IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 11TH DAY OF DECEMBER 2020 / 20TH AGRAHAYANA, 1942

WA.No.1236 OF 2020

AGAINST THE JUDGMENT IN WP(C) 34578/2019(V) OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 2 AND 3:

1 UNIVERSITY OF CALICUT
TIRUR-CALICUT RD, THENHIPALAM, CALICUT UNIVERSITY P.O, MALAPPURAM DISTRICT 673 635, REPRESENTED BY ITS REGISTRAR

2 THE REGISTRAR LAKSHADWEEP CELL UNIVERSITY OF CALICUT,P M SAYEED CALICUT UNIVERSITY CENTRE, ANDROTT, LAKSHADWEEP, PIN 682 551

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS/PETITIONER & RESPONDENT NO.1:

1 DR.J.VIJAYAN
AGED 58 YEARS
S/O. K. JANARDHANAN, RESIDING AT ARATHIYIL, KADUVINAL P.O, VALLIKUNNAM, ALAPPUZHA DISTRICT 690 501

2 UNION OF INDIA,
REPRESENTED BY THE SECRETARY (EDUCATION),
UNION TERRITORY OF LAKSHADWEEP,
LAKSHADWEEP ADMINISTRATION, PIN 682 555

R1 BY SRI.LIJU V. STEPHEN
R2 BY SRI.MANU.S, SCGC, ADMINISTRATION OF THE UNION TERRITORY OF LAKSHADWEEP

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 30-11-2020, THE COURT ON 11-12-2020 DELIVERED THE FOLLOWING:

J U D G M E N T

Dated this the 11th day of December, 2020

Shaffique, J.

The University of Calicut and its Registrar have preferred this appeal challenging judgment dated 10/8/2020 in WP(C) No.34578/2019 by which the learned Single Judge allowed the writ petition and direction had been issued to the appellant University to appoint the petitioner in the place of Dr.Aboobacker Puthanpurayil against the vacancy of Principal that had arisen at Kadmat on 5/12/2019.

2. The short facts of the case would disclose that the petitioner, the 1st respondent herein, retired as Principal. His complaint was that though he was the 2nd rank holder in a select list prepared by the Calicut University pursuant to Ext.P30 notification dated 31/12/2018 for appointment to the post of Principal on contract basis at P.M.Sayeed Calicut University Centre, Androtт and Calicut University Centre, Kadmat, after appointing one Vijayakumaran C.P.V, who was rank No.1 at

AndrotT, he being the 2nd rank holder, was not appointed in the vacancy at Kadmat.

3. The appellant University took up a contention that the rank list prepared for mainlanders have been rotated for keeping the communal rotation. While taking into account the communal rotation, petitioner was given appointment earlier and following the present rotation, after appointing Sri.Vijayakumaran at Androtт under the open category, the next turn is for a Muslim candidate against which Dr.Aboobacker Puthanpurayil has been appointed i.e., 15th turn of OC and 16th turn of Muslim. Learned Single Judge however observed that the contention that appointments are made based on the turns of communal rotation cannot be accepted since the notification does not say that the appointments are made applying communal rotation. Accordingly, it was found that giving appointment to Dr.Aboobacker Puthanpurayil, who is rank No.4, in preference to the petitioner, is illegal.

4. While impugning the aforesaid judgment, learned counsel for the appellant specifically made reference to S.6(2) of the University Act, which reads as under:-

> *"(2) In making appointments by direct recruitment to posts in any class or category in each department under the University, or to posts of non-teaching staff in the University, the University shall mutatis mutandis observe the provisions of clauses (a), (b) and (c) of rule 14 and rules 15, 16 and 17 of the Kerala State and Subordinate Service Rules, 1958, as amended from time to time".*

5. He also placed reliance on a Full Bench judgment of this Court in ***State of Kerala and Another v Rafia Rahim*** (1978 KLT 369) wherein, this Court had occasion to consider how the communal rotation has to be given effect in terms with Rules 14 to 17 of the KS & SSR.

6. We heard Sri.Liju V.Stephen, learned counsel appearing for the 1st respondent/writ petitioner and Sri.S.Manu, learned Central Government counsel. Learned counsel for the 1st respondent attempted to support the view taken by the learned Single Judge. Learned Single Judge proceeded on the basis that there is nothing to indicate that Rules 14 to 17 of KS & SSR would apply in relation to the selection being made by the University. But as rightly pointed out by the counsel for appellants, Section 6(2) clearly indicates that all appointments have to be made observing the provisions of Rules 14 to 17 of the KS & SSR. Under

such circumstances, the University is bound to follow the reservation policy, in which event, there is justification for appointing Dr.Aboobacker Puthanpurayil as the candidate falling under the 16th turn of Muslim category overlooking the rank of the petitioner.

7. Under such circumstances, we are of the view that the learned Single Judge committed error in evaluating the legal and factual aspects involved in the matter. Accordingly, the said judgment has to be set aside and we do so.

In the result, the appeal is allowed setting aside the judgment of the learned Single Judge. The writ petition stands dismissed.

Sd/-

A.M.SHAFFIQUE

JUDGE

Sd/-

GOPINATH P.

JUDGE

Rp True Copy

PS to Judge