

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

WP(C).No. 22524 of 2005 (F)

PETITIONER:

**PRADIP SOMASUNDARAN,
SENIOR LECTURER IN ELECTRONICS SCIENCE
COLLEGE OF APPLIED SCIENCE, I.H.R.D., VADAKKENCHERRY
PALAKKAD DISTRICT.**

**BY ADVS.SRI.C.P.SUDHAKARA PRASAD (SR.)
SRI.ELVIN PETER P.J.
SRI.S.RAMESH
SRI.P.N.SANTHOSH
SRI.NAVEEN.T
SRI.T.G.SUNIL (PRANAVAM)
SRI.C.X.ANTONY BENEDICT**

RESPONDENTS:

- 1. INSTITUTE OF HUMAN RESOURCE DEVELOPMENT,
PRAJOE TOWERS, VAZHUTHACAUD, THIRUVANANTHAPURAM-14
REPRESENTED BY ITS DIRECTOR.**
- 2. THE DIRECTOR,
INSTITUTE OF HUMAN RESOURCES DEVELOPMENT
PRAJOE TOWERS, VAZHUTHACAUD, THIRUVANANTHAPURAM-14.**
- 3. P. ABDUSSAMAD,
PRINCIPAL, COLLEGE OF APPLIED SCIENCE, I.H.R.D.
VETTAMKULAM, MALAPPURAM DISTRICT.**
- 4. P. LATHA,
PRINCIPAL, COLLEGE OF APPLIED SCIENCE, I.H.R.D.
NATTIKA, VALAPPAD, THRISSUR DISTRICT.**

**R1 & 2 BY ADV. SRI.N.N.SUGUNAPALAN, SC, IHRDE
R1 & 2 BY ADV. SRI.S.SUJIN, SC, IHRD
R3 BY ADV. SRI.KRB.KAIMAL (SR.)
R3 BY ADV. SRI.B.UNNIKRISHNA KAIMAL
R4 BY ADV. SRI.P.C.SASIDHARAN
R1 & 2 BY ADV. SHRI M.K.CHANDRAMOHAN DAS,SC,IHRD
BY GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-10-2015,
ALONG WITH WPC 26062/2005 AND OTHERS THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- P1 : TRUE COPY OF ORDER NO.E1/2801/97/HRD DT.26TH MARCH, 1997
ALONG WITH THE DETAILS OF POSTS SANCTIONED ISSUED BY THE
2ND RESPONDENT
- P2 : TRUE COPY OF STAFF PATTERN FOR COLLEGE OF APPLIED SCIENCE,
VADAKKENCHERY ISSUED IN DECEMBER, 2000
- P3 : TRUE COPY OF ORDER NO.E5/1227/2001/HRD DT.3RD APRIL, 2002
ALONG WITH THE REVISED STAFF PATTERN
- P4 : TRUE COPY OF ORDER (CIRCULAR) NO. B/8922/99/HRD/G1
DT.18.11.1999 ISSUED BY THE 2ND RESPONDENT
- P5 : TRUE COPY OF REPRESENTATION DT.25.11.1999 SUBMITTED BY THE
PETITIONER TO THE 2ND RESPONDENT
- P6 : TRUE COPY OF COMMUNICATION NO.55/99CAS/VC. DT.25TH
NOVEMBER, 1999 SENT BY THE PRINCIPAL, C.A.S.,
VADAKKENCHERRY TO THE 2ND RESPONDENT
- P7 : TRUE COPY OF COMMUNICATION NO.R/8922/99/HRD/G1 DT. 4TH
DECEMBER, 1999 FROM THE 2ND RESPONDENT TO THE PRINCIPAL,
C.A.S., VADAKKENCHERRY
- P8 : TRUE COPY OF ORDER NO.E4/1521/2002/HRD DATED 3RD
SEPTEMBER, 2002 ISSUED BY THE 2ND RESPONDENT
- P9 : TRUE COPY OF ORDER NO.E3/8025/2002/HRD (1) DATED 24TH JULY,
2003 ISSUED BY THE 2ND RESPONDENT
- P10 : TRUE COPY OF REPORT GIVEN BY THE PRINCIPAL, C.A.S.,
VADAKKENCHERRY TO THE AICTE FOR THE YEAR 2002-2003
- P11 : TRUE COPY OF ORDER NO.E5/8436/2004/HRD(I) DATED 15TH JULY,
2005 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS

- R2(A) : TRUE COPY OF THE ORDER NO.E4/1521/2002/HRD DATED 3.9.2002
- R3(A) : TRUE COPY OF THE PROCEEDINGS NO.E1/8878/97/HRD DATED
13.10.1997 ISSUED BY THE 1ST RESPONDENT TOGETHER WITH
RELEVANT PORTION OF THE SPECIAL RULES ANNEXED THERETO

- R3(B) : TRUE COPY OF THE LETTER NO.G2/342/86-87 DATED 17.7.1991 FROM THE MANAGER OF EMEA COLLEGE OF ARTS AND SCIENCE, KONDOTTI, TO THE REGISTRAR OF CALICUT UNIVERSITY
- R3(C) : TRUE COPY OF THE LETTER NOGA.II/B2/1809/91 DATED 7.8.1991 OF THE REGISTRAR OF UNIVERSITY OF CALICUT TO THE MANAGER EWMEA COLLEGE OF ART & SCIENCE KONDOTTI.
- R3(D) : TRUE COPY OF THE ORDER NO.GAII/F2/4873/01 DATED 22.7.2005 ISSUED BY THE REGISTRAR, UNIVERSITY OF CALICUT.

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) Nos. 22524 & 26062 of 2005

&

W.P.(C) Nos.26 & 34588 of 2006

Dated this the 16th day of October, 2015

J U D G M E N T

W.P.(C) Nos. 22524 & 26062 of 2005

The petitioners in both the writ petitions assert their seniority over the party respondents and assail the prescription of a combined feeder category, in the Special Rules, as arbitrary and unreasonable; to contend that they ought to have been promoted as Principals in College of Applied Sciences (CAS) under the Institute of Human Resources Development (IHRD), over and above the party respondents.

2. Both the petitioners have 1st Class Master's Degree; one in Electronics and the other in Electronics Science and were appointed to the CAS, under the IHRD, during 1994 and regularised respectively in 1996 and 1997. They were promoted as Senior Lecturers in Electronics

Science, in the year 2003, but were aggrieved that they could not aspire for further promotion as Professor Grade-II. This was so since the Special Rules of the year 1997 applicable to the employees of the IHRD (Ext.R3(a) in W.P. (C) No.22524/2005); provided as an essential qualification a Master's Degree with 55% marks (aggregate) in the appropriate subject with B.Ed., M.Phil. or Ph.D.

3. There was an anomaly, insofar as, while for appointment as Lecturers, the minimum requirement was a Master's Degree in the appropriate subject with 60% marks, the promotion to II Grade Professor required only a Master's Degree in the appropriate subject with 55% marks, but, however, with the additional qualification of B.Ed., M.Phil. or Ph.D. The petitioners, though had a first class Master's Degree, did not possess a B.Ed., M.Phil. or Ph.D.

4. The Special Rules covered various designations of employees in different categories being (i) the Administrative Office, (ii) Polytechnics, (iii) Technical Higher Secondary Schools (THSS), (iv) College of Applied Science (CAS) and (v) Engineering Colleges.

5. The petitioners contend that the courses offered in the CAS were graduate and post graduate courses in Electronics and Computer Science and a post graduate course in Computer Applications. English, Maths and Physics were also taught in the curriculum. While a person having Master's Degree with 55% aggregate marks and Ph.D in the aforesaid subjects or appointed as a Lecturer in any of the other Institutions, could aspire to be an Assistant Professor Grade-II, the petitioners who had Master's Degree in Electronics, which was the main subject taught in the CAS, would be dis-entitled from aspiring for such

promotion, since they did not have the additional qualification of B.Ed., M.Phil. or Ph.D.

6. In any event, the said grievance was redressed when the IHRD brought in the new Special Rules dated 3.9.2002 for the faculty, in the various branches (produced as Ext.P8 in W.P.(C) No.22524/2005). By the new Special Rules the post of Assistant Professor Grade-II was re-designated as Senior Lecturer in Electronics/Computer Science. The qualification for promotion as Senior Lecturer, was also changed to 1st Class Master's Degree in the relevant subject with five years experience as Lecturer under IHRD. The petitioners hence, became entitled for promotion and were so promoted by Ext.P9 dated 24.07.2003.

7. The petitioner's contention is that they ought to have been promoted on completion of five years, since there was an obvious anomaly in the Special Rules existing as on

that date. At least the promotions ought to have been granted with retrospective effect, when the new Special Rules came into effect, since an obvious anomaly was removed by Ext.P8; and it could be treated as a clarification. It is on that ground that the petitioners assert their seniority over the party respondents.

8. Admittedly, respondents 3 and 4 in W.P.(C) No. 22524/2005 were appointed as Principal in Polytechnics, on 11.11.2001 and 11.5.1999 respectively. The respondents 4 and 5 in W.P.(C) No.26062/2005 are the respondents 4 and 3 in the other writ petition. The 3rd respondent, was an Assistant Director on the Administrative side of the IHRD, having been so appointed on 3.1.1997. The appointment of the said respondents to a post in the combined feeder category was prior to that of the petitioners.

9. The petitioners were promoted as Grade-II Professor/Sub Lecturer only by Ext.P9 dated 24.7.2003. The petitioners' claim of seniority, hence, is anchored on the ground that the anomaly in the Special Rules having been rectified by Ext.P8, the petitioners ought to have been promoted with retrospective effect from the date on which they completed their five years experience; or at least notionally so assigned a seniority, to enable further promotions on the basis of such seniority.

10. The first contention of the petitioners is that the amendment to the Special Rules ought to be treated as a clarification. When the petitioners completed their five years experience in the cadre of Lecturers, the Special Rules in existence was Ext.R3(a). A reading of the Special Rules indicate that there was a common cadre of Lecturers/Engineering/System Analyst under the IHRD services and the next promotion post was, Assistant

Director in the Administrative side, Head of Sections under the Polytechnics, Principal under the Technical Higher Secondary Schools and II Grade Professor under the CAS. The Head of Sections in Polytechnics and Principal in Technical Higher Secondary Schools also had a further opportunity for promotion to the post of Principal in Polytechnics. The common feeder category for promotion to the post of Principal in CAS was Grade II Professor in CAS, Principals of THSS and Head of Sections in Polytechnics under IHRD.

11. Though a Lecturer in CAS, who did not have a B.Ed., M.Phil. or Ph.D., could not have aspired to the post of II Grade Professor in CAS, he/she could have opted for promotion to any of the other feeder categories. A Lecturer in the CAS could have aspired for promotion to either the post of Principal in THSS or Head of Section in Polytechnics. The required qualification was Master's

Degree with 55% marks and B.Ed., M.Phil. or Ph.D. or 1st Class degree in Engineering or Technology, along with three years teaching or administrative experience under the IHRD. From there, they also could have opted for being appointed as Principal, CAS.

12. Obviously, the petitioners cannot urge that they had no promotional opportunities and that their service prospects stood stultified for reason of there being no avenue to become a II Grade Professor in C.A.S. The Special Rules, as existing, having provided for other opportunities, it can only be deemed to be the choice of the petitioners, to have remained in the CAS itself. Hence, though an anomaly does exist, in the prescription of qualification for promotion to Professor Grade-II, the petitioners cannot, on the basis of that alone or their disability at that point of time to be promoted, claim any notional promotion. It is also pertinent that the petitioners

never challenged the Special Rules at an earlier point of time. The seniority, hence, asserted on the claim of such notional promotion, has to be negated. Admittedly, in the feeder category, for promotion to Principal, CAS, the petitioners were juniors to the respondents.

13. While considering the seniority aspect, there is a specific contention raised by the petitioner in W.P.(C) No.26062/2005 that the 3rd respondent therein does not have the required experience as stipulated under the Special Rules. The 3rd respondent was appointed as an Assistant Director and has a 1st Class Post Graduate degree in Computer Applications. The 3rd respondent was appointed on 3.1.1997 and regularised on 3.1.1998. The contention that the 3rd respondent did not have seniority over the petitioner cannot be countenanced, since Assistant Director comes within the feeder category for the post of Principal of CAS and the petitioner was promoted to the

post of Senior Lecturer, in the feeder category, only by Ext.P9 dated 24.7.2003; after the 3rd respondent's appointment. The petitioner, on the basis of her service in the post of Lecturer, cannot claim seniority over an Assistant Director; which is a higher cadre.

14. However, what assumes significance is the admitted fact that the 3rd respondent was on deputation to the Matsyafed for two years. The specific stipulation in the Special Rules as to experience is as follows:

“Seven years teaching/Industrial/Administrative
Experience under IHRD”

Hence, it is incumbent, for being considered for promotion, that the experience should be under the respondent Organisation itself and not in any other organisation. In such circumstance, the promotion of the 3rd respondent in W.P.(C) No. 26062/2005, in 2004, could not have been made for the reason of he having not satisfied the experience

stipulated. However, this Court has to notice that the 3rd respondent had continued for long, as Principal, and the petitioner also is now promoted as Principal. In such circumstance, there would be no requirement to set aside the promotion of the 3rd respondent. However, necessary modification shall be made in the seniority list of Principal of CAS, with the 3rd respondent given seniority after the date of his acquiring the necessary experience of seven years under IHRD.

15. The further contention urged is with respect to the arbitrariness of the Special Rules. Sri. S. Ramesh, the learned counsel appearing for the petitioner, would contend that when a rule is found to be arbitrary or unreasonable, then there can be a valid challenge against such rule. To further buttress his contention, he relies on **Pankajakshy & Others v. George Mathew & Others - 1987 (2) KLT 723** and **N.C. Narayanan Nair v. State of Kerala - 1988 (1)**

KL T 894. The learned counsel appearing for the respondent, however, would contend that herein; the reasonableness and unreasonableness is urged only on account of the assumed absence of avenues of promotion and the same cannot be a matter of judicial review. The petitioners however rely on **Food Corporation of India and Others v. Parashotam Das Bansal and Others - (2008) 5 SCC 100**, to refute such claim.

16. The challenge with respect to reasonableness of the rule, is on the ground that, the core subjects taught in the CAS are purely technical. Maths, Physics and English are only included in the syllabus which do not form the main subjects of the curriculum. The Principal of a College, in which technical subjects are the core subjects in the curriculum, should be a person from that stream itself. A person having qualification in languages or as in the case of the 3rd respondent in W.P.(C) No.22524/2005; in Physical

Education, cannot be permitted to take the post of Principal, is the argument. It is also argued that the appointment of the 3rd respondent as Principal would result in a situation where the Principal is not required to take any classes, since Physical Education is not a subject forming the curriculum of the courses in CAS.

17. In this context, it is to be primarily noticed that the reasonableness of a policy, herein the promotion policy, is within the exclusive domain of the organisation and it is not for this Court to impose its own notions of reasonableness, to substitute that of the governing body of the Organisation. A more reasonable prescription, as perceived by this Court, cannot substitute a clearly reasonable prescription arrived at by the Organisation. Unless unreasonableness vitiates the prescription itself, this Court would not invoke the extraordinary power under Article 226 of the Constitution of India, especially in matters

of laying down an essential qualification for enabling promotion. It is not for the Court to embark upon an enquiry as to the wisdom of a policy as declared in **Census Commissioner v. R. Krishnamurthy - (2015) 2 SCC 796.**

18. Further, it is to be noticed that the Special Rules always provided for promotion to the category of Principal, CAS, from the different categories, which formed a combined feeder category. The anomaly sought to be rectified by Ext.P8 regulation was by providing for technically qualified 1st Class Post Graduates also to be promoted as II Grade Professor/Senior Lecturer. As was noticed earlier, it was not as if the Lecturer in the CAS had no other promotion opportunity, since they could have definitely opted for a promotion as a Principal, Higher Secondary School or as Head of Sections in Polytechnic, from where they could have opted to be the Principal of

CAS. In such circumstance, the contention of there being no avenues of promotion cannot at all be countenanced. The petitioners did not opt for any other avenues in the other Institutions under the IHRD, which was a matter of personal choice or individual preference.

19. When modifications were made by Ext.P8, the promotion policy with respect to the Principal, CAS, was modified, including a First Class Master's Degree in Electronics Science/Computer Science/MCA. The feeder category remained as such with only the Senior Systems Analyst under the IHRD and the Assistant Director of IHRD being included in the feeder category. Within the teaching faculty of the various institutions, the experience prescribed was teaching experience. However, to the post of Principal, in all the institutions, the experience required could be on the administrative side also. This is a clear indicator that the organisation understood the Principals post to be

primarily an administrative post. The governing body, in its wisdom, permitted even persons having an industrial or administrative experience to come to the pinnacle post of Principal; which essentially is concerned with administrative work and is created with an aim to ensure the overall control and supervision, on one person; who not only has sufficient academic qualifications but also the capability to provide effective leadership and ensure co-operation of the entire faculty.

20. The petitioners' contention based on Ext.P10, that even the Principals of CAS were obliged to take classes does not indicate a mandate as such. Ext.P10 only indicates that as a matter of practice, the Principals were taking classes in the CAS. However, the petitioners have not been able to point out any specific mandate either within the organisation or under the AICTE/UGC/University Regulations that a Principal should take a specified number

of classes. It is, in fact, pointed out by the 3rd respondent that even in the Arts/Science Colleges, affiliated to the University, the Senior most faculty member qualified in Physical Education, also could be appointed as Principal (Exts.R3(b) to R3(d)). Physical Education, admittedly, is not a subject or part of the syllabus in Arts/Science Colleges which do not have a graduate or post-graduate course in Physical Education. Even then the University approves the appointment of a Lecturer in Physical Education with reference to the number of students studying in the institution. This is in recognition of the need for all overall development of the students who have to be trained in sports and equipped in terms of physical health. This Court is inclined to accept the contention of the 3rd respondent that in the existing academic scenario it is futile to contend that Physical Education Lecturers cannot be posted as Principals of Colleges.

21. It cannot be disputed that an unreasonable rule can be set aside by this Court invoking jurisdiction under Article 226 of the Constitution of India. But it is one thing to hold a rule as unreasonable and quite another to find that the rule could have been more reasonable. The latter imports a subjective appraisal, whereas the former has to be a definite objective determination. On an objective assessment, this Court is unable to find any unreasonableness in the combined feeder category prescribed from the different institutions under the same management. The subject stipulation loses its relevance in the highest organisational post, essentially of an administrative nature. The academic character which is inherent to such a post in an educational institution; is ensured by the educational qualification prescribed as also the experience stipulated.

22. In such circumstance, this Court is unable to find any infirmity or unreasonableness in the Special Rules. The Writ Petitions would, hence, stand dismissed. However, with the directions as above as to the seniority position of the 3rd respondent in W.P.(C) No.22524/2005, which would be re-fixed within a period of one month from the date of receipt of the certified copy of this judgment. Parties shall suffer their respective costs.

W.P.(C) Nos.26 & 34588 of 2006

23. The above writ petitions, on facts, are different insofar as the promotions sought for is to the post of Joint Director in the Administration Wing and the Principal in the C.A.S.

24. In W.P.(C) No.26/2006 the petitioner is a Principal of C.A.S. who is aggrieved by the fact that he has no more further avenues of promotion. The further avenues of

promotion, as is indicated in the Special Rules, is to the post of Joint Director, which, however, is confined to persons who have (i) First Class Master's Degree in Engineering Technology with 10 years teaching or industrial experience or (ii) First Class B.Tech, Degree in Engineering/Technology or First Class Master's Degree in Computer Application with 7 years teaching/industrial experience and three years of administrative experience under IHRD service. The petitioner who is a Post Graduate in English with an M.Phil. is aggrieved insofar as his qualification do not enable him to seek for promotion to the post of Joint Director.

25. In W.P.(C) No.34588/2006, the petitioners are Principals of Technical Higher Secondary Schools, who are aggrieved by their inability to seek for further promotion to the post of Principal, C.A.S. for reason of their not having the essential qualification. While earlier the post for Principal was accessible to the Post Graduates with 55%

and a B.Ed., M.Phil. or Ph.D., there was a substantial amendment brought to the Special Rules, insofar as removing the qualification of B.Ed. Hence, only those persons who had a First Class Degree in Engineering/Technology or First Class Master's Degree in Electronics Science/Computer Science/MCA or Master's Degree with not less than 55% marks in Arts/Science subject with M.Phil or Ph.D. could aspire for such promotion. The petitioners, as in the other writ petition, contend that the prescription in the Special Rules is arbitrary and is discriminatory.

26. It is trite that discrimination can be alleged successfully only when persons equally situated are treated unequally. It cannot, at all, be said that the petitioners in the above writ petitions, with their qualifications are identically situated as the others. With respect to the post of Joint Director, the counter affidavit clearly refutes the

contention of the petitioners that, by removing the word 'Electronics' from the name of the respondent organisation, there is a sea change brought to the objects as such. The Additional Director/Joint Director is a post in the Administrative Wing of the Organisation and the main object of the Organisation is also Human Resource Development by way of Education in technical subjects. The Institutions under the Organisation, as was noticed above, are Polytechnics, T.H.S.S., C.A.S. and Engineering Colleges, all of which have a technical colour and it is hence, only those persons who have a technical qualification are considered fit for promotion to such administrative posts.

27. The petitioners in W.P.(C) No.34588/2006 also have B.Ed., but do not have M.Phil. or Ph.D., which is an essential qualification for being considered to the post of Principal, C.A.S. Mere absence of avenues of promotion

cannot lead to judicial intervention.

28. The decision in **Food Corporation of India** (supra) is not applicable on facts. Therein, Assistant Engineers, constituting a mere 1% of the total employees, ventilated their grievance of total lack of promotion avenues. The Hon'ble Supreme Court though reiterated that promotion is not a fundamental right; emphasised the need for providing sufficient avenues to move up in the organisation to improve the efficiency of the employees. Though, the respondent argued that there were four levels of promotion, the Court found that it was not urged before the High Court and the situation prevailing projected stagnation for long years; in that case 30 years (para 12). The facts here are clearly distinguishable. Here, there are admitted avenues for promotion, which only narrow down on climbing up the hierarchy, which is only natural. Petitioners, admittedly, were promoted from their entry

posts and were also posted as Principals. There can be no total or absolute stagnation alleged as in **Food Corporation of India** (supra). The reasoning to reject the claim of the petitioners in the other writ petitions as to this Court not attempting an exercise of assessing the reasonableness of a policy is also applicable herein.

29. In such circumstance, for the separate reasoning stated above as also for the reasoning stated with respect to the other two writ petitions, these writ petitions also would stand dismissed. Parties to suffer their respective costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE