

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 12494 of 2009 (F)

PETITIONER :

DR.R.K.SUNIL KUMAR
RAYAROTH TAZHE KUNIYIL, MADAPPALLY COLLEGE P.O.
VADAKARA, KOZHIKODE.

BY ADVS.SRI.C.P.SUDHAKARA PRASAD (SR.)
SRI.NAVEEN.T

RESPONDENTS :

1. KANNUR UNIVERSITY , MANGATTUPARAMBA
KANNUR 670 567, REP. BY ITS REGISTRAR.
2. SMT. NAVEENA, ASSISTANT PROFESSOR,
DEPARTMENT OF COMPUTER SCIENCE
CO-OPERATIVE ACADEMY OF PROFESSIONAL EDUCATION
CHEEMENEY, KANNUR PIN - 670 567
3. THE SELECTION COMMITTEE FOR APPOINTMENT
TO THE POST OF LECTURER IN THE DEPARTMENT
OF INFORMATION SCIENCE AND TECHNOLOGY, KANNUR
UNIVERSITY, KANNUR, REP. BY ITS CONVENOR - 670 567
4. SMT.PRIYA R., 'PRIYAM' VALLIKEEZHU,
KAVANAD P.O, KOLLAM - 691 003

R2 BY ADV.SRI.GRASHIOUS KURIAKOSE
R1 & 3 BY ADV. SRI.V.A.MUHAMMED, SC, KANNUR UNIVERSITY
R BY SRI.M.SASINDRAN, SC, KANNUR UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE PAGES CONTAINING ABSTRACT, CONTENTS, INTRODUCTION OF THE THESIS

EXT.P2 : COPY OF THE CERTIFICATS ISSUED TO THE PETITIONER

EXT.P3 : COPY OF THE LETTER DATED 10.1.2006 ISSUED BY THE DIRECTOR

EXT.P4 : CPY OF THE PAPER PRESENTED BY THE PETITIONER IN U.C.COLLEGE, ALUVA

EXT.P5 : COPY OF THE NOTIFICATION DATED 27.9.2006

EXT.P6 : COPY OF THE NOTIFICATION DATED 31.1.2007

EXT.P7 : COPY OF THE NOTIFICATION DATED 29.1.2008

EXT.P8 : COPY OF THE MEMO DATED 11.2.2009

EXT.P9 : COPY OF THE NOTIFICATION DATED 14.6.2006 ISSUED BY THE UNIVERSITY

EXT.P10 : COPY OF THE COMMUNICATIONS ISSUED BY THE UNIVERSITY OF THE BOMBAY

EXT.P11 : COPY OF THE REQUEST SUBMITTED BEFORE THE INFORMATION OFFICER

EXT.P12 : COPY OF THE ORDER DATED 16.6.2009 ISSUED BY THE 1ST RESPONDENT

EXT.P13 : COPY OF THE COMMUNICATION DATED 20.4.2009

EXT.P14 : COPY OF THE COMMUNICATION DATED 1.6.2009

EXT.P15 : COPY OF THE REQUEST DATED 4.6.2009

EXT.P16 : COPY OF THE COMMUNICATION DATED 19.6.2009

EXT.P17 : COPY OF THE APPLICATION DATED 10.6.2009

EXT.P18 : COPY OF THE COMMUNICATION DATED 26.6.2009

EXT.P19 : COPY OF THE COMMUNICATION DATED 9.9.2009

EXT.P19(a) : COPY OF THE COMMUNICATION DATED 9.9.2009

EXT.P20 (SERIES) : COPY OF THE CERTIFICATES

EXT.P21 : COPY OF THE MARK SHEET OF THE INTERVIEW.

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

K.VINOD CHANDRAN, J.

W.P.(C) No.12494 of 2009

Dated this the 19th day of November, 2015

J U D G M E N T

The petitioner, a Post Graduate in Physics and having Ph.D. in the same subject, challenge the selection made pursuant to Ext.P6 notification dated 31.01.2007 to the post of Lecturer in Information Science and Technology.

2. The petitioner applied under the first notification Ext.P5, in which the post of Lecturer in the Department of Information Technology was reserved for the Other Backward Classes (Ezhava/Thiyya & Billava). Though the petitioner had applied under the notification, the petitioner having no qualification in Information Technology was not considered. Since there were not enough applicants, the posts were notified again by Ext.P6. Both Exts.P5 and P6 contain a condition that, if no eligible candidates from the community for which the post is reserved is available, candidates from the other reserved category would be considered and in their absence open category candidates would be considered. The petitioner, first raises a contention against the said condition on the strength of Rule 15(a) of Part II KS&SSR which has to be answered at the

outset.

3. Admittedly, the 2nd and 4th respondents also applied for the post. The 2nd respondent is not qualified, since she does not have the qualification of National Eligibility Test or a Ph.D. Though the University appointed the 2nd respondent, she did not join duty and the next in rank, the 4th respondent was offered the post. The 4th respondent was recommended by the selection committee, despite the petitioner having obtained more marks in the selection procedure, than the 4th respondent. This was on the premise that, the 4th respondent had qualification in Information Technology and that, the consideration of Masters Degree in allied subjects as stipulated in Ext.P6 could be made only in the absence of candidates qualified in Information Technology. Here, the contention with respect to Rule 15(a) of Part II KS & SSR assumes significance.

4. Rule 15(a) of Part II KS & SSR was substituted by amendment dated 08.03.2006. The unamended Rule provided that, with respect to the OBC reserved category, if no candidates were available, the post shall be filled up by a suitable candidate from any other community or group of communities immediately next to the passed over community or group and in the event of absence of any such candidate

also, the same could be filled up from open competition candidates. The amended Rule however specifically restricted such consideration of candidates from the open competition to a post reserved for the OBC. In the case of a suitable candidate being not available for selection from the particular group or community, herein E/T/B, then the same had to be kept unfilled and notified separately for that community or group and if on re-notification also no candidates were available, then selection could be made only from the other OBC candidates and in their absence from the Scheduled Caste or Scheduled Tribe candidates. The provision for filling up such posts from open competition candidates stood annulled by the amendment made. Hence there could be no consideration of an open competition candidate to the reserved post.

5. The notifications Exts.P5 and P6 having come after the amendment to Rule 15(a), the consideration of the 4th respondent, the open competition candidate, to the post is bad. Though the 2nd and 4th respondents were served, none appears. Admittedly, the 2nd respondent is un-qualified for the post, for reason of she not possessing either NET or Ph.D and the 4th respondent though possessing qualification, by virtue of her belonging to the open competition, cannot be considered for

appointment to a post reserved for OBC (E/T/B).

6. The next question hence is the entitlement of the petitioner. As noticed earlier, Ext.P6 notification specifically prescribed that, Masters Degree in allied subjects will be considered for appointment in the absence of candidates qualified in Information Technology. The process of selection was a two tire system, as is evident from Statute 7(1)(b) of Kannur University First Statutes, 1998, when applications are made for a selection, a Committee, consisting of the Vice Chancellor, the Syndicate Member selected by him and Head of the Department or Professor-in-charge, will screen the applications and prepare a short list based on relevant norms. The counter affidavit of the respondent University reveals that the petitioner was short listed and out of the 11 candidates called for interview, only three candidates viz; the petitioner, the 2nd and 4th respondents alone attended the interview. The 2nd and 4th respondents were assigned first and second ranks, since the 1st respondent was having M.Tech First Class in Computer Science and the 4th respondent holds a Masters Degree in Computer Science and has obtained NET qualification for Lectureship from the UGC. The petitioner's qualification in Physics was found to be an allied subject, which

could be considered only if there are none having a qualification in Information Technology.

7. The University's contention is that, the 2nd and 4th respondents were persons having qualification in Information Technology and hence they were suitable for such appointment and that, the petitioner being only a person having qualification in allied subject, he was not considered. It is also stated that, the 2nd respondent, being a candidate from the reserved category E/T/B, was entitled to be appointed. However, this Court has already found that, the 2nd respondent did not have the qualification and the 2nd respondent also did not join, despite an appointment order being issued. The 4th respondent is admittedly from the open competition category and she could not have been considered, when the post is reserved for OBC (E/T/B) for reason of the prohibition in Rule 15(a) Part II KS&SSR.

8. The petitioner, having been shortlisted by the Screening Committee constituted under Statute 7(1)(b) of the first Statutes, definitely is qualified to be appointed as Lecturer in Information Technology, if there are none qualified in Information Technology. The marks obtained by the petitioner and the 2nd and 4th respondents in the selection to the post of

Lecturers in Information Technology are also reveal from Ext.P21, which is admitted by the University. The petitioner had obtained 20 marks, while the 2nd respondent 21 and the 4th respondent 15. The petitioner though had more marks than the 4th respondent, was not considered for appointment only since the 4th respondent was found to lack qualification in the subject concerned, i.e; Information Technology. The fact remains that the petitioner had a qualification in an allied subject; as has been found by the Screening Committee. The 4th respondent having been found not entitled to be considered for the post reserved for OBC (E/T/B), necessarily the petitioner would have to be appointed.

9. The learned counsel for the University has a further contention that, the decision in ***P.Suseela v. University Grants Commission [AIR 2015 SCC 976]*** specifically found that, the exemption applicable to Ph.D. holders could not have been granted for reason of the Central Government having specifically issued an order directing the UGC to make NET qualification as a compulsory requirement for appointment to faculty posts. The learned Senior Counsel appearing for the petitioner however would specifically point out that, what was up for consideration before the Honourable Supreme Court was

the regulations brought out by the UGC as the University Grants Commission Regulations (Minimum Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to it) (the Third Amendment) Regulation (2009), which was enforced on 11.07.2009. The entire gamut of the selection procedure was prior to the enforcement of the said regulation and the appointment order to the 2nd respondent produced as Ext.P12 itself is dated 16.06.2009.

10. A reading of **P.Suseela (supra)** would indicate that the challenge itself was regarding the Central Government directions of 12.11.2008 and 03.11.2010, specifying NET qualification to be an essential requirement for appointment of faculty in colleges. It was after the directive of 12.11.08 that the Regulation of 2009 was brought into force on 11.07.2009, which also continued the exemption. The Government hence issued the second directive dated 03.11.2010. The directives were upheld as within the power of the Central Government. It was also held so in paragraph 15 :

“Such condition would only be prospective as it would apply only at the stage of appointment.”

Even though the exemption was against the directive; even if

the exemption applicable earlier is deemed to have been omitted in the Regulations of 2009; that could have effect only w.e.f. 11.07.2009.

11. The appointment itself having been made before enforcement of the regulations, the same would not be applicable. This Court is inclined to accept the said contention. It is also to be noticed that, as on the date of selection what was applicable was Ext.P9 regulations which contain the stipulation as follows :

“NET shall remain the compulsory requirement for appointment as Lecturer for those with post-graduate degree. However, the candidates having Ph.D. degree in the concerned subject are exempted from NET for PG level and UG level teaching. The candidates having M.Phil degree in the concerned subject are exempted from NET for UG level teaching only.”

Hence as on the date of selection, Ph.D. Degree holders were exempted from NET qualification.

In the said circumstances, there shall be a direction to the respondent University to appoint the petitioner to the post of Lecturer, Information Technology reserved for OBC (E/T/B). Necessary appointment order shall be issued within a period of three weeks from the date of receipt of a certified copy of this

judgment. Ext.P12 stands quashed. This writ petition is allowed. No costs.

Sd/-
K.VINOD CHANDRAN, JUDGE

AV/20/11