

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN**

**MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937**

**WP(C).No. 871 of 2012 (H)**  
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**PETITIONER(S):**  
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1. NIKHIL C.R.,  
S/O.C.RAJAN, 'RASHMI', P.M.ROAD,  
PUTHUPPANAM P.O., VADAKARA, KOZHIKODE-673105.
2. GIREESH T.K.,  
S/O.M.V.RAMANKUTTY, THATTARKANDY, NANMAINDA P.O.,  
KOZHIKODE-673613.

BY ADVS.SRI.B.MOHANLAL  
SRI.SAIJU S.  
SRI.T.PRASAD

**RESPONDENT(S):**  
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1. STATE OF KERALA REPRESENTED BY THE SECRETARY TO  
GOVERNMENT, HIGHER EDUCATION DEPARTMENT,  
SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.
2. THE CO-OPERATIVE ACADEMY OF PROFESSIONAL EDUCATION  
KERALA, REPRESENTED BY ITS DIRECTOR, CO-OPERATIVE  
BANK TOWERS, 1ST FLOOR, VIKAS BHAVAN  
P.O.,THIRUVANANTHAPURAM-695033.
3. THE KERALA STATE PRODUCTIVITY COUNCIL,  
REPRESENTED BY ITS CHAIRMAN, PRODUCTIVITY HOUSE,  
P.B.NO.08, H.M.T. ROAD, KALAMASSERY, KOCHI-683104.

Addl.4. DIVYA S.NAIR  
D/O.P.N.SASIDHARAN NAIR, JAYASREE, TEMPLE ROAD  
KUMARANELLOOR.P.O., KOTTAYAM - 686 016.

Addl.5. FIROZMON .A.M.  
S/O.ABDUL MAJEED.A., H.NO.3/98, NELLUKADAVU  
FORT KOCHI - 682 001.

(ADDL. R4 & R5 ARE IMPEADED AS PER ORDER DATED 07/01/2013 IN  
IA 148/2013).

**CONTD..2..**

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R2 BY ADV. SRI.C.UNNIKRISHNAN,SC,CO-OP ACADEMY OF  
R3 BY ADV. SRI.SURAJ.S  
R2 BY ADV. SRI.E.K.MADHAVAN  
R2 BY ADV. SRI.V.KRISHNA MENON  
R2 BY ADV. SMT.P.VJAYAMMA  
R2 BY ADV. SRI.P.J.ANILKUMAR  
R2 BY ADV. SMT.J.SURYA  
RADDL 4,R 5 BY ADV. SRI.N.MANOJ KUMAR  
RADDL 4,R 5 BY ADV. SMT.JAYASREE MANOJ  
RADDL.R4 BY ADV. SRI.C.RAJENDRAN  
R BY GOVERNMENT PLEADER SMT. A. LOWSY  
R BY SRI.C.UNNIKRISHNAN,SC,CO-OP ACADEMY OF

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
14-09-2015, ALONG WITH WPC. 16388/2012, WPC. 20039/2012, WPC.  
28225/2012, WPC. 564/2013, 26767/2015THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBIT

- EXT. P1: THE TRUE COPY OF THE DEGREEE CERTIFIACTE ISSUED BY THE COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY TO THE 1ST PETITIONER.
- EXT. P1(A): THE TRUE COPY OF THE DEGREEE CERTIFICATE ISSUED BY THE COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY TO THE 2ND PETITIONER.
- EXT. P2: THE TRUE COPY OF THE PROVISIONAL M.TECH CERTIFICATE ISSUED BY THE CONTROLLER OF EXAMINATION, ANNA UNIVERSITY, COIMBATORE FOR THE 1ST PETITIONER.
- EXT. P2(A): THE TRUE COPY OF THE DEGREE CERTIFIACTE ISSUED BY THE VICE CHANCELLOR, VISVESVARAYA TECHNOLOGICAL UNIVERSITY, BELGAUM, KARNATAKA TO THE 2ND PETITIONER.
- EXT. P3: THE TRUE COPY OF THE NOTIFICATION NO : E1-5479/2011/CAPE DATED 20.08.2011 ISSUED BY THE 2ND RESPONDENT.
- EXT. P4: THE TRUE COPY OF THE ADMISSION TICKET IN REGISTER NO : 100143 ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER.
- EXT. P4(A): THE TRUE COPY OF OF ADMISSION TICKET IN REGISTER NO : 400042 ISSUED BY THE 2ND RESPONDENT TO THE 2ND PETITIONER.
- EXT.P4(A) COPY OF THE RANK LIST (PRODUCED ALONG WITH I.A NO.806/2013)
- EXT. P5: TRUE COPY OF THE INTERVIEW SCHEDULE ANNOUNCED BY THE 2ND RESPONDENT AND THE SHORT LIST.
- EXT. P6: THE TRUE COPY OF THE ORDER NO : E1-5479/2011/CAPE/85 DATED 06.01.2002 ISSUED BY THE 2ND RESPONDENT.
- EXT. P7: THE TRUE COPY OF THE NOTIFICATION ISSUED BY THE 3RD RESPONDENT TO CONDUCT THE RE-TEST ON 24/03/2012.
- EXT. P8: THE TRUE COPY OF THE QUESTION PAPER OF THE EXAMINATION DATED 24/03/2012. SUBJECT – ELECTRONICS AND COMMUNICATION ENGINEERING.
- EXT. P9: THE TRUE COPY OF THE COMPLAINT SUBMITTED BY THE 1ST PETITIONER BEFORE THE 3RD RESPONDENT DATED 28/03/2012.

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- EXT. P10: THE TRUE COPY OF THE SPECIMEN OMR SHEET OF THE EXAMINATION CONDUCTED BY THE STATE BANK OF INDIA.**
- EXT. P11: THE TRUE COPY OF THE SPECIMEN OMR SHEET OF THE EXAMINATION CONDUCTED BY THE NORTH MALABAR GRAMIN BANK.**
- EXT. P12: THE TRUE COPY OF THE SPECIMEN OMR SHEET OF THE EXAMINATION CONDUCTED BY THE RAILWAY RECRUIT BOARD.**
- EXT.P13 COPY OF THE RANK LIST FOR COMPUTER SCIENCE AND ENGINEERING AND ELECTRONICS AND COMMUNICATION ENGINEERING.**

**RESPONDENTS' EXHIBITS :**

- ANNEXURE.R2(A) COPY OF THE EXPLANATION GIVEN BY THE RECRUITING AGENCY KITCO ON THE COMPLAINT OF THE PETITIONERS.**
- ANNEXURE.R2(B) COPIES OF THE APPOINTMENT ORDERS DATED 30.6.12 ISSUED BY CAPE.**
- EXT.R1(A) COPY OF THE ORDER DATED 6.1.12**
- EXT.R1(B) COPY OF THE STATEMENT OF FACTS DATED 23.2.12**
- EXT.R1(C) COPY OF THE DECISION OF THE EXECUTIVE COMMITTEE OF CAPE DATED 7.6.12**
- EXT.R1(D) COPY OF THE D.O LETTER DATED 5.10.12**
- EXT.R1(E) COPY OF THE GOVERNMENT ORDER DATED 2.6.12**

**/TRUE COPY/**

**P.A. TO JUDGE**

**SB**

**K. VINOD CHANDRAN, J.**

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**W.P.(C) No.871 of 2012 - H, 16388 of 2012 - W,  
20039 of 2012 -D, 28225 of 2012 - C,  
564 of 2013 and 26767 of 2015 - U**

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**Dated this the 14<sup>th</sup> day of September, 2015**

**J U D G M E N T**

The petitioners in W.P.(C) No. 871 of 2012 were aggrieved with the process of the selection conducted for appointment of Assistant Professors to the various colleges under the 2<sup>nd</sup> respondent. The selection process, which contained a written examination was initially entrusted to the 3<sup>rd</sup> respondent. The 3<sup>rd</sup> respondent conducted the examination and forwarded the results to the 2<sup>nd</sup> respondent, who constituted an interview Board which conducted the interview and selection list was also published. However, the said selections were cancelled by Ext.P6 issued by the Director of the 2<sup>nd</sup> respondent for three reasons, stated in Ext.P6 and extracted herein:-

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- i) The name of the candidates were written in the OMR Sheet.
- ii) The question papers were taken back from the candidates immediately after the examination.
- lii) Answer keys were not published.

2. The petitioners in W.P.(C) No.871 of 2012 challenged Ext.P6. During the pendency of the writ petition, another selection was notified and a written test was also held. The petitioners' prayer for stay of appointments were declined by a learned Single Judge of this Court on 22.03.2012 by an interim order, which was challenged in appeal. Though no interference was caused to the order declining an interim stay, the writ petition itself was called for by the Division Bench.

3. In the writ petition, there was a stay of appointment granted, on the ground that the Director, who had conducted the first examination and who was removed subsequently has informed the petitioners that the cancellation itself was bad and against the specific opinion of the Director.

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An affidavit by the erstwhile Director, was directed to be filed in the writ petition, by the Division Bench. On such affidavit be filed, the Division Bench of this Court also directed the State Government to specifically answer the allegations made in the affidavit.

4. In fact, when the above said proceedings were pending, some of the persons, who were selected as per the second selection had been granted appointment. The other persons, who were awaiting appointment and who were ranked sufficiently high in the rank list, approached this Court with various writ petitions seeking a direction to appoint them to the available posts. Those are W.P.(C) Nos. 564 of 2013, 16388 of 2012, 20039 of 2012 and 28225 of 2012.

5. The petitioners in all the writ petitions except the single petitioner in W.P.(C) No.28225 of 2012 were subsequently granted appointment. This was facilitated by virtue of an order of the Division Bench of this Court dated 21.01.2013, which

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directed the appointments to be made; but subject to the result of the writ petition. The Division Bench in the said order also found that the issue has to be decided on the basis of the two affidavits placed on record, one by the erstwhile Director of the 2<sup>nd</sup> respondent and the other by the Government Secretary. The result of W.P.(C)No.871 of 2012 would decide the other writ petitions too. W.P.(C) No.26767 of 2015 is a fresh petition filed by one of the persons, who had been selected in the first selection. The same having been filed in the year 2015, is grossly delayed.

6. First, this Court hence would have to decide the issue raised in W.P.(C) No. 871 of 2012. Petitioners in the said writ petition have amended the writ petition and challenged the second selection also. The specific challenge made is on the ground that the earlier defects noticed persisted in the second selection also and many of the questions in the second written examinations were obtained from the website of Institute of

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Electronics and Telecommunication Engineers (IETE) and supplied to many of the persons, who had appeared in the first selection.

7. As to the question of defects alleged on the second selection, essentially it is to be noticed that the second selection was not done by the 3<sup>rd</sup> respondent. The selection was carried out by another agency being KITCO, Placement Park, (KITCO) a separate entity, who has not been impleaded herein. In fact the 2<sup>nd</sup> respondent has by an affidavit dated 11.07.2012 placed on record, the reply of the said agency, Ext.R2(a), to the specific allegations raised against the conduct of the written test.

8. However, the petitioners have not impleaded the said agency till date. In such circumstance, the question regarding the defects alleged in the second selection cannot be now considered. Since admittedly the questions were prepared and the valuation was also conducted by the said agency and the results alone were transmitted to the 2<sup>nd</sup> respondent, who had

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conducted an interview of the candidates and selected persons on the combined marks obtained in the written test and interview. Hence, the challenge against the second selection has to be negated.

9. What remains is the question of the cancellation of the first selection, which was for the specific reason stated in Ext.P6. As has been noticed by the Division Bench of this Court, what remains is a consideration of the two affidavits filed, one by the erstwhile Director and the other by the Secretary to Government. The affidavit of the erstwhile Director is produced by the petitioner on 15.08.2012, which is pursuant to the order of this Court in I.A No.9958 of 2012. The Director specifically in the affidavit contends that the cancellation was made by reason of the allegation that the candidates sponsored by the Minister for Co-operation has not figured in the rank list.

10. A specific incident, which is said to have occurred in the office of the Hon'ble Minister has also been spelt out in

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paragraph 5 of the affidavit, where it is also stated that the Minister categorically told the Director that the list will not be approved unless the candidates sponsored by the Minister's office are included.

11. The former Director of the 2<sup>nd</sup> respondent had resigned by a letter dated 02.06.2012, which is said to be produced along with the affidavit as Annexure 1. However, no such letter has been produced along with the affidavit. In any event, the Director has explained the reasons for resignation in paragraph 6, which according to him was the cancellation of the first selection and he being of the definite opinion that the grounds stated for cancellation was not proper and that the procedure followed by the 3<sup>rd</sup> respondent agency cannot be found fault with. The former Director by the said affidavit hence distances himself from the decision to cancel the first selection .

12. The said averments have to be examined as against the affidavit filed by the Secretary as directed by this

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Court on 12.10.2012. From the said affidavit, it is clear that it was the erstwhile Director, himself, who had cancelled the first selection by Ext.P6. Ext.P6 is dated 06.01.2012. The second selection is also said to have been initiated by the said Director himself. Even going by the affidavit of the said Director, he continued in office till 02.06.2012. The second selection having been initiated, the challenge raised in the writ petition with respect to the second selection had to be met, which the said Director himself by a statement of facts dated 23.02.2012, transmitted to the Government which is produced as Ext.R1(b). The original of the said statement of facts is produced along with the affidavit.

13. The Director in the statement of facts specifically supported the cancellation and the second selection conducted. The second selection was entrusted to a separate agency by the Director himself. The Government Secretary has also specifically stated that till the Director resigned, the Director had not raised

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any objection with respect to the cancellation of the first selection or conduct of the second selection. In fact while the Director asserts that he resigned from the service of the 2<sup>nd</sup> respondent by a letter dated 02.06.2012, it is the specific contention of the Government that he was removed.

14. In any event, the Director is said to have submitted his resignation on 02.06.2012 prior to which the second select list was approved by the said Director himself. The affidavit of the Government Secretary specifically shows that the Executive Committee of the 2<sup>nd</sup> respondent held on 07.06.2012 approved the select list drawn up at the second selection process. It is unfortunate that the tussle between the administrators and the Ministers office are unnecessarily brought to this Court. This Court has to specifically find the affidavit of the former Director to be not proper and the allegations remain unsubstantiated. This Court would not pass any further comments on the same, only since the former Director is not

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made a party in the present writ petition, but for expressing strong disapproval of the manner in which the former Director has filed the affidavit. Comparing the allegations made in the affidavit of the former Director and the specific averments made in the affidavit filed by the Government Secretary, this Court finds that there is absolutely no reason to allow the prayers in W.P.(C)No.871 of 2012 and hence W.P.(C)No.871 of 2012 would stand dismissed.

15. W.P.(C) No.28225 of 2015 is filed by a petitioner who appeared in the second selection, but did not eventually get appointment for reason of she having not been ranked high enough. W.P.(C)No.28225 of 2012 hence would stand dismissed.

16. W.P.(C) No.26767 of 2015 necessarily has to be dismissed on the ground of delay as also for the reasons stated in W.P.(C) No.871 of 2012.

17. W.P.(C) Nos.16388 of 2012, 20039 of 2012 and 564 of 2013 are filed by the persons who have already been

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appointed. Nothing survives in the said writ petitions and the writ petitions would stand closed directing the 2<sup>nd</sup> respondent to regularise their appointments since their appointments were made, subject to the result of W.P.(C) No.871 of 2012.

In the result, W.P.(C) Nos. 871 of 2012, 28225 of 2012 and 26767 of 2015 would stand dismissed and W.P.(C) Nos. 20039 of 2012, 16388 of 2012 and 564 of 2013 would stand closed. No costs.

Sd/-  
**K. VINOD CHANDRAN,**  
**JUDGE**

SB

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P.A to Judge