

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

WP(C) .No. 19008 of 2009 (S)

PETITIONER(S) :-

KERALA LATIN CATHOLIC ASSOCIATION,
REPRESENTED BY ITS GENERAL SECRETARY
MR.SHAJI GEORGE, AGED 40 YEARS, S/O.P.C.GEORGE
EDATHALA NORTH, ALUVA, ERNAKULAM DISTRICT.

BY ADVS.SRI.P.K.IBRAHIM
SRI.C.N.GOPAKUMAR

RESPONDENT(S) :-

1. UNIVERSITY OF CALICUT, REPRESENTED BY
THE REGISTRAR, THENHIPALAM, MALAPPURAM DISTRICT.
2. THE SYNDICATE, UNIVERSITY OF CALICUT,
REPRESENTED BY ITS CHAIRMAN, CALICUT UNIVERSITY P.O
MALAPPURAM DISTRICT.
3. THE CHANCELLOR, UNIVERSITY OF CALICUT,
RAJ BHAVAN, THIRUVANANTHAPURAM.

BY ADV. SRI.P.C.SASIDHARAN, SC, CALICUT UTY.
BY ADV. SRI.SANTHOSH MATHEW,SC,CALICUTY UNIVERS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

jvt

APPENDIX

PETITIONER'S EXHIBITS :-

EXT.P1 :- TRUE COPY OF THE GUIDE LINE ISSUED BY THE UGC IN 2006.

EXT.P2 :- TRUE COPY OF THE SUB-COMMITTEE REPORT.

EXT.P3 :- TRUE COPY OF THE RESOLUTION No.2008.356 PASSED ON 22.5.2008.

EXT.P4 :- TRUE COPY OF THE DISSENT NOTE SUBMITTED BY Mr.ABDU RABB.

EXT.P5(a) :- TRUE COPY OF THE RESOLUTION No.2008.463 DATED 19.7.08.

EXT.P5(b) :- TRUE COPY OF THE NOTIFICATION No.GAII/C1/2834/07 DATED 29.7.2008 ISSUED BY THE 1ST RESPONDENT.

EXT.P6 :- TRUE COPY OF THE PETITION DATED 17.2.09 SUBMITTED BY THE PETITIONER ASSOCIATION BEFORE THE RESPONDENT WITHOUT ITS ANNEXURES.

EXT.P7 :- TRUE COPY OF THE NOTIFICATION No.GAII/C1/2834/07 DATED 30.5.09 ISSUED BY THE 1ST RESPONDENT.

EXT.P8 :- PHOTOCOPY OF THE TABLE SHOWING THE APPOINTMENTS TO THE POST OF PROFESSOR, READER AND LECTURER IN THE UNIVERSITY.

EXT.P9 :- PHOTOCOPY OF THE TABLE SHOWING THE 29 DEPARTMENTS IN THE UNIVERSITY OF CALICUT AND THE SUBSTANTIVE POST OF PROFESSOR, READER AND LECTURER IN EACH DEPARTMENT.

RESPONDENT'S EXHIBITS :- NIL.

//TRUE COPY//

P.A. TO JUDGE

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.P.(C) No. 19008 OF 2009

Dated this the 4th day of September, 2015

JUDGMENT

Ashok Bhushan, C.J.

This public interest litigation has been filed by the petitioner Association which is the State Level Organization of Latin Catholics, a community recognized as a backward class in the State of Kerala.

2. Petitioner alleges violation of rights under Article 16 of the Constitution of India. In the writ petition following reliefs have been made:

"i. To declare that the wording in Section 6(2) of the Calicut University Act that "the University shall mutatis mutandis observe the provisions of Clause (a), (b) and (c) or rule 14 and rules 15, 16 and 17 of the Kerala State and Subordinate Services Rules, 1958, as amended from time to time" in making appointments by direct recruitment to posts in any class or category in each Department under the University or to posts of on teaching staffs in the University does not refer to department wise post identification for reservation but for strict compliance of reservation for all recruitments in the departments of the University and that the Section does not prohibit reservation by grouping of posts and cadres in various departments of the University for the purpose of reservation.

ii) to call for the records leading to Ext.P5(a) resolution and p5 (b) consequential notification being proceedings in violation of the provisions of the Calicut University Act and Statute and set aside all the appointments made in violation of Ext.P1 UGC guideline and the constitutional mandate under Article 16(4) of the Constitution of India.

lii) issue a writ of mandamus directing the Respondents to go by Ext.P1 UGC guideline being one issued in compliance of the order of the Government of India vide order No.F.No.6-30/2005 U-5 dated 06.12.2005 under Section 20(1) of the University Grants Commission Act, 1956 to effectively implement constitutional mandate under Article 16(4) of the Constitution of India.

iv) stay all further proceedings pursuant to Ext.P7, pending disposal of the writ petition."

3. The petitioner in the writ petition itself has mentioned that Calicut University Act provides for reservation for appointment to the teaching and non-teaching staff in the services of the University. Section 6 of the Calicut University Act enjoins the University to observe the provisions of Clauses (a), (b) and (c) of Rules 14, 15, 16 and 17 of the Kerala State and Subordinate Services Rules, 1958 as amended from time to time in making direct recruitment to posts in any class or category in any department under the University. The grievance raised is

with regard to the resolution of the Syndicate, Ext.P5 and consequent notification which provides reservation/open competition regarding several social reservation. The grievance of the petitioner reflected from the pleadings in the writ petition is that University should group the posts and cadres in various departments in the University for the purpose of reservation.

4. A detailed counter affidavit has been filed by the University wherein it is stated that Section 6(3) of the University Act mandates that in making appointment to direct recruitment in each department under the University to the posts of teaching and non-teaching staffs, the University has to apply the provisions of Kerala State and Subordinate Service Rules, 1958. It is stated that there is no challenge to any statutory provisions. In paragraph 11 of the counter affidavit following has been stated:

"11. It is further submitted that in the Collegiate Education Service there are various subjects and departments and in each department independent rank list is prepared and the principle of reservation is applied in each rank list and not clubbing the vacancies together. The University issued

notification strictly in accordance with the Rules and the dissenting note of one syndicate member cannot have any relevance since what is to be implemented is the majority decision.”

5. The petitioner Association who claims to espouse the cause of community by means of writ petition seeking a direction in the nature of mandamus to provide reservation by classification of posts in different departments. There is no issue that the reservation for the community for which the writ petition has been filed is not being given as per the statutory provisions. The posts in each department in different disciplines cannot be clubbed for the purpose of reservation. It is well settled that each department in different faculties of the University and discipline in the department form separate unit for the purpose of applicability of reservation to the posts of in different disciplines or different departments cannot be clubbed for applicability for the rules of reservation. Reference is made to the Apex Court judgment in **Dr.Suresh Chandra Verma and others v. The Chancellor, Nagpur University and others** [AIR 1990 SC

2023] in which following was laid down in paragraph 8 (relevant portion).

"8. xx xx xx xx

On behalf of the appellants reliance was also sought to be placed on a Full Bench decision of the Karnataka High Court in Dr.Raj Kumar v. Gulbarga University, ILR(1990) Kant 2125. We do not see how the decision in question helps the appellants, for the Full Bench has observed there that general reservation has to be cadrewise and subjectwise. But an exception could possibly be made in cases like the one of the professors in which post available in each of the subjects is only one while grouping all of them together for purposes of reservation so that at least in the subjects in which the candidates belonging to the reserved category are available, they could be accommodated. It is not necessary for us in this case to express our opinion o the correct course to be adopted when only one post is available in a particular subject at a given time. The course to be adopted would depend upon the unit of reservations, the period over which the backlog is to be carried, the number of appointments already made in the said posts, the availability of candidates from the reserved category etc. What is material from our point of view in this case is to point out that even the Karnataka Full Bench has taken the view that generally reservation has to be cadrewise and subjectwise. It was also a case of the filling in of the vacancies in teaching posts in a University.

We are, therefore, in complete agreement with the view taken by the Full Bench that the employment notice dated July 27, 1984 was bad in law since it had failed to notify the reservations of the

posts subjectwise and had mentioned only the total number of reserved posts without indicating the particular posts so reserved subjectwise.”

The law being well settled that for the purpose of reservation, posts cannot be clubbed on different subjects and departments, the prayer of the petitioner is clearly misconceived. Petitioner has also prayed to set aside the appointments which according to the petitioner are in violation of Ext.P1 UGC guide lines.

We are of the view that in a public interest litigation the petitioner's prayer for setting aside the appointments already made cannot be entertained. We do not find any substance in the writ petition. The Writ Petition is dismissed.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**