

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

WA.No. 2114 of 2015 () IN WP(C).7565/2013

AGAINST THE ORDER/JUDGMENT IN WP(C) 7565/2013 DATED 18-08-2015

APPELLANT/NOT PARTY:

M. RAKESH KRISHNAN
S/O RADHAKRISHNA PILLAI, "PRANAVAM", 131
NSP NAGAR, KESAVADASAPURAM, THIRUVANANTHAPURAM

BY ADV. SRI.T.R.RAVI

RESPONDENTS:

1. DR. AMEBEESHMON,
ANISH NILAYAM, VARANAD PO, CHERTHALA
ALAPPUZHA DISTRICT
2. THE REGISTRAR
UNIVERSITY OF KERALA, THIRUVANANTHAPURAM-695 034
3. THE VICE CHANCELLOR
UNIVERSITY OF KERALA, THIRUVANANTHAPURAM-695 034

R1 BY ADV. SRI.C.P.SUDHAKARA PRASAD (SR.)
R1 BY ADV. SRI.S.RAMESH
R1 BY ADV. SRI.NAVEEN.T
R1 BY ADV. SMT.POOJA SURENDRAN
BY SRI.PAUL JACOB, SC, UNIVERSITY OF KERALA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 02-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

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W.A.No.2114 of 2015

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Dated this the 2nd day of November, 2015

JUDGMENT

Thottathil B.Radhakrishnan, J.

- 1.This appeal is instituted with leave having been granted to a third party to challenge the impugned judgment issued by the learned single Judge in favour of the writ petitioner.
- 2.We have heard the learned counsel for the appellant, the learned senior counsel for the contesting respondent who is the writ petitioner and the learned standing counsel for the University of Kerala.
- 3.As per Ext.P1 notification dated 17.6.2011, different vacancies of Assistant Professors in the University of Kerala including in the Institute of Management were notified. Following selection

process by a duly constituted selection committee in terms of Statute 4 in Chapter III of the Kerala University First Statutes, 1977, the selection process was carried out and the writ petitioner was identified as the candidate selected by the Selection Committee. The Syndicate rejected the proposal of the Selection Committee and refused to appoint the writ petitioner. This led to the writ petition where the University and the Vice Chancellor were made the respondents. Since there was no rival candidate in the select list and no rival who had competed in the selection was noticed, there was no private respondent. The learned single Judge held that in terms of Clause 3 of Statute 4 in Chapter III, it was incumbent on the Syndicate to act on the recommendation of the Selection Committee and there was no room for the Syndicate to come to a different conclusion than that arrived at by the Selection Committee. The decision of the Syndicate refusing to appoint the writ petitioner was thus interfered with by the impugned judgment and directions were issued to the Syndicate to appoint him to the post of Assistant Professor in the Institute of Management.

4. The appellant was not a competitor for the selection based on the notification dated 17.06.2011. Nonetheless, he impeached the impugned judgment and sought leave to institute this writ appeal. Leave was granted, since the appellant demonstrated adequate interest to maintain the appeal in view of the fact that he is an applicant for the post of Assistant Professor in the Institute of Management which would be re-notified following the Syndicate's decision not to appoint the writ petitioner.

5. The learned counsel appearing for the appellant made reference to the decisions of this Court in **Bernard Fenn v. University of Kerala** [1979 KHC 57], **Kerala University v. Sunny** [1996(2) KLT 565 (DB)] and **C.V.Mohan Kumar v. University of Kerala and Others** [2007 KHC 5779] and argued that the recommendation of the Selection Committee is not binding on the Syndicate, though it may be that such recommendation should not be lightly brushed aside and due weight has to be given to such recommendation. He argued that the ratio of the decisions referred to by the learned single

Judge in the impugned judgment does not apply to the issues in hand and the approach adopted by the learned single Judge is quite erroneous inasmuch as the writ petition was decided, as if it was one challenging a punishment or an imposition without the rule of hearing being extended to the writ petitioner. He argued that in a situation where the Syndicate disagrees with the Selection Committee; which is nothing but part of the selection process and appointment; it is unnecessary for a candidate to be extended any hearing touching any issue which may affect the ultimate selection.

6.The learned senior counsel appearing for the writ petitioner supported the impugned judgment on the basis of the materials in the writ petition, particularly Exts.P10 and P11 which indicate that under the provisions of the Right to Information Act, the writ petitioner was informed that there were no complaints against him, going by the official records.

7.We may note that no writ appeal is filed against the impugned judgment either by the University of Kerala or by any of its authorities, including the Syndicate.

8. We are in complete agreement with the statement of law in **Sunny's** case (supra); pointedly to the effect that although the recommendation of the Selection Committee is not binding on the Syndicate, but such recommendation could not be lightly brushed aside and due weight has to be given to such recommendation. This Court held so; as a principle applicable to both teaching and non-teaching courses in the University. Therefore, having regard to the terminology of Clause 3 of Statute 4 in Chapter III, there is room fair enough for the Syndicate to disagree with the recommendations of the Selection Committee, though it would then be bound to disclose the reasons to do so; since statement of such reasons would be necessary to satisfy the required benchmark of transparency and credibility to the decision of the Syndicate to disagree with the recommendation of the Selection Committee. Going by the minutes of the Syndicate, we see that there were discussions and reasons mentioned to defer the selection to the post of Assistant Professor in the Institute of Management and ultimately, the Syndicate disagreed to go by the

recommendation of the Selection Committee to appoint the writ petitioner. But, the predominant factor that surges in this writ appeal is that the person to whom the leave has been granted was not a rival candidate in the selection in question and that he is not a person who could be deemed as one who was eligible to be fought against the writ petitioner who sued only the University. Still further, if the realm of legal issues deserves to be answered as stated above, accepting the submissions on behalf of the appellant, it would not be proper for this Court to further examine the factual issues and arrive at a conclusion against the writ petitioner, since the University which suffered the judgment at the hands of the learned single Judge did not choose to challenge those findings and the issue as to whether the reasons stated by the Syndicate to disagree with the findings of the Selection Committee were factually and legally acceptable in terms of the Constitution and the laws is essentially a mixed question of fact and law and cannot be agitated in a case where the University is shown to have not challenged the decision of the learned single Judge and has apparently accepted that verdict. For this reason, we do not

find our way to interfere with the impugned judgment, though in so far as principles of law are concerned, we clarify that what we have stated aforesaid on an interpretation of Clause 3 of Statute 4 in Chapter III is the indisputable position in law. Similarly, we may also indicate that Clause 4 of Statute 4 in Chapter III deals with an entirely different situation, that is to say, where the Syndicate proceeds to make an appointment without following the selection procedure prescribed in Clauses 1 to 3 of Statute 4. Therefore, such provision would have no bearing on any issue relating to a case where a selection has been conducted by a Selection Committee in accordance with the said provisions of the Statute.

In the result, this writ appeal is dismissed. No costs.

sd/-

Thottathil B.Radhakrishnan, Judge

sd/-

Anu Sivaraman, Judge

sj

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P.A.TO JUDGE