

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

WP(C).No. 13222 of 2009 (W)

PETITIONERS:

1. ANIL KUMAR, S/O.KARUNAKARAN NAIR,
AGED 36 YEARS, LIBRARIAN GR.IV
PAZHASSIRAJA NSS COLLEGE, MATTANNUR.
2. S.SINDHU, W/O.C.JOY, AGED 36,
LIBRARIAN GR.IV, NSS COLLEGE, NENMARA
PALAKKAD.
3. SREENA V.NAIR, W/O.B.GIRISHKUMAR,
AGED 35 YEARS, LIBRARIAN GR.IV, NSS COLLEGE
OTTAPPALAM.

BY ADV. SRI.MILLU DANDAPANI
SRI. V. PREMCHAND

RESPONDENTS:

1. NSS COLLEGES' CENTRAL COMMITTEE,
CHANGANASSERY, REPRESENTED BY ITS SECRETARY.
2. THE DIRECTOR OF COLLEGIATE EDUCATION,
THIRUVANANTHAPURAM.
3. STATE OF KERALA, REPRESENTED BY THE
SECRETARY, HIGHER EDUCATION (D) DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

ADDI.4: VRINDA DEVI. K., LIBRARAIN (U.G.C),
N.S.S. COLLEGE, PANDALAM, RESIDING AT "VINAYAKA"
AKSHAYA NAGAR, NEERAMANKARA,
THIRUVANANTHAPURAM – 40.
IMPLEADED VIDE ORDER DATED 4.3.11 IN I.A. 3541/11.

R1 BY ADV. SRI.P.G.PARAMESWARA PANICKER (SR.)

R1 BY ADV. SRI.P.GOPAL

ADDL.R4 BY ADVS. SRI.T.K.CHINNAN

SRI.B.K.PURUSHOTHAMAN

SRI.B.K.GOPALAKRISHNAN

SRI.S.P.ARAVINDAKSHAN PILLAY

SMT.N.SANTHA

SRI.K.A.BALAN

SRI.PETER JOSE CHRISTO

SRI.S.A.ANAND

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30.10.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1 : TRUE COPY OF THE ORDER DATED 26.9.2007 ISSUED BY THE FIRST RESPONDENT.

P2 : TRUE COPY OF THE ORDER DATED 27.3.2008 ISSUED BY THE SECOND RESPONDENT.

P3 : TRUE COPY OF THE GOVERNMENT ORDER, VIDE NO. G.O.(MS) NO.119/2004/H/EDN. DATED 17.9.2004.

P4 : TRUE COPY OF THE GOVERNMENT ORDER, VIDE NO.G.O.(MS) NO.50/2008 DATED 9.5.2008.

P5 : TRUE COPY OF THE REPRESENTATION DATED 30.4.2008 SUBMITTED BY THE PETITIONERS BEFORE THE 3RD RESPONDENT.

P6 : TRUE COPY OF THE ORDER DATED 3.4.2009 ISSUED BY THE 3RD RESPONDENT.

P7 : TRUE COPY OF THE ORDER DATED 31.3.2001 ISSUED BY THE 2ND RESPONDENT.

P8 : TRUE COPY OF THE ORDER DATED 2.6.2005 ISSUED BY THE 2ND RESPONDENT.

P9 : TRUE COPY OF THE ORDER DATED 25.10.1997 ISSUED BY THE 2ND RESPONDENT.

P10 : TRUE COPY OF THE ORDER DATED 2.6.2005 ISSUED BY THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION, THIRUVANANTHAPURAM.

P11 : TRUE COPY OF THE PROCEEDINGS OF THE 3RD RESPONDENT DATED 28.12.2005.

P12 : TRUE COPY OF THE ORDER, G.O.(P) NO.52/03/H.EDN. DATED 15.5.2003 ISSUED BY THE GOVERNMENT OF KERALA.

P12(a): TRUE COPY OF THE ORDER, G.O.(P) NO.52/2009/H.EDN. DATED 9.6.2003 ISSUED BY THE GOVERNMENT OF KERALA.

P12(b): TRUE COPY OF THE ORDER, G.O.(P) NO.129/03/H.EDN. DATED 26.8.2003 ISSUED BY THE GOVERNMENT OF KERALA.

P13 : TRUE COPY OF THE PROCEEDINGS OF THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION, THIRUVANANTHAPURAM, DATED 31.3.2001.

P14 : TRUE COPY OF THE ORDER DATED 3.4.2013 OF THIS HON'BLE COURT IN W.P.(C) 1255/2013.

P15 : TRUE COPY OF THE GOVERNMENT ORDER NO.GO(MS) NO.490/2014/DCE DATED 14.7.2014.

P16 : TRUE COPY OF THE REPRESENTATION DATED 27.10.2014 BY THE PETITIONERS.

P17 : TRUE COPY OF LETTER NO.36679/D3/14/H.EDN DATED 28.1.2015 ISSUED FROM THE GOVERNMENT TO THE 1ST PETITIONER.

P18 : TRUE COPY OF THE JUDGMENT DATED 24.3.2015 OF THIS HON'BLE COURT IN W.P.(C) 1255/2013.

P19 : TRUE COPY OF PROCEEDINGS, ORDER NO.E1/9176/05/COLL. EDN DATED 02.06.2005 OF THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION, THIRUVANANTHAPURAM.

P20 : TRUE COPY OF LETTER NO.135/02/2012, DATED 30.1.2012 ISSUED BY RAJAGIRI COLLEGE OF SOCIAL SCIENCES TO THE 1ST PETITIONER.

P21 : TRUE COPY OF LETTER NO.C1/RTI/13-490 DATED 24.9.2013 ISSUED TO THE 1ST PETITIONER BY KEYI SAHIB TRAINING COLLEGE.

P22 : TRUE COPY OF LETTER NO.A/R1 09/13 DATED 01.10.2013 ISSUED TO THE 1ST PETITIONER BY DARUL ULOOM ARABIC COLLEGE.

P23 : TRUE COPY OF LETTER NO.AIWA/RIA/2013-14/9 DATED 03.10.2013 ISSUED TO THE 1ST PETITIONER BY THE PUBLIC INFORMATION OFFICER, AIWA COLLEGE, MONGAM.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A TO JUDGE

smv

SHAJI P. CHALY, J.

W.P.(C). No.13222 of 2009

Dated this the 30th day of October, 2015

JUDGMENT

This Writ Petition is filed seeking to quash Exts.P2 and P6 orders passed by the 3rd respondent whereby 3rd respondent has declined the claim of the petitioners to continue as Librarian Grade IV.

3. Brief facts for the disposal of Writ Petition are as follows:

4. 1st and 2nd petitioners joined as Last Grade Staff and 3rd petitioner as L.D. Typist in the service of the 1st respondent college w.e.f. 10.11.1995. After a period of 12 years , on 4.10.2007 they were promoted and appointed to the post of Librarian Gr.IV. However, 2nd respondent refused to approve the said appointment. Petitioners are aggrieved by the action of the 2nd respondent. It is also the case of the petitioners that the 1st respondent has addressed the 2nd respondent for approval of the said appointment. But the said request was rejected by the 2nd respondent as per Ext.P2 order dated 27.3.2008 for the reason that the IVth Grade Librarian is a supernumerary post as per the

Government Orders and therefore, no new appointment, transfer or officiating arrangement can be done. In that circumstances, it was held that the promotions of the petitioners to the said post are not sustainable.

5. In that situation, petitioners submitted Ext.P5 petition before the 3rd respondent pointing out inter alia that the petitioners have acquired Master Degree in Library Science after their graduation but without considering any of the grievances raised in Ext.P5, 3rd respondent has passed Ext.P6 order dated 3.4.2009, dismissing the claim raised by he petitioners.

6. It is further contended by the petitioners that the Calicut University (Conditions of Service of Teachers and Members of Non-teaching Staff) First Statues, 1979 provides for promotion of the Last Grade Staff as Library Assistant and the method of appointment and the qualifications are also prescribed. As per Rule 41(12) of Chapter 3 of the First Statues, petitioners are entitled to get promotion and for the sake of convenience the said Rule is extracted hereunder:-

“12.(Library/Laboratory SSLC or equivalent with pass in attenders test
Assistants) conducted by the Kerala Public Service
Commission. Technical qualifications or experience
required in the particular section. Department or
Institution

Provided that for promotion of last grade staff and specimen collectors of private colleges as the Library/Laboratory Assistants, the following shall be the method of appointment and the qualifications.

Method of appointment	Qualification
By transfer from members of the last grade and specimen collectors employed in the Private College or Colleges.	A. (1) Pass in form III standard VII or equivalent. (2) Pass in the attenders test conducted by the Public Service Commission. Or B. (1) Five year regular service under Private Colleges. (2) Pass in attenders test conducted by the Public Service Commission. II. Technical qualification or experience required in the particular section.

(Provided also that the last grade staff (and specimen collectors) who possess the qualification mentioned above excepting pass in attender's test and who were either in service on 31.3.1971 or who are in regular permanent service are eligible for appointment in the order of seniority as (Library/Laboratory Assistants). Their continuance as (Library/Laboratory Assistant) shall, however, be subject to their passing in one of the five consecutive attender's tests conducted by the Kerala Public Service Commission for the last grade staff of the Private Colleges. Such of those who remain unqualified in the attenders test even after five consecutive chances shall be reverted to their original posts)"

7. It is the further contention of the petitioners that 1st respondent college has acted by virtue of the power conferred under Rule 41(12) of the First Statutes but the 2nd and 3rd

respondents have failed to note the above said provisions and that is why the promotion effected by the 1st respondent happened to be declined by the 2nd respondent. It is thus aggrieved by the action of the 2nd and 3rd respondents, this writ petition is filed. First respondent College Management has filed counter affidavit contending that the petitioners are qualified by virtue of the First Statutes of the Calicut University referred supra and they are entitled to be approved by the 2nd respondent. However, 2nd and 3rd respondents have filed a counter affidavit contending that the petitioners are not qualified to be promoted as Librarian Gr.IV since they are lacking qualification as prescribed under the Government Order referred to in Ext.P2 order.

8. Heard learned counsel Sri.V.Premchand for the petitioners, learned counsel Sri. P. Gopal for the 1st respondent and learned Senior Government Pleader Sri. R. Padmaraj.

9. However in a writ petition filed by yet another person under similar circumstances, this Court has passed Ext.P14 interim order by which it was found that as per the University First Statutes, petitioner therein was entitled to get promotion and the 2nd respondent was bound under law to approve the appointment. The said interim order passed by this Court was affirmed by Ext.P18 judgment dated 24.3.2015. Learned counsel

for the 1st respondent has submitted that petitioners are also similarly situated and they are also entitled to get the benefit of the First Statutes of the Calicut University.

10. Going by the provisions of this Statutes, it is discernible that the qualification prescribed thereunder is SSLC with a certificate in Library Science. The Statues further provides promotion of any class of employees who are qualified for promotion. In such circumstances, since there is no amendment made to the First Statutes extracted supra, I find no reason to decline the relief granted by this Court as per Ext.P18 judgment, to the petitioners also.

11. Learned counsel for the petitioners as well as the 1st respondent has brought my attention also to Ext.P15 order passed by the 3rd respondent dated 14.7.2014 granting permission to approve the appointment of the petitioners to the post of Librarian Gr.IV.

12. Learned counsel for the petitioners also contended that their further promotion is not approved by the Government. Same is not a subject matter of challenge in this writ petition but petitioners are at liberty to challenge the same suitably.

Taking into account all these facts, circumstances and law involved, I am of the considered opinion that petitioners are entitled to get approval in the post of Librarian Gr.IV. Therefore,

this writ petition is allowed and I direct the 2nd respondent to approve the appointment of the petitioners in the college of the 1st respondent against the post of Librarian Gr.IV from the date of their appointment. The entire proceedings so directed shall be completed by the 2nd respondent within a period of two months from the date of receipt of a copy of this judgment.

Writ petition is allowed accordingly.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A to Judge

smv
30.10.2015