

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

WP(C).No. 31585 of 2013 (W)

PETITIONER(S):

M.V.PRASAD,
U.D.CLERK, DIRECTOR'S OFFICE
NATIONAL INSTITUTE OF TECHNOLOGY, NIT CAMPUS P.O.
CALICUT.

BY ADVS.SRI.T.P.PRADEEP
SRI.P.K.SATHEES KUMAR
SRI.SHAJI P.CHALY

RESPONDENT(S):

1. NATIONAL INSTITUTE OF TECHNOLOGY,
REPRESENTED BY ITS DIRECTOR
NATIONAL INSTITUTE OF TECHNOLOGY, NIT CAMPUS P.O.
CALICUT-673032.

2. THE REGISTRAR,
NATIONAL INSTITUTE OF TECHNOLOGY, NIT CAMPUS P.O.
CALICUT-673032.

3. BOARD OF GOVERNORS,
REPRESENTED BY ITS CHAIRMAN
NATIONAL INSTITUTE OF TECHNOLOGY, NIT CAMPUS P.O.
CALICUT-673032.

4. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY
MINISTRY OF HUMAN RESOURCES DEVELOPMENT OF
SECONDARY AND HIGHER EDUCATION
NEW DELHI-110 001.

5. BALAN.A.,
DIVISIONAL ACCOUNTANT, ENGINEERING UNIT
NATIONAL INSTITUTE OF TECHNOLOGY, NIT CAMPUS P.O.
CALICUT-673032.

R4 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA
R1-R3 BY ADV. SRI.MILLU DANDAPANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS:

EXHIBIT P1: COPY OF THE CIRCULAR OF THE 2ND RESPONDENT DATED 29.3.2000.

EXHIBIT P2: COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 31.01.2013.

EXHIBIT P3: COPY OF THE REPRESENTATION DATED 15.2.2013.

EXHIBIT P4: COPY OF THE JUDGMENT DATED 09.07.2013 IN WPC.NO.7024/2013.

EXHIBIT P5: COPY OF THE RELEVANT PAGE CONTAINING THE DECISION OF THE 3RD RESPONDENT UNDER THE SUBJECT 'BG 24.15 REQUEST OF MV PRASAD UDC, DIRECTORS OFFICE TO GIVE PROMOTION AS DIVISIONAL ACCOUNTANT' TAKEN ON 22.10.2013.

EXHIBIT P6: COPY OF THE COUNTER AFFIDAVIT FILED BY THE 2ND RESPONDENT IN WPC.NO.8301/2012 (WITHOUT EXHIBITS)

EXHIBIT P7: COPY OF THE REPLY DATED 03.06.2013 UNDER THE RIGHT TO INFORMATION ACT.

RESPONDENT(S) ' EXHIBITS:

EXHIBIT R1(a): PHOTOCOPY OF MINUTES OF THE MEETING OF the DEPARTMENTAL PROMOTION COMMITTEE HELD ON 01.01.2013

True Copy/

P A to Judge

A.MUHAMED MUSTAQUE, J.
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W.P(C).No.31585 of 2013
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Dated this the 07th day of January, 2015

JUDGMENT

This Writ Petition pertains to promotion to the post of Divisional Accountant in the National Institute of Technology, formerly known as Regional Engineering College at Calicut. Though notice has been served on the 5th respondent, he has not chosen to appear in Court.

2. Petitioner is initially appointed as Lower Division Clerk in the year 1996. Thereafter he was promoted as Upper Division Clerk in the year 2003. Service conditions of erstwhile employees of NIT was governed by the Calicut Regional Engineering College General Service Rules (hereinafter referred as "REC Rules"). Petitioner submits that in terms of above Rules, he is qualified to get appointment as Divisional Accountant by way of promotion. Petitioner submits that overlooking his qualification as referred in the REC Rules, 5th respondent has been appointed as Divisional Accountant by way of promotion. Petitioner challenging appointment of the 5th respondent as Divisional Accountant approached this Court in W.P(C).No.7024 of 2013. This Court by judgment dated 09.07.2013 directed the

Board of Governors to consider petitioner's objection in promoting the 5th respondent. Thereafter, Ext.P5 decision was taken upholding the appointment of the 5th respondent to the post of Divisional Accountant. It is challenging the said decision, this Writ Petition is filed.

3. In this matter, counter affidavit has been filed on behalf of the respondents 1 to 3. It is denied that the 5th respondent has no qualification for promotion to the post of Divisional Accountant. It is the case of respondents 1 to 3 that since the Constitution of the NIT, the staff need not to qualify in the account test higher or other stipulation as referred in the REC Rules. It is further submitted that in so far as filling up of vacancies is concerned, vacancies which arose prior to the constitution of the NIT were sought to be filled up as per the recruitment rules prevalent in the erstwhile REC Rules and all subsequent vacancies are filled up by the Rules adopted by the NIT. The present vacancy arose on 01.02.2013. However, it is admitted that only model recruitment rules have been made after the formation of NIT and there were no statutory rules at the time of promoting the 5th respondent. It is further submitted that the NIT has every

power to issue executive instructions which would hold the field till the finalization of Recruitment Rules to fill up the gap. Such procedure cannot be said to be illegal or irregular. All the vacancies after the formation of the NIT can be filled according to the executive instructions and they are not bound by REC Rules. In the backdrop of facts as above, only question that arise for consideration is whether recruitment has to be made on the basis of REC Rules or executive instruction of the Board of Governors.

4. Learned counsel for the petitioner relying on Sec.5(d) of the National Institute of Technology Act, 2007 submits that till the rules are altered by the Statutes, REC Rules would hold good. It is apposite to refer to Sec.5(d) of NIT Act:

“Every person employed by a society, immediately before such commencement shall hold his office or service in the corresponding institute for the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held if this Act had not been passed, and shall continue to do so unless and until his employment is terminated or until such tenure,

remuneration and terms and conditions are duly altered by the Statutes.”

5. I am of the view, as on the date of relevant date of vacancy arose, if there are no statutory rules, necessarily the respondents are bound to follow the REC Rules. In view of the unambiguous saving clause made in Sec.5(d) of the NIT Act, the executive instruction cannot find a place in the matter of governing the service conditions or recruitment rules unless the terms and conditions are absent in the REC Rules. The Executive Instruction would hold good only on the non-existence of relevant statutory rules governing the field. In this case, admittedly the REC Rules were in existence prescribing qualification and method of appointment to the post of Divisional Accountant. Therefore, the executive instruction cannot override the mandate of Sec.5(d) of the NIT Act. In the light of the above, the third respondent shall advert whether any other statutory Rules were prevailing at the time of vacancy arose under the NIT Act. If there are no other rules, it is made clear that method of appointment shall only be in accordance with the REC Rules. It is made clear that the stand of the respondents that executive instruction would hold the field is found untenable. Ext.P5 is set aside to

the extent above. The third respondent is directed to reconsider the matter afresh in the light of the above. Needful shall be done within a period of six weeks after hearing the petitioner and the 5th respondent.

The Writ Petition is disposed of.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.

Sbna/09/01/15