

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 1ST DAY OF APRIL 2014/11TH CHAITHRA, 1936

WP(C).No. 18534 of 2012 (N)

PETITIONERS:

1. BAIJUMON JOSEPH,
LIBRARIAN GRADE IV, COLLEGE OF APPLIED SCIENCE
CHORAPUZHA TOWERS, NEAR K.S.R.T.C. BUS STAND
THODUPUZHA-685 612.
2. RAJI R. NAIR,
LIBRARIAN GRADE IV, COLLEGE OF ENGINEERING CHERTHAL
ALAPPUZHA-688 524.

BY ADVS.SRI.ELVIN PETER P.J.
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH

RESPONDENTS:

1. INSTITUTE OF HUMAN RESOURCES DEVELOPMENT
REPRESENTED BY ITS DIRECTOR, PRAJOE TOWERS
VAZHUTHACAUD, THIRUVANANTHAPURAM-695 014.
2. THE DIRECTOR,
INSTITUTE OF HUMAN RESOURCES DEVELOPMENT, PRAJOE TOWERS,
VAZHUTHACAUD, THIRUVANANTHAPURAM-695 014.

R1 BY ADV. SRI.V.A.MOHAMMED, SC, IHRD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01-04-2014, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

THE MATTER IS COMING UP IN THE DISPOSAL LIST FOR THE THIRD TIME.
NO REPRESENTATION FOR THE PETITIONERS. THE WRIT PETITION IS
CLOSED WITHOUT EXAMINING THE MERITS OF THE GROUNDS RAISED.

01.04.2014

sd/- **A.V. RAMAKRISHNA PILLAI, JUDGE.**

K. HARILAL, J.

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W.P. (C) No.18534 of 2012

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Dated this the 3rd day of November, 2015

J U D G M E N T

The petitioners are Librarians Grade IV working in the Engineering Colleges established by the 1st respondent as per Ext.P1 order dated 24.06.2006. Now the 1st petitioner stands transferred and is working as Librarian Grade IV in the College of Applied Science, Thodupuzha and the 2nd petitioner is working in the same post in the College of Engineering, Cherthala. According to the Special Rules issued by the 1st respondent, the post of Librarian Grade III has to be filled up by promotion from the category of Librarian Grade IV. The petitioners, who are working as Librarian Grade IV are fully qualified for the post of Librarian Grade III in accordance with Rules. The 2nd respondent, after inviting applications from all the qualified Librarians Grade IV, working under the 1st respondent has published a

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seniority list of Librarian Grade IV, who are eligible to be appointed as Librarian Grade III as per Ext.P6 notification. Thereafter, the 2nd respondent has filled up five vacancies of Librarian Grade II, by promoting five Librarians Grade III, which is evident from Ext.P7. But, thereafter, the 2nd respondent has not filled up five vacancies of Librarian Grade III by promoting qualified candidates in accordance with their seniority shown in Ext.P6. According to the petitioners, above action of the 2nd respondent is absolutely illegal, arbitrary, unfair and violative of Article 16 of the Constitution of India. Hence, the petitioners prayed for issuing a writ of mandamus or order or direction, directing the 2nd respondent to fill up five vacancies of Librarian Grade III that has arisen consequent on the issuance of Ext.P7 order, by appointing Librarian Grade IV from Ext.P6 seniority list forthwith.

2. The respondents filed counter statement admitting the publication of Ext.P6 seniority list and the eligibility of

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the petitioners to be appointed from that list. But it is stated that a revised staff pattern and IHRD Special Rules came into effect from 07.02.2011. It was seen that automatic promotion was put into effect in the place of promotion by selection and there was considerable difference in the number of post and anomalies were reported based on the revised staff pattern. Hence, it is impossible to promote Librarian Grade IV who applied for promotion. The staff pattern and Special Rules are to be issued with the concurrence of the Government. Since, the same were issued without concurrence of the Government, the Government constituted a Committee to study the revision effected in the Special Rules and Staff pattern with effect from 07.02.2011 vide G.O.(Rt) No. 1930/2011/H.Edn. dated 29.11.2011. The report submitted by the above Committee is under consideration of the Government. It is also stated that the actual vacancies can be ascertained only after the finalisation of the report by the Government.

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3. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

4. Learned counsel for the petitioners advanced arguments contending that the appointments by promotion to Librarian Grade-III, Lecturers, Head Clerk, Office Assistants were made under Ext.P3 notification. But, appointment by promotion to Librarian Grade-III alone is withheld arbitrarily without sufficient reasons. It is also contended that the petitioners are discriminated from others to get appointment by promotion under Exts.P12 to P16. Thus, there are sufficient reasons to direct the respondents to make appointments by promotion to Librarian Grade-III. In view of the rival submissions made at the Bar, the only point to be considered is whether the petitioners have made out a case before this Court for issuing a writ of mandamus or order or any direction to the respondents, invoking jurisdiction and power under Article 226 of the Constitution of India, to make appointments by promotion to the post of

Librarian Grade-III.

5. The petitioners claim appointments, by promotion, as they are ranked three and five, respectively in Ext.P6 notification. So the eligibility of the petitioners is not disputed. The contentions raised by the respondents are that there were certain anomalies in the appointments made under the Special Rules and after noticing the said anomalies in the staff pattern and Special Rules, which were issued without the concurrence of the Government, the Government constituted a Committee to study revision effected in the Special Rules and staff pattern with effect from 07.02.2011 vide G.O.(Rt) No. 1930/2011/H.Edn. dated 29.11.2011 and the report submitted by the above Committee is under the consideration of the Government. According to the respondents actual vacancies can be ascertained only after the finalisation of the report by the Government. It is true that several appointments were made for different categories under Exts.P12 to P16. But, I

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find that all those appointments were made by promotion from the feeder category before 07.02.2011. It is pertinent to note that the Government constituted a Committee to study the revision effected by the Special Rules and staff pattern with effect from 07.02.2011 and the report submitted by the Committee is under consideration of the Government and no other appointment has been made out after 07.02.2011. Therefore, I do not find any kind of discrimination or *mala fides* or arbitrariness in not appointing the petitioners under the Special Rules in the post of Librarian Grade-III. Even though, vacancies were arose when Grade III Librarians were promoted to Grade II, I am of the opinion that unless and until any kind of *mala fides* and arbitrariness are found out, this Court is not inclined to exercise the jurisdiction under Article 226 of the Constitution of India. So also, no kind of *mala fides* can be attributed against the respondents for the stand taken by the respondents, not to appoint the petitioners by

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promotion, till the Government takes a decision, on the report filed by the Committee appointed to study the anomalies in the staff pattern and Special Rules. The petitioners failed to make out case, warranting interference of this Court under writ jurisdiction. On the other hand, the stand taken by the 2nd respondent appears to be just and reasonable.

The Writ Petition is devoid of merits and is dismissed accordingly.

Sd/-

**K. HARILAL,
JUDGE**

DST

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P.A. To Judge