

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

W.A.No. 1798 of 2014 () IN WP(C).28046/2012

AGAINST THE JUDGMENT IN WP(C) NO.28046/2012 of HIGH COURT OF KERALA DATED
02-09-2014

APPELLANT(S)/FIRST RESPONDENT:

LBS CENTRE FOR SCIENCE AND TECHNOLOGY,
REPRESENTED BY THE DIRECTOR, NANDAVANAM, PALAYAM,
THIRUVANANTHAPURAM- 695 033.

BY ADVS. SRI.K.P.SUJESH KUMAR
SMT.K.K.RAZIYA, SC, LBS CENTRE

RESPONDENT(S)/PETITIONER & SECOND RESPONDENT:

1. JAYARESMI.J,
LEKSHMI, AYIROOR, VARKALA,
THIRUVANANTHAPURAM, PIN-695 310.
2. DEETHI.P.M,
LECTURER IN ELECTRONICS AND TELECOMMUNICATION ENGINEERING,
LBS COLLEGE OF ENGINEERING, MOOZHIYOOR, KASARAGOD - 671 101.

R1 BY ADVS. SRI.P.C.SASIDHARAN
SRI.ARAVINDA KUMAR BABU T.K.
R2 BY SRI.M.SASINDRAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 01-07-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

W.A. No.1798 OF 2014

Dated this the 1st day of July, 2015

JUDGMENT

Antony Dominic, J.

The 1st Respondent in W.P.(C)No.28046 of 2012 is the appellant. The 1st Respondent herein filed W.P.(C)No.28046 of 2012, seeking to challenge the appointment of the 2nd Respondent as Lecturer in Electronics and Communication Engineering in the Engineering Colleges under the appellant, treating her as a candidate belonging to Thiyya community eligible for the benefit of reservation. According to the 1st Respondent, the 2nd Respondent having been included in Ext.P1 ranked list, as an Open Competition candidate could not have been accommodated against point No.34 of the 100 point roster maintained for the purpose of reservation, which point is one reserved for candidates belonging to Thiyya community. Without answering this contention, the writ petition was disposed of by the learned Single Judge, directing appointment of the 1st Respondent taking into account the

subsequent development that 2nd Respondent after joining the post resigned from the same. It is this judgment which is under challenge before us.

2. Ordinarily, when a vacancy is advertised for recruitment and is filled up by appointing a candidate selected, if the appointee resigns from the post later, the vacancy so created will be treated as a fresh vacancy requiring to be filled up by another process of selection and not from the ranked list already prepared. This contention raised by the appellant has force. However, the main issue is whether the 2nd Respondent who was included in the ranked list as an Open Competition candidate could have been appointed against point No.34 in the roster, a slot reserved for Thiyya candidate. Though the 2nd Respondent is a Thiyya candidate, she was included in the ranked list as an Open Competition candidate. This, going by the averments in paragraph 3 of the writ petition, is on account of the fact that she had not produced the Non Creamy Layer Certificate.

3. In the statement filed by the appellant, though the correctness of the assertion made by the petitioner to the above effect is disputed and it is also asserted that Non Creamy Layer Certificate was produced by the 2nd Respondent, the reason as to

why the 2nd Respondent was included in the ranked list as an Open Competition candidate or the stage when she allegedly produced the Non Creamy Layer certificate are not disclosed. Even in the appeal memorandum, there is no improvement on this aspect.

4. In such a situation, we are compelled to proceed on the basis that at least up to the stage when the ranked list was finalised, the 2nd Respondent had not satisfied the requirements to be treated as a reserved candidate. If that be so, her eligibility could have been only against Open Competition vacancies and she could not have been accommodated against a slot reserved for the Thiyya candidate. Once the eligibility of the 2nd Respondent is held to be that of a general candidate, point No.34 which is reserved for Thiyya candidate, should have automatically gone to the 1st Respondent, she being the next candidate eligible in that category. On that ground also, the 1st Respondent should have been accommodated against point No.34.

5. In view of the above conclusion, we do not find any illegality in the order of the learned Single Judge, requiring the appellant to appoint the 1st Respondent in the vacancy available

at point No.34 and which was illegally filled up by appointing the
2nd Respondent.

Appeal fails and accordingly, it is dismissed.

Sd/-

**ANTONY DOMINIC
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

//true copy//

P.S. to Judge

St/-