

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

WP(C).No. 36851 of 2009 (B)

PETITIONER(S):

**DR.MAHESH R. PILLAI AGED 38 YEARS,
S/O. DR.P.G.RAMAKRISHNA PILLAI, DIRECTOR AND
PROFESSOR, DEPARTMENT OF MANAGEMENT STUDIES,
K.V.M. COLLEGE OF ENGINEERING & INFORMATION TECHNOLOGY,
KOKKOTHAMANGALAM P.O., CHERTHALA, ALAPPUZHA DIST.**

**BY ADVS.SRI.P.T.DINESH
SRI.T.A.ABDUL RASHEED**

RESPONDENT(S):

- 1. MAHATMA GANDHI UNIVERSITY,REPRESENTED
BY ITS REGISTRAR, ATHIRAMPUZHA, PRIYADARSHINI
HILLS P.O., KOTTAYAM-686 560.**
- 2. THE SELECTION COMMITTEE, REPRESENTED BY
ITS CHAIRMAN (VICE CHANCELLOR), MAHATMA GANDHI
UNIVERSITY, ATHIRAMPUZHA, PRIYADARSHINI HILLS P.O.,
KOTTAYAM-686 560.**
- 3. THE SYNDICATE OF MG UNIVERSITY, REPRESENTED BY
ITS CHAIRMAN (VICE CHANCELLOR), MAHATMA GANDHI
UNIVERSITY, ATHIRAMPUZHA, PRIYADARSHINI HILLS P.O.,
KOTTAYAM-686 560.**
- 4. DR.SANTHOSH P.THAMPI,
READER, SCHOOL OF MANAGEMENT AND BUSINESS STUDIES,
ATHIRAMPUZHA, PRIYADARSHINI HILLS P.O.,
KOTTAYAM-686 560.**
- 5. JOHNEY JOHNSON,
LECTURER, SCHOOL OF MANAGEMENT AND BUSINESS STUDIES,
ATHIRAMPUZHA, PRIYADARSHINI HILLS P.O.,
KOTTAYAM-686 560.**

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**6. AMBEESHMON S.,
ANEESH NILAYAM, VARANAD P.O., CHERTHALA,
ALAPPUZHA DISTRICT.**

**R1 TO R3 BY ADV. SRI.VARUGHESE M.EASO, SC, M.G. UNIVERSITY
R4 & R5 BY SRI.KRB.KAIMAL, SENIOR ADVOCATE
ADVS. SRI.B.UNNIKRISHNA KAIMAL
SRI.T.ISSAC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE M.B.A. DEGREE CERTIFICATE ISSUED BY BHARATHIAR UNIVERSITY DATED 5.9.1995 TO THE PETITIONER.

EXT.P2: TRUE COPY OF THE M.PHIL DEGREE CERTIFICATE DTD.26.2.20000 ISSUED BY THE BIRLA INSTITUTE OF TECHNOLOGY & SCIENCE TO THE PETITIONER.

EXT.P3: TRUE COPY OF THE PH.D CERTIFICATE DTD.24.8.2007 ISSUED BY THE BIRLA INSTITUTE OF TECHNOLOGY & SCIENCE TO THE PETITIONER.

EXT.P4: TRUE COPY OF THE NOTIFICATION NO.AD.A.II/2/990/2000 DTD.26.2.2009 BY THE REGISTRAR.

EXT.P5: TRUE COPY OF THE NOTIFICATION NO.AD.A.II/2/990/2000 DTD.9.6.2009 BY THE REGISTRAR.

EXT.P6: TRUE COPY OF THE ORDER NO.2448/AII(1)/2009/ADMN. DTD. 9.6.2009 BY THE 1ST RESPONDENT UNIVERSITY.

EXT.P7: TRUE COPY OF THE COPY OF THE INFORMATION PERTAINING TO THE RANK LIST (STATEMENT) PROVIDED BY THE JOINT REGISTRAR I (ADMN) & PIO PROVIDED UNDER THE RIGHT TO INFORMATION ACT.

EXT.P7(a): TRUE COPY OF THE LETTER NO.AD.AII(1)3798/09 DTD.27.2.2009 WITH A STATEMENT CONTAINING DETAILS OF RANK LIST BY THE JOINT REGISTRAR I (ADMN) & PIO.

EXT.P8: TRUE COPY OF THE M.B.A. DEGREE CERTIFICATE DTD.6.3.1997 OF THE 4TH RESPONDENT ISSUED BY THE ANNAMALAI UNIVERSITY.

EXT.P8(a): TRUE COPY OF THE PH.D DEGREE CERTIFICATE DTD.29.1.2004 OF THE 4TH RESPONDENT ISSUED BY THE UNIVERSITY OF KERALA.

EXT.P9: TRUE COPY OF THE CERTIFICATE DTD.28.7.2004 ISSUED BY THE PRINCIPAL , UNIVERSITY INSTITUTE OF TECHNOLOGY, UNIVERSITY OF KERALA.

EXT.P9(a): TRUE COPY OF THE CERTIFICATE DTD.25.8.2004 ISSUED BY DR.P.MOHANAN, HEAD OF THE DEPARTMENT, DEPARTMENT OF COMMERCE AND MANAGEMENT STUDIES, UNIVERSITY OF CALICUT TO THE 4TH RESPONDENT.

EXT.P10: TRUE COPY OF THE LETTER NO.GAII/C1/1176/08 DTD.26.8.2009 BY THE PUBLIC INFORMATION OFFICER OF THE UNIVERSITY OF CALICUT.

EXT.P11: TRUE COPY OF THE LETTER NO.AD.AII/1/4500/09 DTD.23.10.2009 THE UNIVERSITY BY THE JOINT REGISTRAR I (ADM) & PIO.

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EXT.P12: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DTD.28.5.2009 IN WA.NO.400/2005.

EXT.P13: TRUE COPY OF THE MEMO DTD.23.5.2009 BY THE RESPONDENT UNIVERSITY.

EXT.P14: TRUE COPY OF THE RELEVANT PART OF THE SUBJECTS AVAILABLE FOR NATIONAL ELIGIBILITY TEST AND THE DETAILS OF THE SYLLABUS MANAGEMENT.

C.M.APPL. NO.927/2011 IN WP(C).No. 36851 of 2009 (B)

EXT.P14: TRUE COPY OF THE M.B.A. MARK LIST OF THE PETITIONER WITH THE SERIAL NO.025168 IIN THE EXAM CONDUCTED ON DECEMBER 1993.

EXT.P14(a): TRUE COPY OF THE M.B.A. MARK LIST OF THE PETITIONER WITH SERIAL NO.027734 IN THE EXAM CONDUCTED ON MAY 1994.

EXT.P14(b): TRUE COPY OF THE M.B.A. MARK LIST OF THE PETITIONER WITH SERIAL NO.030220 IN THE EXAM CONDUCTED ON OCTOBER/NOVEMBER 1994.

EXT.P14(c): TRUE COPY OF THE M.B.A. MARK LIST OF THE PETITIONER WITH SERIAL NO.033035 IN THE EXAM CONDUCTED ON APRIL/MAY 1995.

EXT.P15: TRUE COPY OF THE NOTIFICATION NO.F.NO.1-1/2002(PS) EXEMP DTD.14.6.2006 BY THE SECRETARY, U.G.C.

EXT.P16: TRUE COPY OF THE RELEVANT PART OF THE UGC REGULATION ON MINIMUM QUALIFICATIONS FOR APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES AND MEASURES FOR THE MAINTENANCE OF STANDARDS IN HIGHER EDUCATION 2010 DTD.30.6.2010 WHICH IS NOTIFIED IN THE GAZETTE OF INDIA DTD.18.9.2010.

RESPONDENT(S)' EXHIBITS:

EXTR.R5(a): TRUE COPY OF THE MBA DEGREE AWARDED BY THE UNIVERSITY OF PONDICHERRY TO THE 5TH RESPONDENT.

EXT.R5(b): TRUE COPY OF THE STATEMENT OF MARKS DTD.2.3.1995.

EXT.R5(c): TRUE COPY OF THE STATEMENT OF MARKS DTD.4.10.1995.

EXT.R5(d): TRUE COPY OF THE STATEMENT OF MARKS DTD.11.3.1996.

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EXT.R5(e): TRUE COPY OF THE STATEMENT OF MARKS DTD.7.6.1996.

**EXT.R5(f): TRUE COPY OF THE CERTIFICATE ISSUED BY THE UGC TO THE
5TH RESPONDENT.**

**EXT.R5(g): TRUE COPY OF THE NOTIFICATION F.NO.1-1/2002(PS) EXEMP
DATED 14.6.2006 ISSUED BY THE UNIVERSITY GRANTS COMMISSION.**

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No.36851 of 2009**  
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Dated this the 25th day of February, 2015

J U D G M E N T

The petitioner responded to a notification issued by the Mahatma Gandhi University dated 26.02.2009 for the post of Reader cum Lecturer in the school of management in Business Studies under the University. Petitioner was not selected. Challenging selection process selecting respondents 4 and 5, this Writ Petition is filed.

2. The notification prescribed the qualification for Reader and Lecturer. For the Reader post, prescription of the qualification is as follows:

**“Reader in Human Resource
Management/Organisational Behaviour:**

Essential Qualifications:

(a) Good Academic record with Doctoral Degree or equivalent published work in the specialised subjects.

(b) Candidates should also have at least 55% marks or,

an equivalent grade of B in the 7 points scale with latter grades O, A, B, C, D, E, F at Master's Degree level.

(c) 5 years experience of teaching and/or research excluding the period spent for obtaining the research degrees.”

For the Lecturer post, prescription of the qualifications is as follows:

“Lecturer in Marketing:

Essential qualification: Good academic record with at least 55% marks or, an equivalent grade of B in the 7 point scale with latter grades O, A, B, C, D, E, F at Master's Degree level in the relevant subject from an Indian University, or, an equivalent degree from a Foreign University.

Besides fulfilling the above qualifications, candidates should have cleared the eligibility test (NET) for Lecturers conducted by UGC, CSIR or similar test accredited by the UGC. The candidates having Ph.D degree in the subject concerned are exempted from NET.”

3. One of the prescriptions of the qualification of the post of Reader is 5 years experience of teaching after Doctoral Degree. Admittedly, petitioner does not possess 5 years experience of teaching after acquisition of Ph.D. Therefore, petitioner is not qualified for an appointment as Reader. However, learned counsel for the petitioner points out the appointee fourth

respondent is also not having the qualification of 5 years experience after acquiring Ph.D. Therefore, petitioner ought to have been considered for the post of Reader. When petitioner is not qualified for the post and is not entitled for consideration for the post, he cannot question the appointment of fourth respondent when the challenge is made based on competing interest. No doubt, if at all petitioner has a grievance being a member of public, he has remedy elsewhere. But in this case the competing interest is being espoused to sustain the claim of the petitioner. When a person is having no interest, in the sense he has no qualification for the particular post, he has an *locus standi* to challenge the appointment made in the post. Accordingly, I do not find the writ is maintainable in respect of challenge made by the petitioner in respect of the post of Reader. The prayer in this regard is therefore declined.

4. However, the petitioner has a case for non consideration for the post of Lecturer. The University as per Ext.P13 stated reason for rejection of the petitioner for the candidature for the post of Lecturer in marketing. It is stated in Ext.P13 that petitioner does not possess requisite qualification for the post of Lecturer and on account of this, he was not considered for the

post. It appears University further explains the reason in Ext.P13 in the counter stating that petitioner has no Ph.D in the subject concerned.

5. The petitioner has no dispute regarding qualification of the fifth respondent appointed to the post of Lecturer. The question is whether the University's decision to exclude the petitioner from the candidature to the post of Lecturer in marketing is correct or not.

6. Essential qualification referred above clearly indicates qualification in the subject of Marketing. There is no dispute that the petitioner does not possess NET qualification. University's case is that petitioner did not have Ph.D degree in the subject to exempt him from NET qualification. Petitioner is having Ph.D in Emerging Trends in Health Care Management System in Kerala. It has to be noted that Ph.D is normally topic-wise and not subject-wise. Subject in such circumstances has to be understood in the context in which the topic of thesis has been undertaken. There is no specific guidelines how the qualification in Ph.D has to be reckoned in relation to a subject. The petitioner, having acquired the Master's Degree in the relevant subject, necessarily, Ph.D on the particular topics also co-related to the subject in the post. The speciality of the topic

in Ph.D obtained by the fifth respondent in Marketing, does not mean that only persons who are having a topic in marketing in Ph.D concerned alone are qualified. The qualification normally is understood in general sense as referable to class of persons who would otherwise satisfy the criteria. Classification cannot be understood in topic-wise to identify with an individual. The thesis made by the petitioner would also indicate that it is relating to the subject of Emerging Trends in Health Care Management System in Kerala which can have a bearing in the subject referred in the notification. The Ph.D therefore, has to be understood in relation to the Masters degree and not in isolation, necessarily petitioner ought to have been considered for selection as a Lecturer.

7. In such circumstance, rejecting petitioner's candidature stating that petitioner does not have PhD in relevant subject is unsustainable. If petitioner otherwise qualified in terms of notification, with respect to other criteria, necessarily they ought to have considered him for selection. Learned counsel for the fifth respondent would submit that petitioner does not possess requisite marks in the Masters degree and he has only 50% marks in Marketing. This issue has never been adverted by the University.

It is open for the University to consider any objection on the side of the fifth respondent.

8. It is submitted that the fifth respondent has been appointed and his appointment has been approved. No doubt, at this stage, it may not be proper to set aside the above appointment. However, it is made clear that approval of appointment already granted to the fifth respondent is subject to considering the petitioner's application for appointment for such selection. The petitioner shall be interviewed. If new interview board is need to be constituted, both the petitioner and the fifth respondent shall be interviewed for selection. Needful shall be done within a period of two months. It is also made clear the appointment already made in the post of Lecturer is subject to outcome of decision of interview to be conducted pursuant to the direction of this Court.

The Writ Petition is disposed of. No costs.

A.MUHAMED MUSTAQUE, JUDGE

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