

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No. 346 of 2007 (N)

PETITIONER(S) :

HANEEFA T., LECTURER IN COMPUTER
SCIENCE, N.A.M.COLLEGE, KALLIKANDY-670 693.

BY ADVS.SRI.PIRAPPANCODE V.S.SUDHIR
SRI.V.VARGHESE

RESPONDENT(S) :

1. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT
HIGHER EDUCATION (D) DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.

2. KANNUR UNIVERSITY,
REP. BY ITS REGISTRAR, MANGATTUPARAMBU
KANNUR UNIVERSITY P.O., KANNUR.

3. THE MANAGER,
N.A.M.COLLEGE, KALLIKANDY P.O. - 670 693.

4. THE DEPUTY DIRECTOR OF COLLEGIATE
EDUCATION, KOZHIKODE.

R,R2 BY ADV. SRI.M.SASEENDRAN, SC, KANNUR UNIVERSITY

R,R.3 BY ADV. SRI.A.MOHAMMED

R,R.4 BY ADV. GOVERNMENT PLEADER SHRI.ABHIJETT LESSIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 346/2007

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE NEWS ITEM PUBLISHED IN THE MALAYALA
MANORAMA KOZHIKODE EDITION DT. 9.1.2004

EXT.P2: -DO- CHANDRIKA KOZHIKODE EDITION DT.7.1.2004

EXT.P3: -DO- CHANDRIKA KOCHI EDITION DT.7.1.2004

EXT.P4: -DO- MINUTES OF THE INTERVIEW BOARD

EXT.P5: -DO- ORDER NO:ESST/TS/101/2004(32) DT.24.7.2004 OF THE 3RD
RESPONDENT

EXT.P6: -DO-NO:ACAD/B2/3082/04 DT.23.9.2005 OF THE VICE CHANCELLOR
OF THE UNIVERSITY

EXT.P6A: -DO-

EXT.P7: -DO- LETTER NO:ACAD/B2/GEN/05 DT.28.7.2005

EXT.P8: -DO- ORDER NO:ACAD/B2/336/2002 DT.5.10.2002 OF THE 2ND
RESPONDENT

EXT.P9: -DO- G.O.(RT)NO:992/03/H.EDN. DT.15.7.2003

EXT.P10: -DO- G.O.(RT)NO:1771/06/H.EDN. DT.21.11.2006

EXT.P11: -DO- NOTIFICATION NO:F.NO:1-1/2002(PS)EXEMP. DT.14.6.2006
OF UGC

EXT.P12: -DO- UGC ORDER NO:F1-1/2008(PS)MEETING PT.FILE DT.4.11.2008

EXT.P13: -DO- F1-1/2009(PS)MEETING PT.FILE-I DT.16.3.2010

EXT.P14: -DO- STATEMENT OF CANDIDATES WHO ATTENDED THE INTERVIEW FOR
THE POST OF LECTURER IN COMPUTER SCIENCE IN NAM COLLEGE, KALLIKKANDY

EXT.P15: -DO- ORDER NO:F.1-1/2009(PS) MEETING PT.FILE-I DT.16.3.2010
OF THE UGC

RESPONDENTS' EXTS:

EXT.R4A: TRUE PHOTO COPY OF THE LETTER F.NO:SRD/A-24/NCTE/2000-
01/1071 FROM NCTE, SOUTHERN REGION ADDRESSED TO HIGHER EDUCATION

JJ

/TRUE COPY/

P.S.TO JUDGE

K. SURENDRA MOHAN,J.

W.P(C) NO.346 OF 2007

Dated this the 8th January, 2015.

JUDGMENT

The petitioner has filed this writ petition aggrieved by Ext.P10 Government Order by which, the petitioner's appointment as a Lecturer in Computer Science in the N.A.M.College, Kallikandy has not been approved for the reason that the petitioner was not possessed of the qualification of a pass in the National Eligibility Test ('NET' for short) of the University Grants Commission ('UGC' for short). The petitioner has therefore been directed to be given the status of a Guest Lecturer for the time being and the College has been directed to issue a notification for the appointment of a qualified hand.

2. According to the petitioner, he had worked as a Lecturer in Computer Science in the College of the third

respondent for the period from 26.7.2004 to 19.6.2007. Thereafter he has left the service of the third respondent. Though he was appointed as per Ext.P5 proceedings dated 24.7.2004 on a pay of Rs.8,000/- per month, which was the pay due to him as per the UGC scale, he was paid only the salary of a guest lecturer in view of Ext.P10. Therefore, the petitioner seeks the issue of appropriate directions quashing Ext.P10 and directing payment of salary to him at the UGC scale at which he was appointed as per Ext.P5.

3. The petitioner admits that he did not possess the qualification of NET at the time of his appointment. But, according to him, there was a scarcity of NET qualified candidates at the time of his appointment. Therefore, the practice of the University as well as the first respondent was to exempt qualified candidates from the requirement of NET qualification. It was in view of the above practice followed by the University and the first respondent that the petitioner was appointed though he did not possess the NET qualification.

The petitioner was rank No:1 at the selection. After his selection, as per Ext.P6 dated 23.9.2005 the second respondent granted him provisional approval. As per Ext.P7, the Registrar of the University also addressed a communication dated 28.7.2005 to the Secretary of the UGC seeking exemption in the case of the petitioner from the requirement of NET qualification. In tune with the above practice that was being followed, as per Ext.P9 G.O dated 15.7.2003 appointments of other lecturers like the petitioner have been approved. Exts.P12 and P13 are similar orders granting exemption to other lecturers like the petitioner who did not possess NET qualification. According to the counsel for the petitioner, Shri.V.Varghese, the said persons have been permanently exempted. However, in the case of the petitioner a diametrically opposite stand has been adopted by the first respondent in Ext.P10.

4. The contention of Shri.V.Varghese who appears for the petitioner is that, the petitioner though similarly situated

as the other Lecturers in Exts.P8, P12 and P13 has been discriminated against by being subjected to a different treatment. While others who did not possess the NET qualification have been granted exemption by Exts.P8, P9, P12 and P13, the petitioner has been denied such exemption and it has been ordered that he should be treated as a Guest Lecturer at a substantially lower remuneration. Subsequently, as per Ext.P15 the Lecturers in Exts.P8 and P9 have also been granted the exemption, permanently. According to the petitioner, they are still working as Lecturers under the third respondent. The petitioner has left the services of the third respondent. However, the petitioner has not been paid the salary that was legitimately due to him. The counsel places reliance on the decision of the Supreme Court reported in Principal, King George's Medical College, Lucknow v. Dr.Vishan Kumar Agarwal [(1984)1 SCC 416] and a Division Bench of this Court in University Grants Commission v. Rajesh [2008(4) KLT 223] to contend that, the impugned Government

Order Ext.P10 is unsustainable as violative of the equality principle enshrined under Art.14 of the Constitution.

5. A counter affidavit has been filed by the fourth respondent. According to the counter affidavit, the petitioner was not qualified to be appointed as a Lecturer even as per the notification calling for applications from eligible members. The requirement of NET qualification was insisted upon for all appointments at the relevant time in view of the notification issued by the UGC. The petitioner did not possess the said essential qualification. In spite of the above his case was considered sympathetically by the Government and he was permitted to be given the status of a Guest Lecturer. It is contended by the learned Govt. Pleader who appears for respondents 1 and 4 that the stand taken in Ext.P10 is in terms of the notification issued by the University and therefore there are absolutely no grounds to interfere with the same. It is also the case of the fourth respondent that the practice of granting relaxation from the NET qualification was there only

in the year 2002 and the incumbents in Exts.P8 and P9 were granted exemption with effect from 1.1.2002 for the three succeeding academic years.

6. A counter affidavit has been filed by the second respondent putting forward more or less the same contentions as the fourth respondent. It is also pointed out that, the petitioner's appointment had been approved by the University only provisionally exempting him from NET qualification. Such provisional exemption was also granted only subject to the concurrence of the UGC till a NET qualified person was recruited as is clear from Ext.P6. It has also been stated in the counter affidavit that, though the University had been addressed with a request to grant exemption to the petitioner, no orders granting such exemption has been passed so far. Therefore, the University is not in a position to take a decision on the question as to whether the provisional approval should be made permanent or not.

7. Along with I.A.9861/2011 and I.A.15517/2011 the

petitioner has produced additional documents Exts.P12 to P15. Ext.P14 is the list of candidates who had participated in the selection process at which the petitioner was ranked No:1. The counsel for the petitioner points out that, no candidate possessing NET qualification had applied. Exts.P12 and P13 are orders granting exemption to other lecturers in similar circumstances as the petitioner. It is the contention of the counsel for the petitioner that, though the petitioner had satisfied all the requirements for the grant of an exemption from NET qualification as granted to other similarly placed persons, he has been discriminated. Therefore he seeks the issue of appropriate directions setting aside Ext.P10.

8. Heard. It is an admitted fact that the petitioner was not possessed of the NET qualification that was one of the qualifications stipulated for appointment as a Lecturer in Computer Science. The petitioner has been selected as rank No:1 and had worked under the third respondent for a short period, from 26.4.2004 to 19.6.2007. Pursuant to his

selection, the petitioner was issued with Ext.P5 order of appointment on a salary of Rs.8,000/- per month. However, the petitioner was not granted salary at the said rate. According to the petitioner, the salary offered was at the UGC scale. However, in view of Ext.P10 he was paid remuneration only at the rate applicable to guest lecturers.

9. The appointment of the petitioner was granted provisional approval by the second respondent University as per Ext.P6 order dated 23.9.2005. Ext.P7 shows that the Registrar of the University had also addressed the UGC seeking relaxation in his case, from the NET qualification. The said communication is dated 28.7.2005. According to the counter affidavit of the second respondent, the UGC has not passed any orders thereon, till date. At the same time, as per Exts.P8 and P9, two other Lecturers who had been appointed in Computer Science of the third respondent College have been granted exemption from NET qualification by the second respondent University as well as the first respondent. Ext.P9

is the G.O granting such exemption. However, by Ext.P10 in the case of the petitioner it has been ordered that since the petitioner did not possess the NET qualification, his appointment could not be approved and that he could be granted only the status of a Guest Lecturer.

10. A perusal of Ext.P11 shows that, at the time of issue of Exts.P8 and P9, possession of NET qualification was a compulsory requirement for appointment as a Lecturer even in the case of candidates having Ph.D degrees. Therefore the exemption in Exts.P8 and P9 were granted in the face of the stipulation by the UGC that possession of NET qualification shall be a compulsory qualification. Exts.P12 and P13 are orders issued by the UGC on 4.11.2008 and 16.3.2010 granting exemption from NET qualification to Lecturers in Computer Science appointed to other colleges under the Kannur University. Ext.P15 is another order dated 16.3.2010 by which, similar exemptions have been granted to three other Lecturers, two of them being the persons mentioned in Exts.P8

and P9. Ext.P13 shows that, the person who has been granted exemption therein is a Lecturer who was appointed on 29.3.2007. Therefore, the contention of the fourth respondent that the practice of granting exemption from NET qualification had been discontinued after the year 2002 cannot be accepted. What emerges from the above is that, though NET qualification was stipulated as a compulsory qualification by the UGC, exemptions were being granted for appointment as Lecturers in Computer Science from the said qualification, apparently, in view of the scarcity of sufficient number of candidates possessing such qualification. A perusal of the orders granting exemption to the various candidates referred to above shows that others have been granted exemption before and after the date of appointment of the petitioner. At the same time, in the case of the petitioner such exemption has been denied stating that he was not qualified to be appointed. The above conduct therefore shows that the petitioner has been discriminated.

11. In Principal, King George's Medical College, Lucknow v. Dr. Vishan Kumar Agarwal [(1984) 1 SCC 416] (supra) the Hon'ble Supreme Court was considering a question as to whether relaxation in a particular qualification stipulated by an ordinance of the Lucknow University was mandatory or not. That was also a case in which, exemption from the qualification had been granted to some of the candidates. The Apex Court held that the qualification stipulated by the ordinance under consideration was mandatory but, it has been held that since exemptions had been granted to other candidates in similar circumstances, the petitioner could not be denied the benefit thereof. Paragraph 13 of the said judgment reads as under:-

“We agree with the High Court that the papers relating to the admission of Dr. (Miss) Saxena and Dr. (Mrs.) Gupta show that the requirement of clause © was not invariably insisted upon by the University or by the College. They did not regard that requirement as mandatory. We consider it unfair that the

respondent should be picked up for a differential treatment, though situated similarly in the matter of the application of clause(c). If the requirement of clause © could be relaxed in the case of the other two candidates in regard to their admission to the M.D.course of studies, it would not be permissible to the University to regard that requirement as mandatory in the case of the respondent when he applied for admission to the very same course of studies. Clause © does not apply differently to men and women.”

Chandrachud, C.J has thereafter held as follows in paragraph 15 of the said judgment:–

“In all future cases the interpretation put by us on Ordinance 1 must hold good. In so far as the case of the respondent is concerned, his writ petition succeeds on the ground that the University and the College authorities must apply the same yard–stick to all the students who apply for admission to the post graduate course of studies.”

12. The judgment of the Supreme Court referred to

above has been followed by a Division Bench of this Court while considering the question of granting exemption from NET qualification for the purpose of appointment as Lecturers in Computer Science. The issue has been concluded in paragraph 14 of the judgment which reads as under:-

“ In Principal, King George's Medical College v. Dr.Vishan Kumar Agarwal & Anr. [(1984)1 SCC 416] the Apex Court held that as the University has granted relaxation to two other candidates for admission to the M.D.course, it would be unfair to treat the respondent differently though he was similarly situated. In the instant case, both the University Grants Commission and the University have adopted a different yardstick in the case of the petitioners. The University Grants Commission has treated the petitioners differently from the Lecturers named in Exts.P3 and P6 in the matter of grant of exemption from passing the N.E.T. Exts.P3 to P6 relate to Lecturers in Computer Science, appointed in the Colleges affiliated to the University of Calicut. In those cases, the University Grants Commission did not impose a

condition similar to the one in Ext.P16 that they should clear the N.E.T during the period of exemption. Exts.P3 to P6 are in tune with the interpretation which we have placed on the first proviso to Reg.2 of the Regulations. Likewise, the University has by Ext.P7 exempted three Lecturers in Computer Science appointed on 1.6.1998 in one of its affiliated Colleges (Sree Ayyappa College) from passing the N.E.T and approved their appointment with effect from 1.6.1998. The University also has adopted a different yardstick in the case of the petitioners. Therefore, it is crystal clear that though the petitioners were found to be eligible for grant of relaxation in terms of the first proviso to Reg.2, the University Grants Commission and the University have treated them differently by imposing a condition that is not prescribed in the Regulations. The condition stipulated in Ext.P16 that the petitioners shall pass the N.E.T during the period of exemption is ultra vires the Regulations. The said stipulation is therefore liable to be declared invalid and unenforceable .”

13. In view of the above authoritative pronouncements,

there cannot be any doubt that the stand adopted in Ext.P10 is unsustainable. The petitioner has worked under the third respondent only for a short spell. He has ceased to be a Lecturer in Computer Science thereafter. There is absolutely no justification for the discriminatory treatment meted out by the issue of Ext.P10. Therefore, the petitioner is entitled to succeed.

For the foregoing reasons, this writ petition is allowed. Ext.P10 is set aside. The respondents are directed to pay to the petitioner, salary at the scale at which the beneficiaries of Exts.P8 and P9 were paid during the relevant period. The monetary benefits shall be paid to the petitioner, as expeditiously as possible and at any rate within a period of three months of the date of receipt of a copy of this judgment.

Sd/-
K. SURENDRA MOHAN
Judge

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