

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

WA.No. 20 of 2014 () IN WP(C).14147/2010

AGAINST THE JUDGMENT IN WP(C) 14147/2010 of HIGH COURT OF
KERALA DATED 29-11-2013.

APPELLANT/PETITIONER:

DR. HARISHANKAR B.S, AGED 45 YEARS
S/O.BHASKARAN NAIR K.H., RESIDING AT "SREE SAILAM"
PLRA 182, PANCHAMOODU LANE, PATTOM PALACE P.O.
THIRUVANANTHAPURAM-695004.

BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.T.RAMPRASAD UNNI
SRI.S.M.PRASANTH

RESPONDENT/RESPONDENTS:

1. THE VICE CHANCELLOR, UNIVERSITY OF KERALA,
THIRUVANANTHAPURAM - 695 581.
2. THE UNIVERSITY OF KERALA,
THIRUVANANTHAPURAM
REPRESENTED BY ITS REGISTRAR - 695 581.
3. THE SCREENING COMMITTEE
APPOINTED FOR RECRUITMENT TO THE POST OF READER
UNIVERSITY OF KERALA, PALAYAM
THIRUVANANTHAPURAM - 695 581
REPRESENTED BY ITS CONVENOR MR B S RAJEEV.
4. DR AJITH KUMAR,
READER, DEPARTMENT OF ARCHEOLOGY, UNIVERSITY OF
KERALA, KARIYAVATTOM CAMPUS, THIRUVANANTHAPURAM -
695 581.

R1 -R 3 BY ADV. SRI.BECHU KURIAN THOMAS, SC, UNIVERSITY
OF KERALA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 21-07-2015,
ALONG WITH W.A. 380 /2014, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

smv

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

W.A. Nos.20 and 380 of 2014

Dated this the 21st day of July, 2015

JUDGMENT

Antony Dominic,J.

These appeals are filed against the common judgment of the learned Single Judge dismissing Writ Petition Nos.14147 of 2010 and 13688 of 2010 filed by the appellants. In the writ petitions, the challenge was against the decision of the University to treat them ineligible for the post of Reader in Archeology. By the judgment under appeal, this decision of the University was upheld by the learned Single Judge and hence these appeals.

2. We heard the learned counsel for the appellants and also the learned Standing Counsel appearing for the respondent University.

3. Ext.P1 in the writ petitions are the notification dated 26.03.2008 issued by the respondent University. In so far as it is relevant for the purpose of this judgment, it is sufficient to state that one post of Reader in Archeology, was notified for

recruitment. Responding to Ext.P1 the appellants submitted their applications. In so far as appellant in Writ Appeal No.20 of 2014 is concerned, the stand taken by the University in Ext.P5 is that the appellant was not qualified for the post. In the counter affidavit, it is also stated that he did have the prescribed teaching experience. In so far as appellant in Writ Appeal No.380 of 2014 is concerned, it is stated in Ext.P3 therein that the appellant did not satisfy the prescribed teaching experience. It is this stand of the University which was upheld by the learned Single Judge and the correctness of which is canvassed before us.

4. In Ext.P1 notification published by the University, the qualification prescribed for the post of Reader reads thus:

“Reader

Good academic record with a doctoral degree or equivalent published work. Candidates from outside the University System in addition shall also possess at least 55% marks or an equivalent grade at the Masters Degree Level. Eight years experience of teaching and/or research including upto 3 years for research degrees and has made some mark in the areas of scholarship as evidenced by quality of publications, contribution to educational renovation,

design of new courses and curricula.”

Reading of this notification shows that as far as the academic qualification is concerned, the candidates should have good academic record with a doctoral degree or equivalent published work. As far as the candidates from outside University System are concerned, they, in addition, shall also possess 55% marks or an equivalent grade at the Masters Degree Level. In so far as the experience prescribed is concerned, 8 years experience of teaching and/or research including upto 3 years for research degree and has made some mark in the areas of scholarship is the prescription.

5. In so far as the appellant in Writ Appeal No.20 of 2014 is concerned, his Masters Degree is in History while his doctorate is in Archeology. Though he applied for the post of Reader in the Department of Archeology, having regard to the fact that the notification did not specifically state that the Masters Degree and doctoral degree should be in the concerned subject, the contention raised by the counsel for the appellant is that his Masters Degree in History would satisfy the prescription in the notification. Counsel also referred us to the qualification

prescribed in Ext.P1 notification for the post of Lecturer where it is made clear that the Masters Degree shall be in the relevant subject.

6. While on the above basis, the appellant asserted that he is qualified for the post notified, counsel for the University contended that the Masters Degree of the applicant should also be in the subject concerned. He also contended that only candidates who are having Masters Degree in the subject concerned and who are in the feeder category post of Lecturer can aspire for promotion as Reader. According to him, the Reader who teaches students in the post graduate level should have the qualification in the subject concerned otherwise they will not be in a position to effectively discharge their duties.

7. We have considered the rival submissions. It is true that the qualification as notified in Ext.P1 for the post of Reader does not in specific terms prescribed that the Masters Degree and the Doctorate degree shall be in the subject concerned. However, according to us, that does not in any manner suggest that the person with qualification in an unrelated subject or discipline can apply for the post notified. Otherwise, a Post

Graduate with Doctorate in Physical Education will be eligible to apply for the post of Reader in the Archeology Department. It being a teaching post and when the Reader has to teach Post Graduate students, he should certainly be qualified in the subject concerned and therefore, the requirement that the candidate shall have qualification in the subject concerned, is implicit in the prescriptions contained in the notification.

8. As rightly pointed out by the counsel for the University, when Lecturers shall have the qualification in the subject concerned to get promotion to the post of Reader, we see no reason to read the terms in the notification in a different manner when the post is sought to be filled up by direct recruitment. That apart, in the impugned order, the Vice Chancellor of the University himself was examined this claim of the appellant and held him to be un-qualified for the post. Such a view taken by none other than the Vice Chancellor of the University is certainly a plausible one and does not merit interference by a writ court.

9. We, therefore, do not find any substance in the contention of the counsel for the appellant that the appellant is qualified for the post of Reader in the Archeology Department.

For that reason, we do not think it necessary to go into the claim of the appellant that he had also satisfied the experience prescribed in the notification.

10. In so far as the appellant in Writ Appeal No.380 of 2014 is concerned, the pleadings show that she claimed the benefit of experience gained as a Lecturer, appointed on contract basis, in the Archeology Department of the University itself from June, 2002 till 16.05.2008. In addition, she also claimed the benefit of 3 years experience, which she spent for research to obtain Ph.D degree. Therefore, according to the appellant, she satisfied the experience prescribed in the notification. However, the learned Single Judge rejected this contention and has taken the view that the research experience of 3 years prescribed in the notification should be in addition to 8 years teaching experience. It is the correctness of these findings of the learned Single Judge that calls for examination.

11. A Full Bench of this Court had occasion to deal with a similar prescription for the post of Reader in the respondent University in **Basheer v. Saiful Islam** [2014(4) KLT 521]. It was held thus:

“The qualification prescribed for appointment as Reader consist of the following:

- (1) Good academic record with doctoral degree or equivalent published work.
- (2) If candidates are from outside University system, they shall also possess at least 55% marks or an equivalent grade at the Master's Degree level.
- (3) 8 years experience of teaching and/or research including upto 3 years for doctoral degree.
- (4) Should have made some mark in the areas of scholarship as evidenced by the quality of publications, contribution to educational renovation, design of new courses and curricula.

13. The debate before this Court was concerning the nature of the experience of teaching prescribed for the post of Reader. Before we proceed further with the rival contentions, we shall again refer to the teaching experience prescribed for that post, which is as follows:

“Eight years experience of teaching and/or research including upto 3 years for research degree.”

14. In this context, it is to be noticed that the expression used in the prescription of experience is “and/or”. This legal phrase has been taken as indicating that the choice can either be between the two alternatives or that both can be chosen. It has been held that when and/or is used, they

are to be read either disjunctively or conjunctively and it means either or both of.

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17. The experience prescribed can be dissected into the following:-

(1) 8 years of experience of teaching.

(2) 8 years of experience of teaching and research.

(3) 8 years of research.

18. However, in so far as research is concerned, there is a further condition that it shall be only upto 3 years for research degree.”

12. The Full Bench also made reference to the Apex Court judgments in **Dr Kumar Bar Das v.Utkal University and others** [(1999) 1 SCC 453, **G.N. Nayak v. Goa University** [(2002)2 SCC 712 and **B.C.Mylarappa v. Dr.R.Venkatasubbaiah** [(2008)14 SCC 306].

13. Paragraph 17 of the Full Bench judgment shows the manner in which the experience prescribed for the post has to be understood. So understood, the contention of the appellant that the teaching experience of 8 years prescribed for the post of Reader is inclusive of the 3 years research experience has to be accepted. In other words, the conclusion of the learned Single

Judge that the research experience prescribed shall be in addition to the mandatory 8 years teaching experience, cannot be sustained.

14. University has another case that they decided to eschew the experience of the appellant, being a Lecturer appointed on contract basis in the University. However, neither in the counter affidavit nor in any of the other materials produced before this Court, has the University produced any material on the basis of which such a distinction is drawn between the experience acquired by regular appointees and contract appointees. On the other hand, it is the admitted case that the qualification prescribed and the nature of teaching experience gained by the regular appointees and contract appointees, are similar in all respects. Therefore, there is absolutely no rationale for making such a distinction between the experience gained by a Lecturer as a contract appointee with the regularly appointed Lecturer. Therefore, that decision of the University to eschew the experience of the appellant as a contract appointee is without any basis and cannot be sustained.

15. This therefore means that while the appellant in Writ

Appeal No.20 of 2014 did not satisfy the educational qualification prescribed for the post of Reader in Archeology Department, the appellant in Writ Appeal No.380 of 2014 satisfied the educational qualifications and experience prescribed for the post. Therefore, the University shall consider the candidature of the appellant in Writ Appeal No.380 of 2014 for the post, which as confirmed by the Standing Counsel for the University, still remaining vacant.

Writ Appeal No.20 of 2014 dismissed and Writ Appeal No.380 of 2014 is allowed.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**SHAJI P. CHALY
JUDGE**

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P.A. To Judge

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