

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No.3590 of 2012 (W)

PETITIONER :

DR.S.SANKARARAMAN,
SANKAR NIVAS, GANDHI NAGAR HOUSING COLONY,
THODUPUZHA-685585.

BY ADV. SRI.M.R.RAJESH

RESPONDENTS :

1. UNIVERSITY OF KERALA,
REPRESENTED BY ITS REGISTRAR, UNIVERSITY BUILDINGS,
THIRUVANANTHAPURAM-695034.
2. DR.R.RATHEESH,
EXECUTIVE TECHNICAL-IV,
CENTER FOR MATERIALS FOR ELECTRONICS TECHNOLOGY,
MULAMKUNNATH KAVU, ATHANI P.O., THRISSUR-680771.
3. PROF.A.JAYAKRISHNAN,
VICE CHANCELLOR, UNIVERSITY OF KERALA,
SENATE HOUSE CAMPUS, PALAYAM,
THIRUVANANTHAPURAM-695034.

R1 BY ADV. SRI.GEORGE POONTHOTTAM, SC, KERALA UT.

R2 BY ADV. SRI.ELVIN PETER P.J.

R2 BY ADV. SRI.T.G.SUNIL (PRANAVAM)

R2 BY ADV. SRI.K.R.GANESH

R1 & R3 BY ADV. SRI.BECHU KURIAN THOMAS, SC, UNIVERSITY OF KERALA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :-

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| EXT.P1 | TRUE COPY OF THE MPhil DEGREE CERTIFICATE OF THE PETITIONER FROM THE COCHIN UNIVERSITY OF SCIENCE. |
| EXT.P2 | TRUE COPY OF THE PhD CERTIFICATE OF PETITIONER. |
| EXT.P2(a) | TRUE COPY OF THE NOTIFICATION DATED 28/2/2000 ISSUED ALONG WITH THE PhD CERTIFICATE. |
| EXT.P3 | TRUE COPY OF THE EXPERIENCE CERTIFICATE DATED 27/10/2011 ISSUED FROM NIRMALA COLLEGE, MUVATTUPUZHA. |
| EXT.P4 | TRUE COPY OF THE NOTIFICATION 28/9/2005 ISSUED BY THE FIRST RESPONDENT. |
| EXT.P5 | TRUE COPY OF THE ORDER DATED 23/10/2007 ISSUED BY THE FIRST RESPONDENT. |
| EXT.P6 | TRUE COPY OF THE MARK SHEET PREPARED BY THE SELECTION COMMITTEE ON 29/10/2011. |
| EXT.P7 | TRUE COPY OF THE LIST OF PUBLICATIONS AND SEMINAR PAPERS OF THE PETITIONER. |
| EXT.P8 | TRUE COPY OF THE PROFILE OF THE SECOND RESPONDENT AS PROVIDED BY HIM IN ANGELFIRE.COM. |
| EXT.P9 | REPORT PUBLISHED IN MADHYAMAM DAILY ON 3/11/2011. |
| EXT.10 | TRUE COPY OF THE INFORMATION ABOUT SECOND RESPONDENT RECEIVED FROM C-MET. |
| EXT.P11 | TRUE COPY OF THE APPLICATION DATED 28/10/2005 SUBMITTED BY THE SECOND RESPONDENT BEFORE THE FIRST RESPONDENT. |
| EXT.P12 | TRUE COPY OF THE BYE LAWS OF C-MET. |
| EXT.P13 | TRUE COPY OF THE REPRESENTATION DATED 19/12/2011 BEFORE THE THIRD RESPONDENT. |
| EXT.P14 | TRUE COPY OF THE REPRESENTATION DATED 2/11/2011 BEFORE THE MEMBERS OF SYNDICATE. |
| EXT.P15 | TRUE COPY OF THE PROCEEDINGS DTD.6.9.2000 FIXING NORMS FOR SELECTION OF TEACHING STAFF IN 1ST RESPONDENT. |
| EXT.P16 | TRUE COPY OF THE LETTER FROM THE MANAGER, STATE BANK OF TRAVANCORE, BRANCH THRISSUR ROUND SOUTH DTD.7.5.2012. |
| EXT.P17 | TRUE COPY OF THE APPLICATION DTD.16.5.2012 SUBMITTED BY PROF.THANPI VARGHESE BEFORE INFORMATION OFFICER OF 1ST RESPONDENT. |

WP(C).No.3590 of 2012 (W)

- EXT.P18 TRUE COPY OF THE REPLY DTD.19.6.2012 FROM THE PUBLIC INFORMATION OFFICER OF THE 1ST RESPONDENT UNIVERSITY.
- EXT.P19 TRUE COPY OF THE APPLICATION DTD.25.5.2012 UNDER RIGHT TO INFORMATION ACT.
- EXT.P20 TRUE COPY OF THE REPLY DTD.23.6.2012 BY THE PUBLIC INFORMATION OFFICER.
- EXT.P21 TRUE COPY OF THE REPLY DTD.3.11.2012 BY THE JOINT REGISTRAR.
- EXT.P22 TRUE COPY OF THE GOVERNMENT CIRCULAR No.96060/ADV.C3/94/P&ARD DTD.22.11.1994.
- EXT.P23 RETYPED COPY OF THE LETTER DTD.27.3.2012 FROM C-MET.
- EXT.P24 TRUE COPY OF THE LETTER No.Ad.H/506/2011/3 DTD.2.4.2012 FROM UNIVERSITY OF KERALA.
- EXT.P25 TRUE COPY OF THE ORDER No.PN/ADM/SPF/432/97/2728 DTD.24.10.1997 FROM C-MET.
- EXT.P26 TRUE COPY OF THE LETTER No.DPA-3/C-MET TH-1/2010/276 DTD.1.3.2012 FROM C-MET.
- EXT.P27 TRUE COPY OF THE CERTIFICATE DTD.3.10.2011 FROM THE CHAIRMAN, BOARD OF STUDIES, PHYSICS, MAHATMA GANDHI UNIVERSITY.
- EXT.P28 THE RELEVANT EXTRACT OF THE SCORE SHEET OF INTERVIEW DTD.6.12.2011.

RESPONDENTS' EXHIBITS :-

- EXT.R1(b) TRUE COPY OF THE COVERING LETTER DTD.28.10.2005.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.3590 of 2012

Dated this the 14th day of October, 2015

JUDGMENT

The petitioner secured Bachelor's Degree in Physics from the University of Kerala in the year 1991. He secured Master's Degree in Physics with specialisation in Electronics from the University of Kerala in the year 1993. He secured Master of Philosophy in Physics with specialisation in Photonics & Electronics from the Cochin University of Science and Technology in the year 1995, which is evident from Ext.P1 certificate. Later he was awarded Ph.D. by the Cochin University of Science and Technology in the year 2000, for his thesis 'Investigation on thermal diffusivity of some selected material using laser induced photoacoustic techniques', which is evident from Ext.P2 certificate.

2. The petitioner has approached this Court in this writ petition, seeking a writ of certiorari to set aside the selection of the 2nd respondent as Reader in the Department of Opto-Electronics in the University of Kerala (hereinafter referred to as 'the 1st

respondent University') and seeking a declaration that, the petitioner being the most meritorious candidate appeared for interview on 29.10.2011 is entitled to be appointed as Reader in the Department of Opto-Electronics in the 1st respondent University. The petitioner has also sought for a declaration that, Ext.P11 application submitted by the 2nd respondent was belated and hence liable to be rejected. The further relief sought for in the writ petition is to disqualify the 2nd respondent for furnishing wrong information in the application and to initiate legal action against him for not furnishing his actual designation.

3. The 1st respondent University has filed a counter affidavit dated 11.4.2012. The 2nd respondent has filed counter affidavit dated 20.6.2012. By order dated 27.6.2012 in I.A.No.8674 of 2012, the writ petition was amended and the petitioner has also filed the amended writ petition. Thereafter, the 1st respondent University filed additional counter affidavits dated 7.11.2013 and 16.11.2013, to which the petitioner has also filed a reply affidavit dated 15.12.2012. After amendment, the 2nd respondent has also filed an additional counter affidavit dated 1.7.2012.

4. On 1.8.2012, the 2nd respondent filed I.A.No.10702 of 2012 seeking an injunction restraining the 1st respondent University from taking any decision in the matter of appointment to the post of Reader in the Department of Opto-Electronics, pending disposal of the writ petition. On 22.8.2012, this Court passed an interim order directing the 1st respondent University to maintain status quo as on that date in the matter of appointment to the post of Reader in the Department of Opto-Electronics, for a period of two weeks, which order of status quo was later extended until further orders on 5.9.2012.

5. I heard arguments of the learned counsel for the petitioner, the learned Standing Counsel for respondents 1 and 3 and also the learned counsel for the 2nd respondent.

6. The 1st respondent University issue Ext.P4 notification dated 28.9.2005 inviting applications from qualified candidates for appointment to various posts in the teaching departments of the University, including one post of Reader in the Department of Opto-Electronics, in the scale of pay of ₹12,000-18,300, under open category. In Ext.P4 notification, the qualification and experience

prescribed for the post of Reader in the Department of Opto-Electronics read thus;

"2. Reader – Opto-Electronics:-

Good academic record with at least second class M.Tech Degree with a minimum of 55% marks in Opto-Electronics/Optical Communication/Applied Optics/Opto-Electronics and Laser Technology/Electronics Communication and Ph.D Degree in a relevant field.

or

Good academic record with 55% marks in M.Sc Degree in Physics and Ph.D Degree in Opto-Electronics/Laser Technology or in a relevant field.

Experience:-

Five year Teaching in a University or a recognized research Institution/Industrial Research experience as evidenced by published work in a reputed journal patent in a relevant field.

Desirable:-

Some experience in guiding research."

7. Ext.P4 notification provides that, completed application along with Demand Draft/Challan for the prescribed registration fee, one passport size photograph, attested copies of Certificates, testimonials, etc., should reach the Deputy Registrar (Admn.III) of the 1st respondent University, on or before 7.11.2005. The

notification provides further that, candidates who are employed should forward their application through proper channel.

8. Based on Ext.P4 notification the petitioner and the 2nd respondent submitted their application. Ten candidates appeared for the interview held on 29.10.2011, in which the 2nd respondent was selected and the petitioner was ranked second, which is evident from Ext.P6 mark sheet of the Selection Committee held on 29.10.2011, as per which, the petitioner secured 68.20 marks and the 2nd respondent 73.71 marks. Accordingly, the 2nd respondent was selected for appointment to the post of Reader in the Department of Opto-Electronics.

9. Regarding the selection of the 2nd respondent to the post of Reader in the Department of Opto-Electronics, the learned counsel for the petitioner would contend that, since the application submitted by the 2nd respondent through proper channel reached the office of the Deputy Registrar only on 9.11.2005, as admitted in Para.3 of the additional counter affidavit filed by the 1st respondent University dated 7.11.2013, the 2nd respondent is not entitled to participate in the selection process pursuant to Ext.P4 notification.

However, the 1st respondent University permitted the 2nd respondent to participate in the selection process, since he has forwarded an advance copy of the filled up application to the Deputy Registrar, along with Ext.R1(b) covering letter dated 28.10.2005, which was received in the office of the Deputy Registrar on 31.10.2005, which is patently illegal. Further, though the 2nd respondent was issued with an order of appointment as Reader in the Department of Opto-Electronics, instead of joining duty he sought extension of joining time. Though the 1st respondent University granted the 2nd respondent extension of joining time on more than one occasion, he failed to join duty and the last extension was only up to 3.7.2012, which fact is also admitted in Para.4 of the additional counter affidavit filed by the 1st respondent University dated 7.11.2013.

10. Per contra, the learned Standing Counsel for the 1st respondent University and the learned Counsel for the 2nd respondent would contend that, though the application submitted by the 2nd respondent was received in the office of the Deputy Registrar only on 9.11.2005, the advance copy of the filled up application was received in the office of the Deputy Registrar on 31.10.2005, much

prior to the last date fixed in Ext.P4 notification for receipt of applications, namely, 7.11.2005, which is evident from Ext.R1(b) covering letter dated 28.10.2005. As such there is no illegality in permitting the 2nd respondent to participate in the selection process. Based on the request made by the 2nd respondent, the 1st respondent University granted extension of joining time on more than one occasion and the last extension was up to 3.7.2012. Thereafter, this Court by order dated 22.8.2012 in I.A.No.10702 of 2012 filed by the 2nd respondent granted status quo in the matter of appointment to the post of Reader in the Department of Opto-Electronics, for a period of two weeks, which order of status quo was extended until further orders on 5.9.2012.

11. As I have already noticed, Ext.P4 notification mandates that completed application along with Demand Draft/Challan for the prescribed registration fee, one passport size photograph, attested copies of the certificates, testimonials, etc., should reach the Registrar concerned, on or before 7.11.2005. Ext.P4 notification mandates further that, candidates who are employed should forward their application through proper channel. However, in the case of the

2nd respondent, Ext.P11 application dated 28.10.2005 submitted through proper channel reached the office of the Deputy Registrar only on 9.11.2005. The said fact is admitted in the additional counter affidavit filed by the 1st respondent University dated 7.11.2013. The aforesaid fact is also not disputed in Para.6 of the additional counter affidavit filed by the 2nd respondent. Relying on the endorsement made on Ext.R1(b) covering letter dated 28.10.2005, the respondents would contend that, the advance copy of the filled up application was received in the office of the Deputy Registrar on 31.10.2005, much prior to the last date fixed in Ext.P4 notification and as such there is no illegality in permitting the 2nd respondent to participate in the selection process.

12. A reading of Ext.R1(b) covering letter would make it explicitly clear that, the document attached along with the said letter reached in the office of the office of the Deputy Registrar on 31.10.2005 is only an "advance copy" of Ext.P11 application. In Ext.R1(b) covering letter the 2nd respondent has also stated that, "original application form together with registration fee and all other relevant documents" will be forwarded directly to the University at

the earliest. When Ext.P4 notification mandates that, the application with along with Demand Draft/Challan, passport size photograph, attested copies of the certificates, testimonials, etc., should reach the office the Registrar concerned on or before 7.11.2005, mere submission of an "advance copy" of the application without mandatory enclosures would not meet the requirements of the said notification. Moreover, at the time of submission of application, the 2nd respondent was working at Centre for Materials for Electronics Technology (C-MET), a Scientific Society Registered under the Department of Electronics & Information Technology, Ministry of Communications & Information Technology, Government of India. Ext.P4 notification mandates that, being a candidate who is already employed, the 2nd respondent should forward his application through proper channel. Therefore, mere submission of an advance copy of the application by the 2nd respondent himself, would not meet the requirements of the said notification.

13. Ext.P4 notification issued by the 1st respondent University is one dated 28.9.2005. The said notification mandates submission of completed application along with its enclosures, on or before

7.11.2005. As evident from Ext.P11 application, the 2nd respondent remitted the requisite application fee of ₹400/- vide demand draft dated 26.10.2005 and the application is one dated 28.10.2005. When the application of a candidate who is already employed could be forwarded only through proper channel, the 2nd respondent should have submitted the completed application along with its enclosures before his employer well in advance. Having failed to do so, the 2nd respondent cannot now contend that, forwarding application through proper channel is only a formality.

14. A Full Bench of the Punjab and Haryana High Court in **Rahul Prabhakar v. Punjab Technical University, Jalandhar (AIR 1998 P&H 18)** in the context of admission to professional courses held that, whenever a notification calling for applications, fixes date and time within which applications are to be received whether sent through post or by any other mode that time schedule has to be complied with in letter and spirit. If the application has not reached the the competent authority the same cannot be considered as having been filed in terms of the provisions contained in the prospectus or Information Brochure. Applications filed in violation of

the terms of the brochure have only to be rejected. The Full Bench held further that, a candidate who has filed an appropriate application without any defect within the prescribed time limit, will be in a position even to challenge the action of the authorities in condoning the defects of others who filed applications within the prescribed time limit. In the case on hand, since the application of the 2nd respondent reached the office of the Deputy Registrar, through proper channel, only on 9.11.2005, the 1st respondent University should not have permitted him to participate in the selection process pursuant to Ext.P4 notification. In that view of the matter, the 2nd respondent who failed to submit, through proper channel, the completed application along with its enclosures, on or before 7.11.2005, is not legally entitled for appointment to the post of Reader in the Department of Opto-Electronics in the 1st respondent University, notified vide Ext.P4 notification.

15. Relying on the judgment of the Apex Court in **Ashok Chand Singhvi v. University of Jodhpur and others (1989 (1) SCC 399)** the learned counsel for the 2nd respondent would contend that, when the 2nd respondent concealed noting from the University

and the University permitted him to participate in the selection process pursuant to Ext.P4 notification, he cannot denied appointment to the post of Reader in the Department of Opto-Electronics on the ground that his application (through proper channel) reached the office of the Deputy Registrar only after the cut off date prescribed in the notification, namely, 7.11.2005. The judgment of the Apex Court in Ashok Chand Singhvi's case (supra) was in the context of admission of teachers (diploma holders) serving in the Engineering Colleges under the University of Jodhpur to B.E. Degree course, after availing study leave for three years. On 3.9.1987, the Study Leave Committee recommended the case of the appellant. On 14.8.1987, the Syndicate of the University accepted the said recommendation and granted him study leave for a period of three years with full pay, pursuant to which, he made an application on 14.11.1987 for admission in the B.E. Degree course. Admittedly, the said application was made after the last date for admission in the general seats had expired. According to the appellant, in view of the practice of the University, as the teachers who are granted study leave are admitted by the creation of extra

seats, the question of making applications after the last date for admission in the general seats is irrelevant. The admission made after the last date for admission was on the strength of a resolution of the Academic Council and the Syndicate with regard to the admission of teacher-candidates. However, the University contended that, the said resolution has no effect whatsoever and the admissions are governed by the statutes of the University. The appellant has referred to certain cases where the teacher-candidates were admitted in additional seats created by the University with a view to giving them an opportunity to acquire higher knowledge which may be used in the interest of the institution and which may raise the standard of teaching. It was in that context, the Apex Court held that, the appellant was not at fault and he should suffer for the mistake committed by the Vice-Chancellor and the Dean of the Faculty of Engineering. Paras.15 to 17 of the judgment read thus;

"15. It is curious that although the admission to the B.E. Degree Course of the University is governed by statutes of the University and admission rules, the said resolution of the Syndicate dated December 13, 1970 has also been kept alive. Neither the Dean nor the Vice-Chancellor was aware of the true position, namely, as to whether the said resolution had become

infructuous in view of the statutes and the admission rules. A teacher candidate is likely to be misled by the said resolution. It is the duty of the University to see that its statutes, rules and resolutions are clear and unambiguous and do not mislead bona fide candidates. The University should have revoked the said resolution in order to obviate any ambiguity in the matter of admission or included the same in the statutes as part of the admission rules.

16. When the appellant made the application beyond the last date, his application should not have been entertained. But the application was entertained, presumably on the basis of the said resolution of the Syndicate. The appellant also brought to the notice of the Dean the said resolution and also the implementation of the same by admitting seven teacher candidates.

17. It is submitted on behalf of the University that it was through mistake that the appellant was admitted. We are unable to accept the contention. It has been already noticed that both the Dean and the Vice-Chancellor considered the objections raised by the Officer in Charge, Admissions, and thereafter direction for admitting the appellant was made. When after considering all facts and circumstances and also the objections by the office to the Admission of a candidate, the Vice-Chancellor directs the admission of such a candidate, such admission could not be said to have been made through mistake. Assuming that the appellant was admitted through mistake, the appellant not being at fault, it is difficult to sustain the order withholding the admission of the appellant. In this

connection, we may refer, to a decision of this Court in *Rajendra Prasad Mathur v. Karnataka University* (1986 Supp SCC 740). In that case, the appellants were admitted to certain private engineering colleges for the B.E. Degree Course, although they were not eligible for admission. In that case this Court dismissed the appeals preferred by the students whose admissions were subsequently cancelled and the order of cancellation was upheld by the High Court. At the same time, this Court took the view that the fault lay with the engineering colleges which admitted the appellants and that there was no reason why the appellants should suffer for the sins of the management of these engineering colleges. Accordingly, this Court allowed the appellants to continue their studies in the respective engineering colleges in which they were granted admission. The same principle which weighed with this Court in that case should also be applied in the instant case. The appellant was not at fault and we do not see why he should suffer for the mistake committed by the Vice-Chancellor and the Dean of the Faculty of Engineering.”

Therefore, the judgment of the Apex Court in *Ashok Chand Singhvi's* case (*supra*) is on an entirely different factual matrix and has no application to the facts and circumstances of the case on hand.

16. As borne out from the pleadings on record, though the 2nd respondent was issued with an order of appointment as Reader in the Department of Opto-Electronics in the 1st respondent University,

instead of joining duty he sought extension of joining time. Based on the request made by the 2nd respondent, the 1st respondent University granted him extension of joining time on more than one occasion. The last extension, vide Ext.P24 University Order dated 2.4.2012, was only up to 3.7.2012 and the said fact is also admitted in Para.4 of the additional counter affidavit filed by the 1st respondent University dated 7.11.2013. On 1.8.2012, the 2nd respondent filed I.A.No.10702 of 2012 in this writ petition, seeking an order of injunction restraining the 1st respondent University from taking any decision in the matter of appointment to the post of Reader in the Department of Opto-Electronics, pending disposal of the writ petition. A reading of the affidavit accompanying the said interlocutory application, sworn on 31.7.2012, would make it explicitly clear that, the 2nd respondent is yet to resign from the service of C-MET and that, the 1st respondent University has not granted any extension of joining time beyond 3.7.2012. The 2nd respondent has also not produced any documents to show that, seeking further extension of joining time he moved the 1st respondent University well in advance. By an order passed on

22.8.2012 in I.A.No.10702 of 2012 filed by the 2nd respondent, this Court granted an order of status quo as on that date, in the matter of appointment to the post of Reader in the Department of Opto-Electronics, for a period of two weeks, which order of status quo was extended until further orders. However, much prior to the order of status quo in I.A.No.10702 of 2012, the extension of joining time granted to the 2nd respondent expired on 3.7.2012. In that view of the matter as well, the 2nd respondent is not entitled for appointment to the post of Reader in the Department of Opto-Electronics in the 1st respondent University, notified vide Ext.P4 notification.

17. Ext.P4 notification mandates that, the completed application submitted by the candidates should accompany a Demand Draft/Challan towards registration fee. Relying on Ext.P16 letter dated 7.6.2012 issued by the Branch Manager, State Bank of Travancore, Thrissur Round South, the learned counsel for the petitioner would contend that, Demand Draft No.438209 dated 26.10.2005 for ₹400/- stated to have been enclosed along with Ext.P11 application submitted by the 2nd respondent towards registration fee was not encashed as on 7.6.2012. As such, the said

application submitted by the 2nd respondent should have been summarily rejected at the threshold. The learned Standing Counsel for the 1st respondent University, with reference to Para.6 of the additional counter affidavit dated 7.11.2013 would submit that, the demand drafts submitted by the petitioner as well as the 2nd respondent, together with other demand drafts received for various purposes, which were about 318 in number, were transferred to the State Bank of Travancore, KUOC Branch, on 4.3.2006 for being credited to the Kerala University Fund. However, none of the above mentioned 318 demand drafts were encashed and the Cash Section of the University has been directed to follow up the matter. The learned Standing Counsel would submit further that, since the University has acknowledged the receipt of the requisite fee by way of demand draft from the petitioner as well as from the 2nd respondent, their candidature cannot be questioned for non-receipt of registration fee at this stage. When the demand draft submitted by all the candidates including the petitioner are not encashed for the reason stated above, the petitioner cannot contend that, Ext.P11 application submitted by the 2nd respondent should have been

summarily rejected at the threshold for non-payment of registration fee.

18. The learned counsel for the petitioner would then contend that, once this Court holds that the 2nd respondent is not legally entitled for appointment, the petitioner being Rank No.2 in Ext.P6 list prepared by the Selection Committee should be declared as the most meritorious candidate entitled to be appointed to the post of Reader in the Department of Opto-Electronics, notified in Ext.P4 notification. The learned Counsel would contend further that, in view of the inclusion of the petitioner's name in Ext.P6 list prepared by the Selection Committee, the 1st respondent University is estopped from contending that the petitioner is not having the requisite teaching experience in a University, in terms of Ext.P4 notification. The teaching experience prescribed in Ext.P4 notification for the post of Reader in Opto-Electronics is five years teaching experience in a University or a recognised research institution/industrial research experience as evidenced by published work in a reputed journal patent in a relevant field.

19. As rightly pointed out by the learned counsel for the 2nd respondent, the averments in Para.2 of the writ petition would make it explicitly clear that the petitioner has no teaching experience in a University or a recognised research institution or experience in industrial research. Ext.P3 experience certificate would only show that the petitioner has teaching experience for 16 years at Under Graduate and Post Graduate level in the affiliated colleges run by the Corporate Educational Agency, Diocese of Kothamangalam. It is pertinent to note that, in Ext.P4 notification, the experience prescribed for the post of Reader (except Opto-Electronics) is eight years 'experience of teaching' and/or research including up to three years for research degree and that prescribed for the post of Reader in Opto-Electronics is five year 'teaching in a University' or a recognised research institution or experience in industrial research.

20. The learned counsel for the petitioner, with reference to Ext.P6 list prepared by the Selection Committee, would contend that, since the Selection Committee has awarded marks to the petitioner for teaching experience in the aided colleges, the 1st respondent University is estopped from contending that, the

petitioner is not having the requisite teaching experience in terms of Ext.P4 notification, especially when his placement as Rank No.2 in Ext.P6 list prepared by the Selection Committee is not under challenge. The learned counsel for the petitioner, with reference to the averments in Para.7 of the reply affidavit dated 15.12.2012 filed by the petitioner would also point out that, the 1st respondent University had already appointed candidates with teaching experience in aided colleges as Reader in the University departments and that, Dr.V.P.Mahadevan Pillai, the present Head of the Department of Opto-Electronics had been a Lecturer in Physics in St.Gregorious College, Kottarakkara before he was appointed as Reader in the 1st respondent University.

21. I am of the view that, mere inclusion of the name of the petitioner as Rank No.2 in Ext.P6 list prepared by the Selection Committee does not confer him any indefeasible right for being appointed as Reader in Opto-Electronics. It would be always open to the 1st respondent University to decline appointment to a candidate included in Ext.P6 list, once it is found that the said candidate does not have the requisite qualification or experience prescribed under

Ext.P4 notification. However, any such exclusion from Ext.P6 list shall be made only with notice to the candidate concerned and after affording him a reasonable opportunity of being heard. Therefore, it is upto the 1st respondent University to proceed with the selection process pursuant to Ext.P4 notification and appoint any candidate other than the 2nd respondent, who is duly qualified in terms of the said notification, to the post of Reader in the Department of Opto-Electronics.

22. In the result, this writ petition is disposed of declaring that, the 2nd respondent who failed to submit, through proper channel, the completed application along with its enclosures, on or before 7.11.2005, is not legally entitled for appointment to the post of Reader in the Department of Opto-Electronics in the 1st respondent University, notified vide Ext.P4 notification.

23. The 1st respondent University shall proceed with the selection process pursuant to Ext.P4 notification and appoint any candidate other than the 2nd respondent, who is duly qualified in terms of the said notification, to the post of Reader in the Department of Opto-Electronics. Necessary steps in this regard shall

be taken, as expeditiously as possible, at any rate within a period of three months from the date of receipt of a certified copy of this judgment.

No order as to costs.

Sd/-
ANIL K.NARENDRA, JUDGE

jv/skj/dsn