

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

WA.No. 1680 of 2014 () IN WP(C).7383/2013

AGAINST THE JUDGMENT IN WP(C) NO.7383/2013 of HIGH COURT OF KERALA
DATED 23-10-2014

APPELLANTS:RESPONDENTS

1. THE UNIVERSITY OF CALICUT,
CALICUT UNIVERSITY P.O,
MALAPPURAM - 673 635,
REPRESENTED BY ITS REGISTRAR.
2. THE UNIVERSITY SYNDICATE COMMITTEE,
UNIVERSITY OF CALICUT,
KOZHIKODE - 673 635.

BY ADV. SRI.SANTHOSH MATHEW,SC,CALICUTY UNIVERS

RESPONDENT(S):PETITIONER & RESPONDENTS 3 & 4

1. DR.RAJANI.R,
'SREEGOUREESAM',
T.C.9/980-6, TJRA 193-C,
SASTHAMANGALAM P.O,
THIRUVANANTHAPURAM - 695 010.
2. THE PRINCIPAL,
KORAMBAYIL AHAMED HAJI MEMORIAL
UNITY WOMEN'S COLLEGE, NARUKARA P.O,
MANJERI, MALAPPURAM DISTRICT,
PIN - 676 122.
3. THE MANAGER,
KORAMBAYIL AHAMED HAJI MEMORIAL
UNITY WOMEN'S COLLEGE, NARUKARA P.O,
MANJERI, MALAPPURAM DISTRICT,
PIN - 676 122.

R2 & 3 BY ADV. SRI.A.A.ABUL HASSAN
R1 BY ADV. SRI.P.SANJAY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
12.11.2015,THE COURT ON 30-11-2015 DELIVERED THE
FOLLOWING:

ANTONY DOMINIC & P.V ASHA, JJ.

W.A No.1680 of 2014

Dated this the 30th day of November, 2015

JUDGMENT

Asha, J.

The University of Calicut and its Syndicate Committee have filed this Appeal against the judgment of the learned Single Judge declaring that the Syndicate does not have any power to refuse approval to an appointment of a teacher in an aided College, interfering with the awarding of marks by the selection committee, even after finding that marks awarded to her by the selection committee for her Ph.D was contrary to the the University Regulations.

2. Pursuant to a notification issued by Korambayil Ahamed Haji Memorial Unity Women's College, inviting applications for appointment to the post of Assistant Professors in English, the writ petitioner submitted her application. She was successful in the selection and was ranked 2nd in the rank list. She was appointed as Assistant Professor in English as per

Ext.P2 order dated 22.06.2011. The University did not approve her appointment. She filed the writ petition challenging denial of approval to her appointment and seeking a declaration that she is entitled to be awarded 15 marks for her Ph.D, by the selection committee and for a direction to approve her appointment.

3. According to the University, the college had forwarded a proposal for approval of appointment of three Assistant Professors in English including that of the petitioner; in the select list dated 6.4.2011, the petitioner was ranked 2nd; on verification of the score sheet for interview, it was found that the petitioner was awarded 15 marks for her National Eligibility Test (NET) + Ph.D in Library Science contrary to the University regulations for appointment of teaching staff in the University; as the appointment was against the post of Assistant Professor in English, a Ph.D holder in English alone was entitled to 15 marks; because of this, the petitioner was wrongly ranked 2nd in the select list; otherwise she would have been ranked only 6th; the Syndicate therefore decided to seek clarification on this from the Principal of the College; thereafter a subcommittee of the

Syndicate heard the Principal and Manager of the College and the Syndicate considered the matter thereafter and finally resolved not to approve the appointment of the writ petitioner.

4. The learned Single Judge held that the power of the Syndicate is confined to the verification of appointment with reference to the staff pattern fixed by the University and the qualification of the candidate appointed alone. According to the learned Single Judge, even though the petitioner was not entitled to 15 marks towards weightage, the selection was not liable to be interfered with, when there is no challenge against the rank list. The learned Single Judge held that the Syndicate was not expected to make an enquiry into the procedure followed in awarding the marks and to decline the approval. As there was no complaint against the appointment of the petitioner, it was not necessary to go into the marks awarded by the selection committee.

5. We heard the learned counsel appearing on both sides and considered their contentions. The case of the writ petitioner is that she is having the requisite qualification for appointment to the post. Ph.D in the concerned subject is not a qualification

prescribed for the post; none of the regulations provide that the 15 marks allocated for Ph.D and NET, can be awarded only if the Ph.D is in the concerned subject; Syndicate cannot go beyond what is provided in Statute 14 of the Calicut University First Statute, 1979; once the selection committee has prepared the rank list, the Syndicate need only verify whether the candidate is having the qualification and whether the appointment is made in accordance with the staff pattern and moreover there is no complaint from anybody.

6. The 4th respondent educational agency supported the petitioner and states that the selection committee prepared the rank list in accordance with the regulations; the Syndicate cannot interfere with the rank list prepared by the selection committee and that there is nothing in the regulations or orders, which prescribe that the 15 marks is earmarked for Ph.D holders in the same subject.

7. The contentions of the University are: As per Statute 10(3) of the Calicut University First Statute 1979 (hereinafter referred to as the '1st Statute'), the selection committee is bound to prepare select list on the basis of merit. As per Statute 14,

approval can be granted by the University only when a candidate is fully qualified and is appointed as per the staff pattern. In this process, the University is empowered to verify whether the marks awarded with respect to the qualification are as per the instructions issued to the educational agencies and aided colleges and as per the regulations and orders issued by the University. When these details are available from the records relating to selection, the Syndicate is bound to look into it, before granting or declining approval. Moreover, this Court has in the judgment in W.A. 1744 of 2013, in which Calicut University is a party, held that Ph.D in the concerned subject is the mandatory pre-requisite for awarding 15 marks.

8. The learned Single Judge found that, going by the judgment in W.A. 1744 of 2013, the petitioner who was having Ph.D in Library Science alone was not entitled to 15 marks for Ph.D + NET. However, the appointment was upheld on the ground that there is no challenge by any rival candidate and that the Syndicate has no authority to inquire into the awarding of marks by the selection committee, as its power is confined to Statute 14 of the 1st Statute. Therefore, the question to be

considered is whether the University could go into the correctness of the marks awarded by the selection committee.

9. As per the Calicut University Regulations, the qualification prescribed for appointment of Lecturer is good academic record with at least 55% marks in the relevant subject, pass in NET conducted by UGC, CSIR, or Ph.D in the concerned subject on or before 31st December, 1993.

10. From Ext.P9 produced by the petitioner and from the statement of the University, it is seen that the norms for selection and awarding of marks to the candidates in the selection list (in which the petitioner was included) for direct recruitment of teaching staff in Private Colleges as given in Appendix III issued in U.O. No.GA II/F3725/99 dated 29.3.1999, were the following:

	Scheme of weightage	Total 100 marks
(I)	Academic qualification	40
(II)	Publications(3 marks for each paper)	15
(III)	Interview	25
(IV)	Teaching experience(3 marks for each year)	15
(V)	Additional weightage	5

	Scheme of weightage	Total 100 marks
	Total	100

Split up marks in respect of qualification is as given below:

<i>Split up details of marks in respect of qualification</i>	<i>Marks</i>
I class and above in PG Degree	20
I Class I rank	25
I Class II rank	23
I Class III rank	22
NET	Nil
NET+ M.Phil	5
NET+Ph.D	15
M.Phil (before 92)	Nil
Ph.D (before 93)	
UGC/JRF/SRF	10
Conferred Ph.D	10

11. The select list was prepared on 6.4.2011. The petitioner was having Ph.D in Library Science and was not having Ph.D in the concerned subject-English. Therefore, even though she was qualified for appointment to the post, the awarding of 15 marks for NET and Ph.D was in violation of the Regulations and orders of the University. On account of this, she

happened to be ranked 2nd. Otherwise, she would have been placed only 6th in the rank list. The Syndicate declined approval to her appointment under the above circumstances. As per regulations as well as the orders of the University, she was not entitled to get the 15 marks available only for those having Ph.D in the concerned subject. This Court, after considering the very same regulation and norms, while considering the challenge against appointments made in the University, has already held in the judgment dated 12.8.2014 that, the weightage marks for Ph.D can be awarded only to those having Ph.D in the concerned subject, even if it is not specifically stated in the norms.

12. In this context, it is necessary to examine the provisions relating to appointment of teaching staff in the Private Colleges. Appointment of the private college teachers is governed by Section 57(1) and (1A) of the Calicut University Act, 1975, which read as follows:

“57. Appointment of teachers in private colleges:-
[(1) Appointments to the posts eligible to receive salary from the Government shall be made only against posts sanctioned by the Government or by such officers as may be authorized by the Government.

[(1A) Appointments to the lowest grade of teacher in each department of a private college shall be made by the educational agency by direct recruitment on the basis

of merit.”

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13. It is pertinent to note that Section 57 (1A) provides that appointment of teachers in private colleges shall be made by the educational agency by direct recruitment **on the basis of merit**. Subsection 9 provides that every appointment under this Section shall be reported to the University for approval. Under Section 23 (xviii) of Calicut University Act, 1975, the power to approve the appointment of Private College Teachers is vested in the Syndicate. Section 23(xx) empowers the Syndicate

“to arrange for and direct the investigation into the affairs of private colleges, to issue instructions for maintaining their efficiency, for ensuring proper conditions of employment of members of their staff and payment of adequate salaries to them, and in case of disregard of such instructions to modify the conditions of affiliation or recognition or take such other steps as it deems proper in that behalf”

14. Statute 3 provides that for making appointments by direct recruitment, the posts shall be advertised in 2 English and 2 Malayalam daily newspapers. Statute 4 (3) (c) and (d) under Chapter II of 1st Statute provide for the constitution of the selection committee for appointment of teaching staff in private colleges. Statute 10 provides for method of selection of teaching

staff. Under Statute 10(3), the selection committee is to prepare a rank list purely on the basis of merit and appointments shall be made on the basis of merit. Relevant portion of Statute 10(3) reads as follows:

“(3) The selection committee shall prepare the select list on the basis of merit and appointments shall be made only in the order of merit as indicated in the list. No candidate who has been included in the select list on the basis of merit shall be passed over by a person ranked lower in the same list. Xxxxx”

15. Statute 14 which is interpreted by the learned Single Judge reads as follows:

“14. Approval of appointment:- (1) Approval of every appointment to the teaching post shall be made by the Syndicate subject to the condition that the appointment is in accordance with the staff pattern fixed by the University and that the person so appointed is fully qualified for the post.

(2) The Deputy Director of Collegiate Education concerned shall verify before making direct payment of salaries as to whether the post for which payment is claimed is in accordance with the staff pattern and workload fixed by the University. Doubtful cases shall be referred to the University for clarification and the correctness of direct payment ensured.

(3) In the case of those private colleges coming under the Direct Payment Scheme, the Director of Collegiate Education or the Officer authorised by him in this behalf shall verify in consultation with the University as to whether the teaching posts in private colleges are in excess of the posts sanctioned by the University. However, in the case of incumbents declared as supernumeraries by the University, the controlling officers shall ensure that no fresh appointment is made against future vacancies until all the supernumeraries are absorbed against those vacancies. The direct payment of salaries shall not be made to the persons appointed against fresh vacancies, before the absorption of supernumeraries.”

16. The UGC Regulations as well as the regulations issued by the University are binding on the management as well as the selection committee. Under Section 57(1A) of the Calicut Universities Act, management has to make appointments by direct recruitment on the basis of merit. The most meritorious candidate can be found out only if the marks are awarded in accordance with the guidelines. Therefore, the selection committee was bound to award marks strictly in terms of the guidelines issued by the University. It is pertinent to note that, Syndicate's duties include maintenance of efficiency also. Under Section 23 (xx) of the University Act, the Syndicate is duty bound to arrange for and direct the investigation into the affairs of private colleges, to issue instructions for maintaining their efficiency, and in case of disregard of such instructions to modify the conditions of affiliation or recognition or take such other steps as it deems proper in that behalf. Statute 14, if read along with Section 23 (xviii) and (xx), Section 57A and Statute 10 (3) of the first statute, will show that the Syndicate was perfectly within its competence to verify the records leading to the selection and to ensure that the selection was made in

accordance with the norms issued by the University. The proposal for approval is sent to the University along with the records of selection including the notification, minutes of selection committee, which contains the index marks awarded by it to each of the candidates. Exts.R4(a) to (c) norms issued by the University would show that the educational agencies are again cautioned in awarding marks for each head. The proposal for approval of appointment is to be sent to the Syndicate along with all the records leading to the select list, which includes the score sheet of the candidates. In order to verify the awarding of index marks, especially the awarding of marks based on the educational qualification, i.e whether the 15 marks awarded is for Ph.D and NET, is correct and whether the Ph.D is in the concerned subject, a rowing inquiry is not necessary, as a mere look at the qualifying certificates of candidates, which will be part of the records accompanying the proposal for approval sent by the educational agency, is sufficient. When the educational qualification required for the teaching post is P.G Degree in the concerned subject and NET or Ph.D in the concerned subject, the selection committee, while considering the comparative

merit of the candidates, ought to have awarded the 15 marks only to those who are having Ph.D also in the concerned subject. The Syndicate cannot be found fault with in ensuring that the marks awarded was in tune with the judgment of this Court.

17. In that process, when it is found that the petitioner could not have been ranked 2nd, but only as 6th, it cannot be said that despite all this, the Syndicate ought to have approved the appointment, as the candidate was having the minimum qualification, and appointment was in accordance with staff pattern. Syndicate was bound to ensure that the appointment was made on the basis of merit and when it was seen that the selection of the petitioner was done foregoing the merit of candidates at rank nos.3 to 6, the denial of approval to the appointment of the petitioner cannot be said to be without authority.

18. Further question to be examined is that, whether the appointment was to be upheld just because no rival claimant challenged the appointment of the petitioner. Once it is found that the selection is made contrary to the norms and regulations issued by the University and meritorious candidates are

sidelined, there is no justification in upholding the appointment merely for the reason that the candidates who would have been ranked above the petitioner have not challenged the appointment.

19. In this context, the judgment of a Division Bench of this Court dated 12.08.2014 in W.P(c) No.1744 of 2013, to which one of us was a party (Antony Dominic, J.), is relevant. There, the issue was with respect to the weightage marks awarded to the candidate for appointment to the post of Lecturer, Folklore in the University of Calicut. After referring to the guidelines for awarding index marks as approved by the Academic Council, for selection of Lecturers in the Private Arts and Science Colleges and in the University Teaching Departments, this Court found that the eligibility of awarding marks to a candidate should be understood in the light of the prescriptions contained in Ext.P8 order of the University issued on 11.11.1997 prescribing guidelines for awarding index marks also, apart from the notification and even though it is not prescribed in the notification that Ph.D shall be in concerned subject, the selection committee was bound to award 15 marks reckoning Ph.D, only if

the Ph.D was in the concerned subject. Seeing that the appellant therein was not given marks for the Ph.D in the concerned subject and the selected candidate was given marks for Ph.D in other subject, this Court directed to recast the rank list assigning first rank to the appellant, while setting aside the appointment of the 4th respondent therein as Lecturer in Folklore. The issue arising in this case also is the same and therefore in the light of the aforesaid judgment, we are unable to agree with the findings of the learned Single Judge. Hence we set aside the judgment of the learned Single Judge.

20. As we have upheld the action of the Syndicate in declining approval to the petitioner's appointment for the reason that her inclusion as rank no.2 was illegal, and as the Syndicate has already found that ranking of candidates from rank nos. 3 to 5 is proper, the petitioner was liable to be ranked 6th and since the ranking of candidates at rank nos. 3 to 5 is in the order of merit, there shall be a direction to the 4th respondent to take steps to appoint the next candidate in the order of merit, from the rank list

without any further delay.

This Writ Appeal is allowed accordingly.

Sd/-
ANTONY DOMINIC
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge