

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

OP(KAT).No. 278 of 2015 (Z)

AGAINST THE ORDER/JUDGMENT IN OAEKM 584/2015 of KERALA ADMINISTRATIVE
TRIBUNAL, THIRUVANANTHAPURAM DATED 29-06-2015

PETITIONER:

ARUN GOPINATHAN AGED 35 YEARS
S/O.GOPINATHAN TS, ELLAMKONATHU VEEDU, EZHUKONE PO
KOLAM DISTRICT, PIN 691505

BY ADV. SRI.O.D.SIVADAS

RESPONDENT(S) :

1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
TECHNICAL EDUCATION DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM

2. THE DIRECTOR OF TECHNICAL EDUCATION
TECHNICAL EDUCATION DEPARTMENT, EAST FORT
THIRUVANANTHAPURAM

3. KERALA PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY, PATTOM
THIRUVANANTHAPURAM 695004

4. THE SECRETARY
KERALA PUBLIC SERVICE COMMISSION, PATTOM
THIRUVANANTHAPURAM 695004

5. VINEESH KP
KUTTIIPARAMBIL HOUSE, KOLANCHERY PARAMBA, KOLANCHERY PO
KANNUR 670601

6. PRIYAK NK
UDAYAM, NEAR KALLATHAN PEEDIKA, PO.KAVUMBHAGOM
THALASSERY, KANNUR 670110

7. SURESH LAL SR
KRWA 118, SARASHTHA MANDIRAM, KATTAHAL ROAD
VATTIYOORKAVU P, THIRUVANANTHAPURAM 695013

8. AJAYAKUMAR N
NANDOTH HOUSE, ORIKARA PO, KADACHIRA
KANNUR 670621

9. NIJU MOHAMMED K
BISMI, GRA J 39, GANDHIPURAM ROAD
SREEKARIYAM PO, THIRUVANANTHAPURAM 695017

10. SABU KT
KANJIRAMVILA THEKKATHIL, KARIKKUZHI, PADAPPAKKARA PO

11. LAIJU LUKOSE
KOOTUNGAL HOUSE, NEAR KSRTC, SULTHAN BATHERY
WAYANAD 673592

12. NISHANT K
SRIPURAM, TALIPARAMBA, KANNUR 670141

13. SHEFEEK M
SHEFEEK MANZIL, THRIKKARAVA, KANJAVELI PO
KOLLAM 691602

14. SHIJU RS
SADAS, DECENT JUNCTION PO, KOLLAM 691577

15. RAHUL KR
KUNNATH PARAMBIL HOUSE, IRINGOLE PO, ERNAKULAM DT.

16. SAJITH C SUBRAMANIAN
CHERIYAN PARAMBIL HOUSE, ELENJIKARA PO
ERNAKULAM 683594

17. SWAPNESH S
SWAPNAM HOUSE, VENGOOR, KIDANGOOR
ANGAMALY, ERNAKULAM DISTRICT 683591

18. SHANKER KRISHNAN
TC. 36/830 (1), ARICKATHIL, PERUMTHANNI
VALLAKKADAVU PO, TRIVANDRUM 695008

19. SAJI S
ASWATHI M 26, CHITHRA NAGAR, VATTIYORKAVU
TRIVANDRUM 695013

20. ANEESH KJ
KALLINGAL HOUSE, VALLUVALLY, KOONAMMAVU PO 683518

21. BRIJESH R. KOCHUKOTTARAM
MAHADEVESWARAM, KILIMANOOR PO, TRIVANDRUM 695601

22. PRAMOD SHANKAR PS
PS.BHAVAN, VEMBAYAM PO, TRIVANDRUM 695615

23. JOSE MJ
SIGNAL & TELECOMMUNICATION, WORKSHOP, PODANNUR
COIMBATORE, TAMIL NADU 641023

R1&2 BY ADV. GOVERNMENT PLEADER SMT.REKHA VASUDEVAN
R3 BY SRI.P.C.SASIDHARAN, SC, KPSC

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 17-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP(KAT).No. 278 of 2015 (Z)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1:TRUE COPY OF THE ORDER DATED 29.06.2015 IN OA.(EKM) NO.584/2015 OF
THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

P2:COPY OF THE OA.584/2015

P3: THE COPY OF THE NOTIFICATION ISSUED BY THE KPSC DT.12.12.2014

RESPONDENT(S) ' EXHIBITS

NIL

JJ

/TRUE COPY/

P.S.TO JUDGE

K. SURENDRA MOHAN & SHAJI P. CHALY, JJ.

O.P(KAT) NO.278 OF 2015

Dated this the 17th December, 2015.

JUDGMENT

Surendra Mohan, J.

Ext.P1 order of the Kerala Administrative Tribunal ('KAT' for short) is under challenge in this original petition at the instance of the aggrieved applicant therein. The petitioner had applied for selection and appointment to the post of Lecturer in Mechanical Engineering (Engineering Colleges) in the Technical Education Department. Ext.A1 is the notification issued by the Kerala Public Service Commission ('PSC' for short) inviting applications. After considering the applications received, a rank list was published on 18.2.2013, Annexure A2. The case of the petitioner is that, as per Annexure A3 the qualifications for the post of Lecturer in Mechanical Engineering has been

amended by the All India Counsel for Technical Education (AICTE). As per the amendment, the post of Lecturer has been redesignated as Assistant Professor and a set of different qualifications have been prescribed. In the light of the qualifications prescribed by the amendment, it is contended that respondents 5 to 22 are persons who are not qualified to be advised for appointment to the notified posts. The petitioner had approached the KAT seeking a direction to advise for appointment from Annexure A2 rank list only those persons who possess the amended qualifications as per Annexure A3. After considering the contentions of the petitioner, the O.A has been dismissed by Ext.P1 order.

2. According to Shri. O.D.Sivadas who appears for the petitioner Annexure A3 amendments had come into force on 5.3.2010. Pursuant to Annexure A3, as per Annexure A4 the State Government had implemented the same in the various engineering colleges. The consequential monetary benefits

have also been paid to the persons in service. Reliance is also placed on Annexure A5 Government Order dated 21.6.2013 to point out that the Government have as per the said order revised the qualifications for appointment to the notified post. It has also been specified in Annexure A5 that the revised qualifications should be incorporated in the Kerala Education Special Rules Class B Service, 1967 by suitable amendments. In view of Annexure A5, according to the learned counsel for the petitioner there is no justification for operating Annexure A2 rank list. The consequence of advising persons from Annexure A2 rank list would be to appoint persons who are not qualified, to the notified post. It is contended that, the above aspect has not been considered by the KAT. The counsel also places reliance on the decision of a Full Bench of this Court in Mohanan v. Director of Homeopathy [2006(3)KLT 641 (FB)] to contend that appointments as per the unamended qualifications could be

made only to those vacancies that arose prior to the amendment of the special rules.

3. A counter affidavit has been filed on behalf of the second respondent. According to the learned Govt. Pleader, the special rules applicable to the notified posts have not been amended, till date. Though the qualifications have been revised by Annexure A5 Government Order, until and unless the qualifications are incorporated into the special rules by suitable amendments, the selection would remain unaffected.

4. Adv.P.C.Sasidharan who appears for the third respondent submits that, the selection to the notified post was conducted in accordance with the rules that were applicable at that time. The rank list has also been published in accordance with the same. The PSC is bound by the special rules. Since the special rules have not been amended till date, the PSC would be bound only by the unamended qualifications. As and when the special rules are amended,

the only option available to the PSC would be to stop operation of Annexure A2 rank list and to issue a fresh notification. The present prayer of the petitioner to dislodge respondents 5 to 22 from Annexure A2 rank list and to continue to operate the said list by appointing only persons who are qualified as per the amendment is pointed out to be unsustainable.

5. Heard. We notice that Annexure A1 notification inviting applications to the post of Lecturer in Mechanical Engineering was published on 13.5.2009. Annexure A3 by which the the AICTE has amended the qualifications is dated 5.3.2010. Annexure A5 Government Order by which the qualifications have been revised in accordance with Annexure A3 is dated 21.6.2013 whereas, Annexure A2 rank list was published long before the issue of Annexure A5 on 18.2.2013. Therefore, the subsequent issue of Annexure A5 does not and cannot affect the validity of Annexure A2 rank list in any manner as rightly contended by the counsel for the PSC. The

said authority is bound by the special rules. Unless and until the special rules are amended, the PSC would not be bound to alter the qualifications. In the present case, admittedly the special rules have not been amended. Therefore nothing turns on the fact that the qualifications have been amended by the AICTE as per Annexure A3 or that the Government have revised the qualifications for the post as per Annexure A5. In view of the above, the findings of the KAT are perfectly justified.

6. The counsel for the petitioner has placed reliance on the decision of a Full Bench of this Court in Mohanan v. Director of Homeopathy (supra) to contend that, appointments as per the unamended qualifications could be made only to the vacancies that were in existence before the amendment. As already noticed above, in the present case admittedly the special rules have not been amended till date. Therefore, the dictum of the Full Bench has no application to

the facts of the present case. The petitioner cannot claim that respondents 5 to 22 should be removed from the rank list as persons who are not qualified as per Annexure A3 amendments since they are qualified as per Annexure A1 notification.

For the foregoing reasons, the original petition fails and is dismissed.

Sd/-

K. SURENDRA MOHAN
Judge

Sd/-
SHAJI P.CHALY
Judge

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