

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.VASHA

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WA.No. 2701 of 2015 IN WP(C).5228/2015

AGAINST THE JUDGMENT IN WP(C) 5228/2015 of HIGH COURT OF KERALA DATED 31-07-2015

APPELLANTS/RESPONDENTS 1 TO 3 IN WPC:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY
HIGHER EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
2. THE DIRECTOR OF COLLEGIATE EDUCATION
OFFICE OF THE DIRECTOR OF COLLEGIATE EDUCATION
THIRUVANANTHAPURAM - 695 001.
3. THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION
OFFICE OF THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION
KOLLAM - 691 001.

BY SR. GOVERNMENT PLEADER SRI.PFAZIL.

RESPONDENTS/PETITIONER & RESPONDENTS 4, 5 & 6 IN WPC:

1. MINU ELZA R., AGED 26 YEARS
ASSISTANT PROFESSOR
DEPARTMENT OF ECONOMICS,
FATHIMA MATHA NATIONAL COLLEGE
KOLLAM - 691 001.
2. UNIVERSITY OF KERALA
REPRESENTED BY ITS REGISTRAR
KARIYAVATTOM, THIRUVANANTHAPURAM - 695 581.
3. THE MANAGER, FATHIMA MATHA NATIONAL COLLEGE, KOLLAM - 691 001.
4. THE PRINCIPAL, FATHIMA MATHA NATIONAL COLLEGE, KOLLAM - 691 001.

R1 BY ADV. SRI.ELVIN PETER P.J.
R1 BY ADV. SRI.T.G.SUNIL (PRANAVAM)
R1 BY ADV. SRI.K.R.GANESH
R BY SRI.BABY ISSAC ILLICKAL
R BY SRI.PAUL JACOB, SC, UNIVERSITY OF KERALA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18-12-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

Writ Appeal No.2701 of 2015

Dated this the 18th day of December, 2015

JUDGMENT

Antony Dominic, J.

Heard the Government Pleader for the appellants, learned counsel appearing for the first respondent, Standing Counsel appearing for the second respondent and the counsel appearing for respondents 3 and 4.

2. This appeal is filed by respondents 1 to 3 in W.P(C)5228/15. The said writ petition was filed by the first respondent herein cancelling her appointment as Assistant Professor (Economics) in the college of respondents 3 and 4 herein. By the judgment under appeal, the learned Single Judge allowed the writ petition and set aside Ext.P17 to the extent the appointment of the first respondent was cancelled. It is this judgment, which is under challenge before us.

3. On facts, it is only necessary to state that by Ext.P1 notification issued by the management of the college in the Malayala Manorama daily, applications were invited for appointment of Assistant Professor in the Economics Department. It appears that there were three vacancies of Assistant Professor in the Economics Department, of which, one was in the merit quota and two were in the community quota. In response to the

notification, among others, first respondent also applied for appointment as Assistant Professor (Economics). A statutory selection committee interviewed the candidates and the first respondent was ranked for appointment both in the community quota and in the merit quota. Exts.P4 and P5 are the rank lists for the merit quota and the community quota. In both the rank lists the first respondent was included as rank No.1. Accordingly, by Ext.P7 order she was appointed in the vacancy in the merit quota against the retirement vacancy of Sri.Paul Xavier. Simultaneously, rank Nos. 2 and 3 in the community rank list were also appointed to the remaining two vacancies in the Economics Department. The appointments thus made by the manager were approved by the University as per Ext.P8. It would appear that there were certain allegations regarding the manner in which the selection was conducted and regarding the preparation of Ext.P5 rank list for community quota. This resulted in Exts.16 and P18 reports. Acting upon the reports, Government issued Ext.P17. In Ext.P17, pointing out certain irregularities in the selection process and in the rank list, the Government cancelled the rank lists. Insofar as the appointment of the first respondent in the vacancy in the merit quota

made by the management is concerned, Government have given a further finding that there was no sufficient work load to appoint the first respondent. It was challenged before the learned Single Judge and was quashed by the impugned judgment.

4. As we have already stated, there are two reasons contained in Ext.P17 Government Order. The first one is the alleged irregularities in the selection process and the rank list which, according to the Government, have resulted in the meritorious candidates being overlooked. Reading of Exts.P16 and P18 reports show that such a finding has been arrived at by the Government on the basis that in the rank list in the community quota, marks assigned to a particular candidate was altered and the candidate was given rank No.3 and the person who was originally included at rank No.3 was shifted to rank No.4. Though in the writ appeal, we are not concerned with the finding of the Government in so far as the appointments made in the community quota, according to us, even if such finding in the reports is accepted to be factually correct that could not have had any impact on the ranking of the first respondent because the first respondent on her own merit was assigned as rank No.1 in the both the lists. Therefore,

even if the alleged alteration had affected the candidates at rank No.3 and 4 that could not have affected either the ranking of the first respondent or her appointment on her merit.

5. Insofar as the absence of work load is concerned, in the counter affidavit filed on behalf of the appellants, it is inter alia stated thus:

“As per the Post Adalath work load dated 18.12.2002, the total workload of the Economic Department is 155 hours and the sanctioned posts are 9. At the time of appointment of the petitioner, there were 9 regular teachers working in Economics Department and the appointment of the petitioner was against the 10th post. The post has not yet been sanctioned by the Government. This respondent has not given concurrence as there was no sufficient workload for the appointment of any teacher.”

6. From the above, it can therefore be seen that the admitted case of the appellants is that the total work load is 155 hours and sanctioned posts are 9, leaving only 11 hours. Ext.P10 Government Order contains the norms for fixation of workload. As per this Government Order, work load of an Assistant Professor is 16 hours per week and it also provides that minimum number of hours required for additional post in a subject is 9 hours per week. This, therefore, means that even after the appointment of 9 teachers, there is still 11 hours workload left which in

view of the norms fixed in Ext.P10 entitles the management to make appointment of an additional Assistant Professor. Apart from that, we also find from Ext.P19, letter issued by the Deputy Director of Collegiate Education that the vacancy against which the first respondent was appointed is the retirement vacancy of Sri.Paul Xavier and that his appointment was also approved and he was being paid salary. This, therefore, means that the finding in Ext.P17 that there is no sufficient work load left in the college for appointing the first respondent is also factually incorrect.

7. The aforesaid findings on the materials available, therefore, show that the conclusion of the learned Single Judge that Ext.P17, insofar as it concerns the first respondent herein, is untenable does not suffer from any illegality for interference in this appeal.

Appeal fails and it is accordingly dismissed.

**ANTONY DOMINIC
JUDGE**

**P.V.ASHA
JUDGE**

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