

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WP(C).No. 14088 of 2014 (I)

PETITIONER:

SUJITH A, AGED 36 YEARS,
S/O.VELAYUDHAN, ATHIYANATHIL,
CHELANUR P.O, CALICUT - 16, SECRETARY,
ALL INDIA FEDERATION OF NIT TEACHERS(AFNITT)
CAMPUS OF NIT, CALICUT-673601.

BY ADVS.SRI.T.B.SIVAPRASAD
SRI.ABHILASH AKBAR

RESPONDENT(S):

1. SECRETARY,
MINISTRY OF HUMAN RESOURCES development,
DEPT OF HIGHER EDUCATION, NITS DIVISION,
NEW DELHI, PIN-110001.
2. DIRECTOR(NITS),
MINISTRY OF HUMAN RESOURCES DEVELOPMENT,
SASTRI BHAVAN, NEW DELHI, PIN-110001.
3. REGISTRAR,
NATIONAL INSTITUTE OF TECHNOLOGY,
CHATHAMANGALAM, CALICUT DISTRICT, PIN-673601.

*ADDL. R4 TO R12 IMPEADED

4. DR.DEEPAK LAWRENCE, KOCHERIL HOUSE,
KUMBALANGHY, KOCHI - 682 007.
5. DR.SUJITH.R., GAYATHRI, T.C.25/1718, S S KOVIL ROAD,
THAMPANOOR, THIRUVANANTHAPURAM - 695 001.
6. DR.ANJANA BHASI, MANJARI, ARA-21,
MUNDAKKAL EAST, KOLLAM - 691 001.
7. LINI DEVI.K, VELUTHEDATH, VELLANNUR,
CHOOOLUR.P.O., CALICUT.

WP(C).No. 14088 of 2014 (I)

8. MEENU FRANCIS, UZHUNNUMKAT HOUSE,
V.P.MARAKKAR ROAD, VETTEKUNNAM,
EDAPPALLY NORTH.P.O., KOCHI - 682 024.
9. DR.P.V.NIDHEESH, UTHIYA VEETIL, KARIVANNUR,
VILAMANA, IRITTY P.O., KANNUR.
10. DR.RAVIKUMAR DUMPALA, 16-23-1, 10TH LINE,
P.N.COLONY, GUJARATHIPETA.P.O.,
SRIKAKULAM, ANDHARA PRADESH - 532 005.
11. DILEESH.P.V., PARAYIL HOUSE,
NEAR P.M.G.COLLEGE, POTTA.P.O., THRISSUR - 680 722.
12. DR.SHERON FIGARADO, PATHICHERIL HOUSE,
OCHANATHURUTH.P.O., KOCHI - 682 508.

ADDL. R4 TO R12 ARE IMPEADED AS PER ORDER
DATED 23.03.2015 IN IA.4111/2015.

****ADDL. R13 & R14 IMPEADED**

13. GEORGE K.VARGHESE, AGED 39,
S/O.K.P.VARGHESE, ASSISTANT PROFESSOR,
DEPARTMENT OF CIVIL ENGINEERING, NIT CALICUT,
RESIDING AT KUTTIPANICHEL HOUSE,
OTTAPILAKKAL PARAMBU, MIE KUNNAMANGALAM.P.O.,
KOZHIKODE - 673 571.
14. SHIJO THOMAS, AGED 36, S/O.C.D.THOMAS,
ASSISTANT PROFESSOR, SCHOOL OF NANO SCIENCE &
TECHNOLOGY, NIT CALICUT, RESIDING AT CHERUVILLIL,
VADAYAMPADY.P.O., PUTHENCUIZ, ERNAKULAM - 682 308.

ADDL. R13 & R14 ARE IMPEADED AS PER ORDER
DATED 20.05.2015 IN IA.5301/2015.

R1 & R2 BY SRI.N.NAGARESH, A S G
R3 BY ADV. SRI.MILLU DANDAPANI, SC
ADDL.R4 TO R12 BY ADV. SRI.S.VISHNU
ADDL. R13 & R14 BY ADVS. SMT.DENNIS VARGHESE
SMT.B.BINDU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-04-2015 ALONG WITH WPC.27599/2012 & CONNECTED
CASES, THE COURT ON 20-05-2015 DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS:

- P1:- TRUE COPY OF THE RULES AND REGULATION OF ALL INDIA FEDERATION OF NIT TEACHERS.
- P2:- TRUE COPY OF THE ADV. NO P1/2276/05 ISSUED BY THE DIRECTOR IN CHARGE NIT CALICUT.
- P3:- TRUE COPY OF THE ORDER NO F.NO 23-1/2008 TS 11 DTD 18/8/2009 ISSUED BY THE 1ST RESPONDENT MINISTRY OF HUMAN RESOURCES.
- P4:- TRUE COPY OF THE ORDER F.NO 33-9/2011-TSIII DATED 23/8/2013 ISSUED BY THE 2ND RESPONDENT.
- P5:- TRUE COPY OF THE ORDER F.NO 339/2011 DATED 15/1/2014 ISSUED BY THE RESPONDENT.
- P6:- TRUE COPY OF THE NOTIFICATION ISSUED BY THE REGISTRAR NATIONAL INSTITUTE OF TECHNOLOGY, CALICUT FOR FACULTY RECRUITMENT 2013 FOR THE POST OF ASSISTANT PROFESSORS IN PAY BAND 3(PB 3).

RESPONDENT(S)' EXHIBITS & ANNEXURES:

- ANNEXURE R1(A) : TRUE EXTRACT OF SECTION 32(2) (B) OF THE NATIONAL INSTITUTE OF TECHNOLOGY, SCIENCE, EDUCATION & RESEARCH ACT, 2007.
- ANNEXURE R1(B) : TRUE COPY OF LETTER F.NO.33-9/2011-T.S.III DATED 15.1.2014, ISSUED BY GOVERNMENT OF INDIA, MINISTRY OF HUMAN RESOURCES DEVELOPMENT, DEPT. OF HIGHER EDUCATION.
- EXT.R4(A): TRUE COPY OF NOTIFICATION 2013 AVAILABLE IN THE WEBSITE OF NIT CALICUT.
- EXT.R4(B): TRUE COPY OF THE DECISION OF THE BOARD OF GOVERNORS OF NIT CALICUT.
- EXT.R4(C): TRUE COPY OF NOTIFICATION NO.NITC/P1/433/ADHOC/FACULTY/2013 DATED 14.7.2014 FOR WALK IN INTERVIEW FOR 119 FACULTY POSITIONS.
- EXT.R4(D): TRUE COPY OF NOTIFICATION NO.NITC/P1/433/ADHOC/FACULTY/2013 DATED 24.11.2014 FOR WALK IN INTERVIEW FOR 114 FACULTY POSITIONS.
- EXT.R4(E) : TRUE COPY OF COMMUNICATION NO.MNIT/AES-22/58/2013/1475-1504 DATED 18.12.2013 ISSUED BY THE DIRECTOR, MALAVIYA NATIONAL INSTITUTE OF TECHNOLOGY, JAIPUR.

WP(C).No. 14088 of 2014 (I)

EXT.R4(F) : TRUE COPY OF COMMUNICATION NO.MNST/DIR/F-61-A/2015
DATED 22.3.2015 ISSUED BY MEMBER SECRETARY OF OVERSIGHT
COMMITTEE.

EXT.R4(G) : TRUE COPY OF COMMUNICATION DATED 12.2.2015 FROM THE
ADDITIONAL SECRETARY, MINISTRY OF HUMAN RESOURCES
DEVELOPMENT, DEPARTMENT OF HIGHER EDUCATION.

EXT.R4(G)(1) : TYPED VERSION OF EXHIBIT R4(G).

/TRUE COPY/

P.S. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No.14088/2014**  
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Dated this the 20th Day of May, 2015

J U D G M E N T

The petitioner is an Assistant Professor and also the Secretary of the All India Federation of NIT Teachers. He filed this writ petition for himself and on behalf of other similarly situated Assistant Professors, with an apprehension that the third respondent is proceeding to select candidates to the post of Assistant Professors based on the newly introduced four-tier flexible faculty system without mapping the existing directly selected Assistant Professors from the three-tier faculty structure to the four-tier faculty structure. Thus, Ext.P6 notification issued for faculty recruitment is under challenge in this writ petition.

2. By interim order dated 03/07/2014, this Court restrained the third respondent from making actual appointments. This Court also in the interim order directed the Ministry of Human Resources Development to clarify with regard to the apprehension of the petitioner.

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3. In this matter, the first respondent has filed a statement and other respondents have filed counter affidavits.

4. Heard Shri T.B.Siva Prasad learned counsel for the petitioner, the learned Central Government Counsel for respondents 1 and 2, Shri Millu Dandapani, learned Standing Counsel appearing for National Institute of Technology (for short, the "NIT") and Shri Vishnu S.Chempazhanthiyil for additional respondents 4 to 12 and Smt.Dennis Varghese for additional respondents 13 and 14.

5. The petitioner is a directly selected Assistant Professor. The pay scale of faculty members of NIT was revised based on the Sixth Central Pay Commission Report and the existing directly selected Assistant Professors were placed in Pay Band 3 in various Academic Grade Pay (AGP) in the pay scale of Rs.6000-8000/- depending upon their experience. The three-tier faculty system consists of 3 layers, 1st being Assistant Professors, 2nd-Associate Professors and 3rd-Professors. The three-tier system is based on upgradation with an interval of three years for each

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upgradation based on interview by a selection committee.

6. Government of India introduced four-tier flexible faculty system in the NIT as per Ext.P4. The four-tier system having four layers, 1st layer being Assistant Professors on contract, then Assistant Professors, 3rd-Associate Professors and finally 4th-Professors. Ext.P4 also prescribes procedure for selection of faculty.

7. The apprehension of the petitioner is that without mapping the Assistant Professors like the petitioner, by the introduction of the four-tier system, the existing Assistant Professors are denied their opportunity for upgradation at appropriate level. Ext.P6 is the notification issued for filling up of existing vacancies of Assistant Professors.

8. The question that arises for consideration is whether the petitioner has a vested right for upgradation based on the three-tier system, overlooking the method of upgradation as contemplated under the four-tier system.

9. It is to be noted that under four-tier system, the initial appointment is based on contract. The petitioner submits that in the government order issued for implementation of four-tier system, there is no mention of upgradation of existing Assistant Professors placed under the three-tier system. In fact, Ext.P5 clearly indicates that there will be no automatic migration to salaries and AGP's of the four-tier flexible faculty structure and it further stipulates that any change of Grade Pay under four-tier will be purely through open advertisements and on the recommendation of duly constituted Selection Committees.

10. Thus, it is clear that those Assistant Professors, who were already selected will have to compete with others and only those who fulfil the essential qualifications will be eligible for higher grade. It is also clarified by the statement filed by the Union Government that existing faculties who do not fulfil the essential qualifications will continue in the present post and AGP's till they are selected under

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the higher grade four-tier system. Thus, four-tier system layers abundantly make it clear that higher grade promotion is on fulfilling qualification and based on merit. The petitioner will also be entitled for consideration to higher grade provided, he fulfils the essential qualification. Thus, the petitioner's apprehension that Ext.P5 is silent about existing faculty members is misconceived.

11. The introduction of four-tier system and merit oriented upgradation is with the intention to bring NIT in par with other premier institutions like IIT. It is only with the aid of faculties, the objectives of the Government can be secured. Therefore, fixing structured formula to enhance capabilities of faculties, is with objective to secure the best interest of the institution. The petitioner is also having an opportunity for upgradation, provided he competes with others for upgradation. The petitioner cannot expect a promotion based on the length of service when institution's interest is the criteria for upgradation. It is to be noted that claim of the

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petitioner is based on three-tier system which was subsequently introduced, referable to the Sixth Pay Commission. The introduction of four-tier system in no way would affect the right of the petitioner available to him as on date of his appointment. It is only when the right of the petitioner available to him at the time of appointment is fundamentally affected, this Court need to step into protect such right or else the petitioner has to establish arbitrariness in fixing such criteria. This Court cannot substitute the wisdom of the academic or of the Government in fixing the criteria for upgradation. In that view of the matter, I do not find any merit in this writ petition. It is accordingly dismissed. The interim order granted by this Court is vacated. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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