

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

WP(C).No. 28781 of 2015 (W)

PETITIONER :

SHAMEER J.M, AGED 32 YEARS
PHYSIOTHERAPIST, RESIDING AT SHAMEER MANZIL
VAVARA AMBALAM, POTHENCODE P.O
THIRUVANANTHAPURAM -695 584.

BY ADV. SRI.P.NANDAKUMAR

RESPONDENT :

REGIONAL CANCER CENTRE
MEDICAL COLLEGE CAMPUS
THIRUVANANTHAPURAM-695 011 REPRESENTED BY ITS DIRECTOR.

R BY ADVS. SRI.ABDUL KHARIM, SC, REGIONAL CANCER CENTRE
SRI.M.SREEKUMAR, SC, REGIONAL CANCER CENTRE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 - TRUE COPY OF THE EXPERIENCE CERTIFICATE DATED 14.11.2014 ISSUED BY THE RESPONDENT.

EXT.P2 - TRUE COPY OF THE EXPERIENCE CERTIFICATE DATED 25.08.2009 ISSUED BY MEDISCOPE HOSPITAL, BANGALORE.

EXT.P3 - TRUE COPY OF THE EXPERIENCE CERTIFICATE DATED 31.01.2013 ISSUED BY AHALIA HOSPITAL, ABU DHABI

EXT.P4 - TRUE COPY OF THE MARK LIST OF THE PETITIONER FROM ALLAHABAD AGRICULTURAL UNIVERSITY.

EXT.P5 - TRUE COPY OF THE BACHELOR OF PHYSIOTHERAPY CERTIFICATE ISSUED BY ALLAHABAD AGRICULTURAL UNIVERSITY.

EXT.P6 - TRUE COPY OF THE ELIGIBILITY CERTIFICATE ISSUED BY UNIVERSITY OF KERALA DATED 25.04.2012

EXT.P7 - TRUE COPY OF THE NOTIFICATION DATED 28.02.2015 ISSUED BY THE RESPONDENT.

EXT.P8 - TRUE COPY OF THE APPLICATION DATED 06.03.2015 SUBMITTED BY THE PETITIONER.

EXT.P9 - TRUE COPY OF THE NOTIFICATION DATED 26.08.2015 ISSUED BY THE RESPONDENT.

EXT.P10 : COPY OF NOTIFICATION DATED 15.03.2000

EXT.P11 : COPY OF JUDGMENT DATED 02.11.2010

RESPONDENT(S)' EXHIBITS

EXT.R1 : COPY OF LETTER NO.DDE/SHIATS-DU/VERIFICATION/2015-47G DATED 27.5.2015

EXT.R2 : COPY OF THE LETTER NO.F.NO.6-1(6)/2006(CPP-I) DATED 14.5.2010

EXT.R3 : COPY OF ORDER IN WP(C)NO.2403/04 DATED 22.4.10 OF THE HON'BLE HIGH COURT, NEWDELHI

EXT.R4 : COPY OF NOTICE NO.F.6-9/2004(CPP-I) DATED 23.8.2005

/TRUE COPY/

P.A TO JUDGE

AV

K.VINOD CHANDRAN, J.

W.P.(C) No.28781 of 2015

Dated this the 16th day of November, 2015

J U D G M E N T

The petitioner had been continuing, on a project, in a temporary capacity, as a Physiotherapist under the respondent Centre. The petitioner is said to have a Bachelors Degree in Physiotherapy as evidenced by Ext.P5. Initially, the Regional Cancer Centre decided to appoint persons to various designations, regularly and Ext.P7 notification was issued inviting applications from regular/temporary/daily wage/project staff working in Regional Cancer Centre. The petitioner was the only Physiotherapist who could have applied under Ext.P7 and he did so.

2. But however, the respondent Centre has issued Ext.P9 by which they have sought for appointment on regular basis from the open merit candidates. The petitioner contends that, he had been continuing in the organisation as a Physiotherapist for the last three years and that, he was not put to notice as to why he was not eligible to be considered for the regular post. The petitioner also contends that, now the respondent has come forward to contend that the petitioner's degree is not as

contemplated by the Rules.

3. The dispute raised by the respondent is that, the petitioner had admittedly undergone the course through Distance Mode of Education. The respondent also contends that, initially the temporary appointment was granted only by reason of Ext.P6 equivalency certificate issued by the Kerala University. Only later on, it came to the notice of the respondent that, the petitioner had carried on the course under the Distance Mode of Education. In fact a reference to the certificate does not indicate that it was under the Distance Mode but however, the petitioner admits that he had carried on the course under the Distance Mode of Education. The equivalence granted by Ext.P6 is to the degree obtained on a regular study from the University, while the petitioner did a distance education course.

4. The learned counsel for the petitioner would in fact point to Ext.P10 notification by which the Allahabad Agricultural University was deemed to be a University for the purposes of UGC Act, 1956. A withdrawal of affiliation made by the UGC, of the Distance Education Courses, was subsequently cancelled, by granting *ex post facto* approval for the courses conducted

between 01.06.2001 to 31.08.2005. The said fact is also recorded in Ext.P11, is the contention. However, the specific contention raised by the respondent in their counter affidavit is that, the dispute is not with respect to the recognition of the University; or the Distance Mode of Education but however, with respect to the equivalency claimed by the petitioner for the course. The petitioner is said to have carried on the course under the Distance Mode of Education and it is the contention of the respondent that, the particular course in Physiotherapy is one which needs extensive practical training and that, the petitioner having not obtained the same under the Distance Mode, definitely cannot be considered for regular appointment by the respondent, which is a premier institution in the care and treatment of cancer, in the State.

5. Admittedly the petitioner was granted temporary appointment on the basis of the equivalence certificate (Ext.P6) issued by the University of Kerala. Only later by Ext.R1 the respondent was informed that the course carried on by the petitioner was under distance mode. The practise of degree in Physiotherapy being granted under the distance mode of education has been deprecated by the UGC itself as is seen in

Ext.R2. Merely because an institution is recognised; all courses carried on by the institution cannot be deemed to be recognised. It is to ensure that a proper degree has been obtained, equivalence is required from Universities within the State. That is so since the employer within the State is aware of the Courses carried on by the Universities within the State and then also depend on such Universities to speak on courses and certificates obtained from outside the State.

6. On the question of equivalence, the Honourable Supreme Court in *Guru Nanak Dev University v. Sanjay Kumar Katwal* [2009 (1) SCC 610] held as follows :

" 15. The first respondent has passed his MA (OUS) from Annamalai University through distance education. Equivalence is a technical academic matter. It cannot be implied or assumed. Any decision of the academic body of the university relating to equivalence should be by a specific order or resolution, duly published. The first respondent has not been able to produce any document to show that the appellant University has recognised MA (English) (OUS) of Annamalai University through distance education as equivalent to MA of appellant University. Thus, it has to be held that the first respondent does not fulfil the eligibility criterion of the appellant University for admission to the three year law course.

16. The first respondent made a faint attempt to

contend that the distance education system includes “correspondence courses” and therefore, recognition of MA (correspondence course) as equivalent to MA course of the appellant University would amount to recognition of MA, OUS (distance education) course, as an equivalent. For this purpose, he relied upon the definition of “distance education system” in Section 2 (e) of the Indira Gandhi National Open University Act, 1985. But there is nothing to show that Annamalai University has treated correspondence course and OUS (distance education) course as the same. What is more important is that the appellant University does not wish to treat the correspondence course and distance education course as being the same. That is a matter of policy. Courts will not interfere with the said policy relating to an academic matter.”

This Court does not find any reason to interfere with the decision of the employer, the respondent. Hence, this writ petition stands dismissed.

Sd/-
K.VINOD CHANDRAN, JUDGE