

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No. 26449 of 2014 (E)

PETITIONER(S) :

1. DR. SAJITHA B.,
MANGALYA GRA C-204, ETTAYOORKONAM LANE, KURUVIKKADU,
VATTIYOORKAVU P.O., THIRUVANANTHAPURAM-695013.
2. MS. RAFEEKA BEEVI M.,
'KAJAH MANZIL', AV STREET, BALARAMAPURAM P.O.,
THIRUVANANTHAPURAM-695501.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR

SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURIAN THOMAS.

RESPONDENT(S) :

1. UNION OF INDIA,
DEPARTMENT OF HEALTH AND FAMILY WELFARE (STATISTICS
DIVISION PRC),
MINISTRY OF HEALTH AND FAMILY WELFARE, NIRMAN BHAVAN,
NEW DELHI-110 108, REPRESENTED BY ITS SECRETARY.
2. UNIVERSITY OF KERALA,
THIRUVANANTHAPURAM-695 034,
REPRESENTED BY ITS REGISTRAR.
3. HONORARY DIRECTOR,
HEAD OF DEPARTMENT,
OFFICER IN CHARGE OF POPULATION RESEARCH CENTRE (PRC),
DEPARTMENT OF DEMOGRAPHY, UNIVERSITY OF KERALA,
KARIYAVATTOM CAMPUS, THIRUVANANTHAPURAM-695 581.

BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL &
BY SRI.BECHU KURIAN THOMAS, SC, UNIVERSITY OF KERALA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT. P1: TRUE COPY OF THE NOTIFICATION DATED 5/4/2013 ISSUED BY THE 2ND RESPONDENT.
- EXT. P2: TRUE COPY OF THE MEMO DATED 1/2/2014, ISSUED TO THE 1ST PETITIONER BY THE 2ND RESPONDENT.
- EXT. P3: TRUE COPY OF THE MEMO DATED 6/2/2014, ISSUED TO THE 2ND PETITIONER BY THE 2ND RESPONDENT.
- EXT. P4: TRUE COPY OF THE REPLY TO RTI APPLICATION CONTAINING THE RANK LIST DATED 14/3/2014, ISSUED BY THE 2ND RESPONDENT.
- EXT. P5: TRUE COPY OF THE RTI APPLICATION DATED 7/3/2014, SUBMITTED BY THE 2ND PETITIONER.
- EXT. P5 (A) : TRUE COPY OF THE TRANSLATION COPY FROM MALAYALAM TO ENGLISH OF THE RTI APPLICATION DATED 7/3/2014, SUBMITTED BY THE 2ND PETITIONER.
- EXT. P6: TRUE COPY OF THE REPLY ISSUED BY THE 2ND RESPONDENT TO THE RTI APPLICATION SUBMITTED BY THE 2ND PETITIONER DATED 18/3/2014.
- EXT. P6 (A) : TRUE COPY OF THE TRANSLATION COPY FROM MALAYALAM TO ENGLISH THE REPLY BY THE 2ND RESPONDENT TO THE RTI APPLICATION SUBMITTED BY THE 2ND PETITIONER DATED 18/3/2014.
- EXT. P7: TRUE COPY OF THE LETTER DATED 25/2/2014 ISSUED BY THE 1ST RESPONDENT.
- EXT. P8: TRUE COPY OF THE LETTER DATED 22/3/2014, ISSUED BY THE 2ND RESPONDENT TO THE DIRECTOR, DEPARTMENT OF HEALTH AND FAMILY WELFARE STATISTIC DIVISION.
- EXT. P9: TRUE COPY OF THE LETTER DATED 24/6/2014, ISSUED BY THE 2ND RESPONDENT TO THE DIRECTOR, DEPARTMENT OF HEALTH AND FAMILY WELFARE STATISTIC DIVISION.
- EXT. P10: TRUE COPY OF THE LETTER DATED 17/7/2014 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT ALONG WITH THE ENCLOSURE.
- EXT. P11: TRUE COPY OF THE NOTIFICATION DATED 19/9/2014 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.MUHAMED MUSTAQUE, J.

W.P.(C)No.26449 of 2014

Dated this the 5th day of March, 2015

JUDGMENT

Petitioners applied for the post of Data Assistant pursuant to Ext.P1 notification issued by the University of Kerala. This appointment was on temporary basis in the Population Research Centre, Karivattom. The Population Research Centres (PRCs) under the Ministry of Health and Family Welfare under the Union Government, is fully funded by the Central Government. The petitioners approached this Court challenging Ext.P11 notification issued subsequent to Ext.P1 for filling up the post of the Data Assistant. The petitioners submit that when the rank list has been published pursuant to Ext.P1, there is no scope for issuing further notification to fill up the same post, for which the petitioner has applied and included in the rank list.

2. In this matter, a counter affidavit has been filed on behalf of the first respondent. It is stated that many of the vacancies in the PRCs were found to be more than one year duration. The Government by Policy has decided to fill up those vacancies by temporary hands to cut down the expenditure. It is admitted that the post of the Data Assistant was lying vacant more than a year. It is submitted that in view of the decision not to make a regular appointment in the vacancies in PRCs, the Ministry of Health and Family Welfare is not in a position to allow the regular appointment in the abolished post of the Data Assistant. Therefore, it was decided to fill the post on contract basis. Accordingly, fresh notification was issued.

3. A candidate applying for a post in the public appointment has no indefeasible right for selection. Nevertheless, he has indefeasible right for consideration for

the selection in terms of the notification issued by the authority. Ext.P1 notification clearly spells out that the appointment is on temporary basis, essentially, indicating that this is on contract basis. It was not a regular appointment. The policy decision as such now evolved would only apply in the matter in making regular appointment in PRCs. However, overlooking the fact that Ext.P1 was issued inviting application to fill up the post on temporary basis, Ext.P11 was also issued on temporary basis. The authorities seems proceeded as though Ext.P1 notification was for regular appointment as revealed from the counter affidavit itself. The only difference in Exts.P1 and P11 is regarding pay. The Authorities have no case that it is on account of the higher scale of pay shown in Ext.P1, they have issued fresh notification. On the other hand, the case of the establishment is that they have not intend to fill the post by a regular

appointment. In view of the matter that Ext.P1 was issued only to appoint the candidates on temporary basis. I am of the view, overlooking the candidature in the rank list published pursuant to Exts.P1, Ext.P11 could not have been issued. Therefore, Ext.P11 is quashed. It is open for the establishment to appoint any one among the candidates, who are included in the rank list pursuant to Ext.P1 notification.

The writ petition is disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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