

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(C).No. 27043 of 2011 (E)

PETITIONER:

**PREM KUMARI.S. DEMONSTRATOR,
ELECTRICAL & ELECTRONICS DEPARTMENT, S.N.POLYTECHNIC
KOTTIYAM P.O., KOLLAM-691 302, RESIDING AT
DEVI KRIPA, KEPPAYIL, MUNDAYIL
VARKALA P.O., THIRUVANANTHAPURAM-695 141.**

BY ADV. SRI.B. SURESH KUMAR

RESPONDENTS:

- 1. THE STATE OF KERALA
REP. BY ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT
FORT P.O., THIRUVANANTHAPURAM-695 023.**
- 2. THE SECRETARY TO THE HIGHER EDUCATION
DEPARTMENT, GOVERNMENT SECRETARIAT, FORT P.O.
THIRUVANANTHAPURAM-695 023.**
- 3. THE DIRECTOR OF TECHNICAL EDUCATION
OFFICE OF THE DIRECTOR OF TECHNICAL EDUCATION
FORT P.O., THIRUVANANTHAPURAM-695 023.**
- 4. THE SNIOR JOINT DIRECTOR OF TECHNICAL
EDUCATION (PS) OFFICE OF THE DIRECTOR OF
TECHNICAL EDUCATION, FORT P.O.
THIRUVANANTHAPURM-695 023.**
- 5. THE MANAGER, S.N.POLYTECHNIC,
KOTTIYAM P.O., KOLLM-691 302.**
- 6. THE PRINCIPAL, S.N.POLYTECHNIC,
KOTTIYAM P.O., KOLLAM-691 302.**

**R5 & 6 BY ADV. SRI.A.N.RAJAN BABU
R5 & 6 BY ADV. SRI.P.GOPALAKRISHNAN (MVA)
R1 TO R4 BY GOVERNMENT PLEADER SRI. T.R. RAJESH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

**EXHIBIT P1: A TRUE COPY OF THE KERALA TECHNICAL EDUCATION
SERVICE (AMENDMENT) RULES 1989 (GO (P)NO.261/89/
H.EDN. DATED 19/12/1989) ISSUED BY THE GOVERNMENT.**

**EXHIBIT P2: A TRUE COPY OF THE KERALA TECHNICAL EDUCATION
SERVICE (AMENDMENT)SPECIAL RULES 2010, (GO (P)
NO.366/2010/H.EDN.DATED 8/11/2010) ISSUED BY THE
GOVERNMENT.**

**EXHIBIT P3: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN
O.P.NO.34441/2000 DATED 6.3.2003**

**EXHIBIT P4: TRUE COPY OF THE JUDGMENT DATED 31.01.2012 IN W.P.(C)
NO.23416/2010 PASSED BY THIS HON'BLE COURT**

**EXHIBIT P5: TRUE COPY OF THE ORDER DATED 15.06.2009 ISSUED BY THE
GOVERNMENT**

**EXHIBIT P6: TRUE COPY OF THE NON LIABILITY CERTIFICATE DATED 26.05.2010
ISSUED BY THE COLLEGE**

RESPONDENTS' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 27043 of 2011 (E)

Dated this the 22nd day of September, 2015

J U D G M E N T

The petitioner has raised a challenge to the qualification prescribed by the Special Rules, which in effect, dis-entitles her from any promotion in the Polytechnic of respondents 5 and 6, where she was initially appointed as Demonstrator on 30.12.1997.

2. At the time of appointment promotion in the Technical Education Department and the colleges coming under the Department were governed by Ext.P1 Special Rules. The promotion to the post of Lecturer was to be from the feeder categories specified thereunder. By transfer from the Kerala Technical Education Subordinate Service; from the categories mentioned therein under item nos. 1 and 2, and in the absence of such candidates from item no.3 i.e., from other services in the Technical Education Department. Direct recruitment was only in the

circumstance of there being no candidate available in all the above three categories. The qualification prescribed earlier was 60% marks for direct recruitment and relaxation, with no insistence of 60% marks, with respect to promotions from feeder categories. Though, Demonstrator was not initially included in the feeder category, by Ext.P3 judgment, this Court found that the same would come under category (3) as mentioned above. In any event, even going by Ext.P2 amendment brought to the Special Rules, Demonstrator has been included under the feeder category.

3. The petitioner's grievance is in so far as the qualification prescribed being stipulated as first class Bachelor's Degree, both for direct recruitment and transfer. The petitioner is aggrieved insofar as the petitioner's chances for promotion are stultified for ever. The petitioner raised two contentions; (1) with respect to the challenge insofar as the petitioner having been appointed to the post of Demonstrator prior to the amendment to the Special

Rules and (2) for reason of the vacancies arising prior to the introduction of the Special Rules, not being filled up by the Management.

4. The amendment made to the Special Rules, as is indicated by the Government, in paragraph 5 of its counter affidavit, is made to improve the quality of the faculty and to make the qualification/experience, in line with the revised curriculum and syllabi. There can be no defect found in the amendment to the Special Rules by reason only of qualification being upgraded so as to improve the quality of the faculty. The petitioner also cannot raise any vested right for promotion since the right is available only for consideration to the higher post when vacancies arise, and such consideration is made by the Management. This, however, has to be dealt with on the examination of the other contention of the petitioner with respect to availability of vacancies.

5. The Management has filed a counter affidavit which indicates that a vacancy arose on 15.9.2006 on one T. Sajeev, a Lecturer in Electrical Branch, applying for voluntary retirement. In the said vacancy one Akash Kumar K.S., Demonstrator, who is admittedly senior to the petitioner, was appointed. However, the voluntary retirement of T.Sajeev was objected to by the Accountant General and hence, Akash Kumar's promotion was not approved. Then, subsequently, on the retirement of another Lecturer in Electrical Department on 31.3.2009, the said Akash Kumar was accommodated in the said vacancy. A further vacancy arose on the retirement of the Head of Section on 1.6.2011, when the amendment to the Special Rules had come into force. It is also pointed out that subsequently, the Accountant General, on the basis of the direction in a Writ Petition, had approved the V.R.S. of T.Sajeev, which also happened only in the year 2010, prior to which the Special Rules had come into force.

6. In such circumstance, no vacancy arose prior to the amendment to the Special Rules. The petitioner, after the amendment to the Special Rules, cannot raise any claim since admittedly the petitioner had only 59% marks in the graduate examination. The Hon'ble Supreme Court in **P. Suseela v. University Grants Commission - AIR 2015 SC 1976** succinctly noticed the distinction between an 'existing right' and a 'vested right'. The petitioner has no right much less a vested right to be promoted. The right, if at all, is to be considered for promotion, when the vacancies in the higher post are filled up; which right would be available only if he/she satisfies the eligibility conditions.

7. However, it is to be noticed that when the petitioner was appointed to the service and confirmed thereon, the rules provided an avenue for promotion which has now been taken away. The petitioner also cannot aspire to now obtain the eligibility since the prescription now brought in is with respect to a minimum percentage in the

qualifying exam; which she does not have and cannot practically improve upon.

8. Hence, on the petitioner submitting a representation before the Government, the Government shall consider the case of the petitioner who was in service prior to the introduction of the Rules, for exemption in the matter of promotions, as available in the earlier Special Rules, which were applicable at the time of the appointment of the petitioner. The petitioner shall file a representation before the 1st respondent within a period of three weeks from the date of this judgment and the 1st respondent shall, with notice to the petitioner, hear and dispose of the same within three months from that date, untrammelled by the findings in this judgment.

The writ petition is disposed of.

Sd/-
K.VINOD CHANDRAN,
JUDGE