

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

WA.No. 607 of 2015 IN WP(C).35526/2014

**AGAINST THE JUDGMENT IN WP(C) 35526/2014 of HIGH COURT OF KERALA
DATED 09-02-2015**

APPELLANTS/PETITIONERS:

1. MUMTAZ, AGED 39 YEARS,
D/O. NAFEESA BEEVI, VATTAKUZHI HOUSE,
ELAMBARA, NELLIKUZHI P.O.,
KOTHAMANGALAM, ERNAKULAM 686 691.
2. GEETHA, AGED 51 YEARS,
D/O.THANKAMANI AMMA, SANGEETH,
C.C.WARD, AVALOOKUNNU P.O.,
ALAPPUZHA - 688 006.
3. KARUNAKARAN, AGED 32 YEARS, S/O. LATE ALAMI,
KLEENIPARA, KALICHANADUKKAM P.O.,
NEELESWAR VIA KASARGOD 671 314
4. JACOB MATHEW, AGED 51 YEARS,
S/O. LATE P.K. MATHEW, PANDAMPURATHU HOUSE,
KARTHIKAPALLY P.O., ALAPPUZHA 690 516.
5. NISHAD, AGED 35 YEARS, S/O. KOYA HASSAN,
FAZEELA MANZIL, PERUVALLOOR P.O.,
KONDOTTI VIA MALAPPURAM 673 638.
6. HASIF, AGED 29 YEARS, S/O. LATE KUNJU MOHAMMED,
MOOZHICAL HOUSE, AVANKARA, POOKOTTUR P.O.,
MALAPPURAM 676 517
7. RAJEEV, AGED 37 YEARS, S/O. RAMACHANDRAN NAIR,
REVATHY SADANAM, KUNNIYODU, KAKKAVILA P.O.,
THIRUVANANTHAPURAM 695 506.

**BY ADVS.SRI.S.V.PREMAKUMARAN NAIR
SRI.R.T.PRADEEP
SMT. P.S.ANJU**

RESPONDENTS/RESPONDENTS:

1. THE PRINCIPAL SECRETARY
DEPARTMENT OF LOCAL GOVERNMENT INSTITUTIONS,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. EXECUTIVE DIRECTOR,
KUDUMBASREE - STATE POVERTY ERADICATION MISSION,
LOCAL SELF GOVERNMENT, GOVERNMENT OF KERALA,
TRIDA BUILDINGS, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM 695 011.

BY GOVERNMENT PLEADER SRI. P.I.DAVIS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 13-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JJJ

ASHOK BHUSHAN, Ag. C.J.
&
A.M. SHAFFIQUE, J

W.A. No. 607 of 2015

Dated this the 13th day of March, 2015

J U D G M E N T

A.M.Shaffique, J.

Petitioners in W.P.(C) No.35526/2014 are the appellants, who challenge the judgment dated 9.2.2015 of the learned Single Judge.

2. The Writ Petition is filed seeking a direction to respondents to appoint the petitioners on contractual basis in the vacancies to the post in the realm of consultancy in National Urban Livelihood Mission (hereinafter referred to as 'NULM' for short) from Ext.P4 list and for a further direction to confine the selection, pursuant to Ext.P5, for open category candidates only.

3. The short facts involved in the Writ Petition would disclose that the petitioners claim to have service under

different projects of 'Kudumbashree', which is a mission of Government of Kerala. The contract of some of the petitioners expired on 31.12.2014 and in respect of others the contract will expire on 31.03.2015. According to them, the Rajeev Awaz Yojna (RAY) and the NUML being continuing projects, decision was taken to fill up various vacancies on contract basis coming within the realm of Consultants. Accordingly, Ext.P2 notification dated 20.02.2014 was issued. Petitioners submitted their applications and the select list was published in terms of Ext.P4. The 2nd respondent also invited applications for selection of open category candidates as per notification dated 15.2.2014, which is produced as Ext.P3. Subsequently, the 2nd respondent issued Ext.P5 notification dated 6.11.2014 for open category candidates to be filled up in the vacancies in NULM. The petitioners were called upon by the officials of the 2nd respondent to apply on the basis of

Ext.P5. It is stated that it was not necessary for them to write the examination, but has only to formally apply for recruitment to the vacancies in NULM. The petitioners submit that they have not been considered for selection as they did not write the examination. According to them, selection has already been completed in terms of Ext.P4 and there is no reason why the petitioners should again appear for the written examination as far as Ext.P5 is concerned.

4. It is submitted by the learned counsel for the appellants that they need not have applied for the said post as the selection was already over on preparation of Ext.P4 select list. But, since they did not write the examination, they were not considered for the selection in terms of Ext.P5. It is *inter alia* contended that as far as the contractual employees were concerned, Ext.P4 is the final list as per Ext.P2 notification and as far as Ext.P5 is concerned, it was only meant as a selection process for

open category candidates.

5. Counter affidavit has been filed on behalf of the respondents *inter alia* stating that an offer letter was circulated among the staff of Programme Management Unit/Programme Implementation Unit under Basic Services to Urban Poor/Integrated Housing and Slum Development Project for preferential treatment when recruitment to RAY/NULM scheme would be conducted. Ext.P2 was issued under the belief that both the above schemes will be having the same operational guidelines. However, the Government of Kerala appointed 'Kudumbashree' as the State implementing agency only in Mid 2014 as per Government Order dated 1.7.2014 and posts under NULM were sanctioned thereafter. Hence, the offer contained in Ext.P2 letter has become unenforceable and later applications were invited under the posts sanctioned by the Government of Kerala for NULM. It was widely advertised that all the

candidates who had already submitted applications based on the earlier advertisement will have to submit fresh applications based on their previous qualification and experience certificates as evidenced by Ext.P5. It is stated that after issuing the advertisement, none of the petitioners have approached the respondents for any clarification or guidance. After conducting all the due procedures it was ensured that the process of appointment to the posts under NULM is conducted in a reasonable manner. It is further submitted that Ext.P3 can only be related to Rajeev Aavas Yojana and not for NULM and Ext.P2 notification was a mistake.

6. The learned Single Judge dismissed the Writ Petition holding that the appointment can be made only on the basis of the guidelines for appointment for NULM and the operational guidelines for NULM prescribes various qualifications, experience and competency for different

posts. The petitioners have not satisfied the qualifications for appointment and therefore, having not chosen to apply for the post, they cannot claim for appointment.

7. Impugning the aforesaid judgment, the learned counsel for the appellants submits that it is not correct to say that the petitioners have not applied for the post. They have applied for the post but they did not participate in the written examination on account of the oral assurance by the office bearers indicating that they have already participated in the selection process in terms of Ext.P2.

8. This argument, according to us, is not sustainable. A perusal of Ext.P5 clearly indicates that it is a notification issued by the 'Kudumbashree', inviting application from qualified candidates for the appointment on contract basis for a specific period, for various posts, for the implementation of NUML projects. It is also mentioned that those who have submitted application for the posts as per

advertisement dated 15.2.2014, shall again submit application for the posts. That apart, the petitioners had clearly indicated that they were also asked to submit their application. Under such circumstances, when they have submitted their applications, they were liable to complete the selection procedures by participating in the written examination. There is no reason for the petitioners to now complain that they should also be considered for appointment in terms of Ext.P4. As far as Exts.P2 and P4 are concerned, it is clear that it was not acted upon since Ext.P5 notification has been issued after 43 posts were sanctioned in NULM. Under such circumstances, all subsequent events clearly clarify the position that the appointment can be made only in terms of Ext.P5 notification. Petitioners were under obligation to participate in the selection process. Having not done so, it is not open for the petitioners to claim that they should be given a

preferential appointment on the basis of Ext.P4 select list.

In such circumstance, we do not find any ground to interfere with the judgment of the learned Single Judge. Accordingly, this Writ Appeal is dismissed.

Sd/-
ASHOK BHUSHAN,
ACTING CHIEF JUSTICE.

Sd/-
A.M. SHAFFIQUE,
JUDGE.

jjj

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P.A. TO JUDGE