

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

WP(C).No. 20883 of 2010 (I)

PETITIONER:

**ANURANJINI C., CHARACKAL HOUSE,
THRIKKALATHOOR P.O., KEEZHILAM(VIA),
ERNAKULAM-683 557.**

BY ADV. SRI.P.M.PAREETH

RESPONDENT(S):

- 1. CO-OPERATIVE ACADEMY OF PROFESSIONAL
EDUCATION, REP. BY ITS DIRECTOR,
CO-BANK TOWERS, (NEAR MASCOT HOTEL),
VIKAS BHAVAN P.O., PALAYAM,
THIRUVANANTHAPURAM-695 033.**
- 2. PRINCIPAL, CO-OPERATIVE MEDICAL COLLEGE,
KALAMASSERY, KOCHI-683 503.**
- 3. ANJU SEBASTIAN, TUTOR,
CO-OPERATIVE MEDICAL COLLEGE,
KALAMASSERY, KOCHI-683 503.**
- 4. VINEETHA G., MURIYATHU HOUSE,
MAMANGALAM, PALARIVATTOM P.O.,
KOCHI-682 025.**
- 5. STATE OF KERALA, REP. BY SECRETARY TO
GOVERNMENT, DEPARTMENT OF CO-OPERATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

WP(C).No. 20883 of 2010 (I)

***ADDL. R6 IMPEADED**

**6. SMT.S.ARCHANA, GEETHAM, MANNAR.P.O.,
ALAPPUZHA - 689 622.**

**ADDL. R6 IS IMPEADED AS PER ORDER
DATED 26.05.2015 IN IA.161/2012.**

**R1 & R2 BY ADV. SRI.THOMAS ABRAHAM,SC
BY ADV. SRI.C.UNNIKRIISHNAN,SC
ADV. SMT.P.VIJAYAMMA
BY ADV. SRI.V.KRISHNA MENON, SC
BY ADV. SRI.E.K.MADHAVAN, SC**

**R3 BY ADVS. SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SMT.ANILA PETER
SRI.J.VIVEK GEORGE
SMT.C.PRABITHA**

R5 BY GOVERNMENT PLEADER SRI.ROSHAN D.ALEXANDER

R6 BY ADV. SRI.P.M.MOHAMMED SHIRAZ

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-03-2015 ALONG WITH WPC. 20481/2012 & CONNECTED
CASES, THE COURT ON 26-05-2015 DELIVERED THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 : A TRUE PHOTOCOPY OF THE DEGREE CERTIFICATE DATED 11.3.208
ISSUED BY VICE CHANCELLOR MANIPAL ACADEMY OF HIGHER
EDUCATION.**
- EXT.P1(A) : A TRUE PHOTOCOPY OF THE MARK LIST OF THE FINAL YEAR
EXAMINATION DATED 28.2.2008.**
- EXT.P1(B) : A TRUE PHOTOCOPY F THE RELEVANT PAGE OF THE SSLC IN
RESPECT OF THE PETITIONER.**
- EXT.P2 : A TRUE PHOTOCOPY OF THE MEMO DATED 21.8.2008 ISSUED BY THE
1ST RESPONDENT.**
- EXT.P3 : A TRUE PHOTOCOPY OF THE RANKED LIST DATED 22.9.2008 ISSUED
BY THE 1ST RESPONDENT.**
- EXT.P4 : A TRUE PHOTOCOPY OF THE LETTER DATED 13.4.2010 ISSUED BY
THE 1ST RESPONDENT TO THE FATHER OF THE PETITIONER.**

RESPONDENT'S EXHIBITS:

- EXT.R3(A) : TRUE COPY OF THE DEGREE OF MASTER OF SCIENCE IN MEDICAL
MICRO BIOLOGY ISSUED TO ME BY THE MAHATMA GANDHI
UNIVERSITY.**
- EXT.R3(B) : TRUE COPY OF THE RANK LIST PUBLISHED BY THE
1ST RESPONDENT.**
- EXT.R3(C) : TRUE COPY OF THE ORDER DATED 19.1.2006 ISSUED BY THE
1ST RESPONDENT.**
- EXT.R3(D) : TRUE COPY OF THE ORDER DATED 3.5.2008 DECLARING MY
PROBATION IN THE CADRE OF TUTOR IN MICRO BIOLOGY.**
- EXT.R3(E) : TRUE COPY OF THE RANK LIST ISSUED BY THE 1ST RESPONDENT
DATED 22.5.2008.**
- EXT.R3(F) : TRUE COPY OF THE ORDER DATED 13.10.2008 ISSUED BY THE
1ST RESPONDENT.**
- EXT.R3(G) : TRUE COPY OF THE ORDER DATED 20.10.2008 ISSUED BY THE
2ND RESPONDENT.**
- EXT.R3(H) : TRUE COPY OF THE ORDER DATED 5.4.2010 ISSUED BY THE
2ND RESPONDENT.**
- EXT.R5(A) : TRUE COPY OF G.O.(MS)488/13/FWD DATED 17.12.2013.**
- EXT.R5(B) : TRUE COPY OF GO(RT)1675/2014/H&FWD DATED 26.5.2014.**
- EXT.R5(C) : TRUE COPY OF GO(MS)NO.120/14/H&FWD DATED 22.4.2014.**

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.V.RAMAKRISHNA PILLAI, J

WPC Nos.20883/2010, 10216/2012
15775/2012, 20481/2012
& 24323/2012

Dated this the 26th day of May, 2015

JUDGMENT

These writ petitions relate to the appointment of Lecturers/Tutors in the Cochin Medical College (erstwhile Co-operative Medical College, Kochi). One of the writ petitions relate to the grant of pay scale attached to the post of Lecturer in the said Medical College.

2. In WPC No.20883/2010, the petitioner, who belongs to Scheduled Caste community holds rank No.3 in Ext.P3 ranked list issued by the first respondent for appointment to the post of Tutor in Co-operative Medical College, Kochi. The grievance of the petitioner is that even after two years from the date of issuance of Ext.P3 ranked list, the petitioner has not been appointed. He points out that the first rank holder in Ext.P3 under Micro Biology has been appointed. The 4th respondent

has been appointed subsequent to the appointment of the first candidate. The petitioner alleges that as the fourth respondent is unqualified, she is to be terminated from service. It is further alleged that the third respondent is a contract employee who has to give way to regularly selected candidates in Ext.P3 select list. Therefore, according to the petitioner, respondents 3 and 4 are to be terminated from the service and resultant vacancies are to be filled up from Ext.P3 ranked list and the petitioner is entitled to get appointment on filling up of the two vacancies. However, no action has been taken by the first respondent to fill up the said vacancies despite several approaches by the petitioner.

3. WPC No.10216/2012 and WPC No.15775/2012 are filed by the same person. He alleges that he, who is an M.Sc Nursing degree holder, is the 7th rank holder in Ext.P3 ranked list for appointment as a Lecturer in the College of Nursing attached to Cochin Medical College. However, without exhausting the rank list, the

respondent is trying to appoint contract employees for which Ext.P6 selection notification was issued.

4. He further alleges that the first and second rank holders were given appointment and the third and fourth rank holders were given intimation for joining, but they did not join. The petitioner alleges that the 4th respondent in WPC No.15775/2012, one Ameer Ali along with one Sheela Paul filed Writ Petition No.6976/2012 before this Court stating that they are working as Clinical Instructors and therefore, they be re-designated as Lecturers. This Court, as per Ext.P7 judgment, directed the first respondent Co-operative Academy of Professional Education represented by its Secretary to consider the re-designation and communicate the decision to the petitioners within a period of one month from the date of receipt of a copy of this judgment. The petitioners allege that in that case, the third and fourth rank holders in Ext.P3 ranked list were included as party respondent Nos.6 and 7. They did not appear in the case. The petitioners in that writ petition stated that

there was an order passed by the Registrar of Kerala Nurses and Midwives Council dated 19.8.2011 to the effect that the Clinical Instructor post with M.Sc faculty be designated as Lecturer instead of Clinical Instructor. Subsequent to Ext.P7 judgment, the first respondent passed Ext.P8 order by which the aforesaid Ameer Ali and Sheela Paul were re-designated as Lecturers instead of Clinical Instructors. He is challenging Ext.P8 order seeking a declaration that Ext.P9 order of the Registrar of Kerala Nurses and Midwives Council passed by the third respondent does not affect the right of the petitioner to be appointed as per Ext.P3 ranked list. The case of the petitioner is that when Ext.P3 ranked list is available, that ranked list should have been followed.

5. In WPC No.20481/2012, the petitioners are working as Lecturers in Cochin Medical College of Nursing. They are aggrieved by the non-disbursement of emoluments attached to the said post as stated in Ext.P5 notification dated 18.9.2010 on the basis of which the petitioners applied to the post of

Lecturer/Assistant Professor. According to the petitioners, as per Ext.P5 pay scale attached to the post of Lecturer is ₹15600-39100 +(AGP) 6000. The petitioners have filed an earlier writ petition as WPC No.6976/2012, while they were working as Clinical instructors. They are included in the ranked list of Lecturers/Assistant Professors. In the aforesaid writ petition, this Court by Ext.P1 judgment recorded the submission of the standing counsel that the claim of the petitioner for re-designation would be considered in accordance with law. Thereafter Ext.P2 order was passed which reveals that the executive committee resolved to re-designate the petitioners as Lecturers. Therefore, the petitioners are entitled to get monetary benefits attached to the post of Lecturer as specified in Ext.P5. It is further alleged that the 5th respondent had issued a letter dated 24.10.2011 stating that the petitioners are qualified and entitled to be re-designated as Lecturers. Exts.P3 and P4 are the representations filed by the first and second petitioners respectively

stating the said aspects. The petitioners are entitled to get re-designation with effect from the date on which the non-joining candidates were supposed to be appointed as Lecturers and their annual increment will have to be computed based on the pay scale as enumerated in Ext.P5.

6. In WPC No.24323/2012, the petitioner is seeking a direction to the respondent to appoint her in the vacant post of Assistant Professor (Nursing) in the second respondent college which is under first and third respondents. The petitioner alleges that she is a Post Graduate in Community Health Nursing and having more than 7 years of teaching experience. She alleges that pursuant to Ext.P4 notification seeking application for appointment to the post of Assistant Professor/Lecturer, She secured 8th rank as evident from Ext.P5 ranked list in this writ petition. She alleges that rank Nos.1 and 2 were appointed as Lecturers and the third and 4th rank holders in the said ranked list did not join duty though they were given appointment. She

further alleged that from Ext.P9, it is clear that there are eight vacancies in the second respondent college, but the respondents are not making appointments from Ext.P5 ranked list. Besides they are recruiting other candidates on contract basis.

7. Detailed counter affidavits have been filed in almost all cases by the contesting respondents.

8. In the counter affidavit filed by the State, it was pointed out that as per Ext.R5(b) G.O.(Rt) No.1675/2014/H&FWD dated 26.5.2014 a high level committee to examine whether the staff of the Government Medical College Ernakulam be integrated to the Medical Education Department or the institution be given 'stand alone status' in the case of existing staffs was constituted. The committee met on 6.8.2014 and *inter alia* recommended for a 'stand alone status' in respect of the eligible staffs in the Government Medical College, Ernakulam. It was proposed that the total number of posts to be sanctioned, appointment of faculties and other staff etc. in the college should be in

compliance with the norms of Medical Council of India applicable to a Medical College Hospital having students' intake capacity of 100 MBBS seats and 500 bed hospital. Following criteria is proposed to be adopted for the absorption of eligible staffs of Cochin Medical College to regular Government service under the Medical Education service.

- a) The staffs and faculty required for 100 MBBS seats and 500 bed hospital as per Medical Council of India.
- b) The candidates who have not attained the age of superannuation i.e. 60 years in respect of teaching staff and 56 years in respect of other categories, as the case is considered for absorption. Those employees who have crossed the age bar need not be considered for absorption.
- c) Employees of Government Medical College, Ernakulam appointed before 17.12.2013 only (i.e. the date of take over) will be considered for absorption to Government service w.e.f. 1.4.2014, i.e. the date from which Government paid salary through CAPE.
- d) The educational qualification prescribed may be in accordance with the Medical Council of India norms and may be similar to that of

the corresponding posts in medical education service.

e) The eligible regular and contract employees may be considered for absorption in the first phase.

f) Only those employees who turned up for verification of their qualification by verification committee need be considered for absorption.

g) Those who failed to appear before the committee for verification may be given a chance to produce their certificates before director of Medical Education for fixing/verifying their eligibility for absorption.

9. It was further stated that after recommendation of the committee on 6.8.2014, the files are under process in consultation with Finance Department and after the process of concurrence by Finance Department, formal orders would be passed. It is further stated that as per Ext.R5(c) G.O. dated 22.4.2014, the Government took over the Nursing College and Nursing School situated in the Government Medical College Campus and was brought under the control of Director of Medical Education and Director of Health Services respectively. The same committee

which was constituted to examine and to take a decision regarding the pay and service conditions of the employees of Government Medical College, Ernakulam was entrusted to look into the pay and service matters of staff of these institutions also.

10. Arguments have been heard.

11. The stand taken by the Government as evident from the arguments submitted by Mr.Roshan D.Alexander, the learned Special Government Pleader is that after the decision of the Government to take over the Co-operative Medical College, Kochi, it is at the transitional stage and final decisions on the modalities are yet to be taken. Undoubtedly, the selection procedures are to be adopted and the ranked list will have to be finalised by the Kerala Public Service Commission. It will take time to complete the process. Evidently and admittedly too, vacancies are there in the Medical College. If those vacancies are not filled up in time, there is every likelihood of loosing recognition by the Medical Council of India.

12. At present, there is a ranked list prepared on the basis of a due selection procedure which is not at all challenged from any quarters.

13. Anuranjini, the petitioner in WPC No.20883/2010 claims appointment on the basis of her third rank in Ext.P3 ranked list. She says that the third respondent is a contract employee and the 4th respondent has no qualification. She claims appointment to the post of Tutor in Micro Biology (Medical). Rijo Jose, the petitioner in WPC Nos.10216/2012 & 15775 is rank No.7 in Ext.P3 ranked list. He seeks appointment as Lecturer in Nursing. Reena V.I., who is the petitioner in WPC No.24323/2012, is rank No.8 in Ext.P5 ranked list claims for the post of Assistant Professor/Lecturer (Nursing) on the ground that rank Nos.1 and 2 were appointed as Lecturers and rank No.3 did not join duty.

14. As all the aforesaid petitioners have secured position in the ranked list on the basis of a due selection procedure, it is only just and proper to consider them

for appointment, even though the institution has been taken over by the Government, especially, in the light of the fact that it would take time to get another select list prepared by the Kerala Public Service Commission for making appointments.

15. Ameer Ali K.E. and Lt.Col.Sheela Paul, who are the petitioners in WPC Nos.20481/2012, pray for grant of pay scale attached to the post of Lecturer. They are working as Clinical Instructors in the institution and they were re-designated as Lecturers. They were re-designated as per Resolution No.126.5.23 dated 23.5.2012 of the executive committee. Therefore, they are entitled to get monetary benefits attached to the post of Lecturer as per Ext.P5 in that writ petition. As the petitioners have filed Exts.P3 and P4 representations before the second respondent, it is only just and proper to direct the second respondent to consider those applications.

16. The petitioner in WPC No.10216/2012 and WPC No.15775/2012 would allege that the first petitioner in

WPC No.20481/2012 who is below in the rank list was appointed as Lecturer. However, it has to be noted that ranking of the first petitioner in WPC No.20481/2012 in the ranked list of Lecturers and his re-designation as Lecturer have no connection. The first petitioner in WPC No.20481/2012 was re-designated as Lecturer on the basis of his appointment as Clinical Instructor. The aforesaid re-designation does not affect the vacancy position of Lecturers and those vacancies still remain.

In the result, the writ petitions are disposed of as under:

The respondent State shall consider the petitioners in WPC Nos.20883/2010, 10216/2012 and 24323/2012 for appointment as Tutor in Micro Biology (Medical), Lecturer (Nursing) and Assistant Professor/Lecturer (Nursing) respectively on the basis of their position in the ranked list referred to in those writ petitions. Formal orders to this effect shall be issued within a period of three months from the date of receipt of a copy of this judgment.

It is hereby declared that the petitioners in WPC No.20481/2012 are entitled to the pay scale attached to the post of Lecturer as contained in Ext.P5 notification.

WPC No.20481/2012 is disposed of directing the second respondent to take a decision on Exts.P3 and P4 representations and pass formal orders granting the pay scale as ordered under Ext.P5 notification within a period of three months from the date of receipt of a copy of this judgment.

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

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P.S.TO JUDGE