

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WP(C).No. 29152 of 2012 (T)

PETITIONER(S):

**JEYESH KUMAR.P.M. AGED 33 YEARS
INSTRUCTOR HIGHER GRADE
COMPUTER ENGINEERING DEPARTMENT
N.S.S.POLYTECHNIC COLLEGE, PANDALAM.**

BY ADV. SRI.LIJU. M.P

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.**
- 2. THE DIRECTOR OF TECHNICAL EDUCATION
OFFICE OF DIRECTOR OF TECHNICAL EDUCATION
THIRUVANANTHAPURAM.**

R1&2 BY ADV. GOVERNMENT PLEADER, SRI. RINNY STEPHEN CHAMAPARAMBIL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE G.O.(MS)NO.661/65/EDN.DT.13-12-1965.
- EXHIBIT P2: TRUE COPY OF THE G.O.(MS)376.63 DT.7-6-1963.
- EXHIBIT P3: TRUE COPY OF THE REPRESENTATION DT.16-2-2011 SUBMITTED BY PETITIONER BEFORE R1.
- EXHIBIT P4: TRUE COPY OF THE JUDGMENT DT.30-11-2011 PASSED IN WPC 38092/2010 OF THIS HON'BLE COURT.
- EXHIBIT P5: TRUE COPY OF THE NOTE SUBMITTED BY THE PETITIONER.
- EXHIBIT P6: TRUE COPY OF THE GO(RT)NO.454/12/H.EDN.DT.5-3-2012.
- EXHIBIT P7: TRUE COPY OF THE GO(MS)NO.821/EDN. DT.18-12-1963.

RESPONDENT'S EXHIBITS:-

NIL

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 29152 of 2012

Dated this the 18th day of June, 2015

JUDGMENT

The petitioner is working as a Trade Instructor Grade-I in N.S.S. Polytechnic College, Pandalam. In the writ petition he is essentially aggrieved by the provisions of the Kerala Technical Education Sub-ordinate Service Special Rules 2012, whereby, for the post of Demonstrator, the recruitment is contemplated through three modes, namely, (1) by transfer from Trade Instructor of the any Grade/Instrument Mechanic/Boiler Mechanic, (2) in the absence of suitable candidates under item (1), by transfer from any other category mentioned in the Kerala Technical Education Sub-ordinate Service Special Rules, having five years service in the Technical Education Department and (3) by direct recruitment. As per the aforementioned rules, the qualification to be possessed by a person seeking appointment for the post of Demonstrator, either through by-transfer route or through the direct recruitment, is the same and the candidates have to possess a diploma in the appropriate branch of engineering/technology awarded by a University/Government after undergoing regular course of study for not less than three years or its equivalent. The grievance of the petitioner in the writ petition is, essentially, that the requirement of educational qualifications for both, in-service candidates, who can

aspire for the post of Demonstrator through the by-transfer method of recruitment and for those candidates, who seek appointment to the post through direct recruitment, is the same and this puts the in-service candidates at a definite disadvantage in the matter of appointment to the post of Demonstrator, when pitted against candidates coming through the direct recruitment route. Although in the writ petition, there is no specific challenge against the rules referred to above, it is the contention of counsel for the petitioner that, by Ext.P3 representation, he had pointed out the aforesaid anomaly in the recruitment rules to the Government and although the Government was directed, through Ext.P4 judgment, to consider the representation of the petitioner, by Ext.P6 order, that was passed by the Government pursuant to Ext.P4 judgment, the Government does not specifically advert to the grievance highlighted by the petitioner in Ext.P3 representation, namely the anomaly in the rules. The petitioner would therefore, submit that it is necessary that the Government reconsiders the issue that was highlighted by the petitioner in Ext.P3 representation afresh, after dealing with the specific contentions raised by the petitioner with regard to the anomaly in the rules, as also the hardship faced by the in-service candidates, through a strict application of the said rules.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that, while passing Ext.P6 order, pursuant to Ext.P4 judgment of this Court whereby the Government was directed to consider and pass orders on Ext.P3 representation of the petitioner, the Government has not specifically adverted to the issue pointed out by the petitioner namely, the alleged anomaly in the recruitment rules, which mandates that both, persons applying for the post of Demonstrator through the by-transfer route (applicable for in-service candidates) and through the direct recruitment route, have to possess the same educational qualification. It is the specific case of the petitioner in the writ petition that, insisting on the same educational qualification from two different categories of persons, amounts to an injustice, in so far as in-service candidates are concerned, and this is an aspect that has to be considered by the Government for the purposes of deciding whether the recruitment rules need to be amended suitably or not. Inasmuch

as in Ext.P6 order passed by the Government, I do not find such an exercise as having been done, I quash Ext.P6 order and direct the 1st respondent to consider and pass fresh orders on Ext.P3 representation preferred by the petitioner. While passing orders as directed above, the Government shall take note of the fact that in Ext.P3, the reference by the petitioner is to the erstwhile rules that prevailed and not the Kerala Technical Education Sub-ordinate Service Special Rules, 2012. While passing orders as directed in this judgment therefore, the Government shall consider the representation of the petitioner in the light of the Special Rules, 2012 as well, where the alleged anomaly pointed out by the petitioner still persists. The Government shall take a decision in the matter within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner.

The writ petition is disposed as above.

sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE