

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

WP(C).No. 22620 of 2013 (B)

PETITIONERS:

1. BINDU D.,
PRINCIPAL, MODEL TECHNICAL HIGHER SECONDARY SCHOOL
KAPRASSERY, ERNAKULAM DISTRICT, PIN-683585.

2. LAILA JASMIN,
PRINCIPAL, TECHNICAL HIGHER SECONDARY SCHOOL
PALLIPPURAM, CHERTHALA, ALAPPUZHA DIST.
PIN-688541.

BY ADVS.SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN
SRI.T.R.SADEESAN
SRI.T.S.SHYAM PRASANTH

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY PRINCIPAL SECRETARY TO GOVERNMENT OF KERALA
HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.

2. THE INSTITUTE OF HUMAN RESOURCES DEVELOPMENT,
PROJOE TOWERS, VAZHUTHACAUD, THIRUVANANTHAPURAM-695014
REPRESENTED BY ITS DIRECTOR.

R1 BY SRI.RAFEEK.V.K. GOVERNMENT PLEADER
R2 BY ADV. SRI.V.A.MOHAMMED, SC, IHRD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

P1: COPY OF THE ORDER NO.A3/2235/94/MEC. DATED 24.8.1994 ISSUED BY THE MODEL ENGINEERING COLLEGE, ERNAKULAM.

P2: COPY OF THE COMMON JUDGMENT DATED 5.10.2009 OF THIS HON'BLE COURT IN WPC.18048/2007 AND WPC.22725/2007.

P3: COPY OF THE SENIORITY LIST OF LECTURERS WHO HAVE OPTED FOR ENGINEERING COLLEGE SERVICE PUBLISHED BY THE 2ND RESPONDENT VIDE NOTIFICATION NO.EA3/3953/2010/HRD(1) DATED 6.9.2010.

P4: COPY OF THE ORDER NO.EA3/3953/2010/HRD DATED 21.12.2010 ISSUED BY THE 2ND RESPONDENT.

P5: COPY OF THE LETTER NO.EA3/3953/2010/HRD DATED 23.2.2011 ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER.

P6: COPY OF THE INFORMATION PUBLISHED IN THE WEBSITE REGARDING COLLEGE OF ENGINEERING, POONJAR.

P7: COPY OF THE INFORMATION PUBLISHED IN THE WEBSITE REGARDING COLLEGE OF ENGINEERING, KALLUPPARA.

P8: COPY OF THE INFORMATION PUBLISHED IN THE WEBSITE REGARDING COLLEGE OF ENGINEERING, ATTINGAL.

P9: COPY OF THE INFORMATION PUBLISHED IN THE WEBSITE REGARDING COLLEGE OF ENGINEERING, CHERTHALA.

P10: COPY OF THE REPRESENTATION DATED 24.7.2013 FILED BY THE 1ST PETITIONER TO THE 2ND RESPONDENT.

P11: COPY OF THE REPRESENTATION DATED 29.7.2013 FILED BY THE 2ND PETITIONER TO THE 2ND RESPONDENT.

P12: COPY OF THE INFORMATION SOUGHT UNDER THE RIGHT TO INFORMATION ACT BY THE PETITIONERS AND THE REPLY LETTER NO.RTI/8754/2013/HRD DATED 24.8.2013 ISSUED BY THE 2ND RESPONDENT.

1ST RESPONDENT'S EXHIBITS

R1(A): COPY OF THE G.O.(P) NO.171/99/H.EDN. DATED 21.12.1999

R1(B): COPY OF THE G.O.(RT) NO.1931/2011/H.EDN. DATED 29.11.2011

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TRUE COPY

PA TO JUDGE.

P.V.ASHA, J.

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W.P.(C) No.22620 of 2013
.....

Dated this the 7th day of August, 2015

JUDGMENT

Petitioners who were initially appointed as Lecturers in Physics in the College of Applied Science under the Institute of Human Resources Development ('IHRD' for short) and presently working as Principals of Technical Higher Secondary Schools, have filed this writ petition, aggrieved by the refusal of the 2nd respondent to absorb them as Lecturers in Engineering Colleges despite availability of vacancies in the College of Engineering, Poonjar and Kalluppara.

2. The petitioners were appointed as Lecturers in Physics under the 2nd respondent-IHRD, on the basis of applications submitted by them pursuant to notification dated 5.8.1993 of the IHRD. They had been working as Lecturers in Physics from 25.8.1994 onwards in the College of Applied Sciences, Peerumedu and Calicut respectively. Thereafter they were appointed on transfer, as Principals of Technical Higher Secondary Schools. At the time of their initial appointment,

teaching faculties in different streams- Engineering Colleges, College of Applied Sciences, Technical Higher Secondary Schools, Polytechnic Colleges etc. under the IHRD were being appointed from a common rank list and were inter-transferable to either of the streams. Subsequently, consequent to implementation of AICTE Scheme, in Engineering Colleges, the Lecturers under the stream of Engineering Colleges were bifurcated and made non-inter-transferable.

3. When UGC Scheme was implemented in the case of teaching faculties in non-engineering subjects, several of the Lecturers in Arts and Science subjects were absorbed in the stream of Engineering College Services on the basis of the options submitted by them. Lecturers like petitioners could not submit option to Engineering College service, since the second respondent did not call for options from the Lecturers working under various establishments other than the Engineering Colleges. Accordingly, the Lecturers of Engineering Colleges alone were absorbed in the Engineering College Service and Lecturers of other institutions continued in the respective

institutions.

4. Aggrieved by this, petitioners and other Lecturers who had to continue in their respective institutions, without getting an opportunity to opt, approached this Court in W.P.(C) No.18048 of 2007 and connected cases. In the counter affidavit in W.P.(C) 18048/2007, IHRD stated as follows.

"The various posts of Lectures in Arts and Science subjects in the Engineering Colleges will be filled up inviting fresh options and in case the petitioner fulfills the academic and other requirements as per the notification to be issued at that time, his case shall also be considered."

5. In view of the above undertaking this Court disposed of those writ petitions by Ext.P2 judgment directing as follows:

"5. Therefore these writ petitions will stand disposed of directing that the IHRD shall invite options and consider the case of petitioners subject to their the academic qualifications and other requirements, if they have opted in response to such invitation of options. This shall be done, as expeditiously as possible, within two months of production of copy of this judgment."

Needless to say that the claim of petitioners for UGC benefits will depend upon the orders to be

passed as directed above."

6. Thereafter the 2nd respondent invited options and on the basis of options submitted, a seniority list of Lecturers in Arts and Science subjects who have opted Engineering College Service was published as per Ext.P3, on 6.9.2010. Petitioners were ranked 5 and 6 in this list under the category of Lecturer in Physics.

7. Petitioners pointed out that the Lecturers up to serial No.4 in Ext.P3 list are already absorbed in Engineering Colleges and they were given the benefit of UGC scheme with effect from 1.1.1996. But the petitioners were not absorbed even though there were vacancies. It was at this stage, the petitioners approached this Court by filing this writ petition.

8. As per the counter affidavit/statement of the Govt. and IHRD-the second respondent, AICTE pay package was extended to the teaching faculties of Engineering subjects in Engineering Colleges in IHRD on the same terms and conditions issued by the Government from time to time with effect from 1.1.1996. Consequent on the extension of AICTE package in Engineering

Colleges, the teaching faculties in Engineering Colleges were separated from the rest as a separate service and were made non-inter transferable. It is further stated that the UGC pay package, as implemented in Government Colleges were extended to the Lecturers of Arts and Science subjects working in Engineering Colleges with effect from 1.7.2006, as per the decision dated 17.4.2007 of the executive committee of IHRD.

9. In the statement of IHRD, it is stated that the transfer made earlier is under review by Government and will be corrected, on finalisation of staff pattern and special rules by IHRD. Regarding the vacancy position nothing is mentioned in the statement. According to them, since the Government have ordered a vigilance enquiry, in view of the introduction of AICTE package and UGC package, the transfer as requested by the petitioners is not possible. It is further stated that the request of the petitioners will be looked into at the time when review is made in accordance with rules.

10. In the counter affidavit of Government, it is stated that staff pattern and special rules in IHRD were revised from time to

time and were being implemented in IHRD without prior concurrence of Government. Therefore Government constituted a Committee to study the revision made in staff pattern and special rules. It is further stated that the report of the Committee considering actual work load under each scheme was considered by Government and staff pattern was approved, but it is yet to be implemented and the actual number of vacancies can be assessed only after implementation of the staff pattern. They have also stated that transfer as requested by the petitioners from Applied Science Colleges is not possible, since AICTE package has been extended to teaching faculty in Engineering Colleges under IHRD on par with the instructions issued by the Government from time to time and there is no transferability to Engineering College Services.

11. Petitioners point out that persons who are rank nos.1 to 4 have already been appointed in Engineering Colleges as per Ext.P4 order dated 21.12.2010, and they have already been granted UGC pay package as per the guidelines issued in Government Order dated 21.12.1999 notionally with effect from

1.1.1996. It is clear from paragraph 2 of Ext.P4 order, as pointed out by petitioners, that the benefit of UGC scale from 1.1.1996 is granted to Sl.No.1 to 4 in Ext.P3 list, referring to Ext.P2 judgment of this Court- ie. W.P.(C) No.25276 of 2007, 18048 of 2007, 28370 of 2007 etc. It is pertinent to note that Ext.P2 judgment had also made it clear that claim of petitioners for UGC benefits will depend upon the orders to be passed after considering the claims of petitioners based on the options to be called for by IHRD. As petitioners were also parties to Ext.P2 judgment and rank no. 1 to 4 in Ext.P3 list, have already been granted the benefits of UGC scheme as per Ext.P4, there is no reason for discriminating the petitioners and denying them identical benefits, as directed in Ext.P2 judgment.

12. The fact that respondents were parties to Ext.P2 judgment cannot be disputed. That writ petition was disposed of, on the basis of the undertaking of the second respondent that they were going to call for fresh options in order to fill up the vacancies of Lecturers in Engineering Colleges. It is thereafter, in implementation of the said judgment that the second respondent

issued notification calling for fresh options; petitioners submitted their options and 2nd respondent issued Ext.P3 list including the petitioners in it. The respondents do not have a case that the petitioners do not have the requisite educational qualification. There is no case for them to the effect that there is any further requirement to be fulfilled by them for appointment in the Engineering College Service.

13. The appointment of the petitioners were at a time when there was a common cadre of Lecturers for all the institutions under the second respondent and postings and transfers could be made to either of the institutions. It is admitted by the respondents that seniors were being posted to Colleges of Applied Sciences. Petitioners' initial appointments were in College of Applied Sciences. As long as the petitioners are duly qualified and there are vacancies there is no justification in denying them transfer to the Engineering College Service. There is no justification in waiting for the results of the vigilance inquiry to grant them the benefits, when the respondents are bound by the direction in Ext.P2 judgment.

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Under the above circumstances, the respondents are directed to see that the petitioners are considered for transfer against the vacancies of Lecturers (re-designated as Assistant Professors) in Physics available in the Engineering Colleges under the 2nd respondent within a period of two months from the date of receipt of a copy of this judgment and to grant them the same along with benefit of UGC scheme, as done in Ext.P4.

This writ Petition is allowed accordingly.

Sd/-

**P.V.ASHA,
JUDGE.**

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