

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

WA.No. 708 of 2015 IN WP(C).32517/2010

AGAINST THE JUDGMENT IN WP(C) 32517/2010 DATED 26-02-2015

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APPELLANTS/PETITIONERS :

1. REENA P.V.
B.ED STUDENT, DR.AMEDKAR COLLEGE OF EDUCATION
PERIYA KASARGOD DIST. PIN - 671 316.
2. DEEPA.P
B.ED STUDENT, DR.AMEDKAR COLLEGE OF EDUCATION
PERIYA KASARGOD DIST. PIN - 671 316.
3. RAJANI.E
B.ED STUDENT, DR.AMEDKAR COLLEGE OF EDUCATION
PERIYA KASARGOD DIST. PIN - 671 316.
4. VIDYA K
B.ED STUDENT, DR.AMEDKAR COLLEGE OF EDUCATION
PERIYA KASARGOD DIST. PIN - 671 316.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS/RESPONDENTS :

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
DEPARTMENT OF HIGHER EDUCATION , SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
2. KANNUR UNIVERSITY,
REPRESENTED BY THE REGISTRAR
KANNUR UNIVERSITY MANGATTUPARAMBA
KANNUR UNIVERSITY CAMPUS P.O., KANNUR 670 567.
3. THE PRINCIPAL
DR.AMEDKAR COLLEGE OF EDUCATION
PERIYA, KASARGOD DIST. PIN - 671 316.

4. THE MANAGER

DR.AMEDKAR COLLEGE OF EDUCATION
PERIYA KASARGOD DIST. PIN - 671 316.

5. THE VICE CHANCELLOR

KANNUR UNIVERSITY, MANGATTUPARAMBA
KANNUR UNIVERSITY CAMPUS PO, KANNUR - 670 567.

R1 BY SPL.GOVERNMENT PLEADER, SMT. GIRIJA GOPAL
R2 & R5 BY SRI.V.A.MUHAMMED, SC, KANNUR UNIVERSITY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 01-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

APPELLANTS' EXHIBITS :

ANNEXURE I : TRUE COPIES OF THE MARK LISTS/CERTIFICATES OF THE
APPELLANTS.

RESPONDENTS EXHIBITS :

NIL

/TRUE COPY/

PA TO JUDGE

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

W.A. No. 708 OF 2015

Dated this the 1st day of December, 2015

JUDGMENT

Ashok Bhushan, C.J.

This writ appeal has been filed by the appellants against the judgment of learned Single Judge by which the writ petition filed by them was dismissed.

2. The writ petition was filed by four petitioners. The petitioners/appellants were Post Graduates with M.Com degree, obtained through distance education programme of Kannur University. They appeared for the final examination of M.Com in May, 2009. Results were delayed and which could be declared only on 11.12.2009. Due to this the petitioners could apply to the B.Ed course conducted by the University only after 11.12.2009. The admission to the B.Ed course was completed by that time and the Government issued an order, dated 16.11.2009, fixing 02.11.2009 as last date for 'spot admission'. Spot admission was closed on 21.11.2009, but still several Government seats could not be filled up. The State

Government issued Ext.P2 order, dated 30.11.2009, which reads as under :

"ORDER

As per the Government order cited permission was granted to conduct a spot allotment on 21.11.2009 to fill up the unfilled seats of B.Ed Admission 2009. 594 candidates attended the spot allotment. 137 of them got transfer and 218 candidates got fresh allotment. Now the Director, LBS vide his letter 2nd cited has informed that 4 seats in Government Colleges, 36 seats in Aided Colleges and 3064 Government Seats in Private Self financing colleges remain vacant after the spot allotment.

In the circumstances Government are pleased to order that the unfilled seats of B.Ed 2009 may be treated as "lapsed seats" and the managements of Aided and Unaided colleges can fill up the vacant seats in accordance with merit and reservation principles followed by Government. Similarly the Principals of Government Training Colleges can also fill up their lapsed seats after observing usual procedures.

(By Order of the Governor)

Sd/-

R.S.Kumari Valsamma
Under Secretary to Government

3. On the strength of the Government Order dated 30.11.2009 the management immediately filled up the seats for B.Ed course by admitting the petitioners and few others. Petitioners got admitted on 11.12.2009 on which date their

M.Com result was declared. Petitioners were admitted and pursued their course.

4. However, in the mean time, University wrote a letter to the College asking them to submit the details of those students who were admitted after 21.11.2009 and the University Registrar had sent a letter dated 16.03.2010 (Ext.R2(a)) to the College to cancel the admission of those students who were taken subsequent to 21.11.2009. Petitioners filed the Writ Petition and by virtue of the interim order, they appeared for the B.Ed examination and provisional certificate of having passed B.Ed examination has also been given to them in 2012, which they have brought on record as Annexure I series. The writ petition filed by the petitioners were dismissed. Learned Single Judge took the view that issuance of Ext.P2 Government Order was not a reason for admitting the students who were qualified much later to the commencement of the admission process for the academic year.

5. Learned counsel for the appellants submits that Ext.P2 did not confine to the consideration of only those candidates who had already applied for B.Ed allocation in 2009.

A perusal of Ext.P2 Government Order, as noted above, indicates that the management of unaided colleges were permitted to fill up the vacancies after observing usual procedures. The aforesaid observation in the order is capable of interpretation in both ways, i.e., management, after observing the procedure can make or complete the admission and further, the management may follow all procedures as already initiated and complete the admission.

6. Be that as it may, it is not necessary for us to enter into such issue. It is an admitted fact that the management had admitted the petitioners on the date when they were declared as passed in the Post Graduate examination. The appellants have completed one year course of B.Ed and having already been declared as provisionally passed, on what ground, as submitted by learned counsel for the respondent, that they were not eligible on the date when the process of admission began. We are of the view that they need not be treated as unsuited for the purpose of present case.

7. Learned counsel for the appellants submits that after obtaining B.Ed, some of them have already employed and it will be too harsh to return their B.Ed degree. In the facts of the

present case we are of the view that the cancellation of B.Ed admission and consequent degree obtained by the appellants could not satisfy the interest of justice even though there were irregularity in obtaining admission by the appellants, as rightly contended by counsel for the University.

But for the facts of the present case, we are of the view that appellants/writ petitioners be allowed to retain the said degree. We however, clarify that this judgment shall not be treated as a precedent and has been passed on the facts of the present case. The Writ Appeal is disposed of as above.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**