

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No. 22402 of 2009 (U)

PETITIONER(S):

1. J.JOSE,
MARKER, CHRIST COLLEGE, IRINJALAKUDA.

2. C.V.JOY,
MARKER, CHRIST COLLEGE, IRINJALAKUDA.

3. M.K.VENU,
MARKER, CHRIST COLLEGE, IRINJALAKUDA.

BY ADV. SRI.S.MUHAMMED HANEEFF

RESPONDENT(S):

1. THE MANAGER/SECRETARY,
CHRIST COLLEGE, IRINJALAKUDA.

2. THE DEPUTY DIRECTOR OF COLLEGIATE
EDUCATION, THRISSUR.

3. DIRECTOR OF COLLEGIATE EDUCATION,
THIRUVANANTHAPURAM.

4. STATE OF KERALA, REP. BY IT'S SECRETARY
TO THE GOVERNMENT, HIGHER EDUCATION DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.

Addl. R5:- V.T. Biju, Last Grade Employee,
Christ College, Irinjalakkuda

Addl. R6: N. Laiju Varghese, -do-

Addl.R7: Biju Francis -do-

Addl.R8: Dony Paul - do-

**Addl. R5 to 9 are impleaded as addl. R5 to 9 as per
order dated 8-9-2009 in I.A. No. 10991/2009.**

For R1 Adv. Sri. Issac Kuruvila Illickal
For R2, R3 & R4 Govt. Pleader Smt. M.J.Rajasree
For R5 to 9 - Adv. Sri. B. Unnikrishna Kaimal

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 23-02-2015, ALONG WITH WPC. 27253/2010, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTs:

EXT.P1: TRUE COPY OF THE ORDER DATED 20-01-1995 ISSUED BY THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION, THIRUVANANTHAPURAM IN RESPECT OF PETITIONERS 1 AND 2

EXT.P2: TRUE COPY OF THE ORDER DATED 10-04-1996 ISSUED BY THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION, THIRUVANANTHAPURAM IN RESPECT OF THE 3RD PETITIONER

EXT.P3: TRUE COPY OF THE ORDER NO. F5/45957/08/DATED 9-6-2009 ISSUED BY THE 3RD RESPONDENT

EXT.P4: a TRUE COPY OF THE COMMUNICATION NO. F5/38360/2009/COLL.EDN. DT. 10-5-2010

RESPONDENTS EXTs:

EXT.R1 (A): PHOTOCOPY OF THE JUDGMENT OF THIS HON'BL;E COURT DATED 12-3-2008

EXT. R1 (B): PHOTOCOPY OF THE LETTER DATED 31-10-2009 OF THE 3RD RESPONDENT TO THE 4TH RESPONDENT

Ext. R1 (C) : True copy of the order dated 20-08-2010 of the 4th respondent.

EXT. R2 (A); TRUE COPY OF THE G.O.MS NO. 50/08/H.EDN.DATED 9-5-2008

/true copy/

P.S. to Judge

A.M. SHAFFIQUE, J.

.....
W.P. (C) Nos. 22402/2009
&
27253/2010
.....

Dated : 23 - 02 - 2015

JUDGMENT

Petitioners have been appointed as Markers in the first respondent College. There arose a situation when Ext. P3 order had been issued by the Director of Collegiate Education on 9-6-2009 consequent to the de-linking of Pre Degree, by which staff strength was revised and re-fixed. It was, inter alia, provided in the said order that all existing posts, other than the post found excess in the College are declared supernumerary. Further, it is stated that the persons now holding the posts are allowed to continue till their promotion/retirement/removal/death etc. Further it is stated that no fresh recruitment shall be made

in each group if there exists any surplus staff found supernumerary. It is also stated that if there exists/arises vacancy, such vacancy shall be filled up with prior sanction of the Government. As far as the petitioners are concerned, they were working as on 1-11-2003 and their posts were declared to be supernumerary. Petitioners, however, made reference to Ext. P3 to indicate that Sl.No. 18 is the post of Peon and they were entitled for promotion as it is a higher grade than that of Marker. Writ Petition No. 22402/2009 was filed seeking for a direction to enforce Ext. P3 in letter and spirit and for a direction to promote the petitioner and accommodate them as Peons without any further delay. Petitioners contended that there arose vacancies in the post of Peons and, therefore, they were entitled to be accommodated to the said post by way of promotion. WPC No. 27253/2010 has been filed by the very same petitioners when the first respondent appointed respondents 5 to 10 to the

post of Peon by way of direct recruitment. It is inter alia contended that when lower grade persons who are eligible to be appointed as Peons are available, though it is not a promotion post, they are entitled to get appointment in the promotion post. Learned counsel also relied upon the Judgment of the Division Bench of this Court in Arshad Beegom v. Najeeb – 2009 (4) KLT 389.

2. Counter affidavit has been filed respondents refuting the claim made by the petitioners. It is pointed out that the first respondent, in their counter affidavit, has stated that Marker Post was sanctioned to the Christ College exclusively for Bachelor of Physical Education on the recommendation of UGC and in the appointment order itself it is stated that they will not be entitled for promotion. They accepted the job knowing fully well that the post of Marker will have no scope for promotion. The 2nd respondent has filed counter affidavit stating that the

existing post of Specimen Collector, Library Assistant, Watchman, Gasman, Gardner, Sanitation Worker and other posts were found to be in excess and declared as supernumerary for accommodating the surplus staff in future vacancies. It is stated that non-teaching staff in aided Colleges are classified in different groups of same nature in terms of Government Order dated 9-5-2008. It is also stated that appointments of addl. respondents were made by the first respondent as Peons without prior sanction from the Government. It is stated that fresh appointments were made by the Manager instead of promoting the petitioners from the posts of Marker to the post of Peons. It is also stated that the newly appointed persons were not approved.

3. It is stated in the counter affidavit filed by the 5th respondent that there is a mention in Ext. P3 order that fresh appointments can be made to vacancies in Group I if there are

vacant posts taking into account the sanctioned posts and persons in service. It is pursuant to the aforesaid norms that five posts of Peons were filled up by the management which is evident from Ext. R5 (a). Further it is stated that Markers are not in the feeder category for promotion as Peons and, therefore, they are not eligible. The first respondent also produced the judgment dated 12-3-2008 of this Court in O.P. No. 4915/2000 by which similar claim made by the petitioner had been negated by this Court. Relevant portion of the judgment (paragraphs 6 and 7) which reads as follows:-

“It is true that the concerned University Statute does not provide for any particular provision for promotion of Groundman/Marker to various posts like Lab Assistants etc. But promotions of other non-teaching staff are covered by the statute stipulated by the concerned University and the posts of the petitioners are outside those provisions. But still the facts show that they are denied any scope for promotion because of the

non-inclusion of the said post among the last grade service. Going by the decisions of the Apex Court the denial of promotion/not providing of any avenues of promotion resulting in stagnation in an entry cadre results in discrimination. But in the absence of any statutory provision or provisions in the First Statute this Court will not be justified in issuing a direction to include the petitioners also in the last grade service. It is up to the University and other bodies entrusted with the task of framing the First Statute to remedy the situation.

7. The learned counsel for the petitioners, therefore, prayed for an opportunity to ventilate their grievance in the form of a representation to the appropriate authority, namely the 4th respondent. If the petitioners file an appropriate representation to the 4th respondent within a period of six weeks from today, the same will be considered by the appropriate authority of the University and appropriate action as provided by law will be taken in the matter as expeditiously as possible, at any rate, within the period of six

months from the date of production of a copy of this judgment”.

4. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents also.

5. The learned counsel appearing for the respondents brought to my notice the fact that the appointments given to the private respondents has already been approved by the Deputy Director of Collegiate Education as per order dated 16-09-2010.

6. The learned counsel for the petitioner however, submits that the appointment of private respondents is provisional and subject to the result of the present Writ Petition .

7. The first question to be considered is whether the petitioners have any legal right to demand that they should be appointed to the post of Peons. First of all, Marker is not the feeder category to the post of Peon. Secondly, it is stated that the appointment of Markers is only in the Physical Education Department and even in the appointment order itself it was

specifically mentioned that they will not be entitled for any promotion. In the judgment of the Division Bench referred by the learned counsel, reference is made to Statute 66 which provides for filling up of vacancies. In fact, the petitioner had already approached this Court by filing O.P. No. 4915 of 2000, wherein the main claim raised was regarding stagnation in the post of Marker and claiming that they should be promoted to the post of peon. When the said claim has been rejected by this Court on the ground that University Statute does not provide for any particular provision for promotion of Groundman/Marker and various posts like Lab Assistant etc. it is not open for the petitioner to re-agitate the same claim again. That apart, Ext. P3 does not give the petitioner any particular right to claim that they should be promoted to the post of Peon merely for the reason that it is on a higher grade. When the claim of the petitioner has already been decided by a Judgment of this Court, they cannot

again contend that they should get the benefit of promotion to the post of Peon. It is submitted by the learned counsel appearing for the respondents that they have already been promoted to the next post of Lab Assistant.

Under such circumstances, I do not think that the petitioners have ventilated a legal grievance to claim the post of Peon and to challenge the appointment made to the private respondents in the post of Peons. There being no merit in the above Writ Petitions, the Writ Petitions are dismissed.

Sd/-A.M. SHAFFIQUE
(Judge)

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P.S. to Judge