

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WA.No. 1391 of 2015 () IN WP(C).19769/2012

AGAINST THE JUDGMENT IN WP(C) 19769/2012 of HIGH COURT OF KERALA
DATED 08-06-2015

APPELLANT(S)/4TH RESPONDENT:

KAVITHA BALAKRISHNAN, AGED 39 YEARS,
D/O K.M. BALAKRISHNAN, SANJEEVANI DUTT COMPOUND
MANAKAVU PO, KOZHIKODE-673 007

BY ADVS. SRI. KURIAN GEORGE KANNANTHANAM (SR.)
SRI. SAJITH KUMAR V.

RESPONDENT(S)/RESPONDENTS 1 TO 3:

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1. PRASANNA KUMARI E.S.
ERUVELIL, WARRIOM, CHOTTANIKKARA PO
ERNAKULAM DISTRICT, KERALA PIN-682 312
 2. THE REGISTRAR
KANNUR UNIVERSITY, MANAGATTUPARAMBU
KANNUR UNIVERSITY CAMPUS PO, KANNUR 670 567
 3. VICE CHANCELLOR
KANNUR UNIVERSITY, MANGATTUPARAMBU
KANNUR UNIVERSITY CAMPUS PO, KANNUR 670 567
 4. DIRECTOR OF STUDENT SERVICES AND STATE PUBLIC
INFORMATION OFFICER
KANNUR UNIVERSITY, MANGATTUPARAMBU
KANNUR UNIVERSITY CAMPUS PO, KANNUR 670 567

R1 BY ADV. SMT. SANGEETHA LAKSHMANA
R2-R4 BY ADV. SRI. V. A. MUHAMMED SC, KANNUR UNIVERSITY
R2-R4 BY ADV. SRI. P. K. IBRAHIM
R1 BY PRASANNA KUMARI E.S.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13-07-2015, ALONG
WITH WA. 1392/2015, WA. 1459/2015, WA. 1472/2015, THE COURT ON 20-07-2015
DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

W.A.Nos.1391, 1392, 1459 & 1472 of 2015

Dated this the 20th day of July, 2015

JUDGMENT

Antony Dominic, J.

1. These appeals are filed against the common judgment in W.P(C).33953/11 and 19769/12. Appellant in W.A.Nos.1391/15 and 1392/15 is the 4th respondent in W.P(C).19769/12 and 3rd respondent in W.P(C).33953/11. W.A.Nos.1459/15 and 1472/15 have been filed by respondents 1 to 3 in W.P(C).19769/12 and respondents 1 and 2 in W.P(C).33953/11 respectively. First respondent in all these appeals is the petitioner who filed the writ petitions in question.

2. The issue that led to the filing of the writ petitions is the claim of the first respondent herein for appointment to the post of Lecturer in Law, which was a post reserved for physically handicapped persons. Though there is no dispute that the first respondent satisfied all the educational qualifications prescribed for the post, according to the University, she was over-aged and therefore, it appointed the appellant in W.A.Nos.1391/15 and

1392/15. In the judgment under appeal, the learned single Judge held that the first respondent herein was eligible for relaxation in the upper age limit prescribed by the University and on that reasoning, held the action of the University in not considering her suitability for the post of Lecturer in Law illegal. Learned single Judge also held that the appointment of the appellant in W.A.Nos.1391/15 and 1392/15 is illegal and directed the University to consider the suitability of the first respondent by treating her as a candidate who has the necessary age qualification and is otherwise eligible for the post. It is this judgment which is under challenge before us.

3. We heard the learned senior counsel for the appellant in W.A.Nos.1391/15 and 1392/15, learned counsel appearing for the appellant in W.A.1459/15 and 1472/15 and the first respondent who appeared as party-in-person.

4. The facts which are required to be noticed are that the first respondent is a visually impaired person

with 100% disability as certified by the medical board. She acquired LLB degree and Post Graduate Degree in Law. She has also obtained National Eligibility Test qualification. On 29.1.2008, the Kannur University issued a notification inviting applications from eligible candidates for appointment to the posts mentioned therein, including the post of Lecturer in law, reserving the same to physically handicapped persons. Apart from the educational qualifications prescribed for the post, as far as the age of the candidates is concerned, it was specified that as on 1.1.2008, the candidates should be below 40 years of age. It was also specified that "usual relaxation in upper age will be given to candidates belonging to SC, ST, OBC and other categories as per the University rules". The last date for receipt of the applications was specified as 28.2.2008.

5. The first respondent, who satisfied the educational qualifications, applied for the post of Lecturer in Law, she being a visually impaired person. She was issued memo dated 22.9.2010, directing her to appear before the Selection Committee for an interview on

5.10.2010. She appeared before the selection Committee with all certificates. According to her, in view of the fact that as on 1.1.2008 she was 40 years and 7 months old, at the time of interview, a question was raised with regard to her age and she clarified to the Selection Committee that by virtue of the Government Orders dated 29.5.1973 and 25.5.1984, she was entitled to the benefit of age relaxation as contemplated therein for physically handicapped persons. There was no further communication from the University and this led her to file W.P(C).33953/11. Through the counter affidavit filed in the writ petition, she came to understand that the appellant in W.A.Nos.1391/15 and 1392/15, a candidate from the open category, was appointed to the post of Lecturer in Law with effect from 21.12.2011. It was thereupon that the first respondent filed W.P(C).19769/12.

6.The justification offered by the University for treating the first respondent as an ineligible candidate is that the Government Orders pertaining to age relaxation in respect of physically handicapped

persons was implemented in the University only through proceedings dated 21.1.2009 and that the same was in compliance with the order dated 1.3.2008 issued by the State Government. It was contended that the last date of receipt of application pursuant to the vacancy notification dated 29.1.2008 was 28.2.2008 and as on that date, the University had not adopted the Government Orders providing for age relaxation for physically handicapped persons. According to the University, the orders providing for age relaxation thus adopted by it could not be made applicable to the case of the first respondent because adoption of the Government Order had only prospective effect. It was the case of the University that in the above circumstances, as the first respondent was admittedly beyond 40 years of age as on 1.1.2008, the cut off date prescribed in the notification, she did not satisfy the prescription regarding age for appointment to the post in question. It is stated that it was in such circumstances, the appellant in W.A.Nos.1391/15 and 1392/15 was appointed.

7. In the judgment under appeal, learned Judge took the view that the orders issued by the State Government providing for age relaxation is a part of law as far as the University was concerned and that therefore, it was not required to expressly adopt the relevant Government Order for deeming it to be a part of the Rules. According to the learned Judge, the said Government Order had to be read into the Rules and form part thereof even without an express act of adoption. Accordingly, the writ petitions were allowed and hence these appeals.

8. Before us also, counsel appearing for the appellants reiterated the very same contentions which were contradicted by the first respondent who appeared in person.

9. We have considered the submissions made. Kannur University is governed by the provisions of the Kannur University Act and the statutes framed thereunder. It is not the case of the University that the reservation of the post was not in discharge of its obligations under the Persons with

Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (the 'Act', for short). Section 2 of the Act contains definitions. Under section 2(a), in so far as it is relevant, 'appropriate Government' means in relation to a State Government or any establishment wholly or substantially financed by that Government or any local authority, other than a Cantonment Board, the State Government. The term 'establishment' is defined in section 2(k) as a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of the Companies Act, 1956 and includes Departments of a Government. University is receiving aid from the State Government and is therefore, an establishment under section 2(k) of the Act. In respect of such an establishment, the appropriate Government under the Act is the State Government.

10. Chapter VI of the Act provides for employment. Section 38 provides that appropriate Governments and

local authorities shall by notification formulate schemes for ensuring employment of persons with disabilities. It is also provided that the scheme may provide for aids which are specified in clauses (a) to (f) thereof. This section, being relevant for the purpose of the judgment, reads thus:

"38. Schemes for ensuring employment of persons with disabilities - (1) The appropriate Governments and local authorities shall by notification formulate schemes for ensuring employment of persons with disabilities, and such schemes may provide for-

- (a) the training and welfare of persons with disabilities;
- (b) the relaxation of upper age limit;
- (c) regulating the employment;
- (d) health and safety measures and creation of a non-handicapping environment in places where persons with disabilities are employed;
- (e) the manner in which and the persons by whom the cost of operating the schemes is to be defrayed; and
- (f) constituting the authority responsible for the administration of the scheme."

11. In pursuance of the aforesaid provisions of the Act, Scheme for Direct Recruitment of Physically Handicapped Persons in Public Service was framed by the Government of Kerala by G.O(P).20/98 P&ARD dated 14.7.1998. Appendix to the Government Order contains the scheme for direct recruitment and this Government Order deals with the recruitment to class III and IV posts. Annexure to the Appendix contains the list of posts identified under section 32 of the Act as those reserved for persons with disabilities. For the present, we need only notice that clause 11 of the scheme provides as follows:

"11. The Rules regarding age, probation etc., as provided in the General Rule in Part II of Kerala State and Subordinate Service Rules, shall apply to the recruitments under the scheme. The rules regarding communal rotation shall also apply."

12. Subsequently, the Government issued G.O.(P).No. 119/2205/SWD dated 6.8.2005, providing for reservation of 3% of vacancies in class I and II in public service as detailed in the list appended to the order. Government of Kerala again issued G.O(P).

46/08/SWD dated 19.7.2008 fixing the turn of physically handicapped persons in a roster of 100 vacancies. In this notification, it was inter alia provided that:

"(ii) Relaxation in age as per the provisions in KS&SSR Rules will be continued to be extended to the physically handicapped candidates."

13. Evidently therefore, from the scheme framed under section 38 itself, the State Government have clarified that rules regarding age as provided under the General Rules in Part II of KS & SSR shall apply to the recruitments under the scheme. This is further clarified in the Government Order dated 19.7.2008, which, though is also applicable to recruitments to public services, states that relaxation in age as per the provisions of the KS & SSR will be continued to be extended to the physically handicapped persons. These orders issued by the State Government make it clear that the scheme framed by the appropriate government under section 38 of the Act incorporated the provisions of KS & SSR prescribing age and its relaxation into the scheme

for recruitment of physically handicapped persons also. Undoubtedly, scheme framed under section 38 of the Act is binding on every establishment of the State Government, including the University. If that be so, even without the Government orders relied on by the 1st respondent or its adoption, the University was bound by the scheme and was bound to extend the benefit of the scheme in the matter of recruitment of physically handicapped persons.

14. The provision regarding age mentioned in the scheme is Rule 10 of Part II KS & SSR. When this provision is incorporated in the scheme, the beneficiaries of the scheme are also entitled to the benefit of relaxation of age provided in Rule 10. The relevant provision of Rule 10 of Part II KS & SSR, providing for relaxation in age, is Rule 10(c), which reads thus:

"(c) The upper age limit prescribed in the Special Rules shall, unless otherwise stated, be raised by 5 years in the case of a candidate belonging to any of the Scheduled Castes or adult members of such castes and their children when such adult members are converted to other religions or Scheduled Tribes and by 3 years in the case of a

candidate belong to any of the Other Backward Classes:"

15. The notification issued by the University itself says that relaxation in upper age limit will be given to candidates belonging to SC/ST, OBC and other categories as per University Rules. In view of the statutory provisions contained in the Act, the scheme framed by the Government under section 38 is binding on the University. Therefore, relaxation of age ordered by the government as per the scheme has to be read as part of the Rules of the University. In the context of the notification, physically handicapped persons certainly fall within the "other categories" mentioned therein. They are, therefore, entitled to relaxation in age as provided under Rule 10 (c) of part II KS & SSR. While holding so, we are conscious of the fact that since Rule 10(c) provides for relaxation of 5 years for SC/ST and 3 years for OBC candidates, a question could be asked as to which of these should be extended to physically handicapped persons. Having regard to the fact that the provision of the scheme is not properly drafted,

we do concede that it is a tricky question. But, in our view, it is unnecessary to go into that question in this case for the reason that as on 1.1.2008, the cut off date prescribed in the notification, the first respondent was 40 years and 7 months. Therefore, even if she is given the benefit of lesser period of relaxation of 3 years provided for OBC candidates in Rule 10 (c), she will still satisfy the age limit prescribed in the notification. This means that having regard to the provisions of the Act, scheme and Rules 10(c) of Part II KS & SSR, the University should have treated the first respondent as an eligible candidate for the post of Lecturer in Law notified by it.

16. We are also in complete agreement with the learned single Judge in his conclusion that the University was not required to expressly adopt the Government Orders providing for relaxation in age for physically handicapped candidates before deeming it to be a part of its rules. Undoubtedly, the Act was brought into force recognising the country's obligation as a signatory to the proclamation that was adopted on the

Full Participation and Equality of the People with Disabilities in the Asia Pacific Region. The object of the Act is to (1) integrate persons with disabilities into social mainstream (2) lay down a strategy for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities and for education, training, employment and rehabilitation amongst other responsibilities and (3) to give effect to the proclamation on full participation and equality of people with disabilities in Asian and Pacific Regions. Act being a social welfare legislation, it has to be liberally interpreted so that the purpose of the enactment is fully achieved. Every establishment which is bound by the Act should imbibe the true spirit of the Act and implement the statutory provisions. As held in Government of India v. Ravi Prakash Gupta [(2010) 7 SCC 626] the reservation of posts for visually handicapped became effective from 1996 when the Act was implemented and even if posts were identified under section 32 later, the establishments had the liability to fill up the reserved posts which had accumulated from the

implementation of the Act. It is despite this statutory duty, the University wants us to accept their contention that age relaxation was implemented only by Ext.R1(a) with effect from 29.1.2009 and that the first respondent was ineligible for the post. Viewed in that perspective, we are inclined to think that if establishments like the Kannur University, which are amenable to the discipline of the Act, are to have unfettered freedom to adopt or not to adopt or to delay adoption of the orders issued by the appropriate Government on issues such as relaxation of age, the very purpose of the Act itself would be defeated. Therefore, we cannot persuade ourselves to accept the contention of the appellants that the University being an autonomous body, unless adopted by it, the Government Orders do not have any application to it and that since the Government order was adopted only on 29.1.2009 and it being prospective, cannot apply to the recruitment in pursuance of the notification issued on 29.1.2008. Therefore, according to us, the conclusion of the learned single Judge that the orders issued by the Government providing for age relaxation for

physically handicapped persons were not required to be adopted by the University deserves to be upheld and we do so.

For all the aforesaid reasons, we do not find any illegality in the judgment under appeal. Appeals fail and are accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

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PS to Judge