

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

WP(C).No. 13843 of 2013 (E)

PETITIONER(S):

**N.ASOKAN
HIGH SCHOOL ASSISTANT (SOCIAL SCIENCE)
C.A HIGHER SECONDARY SCHOOL, AYAKKAD
PALAKKAD DISTRICT.**

**BY ADVS.SRI.K.I.MAYANKUTTY MATHER
SRI.P.RAHUL**

RESPONDENT(S):

- 1. THE REGIONAL DEPUTY DIRECTOR OF HIGHER SECONDARY
EDUCATION
EDAPPALLY, ERNAKULAM 682 024.**
- 2. THE MANAGER
C.A HIGHER SECONDARY SCHOOL, AYAKKAD
PALAKKAD DISTRICT, PIN 678 683.**
- 3. M.P.JINI
HIGH SCHOOL ASSISTANT (HINDI)
C.A HIGHER SECONDARY SCHOOL, AYAKKAD
PALAKKAD DISTRICT. PIN 678 683.**

**R3 BY ADV. SRI.K.T.SHYAMKUMAR
R3 BY ADV. SRI.HARISH R. MENON
R BY GOVERNMENT PLEADER SMT. A. LOWSY
R BY SRI. V.A MUHAMMED**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06-10-2015, ALONG WITH WPC. 15554/2013, AND 14767 OF 2013 THE
COURT ON 15.10.2015 DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. COPY OF THE B.A DEGREE CERTIFICATE DATED 26.6.1987 ISSUED TO THE PETITIONER BY THE UNIVERSITY OF CALICUT.
- EXHIBIT P2. COPY OF THE B.ED CERTIFICATE DATED 16.12.1991 ISSUED TO THE PETITIONER BY THE UTKAL UNIVERSITY.
- EXHIBIT P3. COPY OF THE DEGREE CERTIFICATE ISSUED TO THE PETITIONER BY THE MADURAI KAMARAJ UNIVERSITY.
- EXHIBIT P4. COPY OF THE ELIGIBILITY CERTIFICATE NO.AC.C/041457/2010 DATED 10.8.10 ISSUED BY THE UNIVERSITY OF KERALA.
- EXHIBIT P5. COPY OF THE G.O(MS)NO.141/208/G.EDN DATED 18.8.2008.
- EXHIBIT P6. COPY OF THE EQUIVALENCY CETRTIFICATE NO.GA.1/A1/10258/11 DATED 7.12.11 ISSUED BY THE UNIVERSITY OF CALICUT.
- EXHIBIT P7. COPY OF THE ORDER NO.B3(B4)508/2012 DATED 1.4.12 ISSUED BY THE IST RESPONDENT.
- EXHIBIT P8. COPY OF THE REVISION PETITION DATED 16.12.11 FILED BY THE PETITIONER BEFORE THE SECRETARY TO GOVERNMENT OF KERLA, GENERAL EDUCATION DEPARTMENT.
- EXHIBIT P9. COPY OF THE G.O(RT)NO.1873/2013/G.EDN DATED 27.4.2013.
- EXHIBIT P10 COPY OF COMMUNICATION FROM THE GOVT. DTD.17.2.14
- EXHIBIT P11 COPY OF COMMUNICATION FROM THE GOVT. DTD.7.4.14
- EXHIBIT P12 COPY OF ADVERTISEMENT DTD.13.8.14 IN MALAYALA MANORAMA DAILY
- EXHIBIT P13 COPY OF APPLICATION SUBMITTED BY PETITIONER DTD.18.8.14
- EXHIBIT P14 COPY OF COMMON JUDGMENT DTD.4.12.07 IN W.A NO.797 OF 07 AND CONNECTED CASES

RESPONDENT(S)' EXHIBITS: NIL

// TRUE COPY //

P.A TO JUDGE.

SB

K. VINOD CHANDRAN, J.

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**W.P.(C) Nos.13843 of 2013 -E,
14767 of 2013 - U &
15554 of 2013 - T.**

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Dated this the 15th day of October, 2015

J U D G M E N T

The teachers in the high school section of an aided school, vying for promotion and appointment as Higher Secondary School Teacher (H.S.S.T) of the very same aided school, with the Manager throwing in his mite with one of them, is the subject matter of the above writ petitions.

2. The petitioner in W.P.(C) NO. 13843 of 2013 is the High School Assistant (H.S.A), who was denied appointment and the 3rd respondent therein, the H.S.A, who was granted the said appointment, filed W.P.(C) No.14767 of 2013. The Manager has filed yet another writ petition numbered as W.P.(C) No.15554 of 2013. The parties and the documents are referred to from W.P. (C) No.13843 of 2013.

3. The admitted facts are that, there were 25% posts reserved in the higher secondary section to the H.S.As, who were qualified to be posted as such. Both the petitioner and the 3rd respondent were approved as H.S.As, sought promotion to the post of H.S.ST (Junior) (Economics) in the aided school. Both are qualified to be appointed and the controversy revolves around the B.Ed qualification obtained by the petitioner from Utkal University. Whether the same is after a regular course of study or otherwise, is the question raised.

4. The same has also to be considered in the context of the specific allegation of nepotism raised against the Manager; as to the manner in which the entire procedure for selection was conducted. The petitioner is the admitted senior since he was appointed as H.S.A (Social Science) in the school on 15.07.1993, which appointment was duly approved. The 3rd respondent was appointed as U.P.S.A from 24.06.1992 and was promoted to H.S.A (Hindi) on 24.06.2004. In the academic year 2011-12, there were 10 sanctioned posts of

H.S.S.T (Junior) in the aided school and 25% of the same were reserved for appointment by transfer from H.S.As.

5. The Manager of the school decided to set apart one of the posts for appointment by transfer, being H.S.S.T (Junior) (Economics). Both the petitioner and the 3rd respondent applied for the same. The qualification prescribed for the said post was Masters Degree in the concerned subject; with not less than 50% marks from any of the Universities in Kerala or a qualification recognised as equivalent by any Universities of Kerala and B.Ed in the concerned subject; acquired after a regular course of study, from any of the Universities in Kerala or as above, an equivalent qualification and a pass in State Eligibility Test (S.E.T). Rule 9(4) of Chapter XXXII Kerala Education Rules (K.E.R) exempts teachers, who have completed 10 years as approved teachers service, at the high school level, from passing the S.E.T.

6. The petitioner had a graduate and Post Graduate degree in Economics and B.Ed in History and English from Utkal University. The 3rd respondent had also acquired graduate and Post Graduate degree in Economics with B.Ed in Social Studies as also the S.E.T qualification. Though both the petitioner and the 3rd respondent did not have B.Ed in Economics, the eligibility conditions prescribed that in the absence of any persons with B.Ed in the concerned subject, a B.Ed in any of the subjects under the concerned faculty would be sufficient.

7. In the event of there being no such qualified persons, the petitioner or the 3rd respondent who had a B.Ed degree under the concerned faculty could very well be considered for appointment by transfer. The petitioner having more than 10 years was also exempted from the S.E.T qualification. The petitioner and the 3rd respondent were called for an interview by the Selection Committee on 05.12.2011. The appointment as per Rule 4 of Chapter XXXII

K.E.R, to posts of H.S.S.T (Junior), in the 25% transfer quota, is based on seniority and suitability. The suitability has been explained by the Government in G.O(MS)No.141/2008/G.Edn. dated 18.08.2008 as "the prescribed qualification and requisite experience" (Ext.P5). Hence, the petitioner by reason of the exemption and the other qualifications as also his seniority had a definite edge over the 3rd respondent for appointment by transfer.

8. The Selection Committee raised a technical objection on the B.Ed qualification of the petitioner obtained from the Utkal University on the ground that the petitioner had not produced any Equivalency Certificate from any of the Universities in Kerala, to the effect that the B.Ed awarded by the Utkal University is recognised. The petitioner's contention before the Selection Committee was that, he having been appointed as an H.S.A, which also required the qualification of a recognised B.Ed degree, there was no question of a further verification of his B.Ed degree, which he had obtained from

Utkal University.

9. The Selection Committee on 05.12.2011 is said to have assured the petitioner that the contention would be considered. In any event, the petitioner produced an Equivalency Certificate from the University of Calicut dated 07.12.2011, which is produced as Ext.P6. However, the 3rd respondent is said to have been appointed on 06.12.2011, ignoring the claim of the petitioner.

10. The petitioner filed a representation before the 1st respondent and also approached this Court for a direction to consider the same. The petitioner's claim was rejected by Ext.P7 order. The petitioner filed a revision before the Government, which went in his favour as indicated in Ext.P9. The Government by Ext.P9 declared that the selection of the 3rd respondent as H.S.S.T (Junior) (Economics) in the aided school is null and void. The Manager was directed to take necessary action to conduct fresh selection. The petitioner seeks implementation of the said order while the 3rd

respondent and the Manager in their respective writ petitions seek setting aside of the said order.

11. The essential contention raised by both sides is as to the efficacy of the B.Ed degree obtained by the petitioner, to be considered as, one obtained under a regular course of study. The distinction drawn by the learned Counsel for the 3rd respondent and the Manager is that Rule 2 (2) (a) Chapter XXXI of K.E.R did not prescribe that the B.Ed degree should be after a regular course of study and the eligibility conditions under Chapter XXXII specifically prescribed that it should be a regular course of study. Thus there is exclusion of a degree obtained pursuant to distance education; presumably.

12. The learned Counsel would also rely on **Municipal Corporation of Greater Bombay and others v. Dr.Sushil V. Patkar and others [AIR 1991 SCC 1733]** to contend that when there is prescribed a qualification for appointment and the same being not possessed by the

candidate, on the date of application, the opportunity given to the candidate to show the acquisition of the required qualification at the time of interview, cannot be extended to a later date. If the candidate is unable to produce the certificate even at the interview, then necessarily the selection made cannot be upset, since the selection Board would be justified in ignoring the claim of such applicant.

13. **Dr.Sushil V. Patkar** (supra) was a case in which, the eligibility for appointment was an M.Ch qualification, which the applicant admittedly did not possess on the date on which the application was called. Despite that, the applicant was called for an interview and asked to produce the certificate. It was hence the Hon'ble Supreme Court found that the applicant, who did not possess the qualification and did not prefer the application on the basis of such qualification, ought to have been ready with the certificate, at least at the time of interview.

14. This Court is of the opinion that there is substantial distinction on facts in the present case. The applicant herein, had been working as an H.S.A (Social Science) in the aided school and had been appointed so on the strength of his graduate, Post Graduate and B.Ed qualification. There was absolutely no room for the petitioner to expect that the petitioner would be asked to produce any certificate at the time of the interview, which again was not a fresh selection, but was a selection for appointment by transfer. When the petitioner had been before the interview Board, no rejection was made on the ground that the petitioner had not undergone a regular course of study. The rejection obviously was on the ground that the petitioner had not produced an Equivalency Certificate. There could have been no such rejection since admittedly even for appointment as an H.S.A, there was a stipulation that the B.Ed should be from any of the Universities in Kerala or one recognised as equivalent. In this context, the qualification of appointment as

H.S.A has to be looked into. Rule 2(2)(a) of Chapter XXXI of the K.E.R is extracted hereunder:-

2(2)(a): High School Assistant (subject)

A degree in the concerned subject and B.Ed/B.T/L.T conferred or recognised by the Universities in Kerala.

15. In the facts as noticed above, this Court is unable, to import the proposition of **Dr.Sushil V. Patkar** (supra). If at all, an Equivalency Certificate was required or an objection with respect to the B.Ed being a regular course of study or otherwise was raised; then, the petitioner ought to have been granted a reasonable time to convince the Selection Committee. The refusal to grant such time has to be found to be a clear case of violation of principles governing such selection, especially in the context of the petitioner being the admitted senior and the petitioner having been appointed and continued for long years in the high school section on the basis of the qualifications acquired by the petitioner; which alone came up for scrutiny before the Selection

Committee.

16. The further compelling circumstances, which disturbs this Court is that the interview as admitted by both sides was conducted on a holiday, Muhram. The very next day, an appointment order was issued to the 3rd respondent. The petitioner on the next following day produced an Equivalency Certificate. The absence of which obviously was the only objection raised by the Selection Committee.

17. The question of the petitioner having not undertaken a regular course of study was never raised by the Selection Committee. A reading of Ext.P9 would indicate that the Regional Deputy Director, Higher Secondary Education, Ernakulam, the approving authority of H.S.S.Ts in the aided Higher Secondary Schools by report dated 21.01.2013, on the basis of the verification of the relevant records reported that the only defect is the non production of Equivalency Certificate at the time of interview. Though the Manager, in his writ petition contends that the other objection was also

raised, admittedly the Deputy Director Higher Secondary Education was the Government nominee in the Selection Committee. It is the Regional Deputy Director, who has filed a report stating that there was only one objection raised with respect to the equivalency issue.

18. In any event, as for the regular course having been undertaken by the petitioner, the petitioner has produced certain documents along with the counter affidavit in W.P.(C) No.14767 of 2013, which are referred hereunder. The eligibility certificate is produced at Ext.R5(e) issued by the University of Kerala on 07.12.2011, ie., two days after the interview and one day after the appointment. Going by the fact that the interview itself was fixed on a holiday; Muhram and the petitioner having sought for time to produce the Equivalency Certificate, normally breathing time ought to have been granted. The petitioner has also obtained the Equivalency Certificate within two days from the University of Calicut. This Court is of the opinion that the Manger showed

undue haste in appointing the additional 3rd respondent.

19. The appointment of the petitioner as an H.S.A and the approval granted, for such appointment, was on the basis of the very same certificates. The Manager as also the educational authorities under the K.E.R, had acted upon such certificates and accepted the same while appointing and approving the petitioner as an H.S.A . When doubts are raised on the question of efficacy of such certificate, necessarily the onus shifts to the person who asserts that the same is not a proper qualification. There was never a doubt raised on the question of the B.Ed course undertaken by the petitioner; as to whether it was a regular course or not.

20. Further Ext.R5(f) and (g) are produced which are respectively the conduct and course leaving certificates. The conduct certificate issued specifically indicate that the period of studentship is from 1987 to 88. Ext.R5(g) though indicates the period as between 14.7.1987 and 22.09.1994. That is an obvious mistake since the certificate itself was issued on

22.09.1994.

21. In any event, even without relying on Ext.R5(g), the conduct certificate definitely indicates that the petitioner had undergone a regular course of study. Ext.R5(f) is obviously not a certificate obtained for production at the time of the interview to the post of H.S.S.T. Ext.R5(f) was issued long back, in the year 1994. No allegation of a certificate procured at the time of the interview can be raised. Further there could not have been a certificate issued with respect to the conduct of a student if the course was not of a regular nature.

22. The further contention of the 3rd respondent is on the ground that the certificate of the petitioner (produced as Ext.P6 in her writ petition) shows it to be a Diploma. Admittedly, the B.Ed course conducted under the Universities in Kerala, also have a duration of only one year. The B.Ed course conducted by the Utkal University is also recognized by the Calicut University as equivalent to that of its own B.Ed

degree. Equivalency also is not an aspect to be gone into at this distance of time, since the petitioner admittedly under the same rigour of equivalency/recognition was appointed as an H.S.A, by the very same authorities. The Conduct and Course Leaving Certificates are issued not by the University, but by the B.P. College of Science and Education, Bhubaneswar, affiliated to Utkal University. The fact that the petitioner had undergone the course through a college, affiliated to Utkal University, itself would indicate that the same was a regular course.

23. In such circumstance, this Court is unable to sustain the contentions raised by the Manager and the 3rd respondent. The order of the Government in the revision filed by the petitioner has to be sustained. In the context of the petitioner having sought only for a fresh selection, necessarily the same shall be done. The 3rd respondent shall be reverted to the high school section immediately. Ext.P9 in W.P.(C) No. 13843 of 2013 is sustained and there shall be a

W.P.(C) Nos.13843 of 2013 -E
& connected matters

direction to the 1st respondent to immediately direct the 2nd respondent to initiate selection proceedings for appointment to the post of H.S.S.T (Economics) to the 25% quota, only from those candidates available on the date on which the vacancy arose.

W.P.(C) No. 14767 of 2013 and 15554 of 2013 filed respectively by the teacher appointed as the H.S.S.T and the Manager would stand dismissed. W.P.(C) No. 13843 of 2013 would stand allowed. Parties to suffer their respective costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB/08 /10 /2015

// true copy //

P.A to Judge.