

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).No. 7649 of 2009 (A)

PETITIONER:

RANJITHLAL.P.K., S/O.PREMANANDAN P.K.,
AGED 40, PUTHIYAPARAMBATH KUNNANCHERI,
PALAZHI, IRINGALLUR P.O., KOZHIKODE-673 014.
(NOW WORKING AS HSST IN MODEL HIGHER
SECONDARY SCHOOL KOZHIKODE.)

BY ADV. SRI.S.SREEKUMAR

RESPONDENT(S):

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1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY, SOCIAL WELFARE (A) DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM.
 2. UNIVERSITY OF CALICUT,
REPRESENTED BY ITS REGISTRAR,
CALICUT UNIVERSITY P.O., PIN-673 635.

*ADDL. R3 IMPEADED

3. MOHAMMED ELIYAS MUSTHAFA,
LECTURER IN EDUCATION, UNIVERSITY OF CALICUT,
CALICUT UNIVERSITY.P.O., MALAPPURAM DISTRICT.

ADDL. R3 IS IMPEADED AS PER ORDER DATED 8.4.2009 IN IA.4903/2009.

**ADDL. R4 & R5 IMPEADED

4. DR.VASUMATHI.T., 'ALAKANAND', PANTHALAYANI.P.O.,
KOYILANDI, CALICUT.
5. DR.BAIJU K.NATH, GCTE STAFF QUARTERS,
THALASSERY – 670 101, KANNUR.

ADDL. R4 & R5 ARE IMPEADED AS PER ORDER
DATED 10.9.2009. IN IA. 6609/2009.

R1 BY GOVERNMENT PLEADER SRI.P.V.ELIAS
R2 BY ADV. SRI.SANTHOSH MATHEW,SC
SRI.P.C.SASIDHARAN, SC
R3 TO R5 BY ADVS. SRI.V.RAJENDRAN
SMT.K.S.SABITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

mbr/

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 : TRUE COPY OF CERTIFICATE DATED 4.1.2007 ISSUED BY THE MEDICAL BOARD.**
- EXHIBIT P2 : TRUE COPY OF G.O.(P)NO.119/2005/SWD DATED 6.8.2005.**
- EXHIBIT P3 : TRUE COPY OF DETAILS OF THE CIRCULARS ISSUED BY UGC FOR ASSISTANCE TO UNIVERSTIES/COLLEGE FOR DISABLED PERSONS.**
- EXHIBIT P4 : TRUE COPY OF NOTIFICATION DATED 29.7.2008 ISSUED BY THE 2ND RESPONDENT.**
- EXHIBIT P5 : TRUE COPY OF MEMO DATED 13.1.2009 ISSUED BY THE 2ND RESPONDENT.**
- EXHIBIT P6 : TRUE COPY OF SELECT LIST OF TEACHERS APPOINTED IN PURSUANCE OF EXT. P4.**
- EXHIBIT P7 : TRUE COPY OF NOTIFICATION DATED 28.4.2010 INVITED APPLICATION FOR THE POST OF LECTURER IN EDUCATION (MUSLIM RESERVATION)**

RESPONDENT'S EXHIBITS: - **NIL**

/TRUE COPY/

P.S. TO JUDGE

mbr/

C.K. ABDUL REHIM, J.

WP(C)No.7649 of 2009

Dated this the 12th day of January, 2015

JUDGMENT

The petitioner applied to the post of Lecturer in Education in the 2nd respondent University pursuant to Ext.P4 notification issued inviting applications to the said post from eligible candidates. The petitioner was called on for an interview based on the application, as evidenced from Ext.P5 Memo. Respondents 3 to 5 are the candidates selected to the post of lecturer (Education). According to the petitioner, Ext.P4 notification contained a clause providing 3% reservation for physically challenged persons. The petitioner being a person physically disabled with 50% locomotor disability had applied for the post by submitting Ext.P1 'Disability Certificate'. But ignoring the 3% reservation provided for physically handicapped persons, his candidature was not considered. Selection of respondents 3 to 5 is in violation of the reservation provided and it

had violated provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred as the Act for short), is the contention. Hence the petitioner seeks direction to the respondent to fill up the 3 % vacancies reserved for disabled candidates in the selection made based on Ext.P4 notification. Inter alia, the petitioner seeks direction to the respondents to post him as Lecturer in Education, under the 3% quota reserved for disabled persons.

2. The petitioner points out that, based on the mandate of Section 33 of the Act, the 1st respondent have constituted an expert committee to identify the posts for providing the 3% reservation for physically challenged persons. In Ext.P2 Government Order, a list of 20 posts which are identified for appointment from the reserved category of physically challenged persons include the post of Lecturer in the Collegiate Education Department. Further it is contended that, the University Grants Commission (UGC) had also accepted reservation of 3%

posts in the cadre of Lecturers, as evidenced from Ext.P3. According to the petitioner, it is on the basis of Exts. P2 and P3 that Ext.P4 Notification contained a clause that 3% seats will be reserved for physically handicapped persons. Therefore the rejection of candidature of the petitioner, without appointing any physically handicapped person against the 3% reservation provided, is illegal and unsustainable, is the contention. The petitioner also contended that the implementation of the reservation is mandatory as per Section 33 of the Act, as held by the honourable Apex Court in various decisions.

3. In the counter affidavit filed on behalf of the 2nd respondent it is mentioned that, the petitioner has not mentioned the specific category under which he has applied, in the space provided in the Application form. Therefore through Memo, dated 13/01/2009 the petitioner was informed that he has not specified the category under which he is applying and therefore the application will be considered only under the open category. Thereupon, the petitioner replied that he had specified the category

in the application as physically handicapped, ETB and open and requested to include in application for all the three categories. In fact the instructions contained in the Application form has specifically emphasised that the candidates should submit separate applications and fee for each post indicating at the top of each such applications about their category of reservation. It is further mentioned in the counter affidavit that, on the basis of Ext.P3 the 2nd respondent had considered implementing reservation for 3% physically handicapped persons. But there occurred some practical difficulties in implementation of the scheme and after taking note of the modalities formulated by the State Government in consultation with the PSC, the University have decided to adopt the scheme framed by the PSC, to have uniformity in the appointments. Therefore the guidelines issued by the PSC, dated 19/08/2008 and 15/09/2008, regarding the selection procedure to be followed for appointment of physically handicapped persons against the 3% vacancies earmarked under the Act, was placed before the

Syndicate for detailed examination. The Syndicate of the 2nd respondent University, which held its meeting on 31/01/2009 resolved to constitute a sub-committee to frame guidelines regarding the selection procedure. The committee recommended for 3% reservation for the physically challenged persons for appointment against teaching posts by clubbing the vacancies in all the teaching departments together, treating it category wise as one unit of 100 each. The turns of appointments at 33,66,99 should be filled up on an out of turn basis in the respective categories of (a) blindness or low vision (b) hearing impairment (c) locomotor disability or cerebral palsy. The scheme contemplates other working details as to how the reservation should be kept in tact in the rotation process. According to the 2nd respondent, steps are being adopted based on the recommendation of the Committee, which was already approved by the Syndicate of the University, to identify specific vacancies for physically challenged persons and to fill up the same for meeting the mandatory requirement of reservation. It

is specifically stated that, since the University had not formulated any clear cut guidelines on the selection of physically challenged persons based on Ext.P4 notification, the selection of physically handicapped persons was not made pursuant to Ext.P4. It is stated that the reservation for physically challenged persons, based on the recommendation of the Syndicate Committee, will be provided in future appointments.

4. While considering the issue involved, it is beneficial to evaluate provisions contained under Section 33 of the Act. It mandates on the Government to appoint in every establishment such percentage of vacancies not less than 3% with class of persons with disability, of which 1% each shall be reserved for persons suffering from (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or cerebral palsy in the post identified for each disability. Proviso to Section 33 specifies that the Government may, having regard to the type of work carried on in any department or establishment, by notification, subject to such conditions,

may specify any establishment as exempted from the provisions of said Section. Of course, Ext.P2 can be considered as an identification of post made by the State Government in order to fulfill the requirement mandated under Section 33. It is mentioned in Ext.P2 that the expert committee constituted for the said purpose had identified 20 posts in various departments in Public Service, for 3% reservation in class I and II posts. Therefore the Government have ordered that 3% vacancies in class I and II posts in Public Services, appended in the list to Ext.P2 order, should be reserved for appointment from eligible physically handicapped persons. It is true that the post of Lecturer in Arts and Commerce as well as in Science in the Collegiate Education Department was identified for orthopedically handicapped persons, visually impaired persons and partly deaf persons. Whereas the posts were not declared as suitable for totally deaf persons. It is also evident from Ext.P3 that, the guidelines were issued for implementing reservation for physically handicapped

persons. It cannot be disputed that the 2nd respondent University was bound to take appropriate steps for implementing the reservation of 3% for physically challenged persons. But the question remains as to whether such reservation was made or contemplated under Ext.P4 notification. In Ext.P4 various number of vacancies of Lecturers were notified for selection in various subjects like, Botany, History, Commerce & Management Studies, Physics, English, Malayalam, Hindi, Philosophy, Psychology, Mathematics, School of Drama, Economics, Sanskrit, Journalism & Mass communication, Life Sciences, Library and Information Science etc. The total number of post of Lecturers notified under Ext.P4 would come to above 40, under different subjects. But it was not specifically mentioned in Ext.P4 as to which of the post of Lecturers was reserved for physically handicapped persons. In the general instructions incorporated in Ext.P4 Notification, in clause (5) it is mentioned that; "three percentage reservation to the physically challenged persons will be provided as per

Rules". Question to be decided is as to whether the petitioner, who applied for an un reserved post, will be entitled to be considered for the selection, despite his merits in the selection process with the general candidates, on the basis that he is a physically handicapped person. Only in a case where the above question is answered in the affirmative, this court can issue a direction to consider the appointment of the petitioner to the post of Lecturer in Education, on the basis that he is a physically handicapped person.

5. Contention of the respondent University is that the modalities for reserving the 3% quota earmarked for physically handicapped persons, was not formulated and implemented at the time when Ext.P4 Notification was issued and when the selection was conducted based on such Notification. It is further contended that, now the modalities had been formulated and accepted by the Syndicate and that such reservations will be provided in the future appointments.

6. Learned counsel for the petitioner placed heavy

reliance on a decision of the Honourable Supreme Court in **Union of India and another V. National Federation of the Blind and another [2013 (4) ILR Kerala 279]**.

The said decision basically deals with the obligation on the part of Government in identifying suitable posts in various establishments for making reservation for the physically handicapped persons suffering from different categories of disablement, under three distinct categories as provided under Section 33. The dictum contained in the said decision relates to computation of vacancies for reservation of 3% for differently abled persons. It is held by the Apex Court that, such computation should be based on the number of vacancies in the cadre strength and not just on the basis of vacancies available in the identified posts. The Honourable Supreme Court issued directions to the appropriate Government to compute the number of vacancies in all the establishments and further to identify the posts for disabled persons, within a time limit stipulated. Presumably, it is in implementation of the said directions that the Government have identified

the posts as contained in Ext.P2 order. But in the case at hand as observed above, in Ext.P4 Notification, the applications were invited for appointment to the post of Lecturers in more than 40 posts in different subjects. Even though in the general instructions of the Notification it is mentioned that 3% reservation will be provided for physically challenged persons, none of the posts of Lecturers in any of the subjects was identified or earmarked as reserved for physically handicapped persons. Nor there was any guidelines formulated prescribing any mode of rotation for appointment of the physically handicapped persons from select list if any prepared. It is true that, based on Section 33 of the Act and based on Exts. P1 and P2, the petitioner could have sought for implementation of the mandatory requirement of reservation. In that respect, the petitioner could have challenged Ext.P4 Notification as one lacking specific provisions providing reservation of any particular post for the physically handicapped persons or as one lacking in particulars and methods prescribed for keeping any posts

reserved for physically handicapped persons, on a rotation basis. But the petitioner has not chosen to challenge Ext.P4 Notification. On the other hand he had applied for the post of Lecturer (Education) and competed in the selection process, along with the general/unreserved candidates. It is not discernible as to whether there were any other applicants with physical disablement in any of the subjects within the posts of Lecturers notified under Ext.P4 and as to who is more meritorious in the process of selection among those physically handicapped persons. Therefore, this court is not in a position to hold that the non-selection of the petitioner based on his physical disablement, was illegal or unsustainable. In other words, this court cannot find fault with the University in selecting respondents 3 to 5 against the post of Lecturers in Education, which was not specifically reserved for physically challenged candidates. Having not chosen to challenge the Notification based on non-reservation of any of the posts for physically handicapped persons, the contentions now raised by the

petitioner based on the statement contained in the general instructions of Ext.P4 Notification, cannot be sustained in order to annul the selection already made.

7. Under the above mentioned circumstances, the writ petition deserves no merit and no direction can be issued to select the petitioner against the post for which he had applied. Accordingly the above writ petition is hereby dismissed.

8. However, in view of the first relief sought for in the writ petition, a direction is hereby issued to the 2nd respondent University to adopt any particular methodology for reserving posts for physically handicapped persons in the categories identified by the State Government, in all the future selections to be conducted.

**Sd/- C.K. ABDUL REHIM
JUDGE**