

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

WP(C).No.28697 of 2004 (N)

PETITIONER:

P.K.KAVITHA,W/O.MR.SAJITH S.,HINDU,
AGED 20,RESIDING AT 'SATH JYOTHIS'
KARUMAM,THIRUVANANTHAPURAM.

BY ADVS.SRI.M.RAMASWAMY PILLAI
DR.N.RAJENDRAN PILLAI
SRI.P.M.JOSEPH

RESPONDENT'S:

1. THE STATE OF KERALA,REPRESENTED BY
THE CHIEF SECRETARY,GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
2. VICE CHANCELLOR,
SREE SANARACHARYA UNIVERSITY OF SANSKRIT,
KALADY.
3. SREE SANKARACHARYA UNIVERSITY OF SANSKRIT,
KALADY,REPRESENTED BY ITS REGISTRAR.
4. MANJU GOPAL,RESIDING AT THIRUVONAM,
VAZHAMUTTAM.

*ADDITIONAL R5 IMPEADED

ADDL.R5:PREETHY.K,LECTURER,MUSIC DEPARTMENT,
SREE SANKARACHARYA UNIVERSITY OF SANSKRIT,
KALADY.

*ADDITIONAL R5 IMPEADED AS PER ORDER DATED 29.11.2007 IN
I.A.15914/2007.

R1 BY GOVT.PLEADER SRI.P.V.ELIAS.
R2 & R3 BY SRI.KRISHNAKUMAR MANGOT,SC,SANSKRIT UTY
SRI.ARUN B.VARGHESE,SC,SREE SANKARACHARYA UTY.
SRI.K.ANAND, SC, SANSKRIT UTY.
SRI.P.K.VIJAYAMOHANAN,SC,SANKARACHA.UTY
SRI.P.S.NISHIL,SC,SREE SANKARACHARYA UTY

...2...

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**R4 BY ADVS.SRI.R.T.PRADEEP
SRI.V.VIJULAL
ADDL.R5 BY ADV.SMT.R.RANJINI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12.9.2013 THE COURT ON 31-03-2015, DELIVERED THE FOLLOWING:**

pk

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF THE NOTIFICATION DATED 22.4.2002.

EXT.P2:TRUE COPY OF EXTRACT FROM THE S.S.L.C. BOOK.

EXT.P3:TRUE COPY OF THE CERTIFICATE ISSUED BY THE TAHSILDAR.

EXT.P4:TRUE COPY OF THE CERTIFICATE ISSUED BY THE TAHSILDAR.

EXT.P5:TRUE COPY OF THE DECREE CERTIFICATE DATED 30.12.1995.

EXT.P6:PHOTO COPY OF THE DEGREE CERTIFICATE.

EXT.P7:TRUE COPY OF THE CERTIFICATE ISSUED BY THE U.G.C.

EXT.P8:TRUE COPY OF THE RANK CERTIFICATE FOR B.A. ISSUED BY THE
UNIVERSITY OF KERALA.

EXT.P9:TRUE COPY OF THE PROVISIONAL CERTIFICATE FOR M.PHIL.

EXT.P10:TRUE COPY OF THE AWARD OF UNIVERSITY MERIT SCHOLARSHIP
CERTIFICATE ISSUED BY THE KERALA UNIVERSITY.

EXT.P11:TRUE COPY OF THE LETTER ISSUED BY ALL INDIA RADIO
DATED 26.6.1998.

EXT.P12:TRUE COPY OF THE LETTER DATED 27.7.1999 BY THE ALL INDIA RADIO.

EXT.P13:TRUE COPY OF THE CERTIFICATE ISSUED BY THE JAWAHAR
BALABHAVAN.

EXT.P14:TRUE COPY OF THE CERTIFICATE DATED 7.9.2000.

EXT.P15:TRUE COPY OF THE CERTIFICATE DATED 9.6.2004.

EXT.P16:PHOTO COPY OF THE COVER.

EXT.P17:TRUE COPY OF THE LIST OF CANDIDATES.

RESPONDENT'S EXHIBITS:

EXT.R3(a):TRUE COPY OF THE ORDER DATED 17.10.2001 CONSTITUTED
SCREENING COMMITTEE.

EXT.R4(a):TRUE COPY OF THE CERTIFICATE DATED 15.1.1997.

EXT.R4(b):TRUE COPY OF THE NOTIFICATION DATED 5.2.2004.

EXT.R4(c):TRUE COPY OF THE COMMUNICATION DATED 31.10.1997.

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**EXT.R4(d):TRUE COPY OF RELEVANT PAGE OF S.S.L.C.CERTIFICATE
DATED 10.3.1989.**

**EXT.R4(e):TRUE COPY OF THE NON CREAMY LAYER CERTIFICATE
DATED 15.10.2004.**

EXT.R4(f):TRUE COPY OF THE MEMO OF APPOINTMENT DATED 20.11.2004.

EXT.R4(g):TRUE COPY OF THE ORDER DATED 25.11.2004.

EXT.R5(h):TRUE COPY OF THE ORDER DATED 30.6.2005.

EXT.R4(i):TRUE COPY OF THE ORDER DATED 2.1.2006.

**EXT.R5(1):THE PHOTOCOPY OF THE DEGREE CERTIFICATE OF THIS
RESPONDENT ISSUED BY THE UNIVERSITY OF KERALA.**

EXT.R5(2):THE PHOTOCOPY OF THE M.A.DEGREE CERTIFICATE.

EXT.R5(3):THE PHOTOCOPY OF THE DEGREE OF DOCTOR OF PHILOSOPHY.

EXT.R5(4):THE PHOTOCOPY OF THE NET CERTIFICATE.

EXT.R5(5):THE PHOTOCOPY OF THE MEMO DATED 3.8.2004.

**EXT.R5(6):THE PHOTOCOPY OF THE ORDER OF THE 3RD RESPONDENT
DATED 11.8.2004.**

**EXT.R5(7):THE PHOTOCOPY OF THE ORDER OF THE 3RD RESPONDENT
DATED 30.6.2005.**

//TRUE COPY//

P.S. TO JUDGE

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C.K.ABDUL REHIM, J.

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W.P.(C). No.28697 OF 2004

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Dated this the 31st day of March, 2015

JUDGMENT

The petitioner is a candidate applied for appointment in the 3rd respondent University to the post of Lecturer in Music, for which application was invited based on Ext.P1 notification. There is no dispute with respect to qualification and eligibility of the petitioner to the post in question. The petitioner had attended the interview conducted on 14.6.2004. The 2nd respondent had published a rank list of 8 candidates in which the petitioner's name was not included. The additional 5th respondent herein was given appointment from the merit quota. According to the petitioner the 2nd vacancy ought to have been given to an Ezhava candidate, as per the Rules of reservation provided in the Kerala State and Subordinate Service Rules (KS&SSR). The University had issued appointment order to one M. Sajith who was included as Serial No.6 in the rank list, who

belongs to Hindu-Ezhava Community. But Mr.Sajith has not joined duty for personal reasons. Even then the petitioner was not considered for selection since the 3rd respondent University has not prepared any supplementary list. This writ petition was originally filed alleging that the respondents 1 to 3 are taking hasty steps to appoint the 4th additional respondent (impleaded subsequently). It was contended that the 4th respondent belongs to Hindu - Ganaka Community which belongs to Other Backward Community (OBC). According to the petitioner, if a supplementary list would have prepared, there was every chance for the petitioner to get appointment in the vacancy earmarked for Ezhava Community. Therefore the petitioner had challenged the entire selection process as well as the rank list published. Subsequently the petitioner had impleaded respondents 4 and 5 and amended the writ petition by incorporating additional grounds for challenging validity of constitution of the Selection Committee, the process of selection adopted, preparation of rank list etc. The petitioner is seeking relief to set aside the selection and

to appoint her in the vacancy which is earmarked for Hindu-Ezhava Community. Intera alia the petitioner is seeking various reliefs to the effect of nullifying the selection process.

2. One of the main contentions urged, is regarding the constitution of the Selection Committee. Referring to Statute 4 of Chapter III of the Sree Sankaracharya University of Sanskrit, Statutes 1997, it is pointed out that the selection committee was not properly constituted. Statute 4 prescribes that when posts are to be filled up by inviting applications through advertisements the applications received shall be first screened by a committee consisting of the Head of the concerned Department of Study and Research and the second member of the Syndicate. The applications found to be in order by the said Committee shall be referred to the Selection Committee consisting of the following persons:-

- (i) Vice Chancellor of the university who shall be the Ex-Officio Chairman of the Selection Committee.
- (ii) The Principal Dean of Studies.

(iii)(b) One Syndicate member to be nominated by the Vice Chancellor, two outside experts chosen by the Syndicate and the Head of the concerned University Department or the teacher holding charge of the Head of the Department.

3. Contention of the petitioner is that the Principal Dean of Studies was not included in the Selection Committee and therefore the Selection Committee was not constituted in accordance with the statute. It is contended that selection if any made by a Committee which is not statutorily constituted, would vitiate the selection itself. In this regard learned Counsel for the petitioner had placed reliance on a Division Bench of this Court in *Sree Sankaracharya University of Sanskrit v State* [1996 (2) KLT 378]. Question considered in the said decision is mainly as to whether the Vice Chancellor has got power to constitute the Selection Committee, in the absence of any first statute issued by the State. It is found that even though various provisions give powers to the first Vice Chancellor to exercise powers and to perform duties and functions of all

the authorities of the Universities, the Selection Committee is not an authority specified in Section 11 of the Act. Therefore when the first Statute have not been issued by the Government it is not possible to comprehend that the Selection committee is a body specified by the Statute to be an authority of the University. When the provisions contained in the Act empowers the Vice Chancellor only to appoint teachers and employees based on advice of the appropriate Selection Committee constituted in the manner prescribed under the Statute, in the absence of the first statute no valid Selection Committee can be constituted by the Vice Chancellor, is the dictum. The decision further holds that, when the Selection Committee has not been constituted in the manner as prescribed by the Statute the appointment of teachers made by the Vice Chancellor cannot be accepted, as it violates the mandatory provisions of the University Act.

4. Contention of the 3rd respondent University and respondents 4 and 5 are to the effect that non inclusion of the 'Principal Dean of Studies' in the Selection Committee

constituted would not in any manner vitiate the selection process. In the additional counter affidavit filed on behalf of the 3rd respondent University dated 24.10.2007 it is specifically mentioned that as the post of 'Principal Dean of Studies' was lying vacant, that post was kept vacant when the Selection Committee was constituted. Attention of this court was drawn to Section 49 of the Sree Sankaracharya University of Sanskrit Act, 1994, which provides that, no act or proceedings of any authority or other body of the University shall be invalidated, merely by reason of any defect in the constitution of such authority or body or by the reason of existence of any vacancy or vacancies among its members. Learned Standing Counsel had placed reliance on various decisions of the hon'ble Supreme Court as well as this Court to content that the vacancy of one person in the Selection Committee will not vitiate the selection proceedings. In the decision in M.V. Thimmaiah and Others v Union Public Service Commission and Others [(2008) 2 SCC 119] it is mentioned that the constitution of the Selection Committee without inclusion of the Divisional

Commissioner, who was supposed to be a member of the Selection Committee would not make the selection committee non-functional, because the post of Divisional Commissioner was abolished by the Government. It is held that such a vacancy would not render the Selection Committee non-functional, as out of the 7 members 6 members have participated in the selection process. It is held that absence of a member shall not invalidate the proceedings of the committee if more than half of the members of the committee had attended its meeting. In an earlier decision of the Hon'ble Supreme Court in *Shri. Ishwar Chandra v Shri. Satyanarain Sinha and Others* [(1972) 3 SCC 383] it is held that when no specific quorum is prescribed with respect to strength of the selection committee, absence of one person will not invalidate the recommendations of the Selection Committee. It is held that if for one reason or other one of the members could not attend, that does not make the meeting of others illegal. The presence of majority members would constitute it a valid meeting and matters considered there cannot be held

as invalid. Pointing out a decision of this court in Dr. G, Santhana Krishnan v Union of India and Others [1996 (2) KLJ 775.] it is contended that the duty of the Committee is only recommendary in nature and the absence of any member in the committee will not invalidate the recommendations.

5. The petitioner is not in a position to dispute the factual aspect that the post of 'Principal Dean of Studies' was lying vacant at the time of Constitution of the Selection Committee. Therefore considering Section 49 of the University Act as well as the dictum contained in the rulings cited above, this court is of the opinion that there was no illegality in the constitution of the Selection Committee by virtue of non-inclusion of the Principal Dean of Studies and that the Selection process conducted would not be vitiated for that reason alone.

6. Next contention raised is regarding the Selection process and awarding of marks. Learned Counsel had drawn attention of this court to Ext.P17 document produced along with the reply affidavit. One of the documents

contained in Ext.P17 is the consolidated statement of marks obtained by each of the candidates who have attended the interview for selection to the post of Lecturer, Music. The statement contains marks obtained by 35 candidates. It is evident that some of the candidates were absent for the interview. It is seen that the petitioner secured 37 marks as as per the index card and 8 marks for the interview and thus secured a total of 45 marks. Whereas the 4th respondent secured 43.8 index marks and 4 marks for the interview and a total of 47.8 marks. According to learned Counsel for the petitioner when all the candidates have fulfilled the eligibility criteria stipulated for the post in question, the inter-se merit should have been decided solely based on the performance in the interview. It is contended that since the petitioner had secured 8 marks in the interview she should have been found a place higher in rank than the candidates who have secured less marks for the interview. According to learned counsel for the petitioner the Selection Committee was not entitled to evolve its own criteria for selection of the candidates. Relying on the decision of this

court in *Krishnadas v Sree Sankaracharya University of Sanskrit* [2005 (3) KLT 908] it is pointed out that the Selection Committee has no jurisdiction to lay down the norms for selection, unless authorised. It is held therein that neither the Act nor the statute authorises the Selection Committee to prescribe any norms for selection since the selection Committee did not have jurisdiction to lay down the norms for selection. The selection made on the basis of norms laid down by the committee is totally without jurisdiction and unsustainable. But in the case at hand, there is nothing to indicate that the Selection Committee had formulated its own norms. The power to appoint the teachers and other employees of the University and to prescribe their duties and to fix their terms and conditions of service etc. are matters coming within the powers and functions of the Syndicate of the University as per Section 14(2)(j) of the University Act, 1994. Going by Section 17 of the Act it is for the academic Council to advise the Syndicate in matters related to academic activities of the University and the academic counsel will be responsible for

maintenance of the standard of instruction and examinations of the University. Hence in the normal course it is for the academic council to formulate norms with respect to selection of teachers, which should be approved by the Syndicate and the Selection Committee has to follow such norms. Since the petitioner is not in a position to establish that the Selection Committee themselves have formulated norms with respect to awarding of marks, the contention raised in this regard cannot be countenanced. Further it is pointed out by the learned Standing Counsel for the University that the decision in Krishnadas's Case (cited supra) has been reversed by Division Bench of this court in the judgment in writ appeal No.1597/2005 and the question as to whether the Selection Committee can formulate guidelines is now pending decision before the Hon'ble Supreme Court in a Special Leave Petition. (Single Bench decision was upheld by the Division Bench and the matter is now pending consideration before the Hon'ble Supreme Court in SLP No.20813/2006.)

7. Under the above mentioned circumstances,

challenge with respect to method of awarding marks adopted by the Selection Committee, cannot be sustained. Further, this court cannot hold that awarding of index marks based on the merit obtained in securing the educational qualifications cannot be held in any manner as illegal or irregular.

8. The most important contention raised by the petitioner is with respect to non adherence to the reservation rules as well as non preparation of supplementary rank list. Referring to Section 32 of the Sree Sankaracharya University of Sanskrit Act, 1994 it is pointed out that in making appointments by direct recruitments to all teaching and non-teaching posts under the University, the University shall mutatis mutandis observe the relevant reservation rules of the Kerala State and Subordinate Service Rules, 1958 as amended from time to time. Statute 3 of Chapter III prescribes that constitution 1997 prescribes that in making appointment by direct recruitments the University shall observe provisions contained in Clause (a), (b) and (c) of Rule 14, 15, 16 and 17 of the Kerala State and

Subordinate Service Rules 1958 as amended from time to time. Based on Rule 14(e) of Part II of KSSSR it is contended that a supplementary list of sufficient number of suitable candidates, not less than 5 times of the reservation quota shall be prepared and published from each community or group of communities for the purpose of satisfying the reservation quota, if such number of candidates are available. It is pointed out that the non-preparation of supplementary list in the case of the selection in question had resulted in violation of Rule 14(e). But it is pertinent to note that Clause (e) of Rule 14 was introduced to the statute book for the first time only with effect from 2.2.2006 by virtue of SRO No.227/2006 published in the extra ordinary Gazette No.541 dated 8.3.2006, whereas the selection in question was conducted during the year 2004. Further under Statute 3 of Chapter III there is only mention about applicability of Clause (a) (b) and (c) of Rule 14 of Part II KS&SSR. Therefore it cannot be accepted that non-preparation of supplementary list including the candidates in the reservation community, had in any manner violated

any statutory procedure for selection or that by itself had vitiated the selection conducted.

9. It is admitted that the 2nd post of Lecturer in Music for which direct recruitment was made based on Ext.P1 notification was a post which ought to have been reserved for Hindu – Ezhava Community. Contention of the 3rd respondent University is that considering the communal reservation Shri.Sajith E.N. who was included as rank No.6 was advised for appointment. But he had failed to report for duty. Since there was no other Ezhava candidate available in the list the reservation turn was passed over to the next eligible reservation community which is the other Other Backward Class (O.B.C.) as per Rule 15(a) of Part II KSSSR. It is stated that the 4th respondent got appointment as she belonged to Hindu Ganaka Community which comes in the O.B.C, category in the 10th position as per the rotation, because there was no Scheduled Caste candidate available in the 4th position and no Muslim candidate was available in the 6th position and no Latin Catholic candidate was available in the 8th position. Rule 15(a) provides that if

a suitable candidate is not available for selection from any particular community or group of communities under the reservation chart, the said community or group shall be passed over and the post shall be filled up by a suitable candidate from the community or group of communities immediately next to the passed over community or group in the reservation chart, in the order of rotation. Under the above explained circumstances it cannot be held that the appointment given to the 4th respondent in the 2nd vacancy is in any manner illegal .

10. Yet another contention raised by the petitioner is that the non-inclusion of the name of all the candidates attended the interview in the rank list is an illegal and irregular procedure. If the name of all the candidates who attended the interview were included in the rank list there was a chance of selecting the petitioner for appointment in the communal turn of Hindu-Ezhava, is the contention. Per contra, it is contended that, only those 8 candidates who were included in the rank list have proved their efficiency in the subject before the interview Board. Conclusion of the

Selection Committee was that only those 8 candidates alone have proved their efficiency in the subject and other 18 candidates were found to be below the required standard level fixed by the Selection Committee. It is evident that, for the two vacancies notified, the Selection Committee had prepared a rank list of 8 candidates which is apparently 4 times of the number of vacancies. The norms of selection approved by the University is not produced before this court by either side. Whether the norms had prescribed any cut-off mark as minimum eligibility for inclusion in the rank list is not known. Question remains as to whether the selection Committee is empowered to shortlist the candidates interviewed for inclusion in the rank list. A Division Bench of this court in *Indulekha v State of Kerala* [2001 (1) KLT 951], referring to the Rules and procedure of Public Service Commission, this court observed that selection Committee has got the power to lay down criteria for finding out the best and suitable persons for the post notified and it can short list the candidates on the basis of the marks obtained in the written test. Since candidates at 4 times the number

of vacancies reported have been included in the rank list, it cannot be held that non inclusion of all the candidates who attended the interview is in any manner illegal or irregular.

11. Learned Standing Counsel appearing for the 3rd respondent University as well as the counsel appearing for respondents 4 and 5 have contended that, despite the selection process have been completed and despite the party respondents were appointed through the selection, the petitioner has not chosen to amend the writ petition by challenging the rank list or the appointment made. On the other hand, contention of learned counsel for the petitioner is that, when the entire selection process itself is under challenge as vitiated by illegalities and irregularities, there need not be any specific challenge against the rank list or the appointments made. This is especially because, by virtue of an interim order passed by this court it was made clear that selection if any made to the post in question will be subject to the result of this writ petition. However, as evidenced from the discussion contained in the foregoing paragraphs this court is not convinced that there occurred

any material irregularity with respect to the selection.

12. Learned counsel appearing for the 4th respondent contended that the selection process was completed as early as in the year 2004 and appointments were made long back. Even if this court finds that there occurred any irregularity which had not in any manner violated any of the statutory provisions, the selection should not be disturbed at this point of time. A mere irregularity cannot be treated as an illegal appointment, even if the selection process can be considered as tainted due to any irregularity occurred in the process. Learned counsel had pointed out various decisions on this point such as *Buddhi Nath Chaudhary and Others v Abahi Kumar and Others* [(2001) 3 SCC 328], *M.P. State Co-operative Bank Limited Bhopal v Naurin Yadav* [(2007) 8 SCC 264], *Inderpreet Singh Kahlon and Others v State of Punjab and Others* [(2006) 11 SCC 356] and in *ING Payarilal v Cochin University* [2001 (1) KLT SN23]

13. Considering the entire circumstances as narrated above, this court is of the opinion that the selection process conducted based on Ext.P1 notification had not in any

manner violated the statutory provisions. There is no malafides, favoritism or nepotism alleged by the petitioner with respect to the process of selection. No material irregularity can be pointed out or proved through any convincing materials with respect to the selection and appointment made.

In the result none of the reliefs sought in the writ petition can be granted based on the pleadings and materials. Therefore the writ petition fails and the same is hereby dismissed.

Sd/ –
C.K.ABDUL REHIM, JUDGE

SKV