

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

WP(C).No. 16124 of 2010 (M)

PETITIONER :

**DEEPU S. KUMAR,
LECTURER IN MECHANICAL ENGINEERING,
SREE CHITRA THIRUNAL COLLEGE OF ENGINEERING
PAPPANAMCODE, THIRUVANANTHAPURAM-695018.**

BY ADV. SRI.PIRAPPANCODE V.S. SUDHEER

RESPONDENT(S) :

- 1. KSRTC SREE CHITRA THIRUNAL COLLEGE OF
ENGINEERING (THIRUVANANTHAPURAM) SOCIETY
PAPPANAMCODE, THIRUVANANTHAPURAM
REPRESENTED BY ITS SECRETARY,
SREE CHITRA THIRUNAL COLLEGE OF ENGINEERING
PAPPANAMCODE, THIRUVANANTHAPURAM-695018.**
- 2. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
HIGH EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.**
- 3. PRINCIPAL,
SREE CHITRA THIRUNAL COLLEGE OF ENGINEERING,
PAPPANAMCODE, THIRUVANANTHAPURAM-695018.**
- 4. MANAGING DIRECTOR,
KERALA STATE ROAD TRANSPORT CORPORATION,
THIRUVANANTHAPURAM.**

**R1, R3 & R4 BY ADV. SRI.BABU JOSEPH KURUVATHAZHA, SC
R2 BY SR. GOVT. PLEADER SRI.P. FAZIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-11-2014,
THE COURT ON 16-01-2015 DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE CERTIFICATE ISSUED BY THE PRINCIPAL OF SREE CHITRA THIRUNAL COLLEGE OF ENGINEERING DATED 6.12.2005 TO THE PETITIONER EVIDENCING THAT HE HAD BEEN WORKING IN THAT INSTITUTION AS GUEST LECTURER IN MECHANICAL ENGINEERING WITH EFFECT FROM DECEMBER, 2000.
- EXT.P2 COPY OF THE NOTIFICATION PUBLISHED IN THE MATHRUBHOOMI DAILY DATED 11.6.2003.
- EXT.P3 COPY OF THE RANKED LIST AS APPROVED BY THE SUB COMMITTEE AND THE BOARD OF GOVERNORS FOR APPOINTMENT TO THE POST OF MECHANICAL ENGINEERING IN SCTCE (THIRUVANANTHAPURAM) SOCIETY.
- EXT.P4 COPY OF THE APPOINTMENT ORDER DATED 20.11.2003 ISSUED BY THE 1ST RESPONDENT TO THE 1ST RANK HOLDER.
- EXT.P5 COPY OF THE APPOINTMENT ORDER DATED 20.11.2003 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RANK HOLDER.
- EXT.P6 COPY OF THE APPOINTMENT ORDER DATED 20.11.2003 ISSUED BY THE 1ST RESPONDENT TO THE 3RD RANK HOLDER.
- EXT.P7 COPY OF THE APPOINTMENT ORDER DATED 20.11.2003 ISSUED BY THE 1ST RESPONDENT TO THE 4TH RANK HOLDER.
- EXT.P8 COPY OF THE ORDER NO. 829-ADMN1/2005/SCTCE DATED 5.4.2005 RELIEVING THE 1ST RANK HOLDER FROM SERVICE.
- EXT.P9 COPY OF THE ORDER NO. 466-E/2003/SCTCE DATED 27.12.2004 RELIEVING THE 2ND RANK HOLDER FROM SERVICE.
- EXT.P10 COPY OF THE ORDER NO. 667-ADMN-1/2004/SCTCE DATED 10.1.2005 RELIEVING THE 3RD RANK HOLDER FROM SERVICE.

(Contd...)

- EXT.P11 COPY OF THE ORDER NO. 3392-ADM1/2005/SCTCE DATED 5.12.2005
REGULARISING THE SERVICE OF THE 4TH RANK HOLDER IN
SERVICE.
- EXT.P12 COPY OF THE REPRESENTATION DATED 1.8.2005 SUBMITTED BY THE
PETITIONER BEFORE THE PRINCIPAL, SCTCE.
- EXT.P13 COPY OF THE AGENDA ITEM NO. 24-08.
- EXT.P14 COPY OF THE ORDER NO. 298/ADM.1/06/SCTCE DATED 15.2.2006
ISSUED BY THE 1ST RESPONDENT.
- EXT.P15 COPY OF THE ORDER NO. 298/ADM.1/2006/SCTCE DATED 15.2.2006
ISSUED BY THE 1ST RESPONDENT.
- EXT.P16 COPY OF THE ORDER NO. 083-ADM.1/2007/SCTCE DATED 16.1.2007 OF
THE 1ST RESPONDENT.
- EXT.P17 COPY OF THE ORDER NO. 644-A1/2007/SCTCE DATED 30.4.2007 OF
THE 1ST RESPONDENT.
- EXT.P18 COPY OF THE REPRESENTATION DATED 8.1.2007 SUBMITTED BY THE
PETITIONER BEFORE THE HON'BLE MINISTER FOR TRANSPORT.
- EXT.P19 COPY OF THE AGENDA NO. 718-A1/2007/SCTCE AS AGENDA ITEM
NO. 34-05/2007.
- EXT.P20 COPY OF THE REPRESENTATION DATED 10.5.2007 SUBMITTED BY
THE PETITIONER BEFORE THE PRINCIPAL, SCTCE.
- EXT.P21 COPY OF THE AGENDA NO. 700-A1/2007/SCTCE AS AGENDA ITEM
NO. 34-15/2007.
- EXT.P22 COPY OF THE RELEVANT EXTRACT OF THE AGENDA ITEM
NO. 34-15/2007.

(Contd...)

- EXT.P23 COPY OF THE INTERIM ORDER OF THIS HON'BLE COURT IN WP(C) NO. 14017/2005.**
- EXT.P24 COPY OF THE ORDER NO. 700-A1/2007/SCTCE DATED 13.6.2007 OF THE 1ST RESPONDENT.**
- EXT.P25 COPY OF THE NOTIFICATION PUBLISHED IN THE MALAYALA MANORAMA DAILY DATED 13.6.2007.**
- EXT.P26 COPY OF THE ORDER OF THE APEX COURT IN CIVIL APPEAL NO. 5132/2009 FILED BY THE PETITIONER.**
- EXT.P27 COPY OF THE JUDGMENT DATED 7.1.2010 OF THIS HON'BLE COURT IN WP(C) NO. 20883/2007.**
- EXT.P28 COPY OF THE REPRESENTATION DATED 8.2.2010 SUBMITTED BY THE PETITIONER.**
- EXT.P29 COPY OF THE ORDER NO. 256-A1/2010/SCTCE DATED 23.4.2010 OF THE 3RD RESPONDENT.**
- EXT.P30 COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C) NO. 14017/2005.**
- EXT.P31 COPY OF THE RELEVANT EXTRACT OF THE RANK LIST PUBLISHED BY THE COLLEGE FOR APPOINTMENT AS LECTURER IN COMPUTER SCIENCE DEPT.**
- EXT.P32 COPY OF THE RANK LIST PREPARED AND APPROVED BY THE COMMITTEE FOR SELECTION OF LECTURERS ON CONTRACT BASIS IN COMPUTER SCIENCE ENGINEERING.**
- EXT.P33 COPY OF THE ORDER NO. 088-E/2003/SCTCE DATED 20.11.2003 OF THE 3RD RESPONDENT APPOINTING SMT. ANISHA S. AS LECTURER IN COMPUTER SCIENCE ENGINEERING.**

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- EXT.P34 COPY OF THE ORDER NO. 088-E/2003/SCTCE DATED 2.1.2004 OF THE
3RD RESPONDENT.
APPOINTING SMT. NIJA BABU.**
- EXT.P35 COPY OF THE ORDER NO. 014-E/2004/SCTCE DATED 14.5.2004 OF THE
3RD RESPONDENT.**
- EXT.P36 COPY OF THE ORDER NO. 473-ADMN.1/2004/SCTE DATED 10.11.2004
OF THE 3RD RESPONDENT.**
- EXT.P37 COPY OF THE ORDER NO. 201-ADMN./2005/SCTCE DATED 13.4.2005
OF THE 3RD RESPONDENT.**
- EXT.P38 COPY OF THE ORDER NO. 212(a)-ADMN/2004/SCTCE DATED 27.1.2005
OF THE 3RD RESPONDENT.**
- EXT.P39 COPY OF THE ORDER NO. 3392-ADMN/2005/SCTCE DATED 5.12.2005
OF THE 3RD RESPONDENT REGULARIZING THE SERVICE OF
LAKSHMI D. KUMAR.**
- EXT.P40 COPY OF THE ORDER NO. 3392-ADMN/2005/SCTCE DATED 5.12.2005
OF THE 3RD RESPONDENT REGULARIZING THE SERVICE OF
PREEJA V.**
- EXT.P41 COPY OF THE ORDER NO. 942-ADMN2/2005/SCTCE DATED 20.4.2005
OF THE 3RD RESPONDENT APPOINTING SMT. SYAMALAKUMARI D. AS
LIBRARY ASSISTANT.**
- EXT.P42 COPY OF THE LETTER DATED 20.4.2005 OF SMT. SYAMALA KUMARI D.**
- EXT.P43 COPY OF THE ORDER NO. 350/ADMN2/2006/SCTCE DATED 28.2.2006
OF THE 3RD RESPONDENT.**
- EXT.P44 COPY OF THE ORDER NO. 943/ADMN2/2005/SCTCE DATED 20.4.2005
OF THE 3RD RESPONDENT.**
- EXT.P45 COPY OF THE ORDER NO. 944/ADMN2/2005/SCTCE DATED 20.4.2005
OF THE 3RD RESPONDENT.**

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- EXT.P46 COPY OF THE ORDER NO. 347/ADMN2/2006/SCTCE DATED 28.2.2006 OF THE 3RD RESPONDENT.
- EXT.P47 COPY OF THE ORDER NO. 350/ADMN2/2006/SCTCE DATED 28.2.2006 OF THE 3RD RESPONDENT.
- EXT.P48 COPY OF THE RELEVANT EXTRACT OF THE DECISION OF THE BOARD OF GOVERNORS.
- EXT.P49 COPY OF THE REPORT DATED 17.9.2009 OF THE NEW INDIAN EXPRESS DAILY.
- EXT.P50 COPY OF THE REPORT ON THE INSPECTION CONDUCTED IN THE SCTCE BY THE FINANCE INSPECTION WING OF THE FINANCE DEPARTMENT, GOVERNMENT OF KERALA.
- EXT.P51 COPY OF THE RANK LIST PREPARED FOR PROMOTION TO THE POST OF ASSISTANT PROFESSORS IN MECHANICAL ENGINEERING.
- EXT.P52 COPY OF THE RANK LIST PREPARED FOR PROMOTION TO THE POST OF ASSISTANT PROFESSORS IN ELECTRONICS AND COMMUNICATION ENGINEERING.
- EXT.P53 COPY OF THE RANK LIST PREPARED FOR PROMOTION TO THE POST OF ASSISTANT PROFESSORS IN COMPUTER SCIENCE AND ENGINEERING.
- EXT.P54 COPY OF THE NOTIFICATION PUBLISHED IN THE MATHRUBHUMI DAILY DATED 28.4.2011.
- EXT.P55 COPY OF THE REPORT INVITING APPLICATION FOR APPOINTMENT AS GUEST LECTUER, PUBLISHED IN THE MALAYALA MANORAMA DAILY DATED 27.5.2011.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 16124 of 2010

Dated this the 16th day of January, 2015

J U D G M E N T

Ext.P29, by which the petitioner's claim for regularization in service was rejected by the respondents, is under challenge in this writ petition.

2. The petitioner was originally appointed as Guest Lecturer in Mechanical Engineering in the Sree Chithira Tirunal College of Engineering (for short, "SCTCE") under the Kerala State Transport Corporation in December 2000. While the petitioner was working as Guest Lecturer, SCTCE invited applications for appointment of Lecturers on contract basis. The selection consisted of written test and interview. In Ext.P3 ranked list prepared on the basis of the said procedure, seven persons and the petitioner were included. The petitioner was ranked as Sl.No.5. The petitioner alleges that Sl.Nos.1 to 4 were appointed as Lecturer in Mechanical

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Engineering in SCTCE on 20.11.2003 and they have assumed charge. However, later, Sl.Nos.1, 2 and 3 resigned and they were relieved from the post as evidenced by Exts.P8, P9 and P10. The petitioner alleges that in one of the vacancies that had arisen because of the aforesaid resignations, he should have been appointed as Lecturer in Mechanical Engineering. However, the 1st respondent failed to appoint him. The petitioner further points out that the service of the 4th rank holder, viz., Pradeep A., had been regularized in the post of Lecturer as per Ext.P11. Still, the petitioner was not appointed as Lecturer in the service of SCTCE. On the other hand, the 1st respondent had appointed the petitioner as Lecturer in Mechanical Engineering on contract basis on a consolidated pay of ₹8,000/- per month for a period of 11 months as per Ext.P15 order dated 15.02.2006. The petitioner alleges that as the service of the 4th rank holder, Pradeep A., had been regularized in the post of Lecturer in Mechanical Engineering, it was the duty of the 1st respondent to regularize the service of the petitioner also in the post of Lecturer in Mechanical

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Engineering. As the respondent rejected the petitioner's claim for regularization, initially, he had approached this Court with WP(C) No.20883/2007; and this Court, by Ext.P27 judgment, directed the respondent to take up the request of the petitioner for appointment as permanent employee and issue orders after hearing him. However, despite the said direction, the claim of the petitioner was refused. Hence, this writ petition.

3. A detailed statement has been filed on behalf of respondents 1 & 3. According to them, Ext.P1 certificate, which was issued for internal purpose of the institution, does not specify the actual spells of period of the petitioner's service. The actual spells of the petitioner's service are as follows;

04.12.2000 to April, 2001,
21.08.2001 to April, 2002,
20.01.2003 to April, 2003,
07.07.2003 to March, 2004,
16.06.2004 to January, 2005,
March 2005 to 08.04.2005 and
23.06.2005 to 15.02.2006.

According to them, the service is hourly basis and do not cover the entire period or entire days; and the appointments were given without undergoing any

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selection process. Ext.P3 ranked list was prepared for immediate appointment on contract basis against the existing vacant posts of Lecturers. It was decided by the Board of Governors that the appointment would be for 11 months only. The ranked list has no validity period as in the case of ranked lists for regular appointments. The services of those persons, who are appointed on contract basis, were extended beyond 11 months due to administrative exigencies. During the extended period, the Heads of Departments, after assessing the quality and expertise of those who were continuing, have recommended for regularization. As Sri.A.Pradeep and others were appointed initially after a selection process, their appointments were regularized. There is no provision to promote a Guest Lecturer to the post of a Lecturer. The presumption of the petitioner that he deserves regularization is baseless. There was no recommendation by the Head of the Department to regularize the service of the petitioner. Eleven lecturers were regularized as they were appointed after due selection process. The petitioner, who has executed an

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agreement of contract of appointment, is bound by the terms. The 34th meeting of the Board of Governors held on 19.05.2007 has approved a new staff pattern as per Ext.P19. As per this vacancy position, appointment on regular basis has been made after due selection process. The petitioner was free to contest for the vacancies, but, he did not contest in the process. Ext.P25 is a fresh notification issued by the respondent inviting applications for appointment on regular basis through fresh selection process. The petitioner had opportunity to compete in this selection process for regular appointment. All the claims raised by the petitioner were considered by the respondent before issuing Ext.P29 order. The petitioner was aware that though he got appointments in the institution at different spells during a span of around 10 years as of now in the category of Contract Lecturer/Guest Lecturer, none of those appointments were based on any selection process for regular/provisional appointments. Therefore, the respondents maintained the stand that Ext.P29 is valid and sustainable.

4. The petitioner has filed a detailed reply affidavit to the counter.

5. Arguments have been heard.

6. The petitioner is seeking regularization in service in view of his inclusion in Ext.P3 ranked list prepared. The main contention of the respondents is that Ext.P3 was prepared for immediate appointment and it was not through a selection process. The petitioner would point out that certain persons included in Ext.P3 list were regularized. However, according to the respondents, it was because of the fact that those persons were selected under the due process of selection. The learned counsel for the petitioner would point out that in the Computer Science Department, persons in the lower rank, who were appointed as Lecturers on contract basis, had been regularized because of the top rank holder therein resigning. However, the petitioner is, for no reason, being denied regularization; it was argued. It was also argued that 11 persons in Ext.P13, who were also not appointed through any selection process, were subsequently regularized; and therefore, there is no

justification in denying his claim stating that his request cannot be admitted.

7. The learned counsel for the petitioner, inviting my attention to Exts.P31, P32, P36, P38, P39, P40, P41, P43, P44, P45, P46, P47 and P50, argued that respondents 1, 2 and 4 were resorting to back door appointments and regularizing those appointments without following any norm, criteria or established procedure. In answer to the said argument, the learned Standing Counsel for the respondent corporation would submit that as per Ext.P13 decision itself, the Board of Governors has refused to regularize two Lecturers, viz., Smt.Riya Jacob and Smt.Sherene Jalaluddin, who were appointed without due selection process. Therefore, according to the learned Standing Counsel, it clearly explicits that the institution has not allowed any kind of back door regularization in faculty postings. The petitioner, who alleges that there were back door appointments in the institution, has not chosen to challenge any of those appointments; and on the other hand, he claims that he also should be given appointment

in the light of those appointments.

8. It cannot be denied that the procedure followed in the institution was for appointment of Contract Lecturers against vacancies existed at that time. As the petitioner was below in rank in the selection list, he could not be appointed in the institution. Mere inclusion in the selection list cannot make a candidate eligible for regularization in service without getting an appointment on the basis of that selection list. The definite stand taken by the respondents is that the procedure followed was not for regular appointment.

9. This Court in WP(C) No.14017/2005, by interim order dated 30.03.2006, directed the Director of Technical Education to study and report as to whether the institution has adhered to the instructions and norms of Government and AICTE in making appointments, and also ordered as follows; "Henceforth, no appointments shall be made without following the procedure prescribed by Government or the norms set out by AICTE".

10. As rightly pointed out by the learned Standing Counsel for the respondent corporation, the petitioner

would have responded to Ext.P25 notification, which is a fresh notification issued by the respondents inviting applications for appointments on regular basis through fresh selection process. The argument of the petitioner that he has a right to get regularized as Lecturer in Mechanical Engineering in the 1st respondent institution is totally baseless. The petitioner and other candidates below in the ranked list were not appointed in the institution on the basis of that selection list as there was no vacancy at that time for appointment. The petitioner is not a similarly placed person with reference to the 11 Lecturers, whose services were regularized. The petitioner was free to contest for the post on the basis of Ext.P25 notification. The petitioner's argument is that vacancies had arisen on 28.12.2004, 02.01.2005 and 06.04.2005 as per Exts.P8, P9 and P10 respectively; and if he had been appointed in anyone of these vacancies, he would have been regularized along with other 11 Lecturers regularized. However, the petitioner was not appointed against those vacancies as the ranked list was prepared for immediate appointment against vacancies at

the time of preparation of ranked list, i.e., in 2003; and as the ranked list was for contract appointment, it has no validity for appointment against vacancies arisen at a later stage. The vacancy, consequent to the resignation of Sri.Shabuan T.K. has arisen on 28.12.2004, i.e., after a period of one year from the date of approval of the ranked list. The said ranked list has no validity for appointment on 28.12.2004. The respondent, being a self financing institution, the decision to be taken by the 1st respondent had to decide specifically on each and every appointments. The Board of Governors had not taken a decision to appoint anyone on 28.12.2004 and if such a decision had been taken, conduct of a fresh selection process might have been the proper way for filling the aforesaid vacancy. Only four vacancies were filled up from Ext.P3 ranked list according to the rank and seniority as per Exts.P4 to P7 orders dated 20.11.2003. Sri.Pradeep A. was initially appointed in the respondent institution as per Ext.P7 order dated 20.11.2003 for a period of 11 months and his term of service was extended from time to time; and finally, he was regularized as per

Ext.P22 order dated 05.12.2005. The petitioner was not appointed along with Sri.Pradeep A. on 20.11.2003 as there was no vacancy. The petitioner was not in service of the respondent institution on the basis of selection process as on 28.12.2004; and as there was no such service, the petitioner has no legal claim or right for regularization. Moreover, the Board of Governors rejected the proposal to regularize the services of two faculties, viz., Smt.Riya Jacob and Smt.Sherene Jalaluddin, who were appointed without due selection process. The petitioner was only a Guest Lecturer, working in the respondent institution. Under these circumstances, the petitioner is not entitled to succeed in this writ petition.

In the result, the writ petition fails and accordingly, dismissed. No costs.

Sd/-
A.V. RAMAKRISHNA PILLAI,
JUDGE

bka/-