

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC  
&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

WA.No. 597 of 2014 () IN WP(C).17607/2012  
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AGAINST THE JUDGMENT IN WP(C) 17607/2012 of HIGH COURT OF KERALA  
DATED 07-03-2014

APPELLANT(S)/RESPONDENTS:-:  
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1. UNIVERSITY OF KERALA  
THIRUVANANTHAPURAM - 695 034  
REPRESENTED BY ITS REGISTRAR.

2. THE REGISTRAR,  
UNIVERSITY OF KERALA, THIRUVANANTHAPURAM - 695 034.

BY ADV.SRI.GEORGE POONTHOTTAM, SC, KERALA UNIVERSITY  
SRI.PAUL JACOB, SC, UNIVERSITY OF KERALA

RESPONDENT/PETITIONER:-:  
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DR.ZAINUDHIN SAHIB.S, AGED 50 YEARS  
S.S.COTTAGE, NJARACKAL, PERINAD P.O.  
KOLLAM - 691 601.

R1 BY ADV. SRI.PHILIP J.VETTICKATTU  
R1 BY ADV. SRI.B.PREMNATH (E)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20-10-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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**ANTONY DOMINIC &  
P.V.ASHA, JJ.**

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**W.A.No.597 of 2014**  
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**Dated this the 20<sup>th</sup> day of October, 2015**

**JUDGMENT**

Asha, J.

University of Kerala has filed this writ appeal against the judgment of the learned single Judge directing appointment of the petitioner, the first respondent herein, to the post of Lecturer (Zoology).

2. The University of Kerala invited applications for selection and appointment to the post of Lecturer in Zoology. Two vacancies - one for open category and the other for Muslim reservation - were notified. The first respondent submitted his application against the vacancy reserved for Muslim. After the process of selection including interview, the University appointed one Sri.Abdul Rasheed K, as per Ext.R2(c) proceedings dated 20.6.2002. But he did not join duty.

3. The petitioner had collected the details of marks awarded by the selection committee, pursuant to the selection conducted on the basis of Ext.P5. From Ext.P8 list, he received under the

Right to Information Act, it was seen that he was the candidate who obtained the highest marks next to the appointed candidate Sri.Abdul Rasheed. The total marks awarded to the first respondent was 75.23 and to Sri.Abdul Rasheed K. who was offered appointment was 79.26. Therefore on coming to know that Sri.Abdul Rasheed did not join duty, he approached the University requesting for appointment in his place. Since the University did not take any positive action, he approached this Court in W.P.(C) No.17607 of 2012, which resulted in the impugned judgment.

4. The University filed a counter affidavit stating that Sri.Abdul Rasheed was the only candidate recommended by the selection committee and as per the provisions contained in Statute 4 of Chapter III of the Kerala University First Statutes, 1977, Syndicate offers appointment only to the candidates who are recommended by the selection committee. As long as there is no recommendation for appointment of first respondent, by the selection committee, the Syndicate cannot offer him appointment.

5. The learned single Judge found that the selection committee had already evaluated the merit of the candidates and awarded marks to them under all heads including academic qualification, teaching experience, performance in interview, publication of journals, etc. It was found that the first respondent secured the highest marks in the written test and that only because of the higher marks awarded in the interview Sri.Abdul Rasheed happened to be selected. Seeing that the selection committee has not found the appellant unfit and the vacancy was remaining unfilled on account of the non-joining duty of Sri.Abdul Rasheed, the learned single Judge directed the appointment of the first respondent, on the basis of the marks awarded to him by the selection committee.

6. It is as against this direction that the University has filed this appeal. The main contention raised by the learned counsel for the appellant is that the Syndicate can offer appointment only to candidates who are recommended by the selection committee. As the first respondent is not recommended by the selection committee, he cannot be offered appointment. It is argued that

merely on the basis of the marks scored by the first respondent, he cannot claim any right for appointment. The learned counsel for the appellants relied on the judgment of the Apex Court in ***State of Rajasthan and others Vs. Jagdish Chopra : 2007 (8) SCC 161*** asserting that there is no provision for appointing the first respondent and they have to resort to fresh process of selection after re-notifying the vacancy.

7. On the other hand the counsel for the 1<sup>st</sup> respondent pointed out that the 1<sup>st</sup> respondent has already been assessed to be meritorious just below the candidate who was offered appointment. When that candidate did not join duty, it is only just and proper that the next candidate is appointed. It was alleged that the University is taking steps to see that a person their choice is appointed.

8. Having regard to the rival contentions and pleadings, we find that the selection committee has already evaluated the comparative merit of all the 23 candidates who attended the interview, in accordance with the UGC Regulations, as evident from Ext.P8 in which marks are awarded separately under each

head like qualifying examination, additional qualifications like NET, Ph.D, etc., research experience, publication in journals, international seminar/conference and performance in interview. In this process of assessment, the first respondent was found to be the 2<sup>nd</sup> meritorious candidate eligible for appointment against the vacancy reserved for Muslim candidates. We also find that the selection committee has recommended the names of only one candidate each, as against each of the vacancies notified.

9. In these circumstances, we are of the considered view that it is absolutely unnecessary to resort to a fresh process of selection, merely on the ground that the selection committee did not recommend the 1<sup>st</sup> respondent. We are unable to accept the contentions raised by the learned standing counsel on the mere assumption that there may be reasons for not recommending the 1<sup>st</sup> respondent, such as his unsuitability or some other reasons. There is no such contention in the counter affidavit. There is absolutely no material also for raising such contentions. We find that the selection committee recommended only one candidate for the unreserved-open vacancy also as in the case of the

vacancy reserved for Muslim. When the selection committee has already evaluated the merit of the candidates, and the candidate recommended by selection committee, whom the Syndicate resolved to offer appointment and University appointed, did not join duty i.e when the recommendation did not materialise, a further recommendation by the selection committee and a resolution by the Syndicate to offer appointment to the next candidate who has been found suitable, are mere formalities. As rightly observed by the learned Single Judge, the appellant University is adopting a hyper technical approach by denying appointment to the 1<sup>st</sup> respondent. The University does not have a case that evaluation made in Ext.P8 is not by the selection committee. Therefore, the first respondent who is the next candidate who was found to meritorious just below Sri.Abdul Rasheed is entitled to be appointed, without resorting to an unnecessary procedure of fresh selection after re-notification.

10. The judgment relied on by the learned standing counsel cannot be made applicable in the peculiar circumstances of the case, as the merit of the first respondent herein is already

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assessed as evident from Exts.P8 and 1<sup>st</sup> respondent claimed the appointment immediately after the candidate appointed did not join duty. The only formality to be completed is a formal recommendation of the selection committee and the formal resolution of Syndicate to offer appointment. Going by Statute 4 of Chapter III of the Kerala University First Statutes, 1977, once the selection committee recommends a candidate, the Syndicate has no other option except to take a decision to offer him/her appointment. Hence the learned single Judge was perfectly right in directing the appointment of the first respondent.

In the above circumstances, we do not find any ground for interference in the matter. The writ appeal is dismissed.

Sd/-  
**ANTONY DOMINIC,**  
**JUDGE.**

Sd/-  
**P.V.ASHA,**  
**JUDGE.**

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