

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

OP(KAT).No. 335 of 2015 (Z)

AGAINST THE ORDER IN TA NO 2844/2012 of KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM DATED 25.06.2015.

PETITIONER/APPLICANT:

DR. SWETHA, AGED 36 YEARS
S/O.PRADEEP. P., MYDIKONATHU VEEDU,
NEAR ADAMON RAILWAY STATION, EDAMON. P.O.,
KOLLAM - 691 307, KERALA.

BY ADVS.SRI.P.CHANDRASEKHAR
SRI.P.SREEKUMAR
SRI.S.PRASANTH
SRI.SOORAJ T.ELENJICKAL
SRI.P.A.MOHAMMED SHAH
SMT.UMA
SRI.K.NANDAKUMAR
SMT.MARY RESHMA GEORGE
SMT.V.A.HARITHA
SMT.P.M.MAZNA MANSOOR

RESPONDENTS/RESPONDENTS:

1. KERALA PUBLIC SERVICE COMMISSION
PATTOM, THIRUVANANTHAPURAM - 695 004, KERALA,
REPRESENTED BY ITS SECRETARY.
2. THE CHAIRMAN, KERALA PUBLIC SERVICE COMMISSION
PATTOM, THIRUVANANTHAPURAM - 695 004, KERALA.
3. THE UNIVERSITY GRANT COMMISSION, BAHADUR SHAH ZAFAR MARG,
NEW DELHI - 110 002.

R3 BY ADV. SRI.S.KRISHNAMOORTHY, CGC
R1 & R2 BY SRI.P.C.SASIDHARAN, SC, KPSC

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP FOR
ADMISSION ON 02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : TRUE COPY OF THE BIODATA OF THE PETITIONER.
- P2 : TRUE COPY OF THE GAZETTE NOTIFICATION REGARDING VACANCY FOR THE POST OF LECTURER DATED 13.6.2008.
- P3 : TRUE COPY OF THE ADMISSION TICKET ISSUED BY THE 1ST RESPONDENT.
- P4 : TRUE COPY OF THE SHORT LIST PUBLISHED BY THE 1ST RESPONDENT ON 5.10.2010.
- P5 : TRUE COPY OF THE LETTER DATED 22.11.2010 FROM THE 1ST RESPONDENT.
- P6 : TRUE COPY OF THE RELEVANT PAGES OF APPENDIX III TABLE II(C) OF THE GAZETTE OF INDIA.
- P7 : TRUE COPY OF THE REPRESENTATION DATED 14.12.2010.
- P8 : TRUE COPY OF THE RANK LIST PUBLISHED BY THE 1ST RESPONDENT FOR LECTURER POST IN MICROBIOLOGY.
- P9 : TRUE COPY OF THE APPOINTMENT CHART TO THE POST OF LECTURER IN MICROBIOLOGY.
- P10 : TRUE COPY OF THE RANK LIST FOR THE POST OF LECTURER IN BIOCHEMISTRY IN THE COLLEGIATE EDUCATION DEPARTMENT.
- P11 : TRUE COPY OF THE REVISED GUIDELINE VIDE ORDER NO.GA II E1/3265/5 DATED 11.11.1997 ISSUED BY THE UNIVERSITY OF CALICUT.

RESPONDENTS' ANNEXURES:

ANNEXURE B: TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 1ST AND 2ND RESPONDENTS IN W.P.(C) NO.20044/2011.

ANNEXURE C: A TRUE COPY OF THE ORDER DATED 25.6.2015 IN T.A.NO.2844 OF 2012 OF THE KERALA ADMINISTRATIVE TRIBUNAL.

//TRUE COPY//

P.A. TO JUDGE

smv

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

O.P.(KAT). No.335 of 2015

Dated this the 2nd day of November, 2015

JUDGMENT

Surendra Mohan,J.

As per an order dated 25.06.2015 in T.A. No.2844 of 2012, the Kerala Administrative Tribunal has dismissed the challenge made by the petitioner herein against Ext.P8 rank list published by the 1st respondent Kerala Public Service Commission. The petitioner had applied for appointment to the post of Lecturer (Microbiology) in the Kerala Collegiate Education Department. The basic qualification stipulated by the 1st respondent was possession of a Master's Degree in Microbiology with 55% marks. It was also a stipulation that, the candidate should have passed a comprehensive test in the concerned subject specifically conducted for the purpose by the University Grants Commission (UGC) or any agency duly constituted by the State Government for the purpose. The petitioner was thereafter called for a test which was an OMR test followed by an interview. After the selection process, Ext.P8 rank list was published.

Petitioner was rank No.8. The petitioner challenges the rank list contending that, the method of selection adopted by the 1st respondent was unscientific, bad and liable to be set aside.

2. Initially the petitioner had approached this Court by filing W.P.(C) No.20044/2011. The same was later on transferred to the Kerala Administrative Tribunal and was re-numbered as T.A. No.2844 of 2012.

3. Contentions of the petitioner were opposed by the 1st respondent. A counter affidavit was filed on behalf of the respondents setting out the procedure that was followed for preparing the rank list Ext.P8.

4. The Administrative Tribunal considered the contentions of the parties, referred to the process of selection that was conducted by the 1st respondent and dismissed the application filed by the petitioner. It has been held by the Tribunal that, the petitioner had not impleaded the persons who would be affected by the grant of the relief sought for by her. It has also been found that, the 1st respondent was at liberty to device its own procedure for making selection to the various posts notified by it. The method of recruitment followed by the 1st respondent in the

present case has also been held to be free of any infirmity by the Tribunal.

5. According to Sri.P. Chandrasekhar who appears for the petitioner, the applicants who had applied for being considered for the selection had obtained their qualifications from different Universities. The criteria for the award of marks followed by different Universities are different. However, no process of equalization had been adopted by the Public Service Commission while preparing the rank list. Therefore, the procedure adopted was neither scientific nor proper. Further, according to the learned counsel, the UGC had brought into force Regulations in the year 2010 stipulating the manner in which such selections were to be made. Therefore, it was incumbent on the 1st respondent to have followed the said Regulations and conducted the selection, in compliance therewith. The present selection having been undertaken without complying with the said Regulations, is unsustainable, according to the learned counsel. The above aspect has not been considered by the Administrative Tribunal in its order.

6. Adv. Sri.P.C. Sasidharan, learned Standing Counsel for

the 1st respondent refutes the contentions of the counsel for the petitioner by pointing out that this is a case where the petitioner has participated in the selection process and has challenged the same, for the only reason that she has not been selected. She has been ranked as No.8 in the rank list. The rank list came into force on 28.06.2011. The writ petition was filed only months thereafter. After having been in force for the full length of its duration, the rank list has expired on 27.8.2015. Many candidates have been appointed from the said rank list. They have completed their periods of probation and their probation also have been declared. None of them have been made parties to the present proceedings. The rank list having expired, the questions raised by the petitioner are only academic at present. Appointment to the posts notified are regulated by Special Rules and therefore, the Regulations of the UGC do not apply, ipso facto. The Special Rules would have to be amended before they could be made applicable. In view of all the above facts and circumstances, according to the learned Standing Counsel, this original petition is only to be dismissed.

7. Having heard the counsel appearing for the respective

parties, we do not find any grounds to admit this Original Petition or to grant any of the reliefs sought for.

8. In the first place, the petitioner had participated in the selection process without any demur and had also been ranked by the 1st respondent as rank No.8 in Ext.P8. She has challenged the selection only after the selection process was over, when it was clear that her rank would not entitle her to an appointment. The rank list was in operation for the full period of its duration and has expired on 27.8.2015. During the period of its operation, a number of persons have been appointed from the said rank list. They have joined service and their periods of probation have already been completed. They are not made parties to this Original Petition. The reliefs prayed for by the petitioner cannot be granted for the reason that, all persons who are likely to be affected have not been made parties, as rightly held by the Administrative Tribunal.

9. The 1st respondent had formulated its process of selection, the details of which have been set out in the counter affidavit filed before the Kerala Administrative Tribunal. The procedure has also been referred to in the impugned order. The

Tribunal has found the procedure to be proper. We do not find any grounds to take a different view of the matter. On the question as to whether the 1st respondent should have followed the Regulations issued by the University Grants Commission since Special Rules are applicable to the notified post, such Regulations would become applicable only after the Special Rules are amended by the State Government. Therefore, we do not find any infirmity in the procedure adopted by the 1st respondent.

For the foregoing reasons, we do not find any grounds to admit this Original Petition or to grant any of the reliefs sought for. The same is therefore dismissed.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. To Judge

smv
02.11.2015