

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

WA.No. 1808 of 2013 () IN WP(C).21329/2011

JUDGMENT IN WP(C) 21329/2011 of HIGH COURT OF KERALA DATED 18/06/2013 AND
ORDER IN R.P. NO.657/2013 IN W.P.(C) 21329/2011 DATED 20.08.2013

APPELLANT:

HARIDAS R
VISHNUSURYA, VELLAROAD, MANKARA P.O.
PALAKKAD -678 613.

BY ADV. SRI.R.SREERAJ

RESPONDENTS:

1. THE UNIVERSITY OF CALICUT
CALICUT UNIVERSITY P.O.
PIN - 673 635 REPRESENTED BY ITS REGISTRAR.
2. THE VICE CHANCELLOR
UNIVERSITY OF CALICUT, CALICUT UNIVERSITY P.O.
PIN - 673 635.
3. ABDUL MANAF V,
VALAKKODE HOUSE, PALLIKKAL P.O., MALAPPURAM
PIN - 673 653
4. SHEEJA T.
SREEVALSAM, MELUR P.O., KOILANDY
KOZHIKODE, PIN - 673 305.

R1-R2 BY ADV. SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW, SC, CALICUT UNIVERSITY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20-05-2015, THE COURT
ON 22.05.2015 DELIVERED THE FOLLOWING:

smv

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

W.A.No.1808 OF 2013

Dated this the 22nd day of May, 2015

JUDGMENT

Shaji P. Chaly, J.

This appeal is preferred by the petitioner in W.P.(C) No.21329/2011 against the dismissal of the writ petition along with other connected matters. The petitioner had also filed a Review Petition as R.P.No.657/2013 against the impugned judgment which was also dismissed by the learned Single Judge on 20.08.2013. Both the judgment and the order under review are under challenge in this writ appeal.

2. The brief facts required for disposing of the above writ appeal are enumerated hereunder.

3. It is the case of the appellant that pursuant to Ext.P2 notification issued by the 1st respondent, he had filed application for appointment to the post of L.D.Typist. Pursuant to the application, hall ticket was issued and the appellant had participated in the competitive test as required under Ext.P2

and as per Ext.P4, a rank list was published, under which, he had found a place. The further case of the appellant is that what remained after Ext.P2 was only an interview. But the 1st respondent introduced one more method before interview viz., practical test and the same was informed to him ten days prior to the date notified for the practical test as per Ext.P5 memo dated 19.05.2010. In accordance with the stipulations contained in Ext.P5 memo, the appellant participated in the practical test on 02.06.2010 and the interview on 18.06.2010. Thereafter, the 1st respondent had published Ext.P6 rank list, in which the appellant was included as rank No.596.

4. The thrust of the challenge in the writ petition was against the conduct of the practical test which was not notified in Ext.P2 and that therefore the same was absolutely illegal, arbitrary, unfair and discriminatory. In order to substantiate the alleged infirmities, appellant has sought the copies of the decision of the 1st respondent to conduct the practical test against the prescriptions contained under Ext.P2 notification. But the concerned statutory authority under the Right to Information Act has declined issuance of the copy and even though an appeal was preferred, the same was also rejected.

5. The learned Single Judge has dismissed the writ petition on the premise that the appellant has not impleaded all the affected parties in the rank list and further that even though a few persons are impleaded in a representative capacity, the same is not sufficient.

6. Heard the learned counsel for the appellant as well as the learned Standing Counsel appearing for the University.

7. The substantial contention in the appeal is with regard to the dismissal of the writ petition by the learned Single Judge on technicalities rather than considering the issues on merit. Apart from this contention, the appellant also contended that such deviations from Ext.P2 is manipulated by the 1st respondent in order to commit illegalities in the matter of selection of candidates. It is also the contention of the appellant that on the basis of the application filed by him seeking paper publication, same was allowed by the learned Single Judge and therefore he has practically complied with the requirement of impleading the affected parties that is contemplated under law, which had enabled the affected parties to appear before the Hon'ble Court and contest the matter.

8. In the light of the above said contentions, we are called upon to take a decision as to whether the dismissal of the writ petition by the learned Single Judge on the ground that all the affected parties are not impleaded in the writ petition is correct or not and further, whether, the appellant having participated in the competitive test, is entitled to turn around and contend that the process of the selection by including practical test, is unsustainable.

9. While considering these questions, the decision reported in '**Siraj v. High Court of Kerala**' [2006 (2) KLT 923 (SC)], in which the very same question projected by the appellant was considered and decided in the negative. So far as the impleadment of the affected parties are concerned, the Hon'ble Apex Court in paragraph 62 of the judgment has held as follows:

"62. The Writ Petitions have also to fall on the ground of absence of necessary parties in the party array. Though the appellants/petitioners contend that they are only challenging the list to a limited extent, acceptance of their contention will result in a total re-arrangement of the select list. The candidates will be displaced from their present ranks, besides some of them may also be out of the

select list of 70. It was, therefore, imperative that all the candidates in the select list should have been impleaded as parties to the Writ Petitions as otherwise they will be affected without being heard. Publication in the newspaper does not cure this defect. There are only a specified definite number of candidates who had to be impleaded namely, 70. It is not as if there are a large unspecified number of people to be affected. In such cases, resort cannot be made to R.148 of the Kerala High Court Rules. That Rule can be applied only when very large number of candidates are involved and it may be not able to pin point those candidates with details. In our view, the Writ Petitions have to fail for non-joinder of necessary parties also”.

10. Therefore, after evaluation and consideration of the very same question, the Hon'ble Apex Court has come to a conclusion that the general rule is that all the affected parties shall be made parties to the litigation and the procedure with regard to the publication is an exception. Therefore, we are of the considered opinion that the learned Single Judge was right in holding that the writ petition is liable to be dismissed in view of the non-impleadment of the affected parties by the petitioner in the writ petition. Apart from this, we are also of the opinion that several candidates as per Ext.P6 rank list have

been appointed by the University and if a decision is taken without hearing them, same will be clear violation of the principles of natural justice and therefore, we do not propose to interfere with the finding of the learned Single Judge with regard to the dismissal of the writ petition for non-impleadment.

11. The next aspect that has come to our notice is with regard to the participation of the appellant in the practical test conducted by the 1st respondent without any protest, even though the petitioner was well aware that such practical test was being conducted deviating from the prescriptions made under Ext.P2 notification and on the basis of the same, he is included in Ext.P6 rank list also as rank No.596.

12. A similar question was considered by the Hon'ble Apex Court in the decision cited *supra* and has held as follows: "the petitioners having participated in the interview, it is not open to them to turn around thereafter when they failed in the interview and contend that the prescription of minimum mark for interview was not proper". The Hon'ble Apex Court had also occasion to consider the decisions in '**P.K.Ramachandra Iyer & Ors. v. Union of India & Ors.**' [(1984) 2 SCC 141],

'Umesh Chandra Shukla v. Union of India' [(1985) 3 SCC 720] and **'Inder Prakash Gupta v. State of J&K & Ors.'** [(2004) 6 SCC 786] and has come to a definite finding with regard to the participation of the candidates as per the modalities prescribed for the selection and that after participating in the procedures contemplated, the candidates are not at liberty to turn around after they become unsuccessful or listed lower in the rank list and contend that the selection method was improper. Therefore, the appellant cannot succeed in the writ appeal on that ground also.

13. Having considered all these aspects and the submissions made by the learned counsel for the appellant and the respondent, we have no hesitation in holding that no case has been made out by the appellant in order to seek interference in an appeal preferred against the judgment of the learned Single Judge in a proceedings under Article 226 of the Constitution of India.

The writ appeal fails and accordingly the same is dismissed. In the facts and circumstances, there is no order as to costs.

Sd/-

**ANTONY DOMINIC
JUDGE**

Sd/-

**SHAJI .P. CHALY
JUDGE**

//true copy//

P.S. to Judge

St/-