

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WA.No. 1813 of 2010 () IN WP(C).5731/2008

AGAINST THE JUDGMENT IN WP(C) 5731/2008 of HIGH COURT OF KERALA
DATED 19-05-2010

APPELLANT/PETITIONER:

P.P.SHIJU, AGED 36 YEARS,
S/O. PADMANABHAN, PUTHENPURAYIL HOUSE, PUTHUKAD
THATTAMPADI, NORTH PARAVUR, ERNAKULAM DISTRICT.

BY ADV. SRI.BIJIMON C.CHERIAN

RESPONDENT(S)/RESPONDENTS:

1. THE DIRECTOR,
L.B.S.CENTER FOR SCIENCE AND TECHNOLOGY
EXTRA POLICE ROAD, NANDAVANAM, THIRUVANANTHAPURAM.

2. SMT.MARY REENA K.E, AGED 34 YEARS,
D/O. K.EASHY, KOTTARATHIL HOUSE, KARUVELIPPADY P.O.
FORT KOCHI-682 001.

R,R2 BY ADV. SRI.N.JAMES KOSHY
R1 BY ADV. SMT.K.K.RAZIYA, SC, LBS CENTRE

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ANTONY DOMINIC & P.V ASHA, JJ.

W.A No.1813 of 2010

Dated this the 1st day of September, 2015

JUDGMENT

Antony Dominic, J.

The appellant filed W.P(c) No.5731 of 2008, in which though various reliefs were sought for, his main claim was that he was entitled to seniority over the 2nd respondent in the post of Assistant Professor in Electronics and Communication Engineering, in the Engineering Colleges of the 1st respondent. The learned Single Judge having negatived the claim, this appeal is filed. We heard the learned counsel for the parties and considered the submissions made.

2. Briefly stated, the facts of the case are that the appellant was working as a Senior Lecturer in the L.B.S College of Engineering, Kasaragode. In 2003, he acquired M.Tech. and was eligible for the post of Assistant Professor. On 19.01.2004 the 1st respondent issued a notification inviting applications from eligible internal candidates like the appellant, for appointment to the post of Assistant Professor in Electronics and Communication. Although the appellant submitted his

application, the 1st respondent did not take further proceedings for finalising the selection process.

3. While so, in 2007, the 1st respondent is alleged to have attempted to fill up the vacancy by deputation. At that stage, the appellant filed W.P(c) No.22032 of 2007. When that Writ Petition came up for consideration, the learned Standing Counsel appearing for the 1st respondent, based on the instructions received, submitted that 6 vacancies of Assistant Professor were available in the colleges of the 1st respondent and that steps had already been initiated to finalise the process of selection pursuant to the notification issued in 2004. It was also undertaken that selection process will be completed on or before 31.10.2007. In the judgment, this Court recorded the submission and also that there were two other vacancies and that those vacancies will also be notified immediately. Further it was also submitted before this Court that, even assuming the proposal of the 1st respondent to bring in deputationists to fill up the 2 vacancies of Assistant Professor is implemented, the interest of the appellant or other applicants will not be in jeopardy.

4. Taking note of the submissions thus made before this

Court, the Writ Petition was disposed of by Ext.P1 judgment and in paragraph 5 it was ordered thus:

“5. Respondent No.1 shall, in compliance of the submission made by the learned Standing Counsel, complete the process of selection and fill up the vacancies of Assistant Professor pursuant to the notification issued in the year 2004 on or before October 31, 2007. Respondent No.1 shall further notify the remaining vacancy, if any, of Assistant Professor immediately after completion of the selection process referred to above.””

5. Though Ext.P1 judgment was rendered on 6.8.2007, without taking any further action in pursuance to the judgment, the executive committee of the 1st respondent held on 21.08.2007 resolved to carry out selection to the post of Assistant Professor from among the qualified internal candidates. All these led to initiation of Contempt Court Proceedings and during the pendency of the contempt proceedings, according to the 1st respondent, the selection process initiated pursuant to the 2004 notification and the notification dated 06.09.2007 was finalised. Accordingly Ext.P2 order was issued on 31.10.2007 and the 2nd respondent and the appellant were appointed as Assistant Professors. Subsequently when the Contempt Petition came up for consideration on 05.11.2007, reserving the liberty of the appellant to agitate his

claim regarding seniority over the 2nd respondent, it was closed.

6. It was thereafter that she filed the Writ Petition in which, as stated above, his main claim was for seniority over the 2nd respondent. The judgment under appeal shows that according to the learned Single Judge, since the Contempt Petition was not pursued by the appellant and as his appointment was based on a common selection involving candidates who had applied in response to the 2004 notification and the notification dated 06.09.2007, in response to which the appellant had also submitted his application, the appellant cannot claim any superior right over the 2nd respondent. It is accordingly that the writ petition was dismissed by the impugned judgment.

7. Having heard the learned counsel for the parties, we are inclined to think that the appellant is entitled to succeed. As we had already seen in Ext.P1 judgment rendered by this Court in W.P(c) No.22032 of 2007, paragraph 5 of which has already been extracted in the earlier part of this judgment, this Court directed the 1st respondent to complete the process of selection and fill up the vacancies of Assistant Professor thereupon pursuant to the notification issued in the year 2004 on or before

31.10.2007. It was also directed that the 1st respondent shall further notify the remaining vacancies, if any, of Assistant Professor immediately after completion of selection process in pursuance of the 2004 notification. We have already seen that the appellant had submitted his application in response to the notification of 2004. It is also the specific case of the appellant, as averred by him in paragraph 6 of his Writ Petition, that the 2nd respondent was not qualified for the post when the 2004 notification was issued as the 2nd respondent acquired M.Tech. Degree only in February, 2005. Though this Court directed that selection in pursuance of the 2004 notification and the steps to fill up the remaining 2 vacancies be conducted separately and in 2 stages, counter affidavit filed by the 1st respondent shows that the aforesaid direction of this Court has not been complied with. This factual position is evident from paragraph 4 of the counter affidavit where it has been stated thus:

“4. The applications submitted by the candidates working under the Colleges under the Centre pursuant to the circulars dated 19.01.2004 and 6.9.2007 were scrutinized. The scrutiny committee found that three applicants including the petitioner are eligible to be considered for selection to the post of Asst.Professor in

Electronics and Communication Engineering. The selection process for the post of Electronics and Communication Engineering was held on 24.10.2007. Petitioner participated in the selection process held on 24.10.2007 along with two other applicants and all of them have been selected. Thereafter, appointment orders have been issued to them and all of them including the petitioner joined duty on 31.10.2007.”

8. Evidently, the candidates who responded to both notifications were considered together and based on a common selection, ranking was finalised and it is on that ranking, Ext.P2 appointment order was issued. It is also on that basis that the 2nd respondent and the appellant were offered appointment in that year. From the above itself it is evident that, if the direction in Ext.P1 judgment was complied with, and the applications received in response to the 2004 notification were processed and appointments were made on that basis, the appellant would have been appointed earlier than the 2nd respondent. If appointments were made on that basis, the appellant would have been senior to the 2nd respondent. This legitimate entitlement of the appellant for seniority over the 2nd respondent was defeated by the 1st respondent by conducting a combined selection processes, which is directly contrary to the directions of this Court

contained in paragraph 5 of Ext.P1 judgment. This entitlement of the appellant could not have been affected by the fact that he had submitted an application against the notification issued on 06.09.2007. For all these reasons, we hold that the appellant is entitled to be treated as senior to the 2nd respondent for all practical purposes.

Therefore we set aside the judgment of the learned Single Judge to the extent the seniority assigned to the 2nd respondent over the appellant and dispose of this appeal declaring that for all purposes, the appellant shall be treated as senior to the 2nd respondent.

Sd/-

ANTONY DOMINIC
Judge

Sd/-

P.VASHA
Judge

rtr/

/true copy/

P.S to Judge