

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

TUESDAY, THE 20<sup>TH</sup> DAY OF DECEMBER 2022/29TH AGRAHAYANA, 1944

OP(KAT).NO.124 OF 2017

AGAINST THE ORDER DATED 30.03.2017 IN O.A.NO.2396/2016 OF KERALA  
ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONER/6TH RESPONDENT:

DR. ASHA SREEDHAR, AGED 51 YEARS  
D/O. THE LATE D. SREEDHARAN NAIR, AGED 51  
YEARS, ASSOCIATE PROFESSOR, DEPARTMENT OF PRASUTHI  
STREEROGA, GOVT. AYURVEDA COLLEGE, TRIPUNITHURA,  
ERNAKULAM, KERALA 682 031, RESIDING AT HOUSE NO 130,  
NARAYANEEYAM" GANDHARI NAGAR, PULIMOODU,  
THIRUVANANTHAPURAM -695 001

BY ADV.SRI.O.V.RADHAKRISHNAN (SR.)  
BY ADV.SRI.S.ABHILASH  
BY ADV.SMT.RENY ANTO  
BY ADV.SRI.K.SIJU

RESPONDENTS/APPLICANT AND RESPONDENTS 1 TO 5:

- 1 DR. SHAHINAMOLE.S  
ASSOCIATE PROFESSOR, DEPARTMENT OF PRASUTHI  
AND STREEROGA, GOVERNMENT AYURVEDA COLLEGE,  
KANNUR, PARIYARAM, MEDICAL COLLEGE (PO),  
KANNUR DISTRICT PIN 670 567
- 2 STATE OF KERALA  
REPRESENTED BY ITS SECRETARY AYUSH DEPARTMENT,  
THIRUVANANTHAPURAM, KERALA 695 001
- 3 CONVENER  
DEPARTMENTAL PROMOTION COMMITTEE TO PREPARE THE  
SELECT LIST FOR PROMOTION TO THE POST OF PROFESSOR

IN THE GOVERNMENT AYURVEDA COLLEGE (SECRETARY,  
AYUSH DEPARTMENT) SECRETARIAT, THIRUVANATHAPURAM,  
KERALA, PIN 695 001

- 4 DIRECTOR OF AYURVEDA MEDICAL EDUCATION  
AROGYA BHAVAN, THIRUVANANTHAPURAM, KERALA 695 001
- 5 KERALA PUBLIC SERVICE COMMISSION  
REPRESENTED BY ITS SECRETARY, PATTOM,  
THIRUVANANTHAPURAM, KERALA 695 004
- 6 DR. PADMAJA DEVI  
ASSOCIATE PROFESSOR, DEPARTMENT OF PRASUTHI AND  
STREEROGA, GOVERNMENT AYURVEDA COLLEGE HOSPITAL FOR  
WOMEN & CHILDREN, POOJAPPURA (P.O), THIRUVANANTHAPURAM,  
KERALA 695 012

BY ADV.SRI.ELVIN PETER P.J.  
BY ADV.SRI.T.G.SUNIL PRANAVAM  
BY SRI.P.C.SASIDHARAN, SC  
BY GOVERNMENT PLEADER SRI.BIJOY CHANDRAN

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP  
FOR HEARING ON 13.12.2022 ALONG WITH OP(KAT).NOS.148/2017  
AND 319/2017, THE COURT ON 20.12.2022 DELIVERED THE  
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

TUESDAY, THE 20<sup>TH</sup> DAY OF DECEMBER 2022 / 29TH AGRAHAYANA, 1944

OP(KAT) NO. 148 OF 2017

AGAINST THE ORDER DATED 30.03.2017 IN O.A.NO.2396/2016 OF KERALA  
ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONER/5TH RESPONDENT:

DR.S.PADMAJADEVI  
AGED 59 YEARS  
ASSOCIATE PROFESSOR, DEPARTMENT OF PRASUTHI AND  
STEEROGA, GOVERNMENT AYURVEDA COLLEGE HOSPITAL FOR  
WOMEN AND CHILDREN, POOJAPPURA, THIRUVANANTHAPURAM  
695 006.

BY ADV.SRI.M.C.GOPI

RESPONDENTS/APPLICANT AND RESPONDENTS 1 TO 4 AND 6:

- 1 DR.SHAHINAMOL S.  
ASSOCIATE PROFESSOR, DEPARTMENT OF PRASUTHI AND  
STEEROGA, GOVERNMENT AYURVEDA COLLEGE HOSPITAL,  
PARIYARAM, MEDICAL COLLEGE P.O, KANNUR 670 567.
- 2 STATE OF KERALA  
REPRESENTED BY SECRETARY TO GOVERNMENT, AYURVEDA  
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM 695 001.
- 3 THE CONVENOR  
DEPARTMENT OF PROMOTION COMMITTEE TO PREPARE THE  
SELECT LIST FOR PROMOTION TO THE POST OF PROFESSOR

IN THE GOVERNMENT AYURVEDA COLLEGE [SECRETARY,  
AYUSH DEPARTMENT] SECRETARIAT, THIRUVANANTHAPURAM  
695 001.

- 4 DIRECTOR OF AYURVEDA MEDICAL EDUCATION  
AROGYA BHAVAN, THIRUVANANTHAPURAM 695 501.
- 5 KERALA PUBLIC SERVICE COMMISSION  
REPRESENTED BY SECRETARY, PATTOM,  
THIRUVANANTHAPURAM 695 004.
- 6 DR.ASHA SREEDHAR  
ASSOCIATE PROFESSOR, DEPARTMENT OF PRASUTHI AND  
STEEROGA, GOVERNMENT AYURVEDA COLLEGE, TRIPUNITHURA,  
ERNAKULAM 682 031.

BY ADV.SRI.ELVIN PETER P.J.  
BY ADV.SRI.PRATHEESH.P  
BY ADV.SRI.K.SIJU  
BY SRI.P.C.SASIDHARAN, SC  
BY GOVERNMENT PLEADER SRI.BIJOY CHANDRAN

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP  
FOR HEARING ON 13.12.2022 ALONG WITH OP(KAT).NOS.124/2017  
AND 319/2017, THE COURT ON 20.12.2022 DELIVERED THE  
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

TUESDAY, THE 20<sup>TH</sup> DAY OF DECEMBER 2022/29TH AGRAHAYANA, 1944

O.P(KAT).NO.319 OF 2017  
AGAINST THE ORDER DATED 30.03.2017 IN O.A.NO.2396/2016 OF KERALA  
ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM

PETITIONERS/RESPONDENTS T TO 3 IN O.A:

- 1 STATE OF KERALA  
REPRESENTED BY SECRETARY, AYUSH DEPARTMENT,  
THIRUVANANTHAPURAM.695001.
  
- 2 THE CONVENER  
DEPARTMENTAL PROMOTION COMMITTEE TO PREPARE THE  
SELECT LISTFOR PROMOTION TO THE POST OF PROFESSOR  
IN THE GOVERNMENTAYURVEDA COLLEGE (SECRETARY, AYUSH  
DEPARTMENT) GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
  
- 3 THE DIRECTOR OF AYURVEDA MEDICAL EDUCATION  
AROGYA BHAVAN, THIRUVANANTHAPURAM. 695001.

BY SRI.BIJOY CHANDRAN, GOVERNMENT PLEADER

RESPONDENTS/APPLICANT & RESPONDENTS 4 TO 6 IN OA:

- 1 DR.SHAHINAMOLE S.  
ASSOCIATE PROFESSOR, DEPARTMENT OF PRASUTHI  
ANDSTREEROGA, GOVERNMENT AYURVEDA COLLEGE, KANNUR,  
PARIYARAM MEDICAL COLLEGE, PO, KANNUR.670567.

- 2 THE KERALA PUBLIC SERVICE COMMISSION  
REPRESENTED BY ITS SECRETARY, PATTOM,  
THIRUVANANTHAPURAM. 695004.
- 3 DR. S. PADMAJA DEVI  
ASSOCIATE PROFESSOR, DEPARTMENT OF PRASUTHI  
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WOMEN & CHILDREN, POOJAPPURA PO, THIRUVANANTHAPURAM.  
695012.
- 4 DR. ASHA SREEDHAR  
ASSOCIATE PROFESSOR, DEPARTMENT OF PRASUTHI AND  
STREEROGA, GOVERNMENT AYURVEDA COLLEGE, TRIPUNITHURA,  
ERNAKULAM. 682301.

BY ADV.SRI.ELVIN PETER P.J.  
BY ADV.SRI.P.C.SASIDHARAN, SC, KPSC  
BY ADV.SRI.M.C.GOPI  
BY ADV.SRI.K.SIJU  
BY ADV.SRI.K.R.GANESH

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME UP  
FOR HEARING ON 13.12.2022 ALONG WITH O.P(KAT).NOS.124/2017  
AND 148/2017, THE COURT ON 20.12.2022 DELIVERED THE  
FOLLOWING:

'C.R.'

## J U D G M E N T

### A.K. Jayasankaran Nambiar, J.

As these O.P.(KAT)'s arise from the common order dated 30.3.2017 in O.A.No.2396 of 2016 before the Kerala Administrative Tribunal, they are taken up together for consideration and disposed by this common judgment.

#### The Facts in Brief:

The applicant before the Tribunal Dr. Shahinamole S. was an Associate Professor in the Department of Prasuti Tantra and Striroga in the Government Ayurveda College, Kannur. She approached the Tribunal aggrieved by the decision of the Departmental Promotion Committee [DPC] that convened to consider the candidates for promotion to the post of Professor to a vacancy that arose with effect from 26.9.2014. The DPC had decided to consider the candidature of the applicant along with Dr. S. Padmaja Devi and Dr. Asha Sreedhar, who, according to the applicant, were not qualified in terms of the Special Rules in force for promotion to the post of Professor in the

Department of Prasuti Tantra and Striroga. The Special Rules in force as on the date of arising of the vacancy was the one notified in the Kerala Gazette on 4.8.2007 [Annexure A1]. As per the said Rules, the post of Professor [Prasuti Tantra and Striroga] was to be filled by promotion from among Reader (Associate Professor) [Prasuti Tantra and Striroga] and, in the absence of qualified persons for promotion, by direct recruitment. Promotion to the category of Professor is based on cadre seniority in the concerned Department and the candidate is to be chosen from a select list. The qualifications prescribed for promotion to the post of Professor under the Special Rules read as follows:

(1)	(2)	(3)
3. Professor	1. By promotion	(1) A Postgraduate Degree in Ayurveda in the concerned subject from any of the Universities in Kerala or from any other University recognized by any of the Universities in Kerala. (2) Teaching experience for a minimum period of 10 years in the concerned subject of which there should be 5 years experience as Reader/Assistant Professor in the Government Ayurveda College. (3) Permanent 'A' Class Registration with Travancore Cochin Medical Council (Council of Indigenous Medicine).
	2. By Direct Recruitment	(1) A Postgraduate Degree in

Ayurveda in the concerned subject from any of the Universities in Kerala or from any other University recognized by any of the Universities in Kerala.

- (2) Teaching experience for a minimum period of 15 years in the concerned subject in any of the recognized Ayurveda Colleges in Kerala or recognized Ayurveda Colleges in any other State.
- (3) Permanent 'A' Class Registration with Travancore Cochin Medical Council (Council of Indigenous Medicine).

Desirable: - Published Research papers in the concerned subject.

Notes 1, 3 and 7 below Rule 5 are important, and they read as follows:

- Note:-
1. In accordance with these Special Rules, Postgraduate Degree in the concerned subject has been made compulsory qualification for appointment by promotion and by direct recruitment to the posts of Professor, Reader (Associate Professor) and Senior Lecturer (Assistant Professor).
  3. The teaching staff in service as on the date of coming in force of Special Rules and who have been recruited before 1-7-1989 shall be exempted from acquiring the PG Degree qualification.
  7. Teachers in service and recruited after 1-7-1989 but recruited before 31-1-1998 and do not possess the PG Degree qualification in the concerned subject or in allied subject shall be given five more years time with effect from 31-1-2003 to acquire the prescribed qualification.

2. The career paths of Dr. Shahinamole S., Dr. Asha Sreedhar and Dr. S. Padmaja Devi in the Department of Prasuti Tantra and Striroga can be tabulated as follows:

Name of Teacher	Dr. Shahinamole S. [applicant]	Dr. S. Padmaja Devi [respondent No.5]	Dr. Asha Sreedhar [respondent No.6]
Date of acquisition of PG qualification	Prior to 28.8.2002	January, 2005	1.4.2006
Date of appointment as Tutor	28.8.2002	11.12.1991	16.12.1995
Date of promotion as Lecturer	20.1.2006	16.9.1998	11.9.1998
Date of promotion as Reader/Associate Professor	21.7.2010	13.10.2004	31.5.2005

Dr. Shahinamole had obtained her PG qualification even at the time of joining the service as a Tutor, in which post, as per the Special Rules then in force [Annexure A2; notified with effect from 31.1.1998], the basic qualification required for direct recruitment was only a first or second class Degree in Ayurveda from any of the Universities in Kerala or any other Universities recognised by the Universities in Kerala. A Post Graduate Degree in the concerned subject from any of the Universities in Kerala or any other University recognised by the Universities in Kerala was a desirable qualification. Notes 1 and 3 below Rule 5 of Annexure A2 that

deals with qualifications read as follows:

- Note:- 1. In accordance with these Special Rules, Post Graduate Degree in the concerned subject has been made compulsory qualification for appointment by promotion and by direct recruitment to the posts of and above the category of Lecturer.
3. Teachers in service who do not possess the P.G. Degree qualification shall be given five years time to acquire the prescribed qualification. Those who get promoted during this period and do not acquire the prescribed qualification within the period shall be reverted.

3. A reading of the Notes below Rule 5 in the erstwhile Special Rules and the extant one clearly reveals that while a PG Degree in the concerned subject was made a compulsory qualification for appointment by promotion and by direct recruitment to the posts of and above the category of Lecturer, the teachers in service who did not possess the PG Degree qualification were given five years time to acquire the prescribed qualification with the rider that those who got promoted during the said period and did not acquire the prescribed qualification within the period would be reverted. The extended period for acquiring the PG qualification was five years under the erstwhile Rules [till 30.1.2003] and the period was extended further under the extant

Rules for five years from 31.1.2003. The reference in Note 7 below Rule 5 of Annexure A1 extant Rules is significant for it mentions the case of teachers recruited after 1.7.1989, which is the date on which the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations, 1986 that were framed under the Indian Medicine Central Council Act, 1970 came into force and effect. As per the said Regulations, the essential qualifications for teaching staff recruited after 1.7.1989 included a Post-graduate qualification in the subject/speciality concerned included in the Schedule to the Indian Medicine Central Council Act, 1970.

4. It can be seen from the table above that Dr. Padmaja Devi and Dr. Asha Sreedhar obtained their PG qualification only in January, 2005 and April, 2006 respectively, after they were promoted as Reader/Associate Professor. Dr. Shahinamole S., on the other hand, had obtained her PG qualification even by the time of her initial appointment as Tutor. It was therefore her case before the Tribunal that although it was a fact that Dr. Padmaja Devi and Dr. Asha Sreedhar had obtained their PG qualification within the extended period granted under the Special Rules in

force, the period spent by them in the various posts where PG qualification was prescribed as the essential qualification, could not be counted towards the teaching experience required for the post of Professor where also the PG Degree was prescribed as an essential qualification. She also relied on the provisions of Rule 10 (ab) of Part II Kerala State and Subordinate Services Rules [KS & SSR] that reads as follows:

**“10. Qualifications. \_\_\_\_\_**

*(ab)* Where the Special Rules or Recruitment Rules for a post in any service prescribe qualification of experience, it shall, unless otherwise specified, be one gained by persons on temporary or regular appointment in capacities other than paid or un paid apprentices, trainees and Casual Labourers in Central or State Government Service or in Public Sector Undertaking or Registered Private Sector Undertaking, after acquiring the basic qualification prescribed for the post.”

The findings of the Tribunal:

5. The Tribunal that considered the issue, found that Rule 10 (ab) of Part II KS & SSR had to be read along with the Special Rules that prescribed qualifications for the post of Professor and when so read, the qualifying teaching experience for the post had to be seen as teaching experience gained after acquiring the PG qualification. On that reasoning, the Tribunal found that as on the date of arising of the vacancy in the post of Professor, namely,

26.9.2014, Dr. Shahinamole S. had ten years service inclusive of five years in the Assistant Professor category from 20.1.2006, whereas Dr. Padmaja Devi and Dr. Asha Sreedhar acquired the ten years experience only in 2015 and 2016 respectively. The applicant Dr. Shahinamole alone was therefore declared qualified for promotion to the post of Professor [Prasuti Tantra and Striroga] in the vacancy that arose on 26.9.2014.

The submissions of the learned counsel:

6. The Tribunal order has been impugned by Dr. Padmaja Devi in O.P. (KAT).No.148 of 2017, by Dr. Asha Sreedhar in O.P. (KAT).No.124 of 2017 and by the Government in O.P. (KAT).No.319 of 2017. The arguments of the learned senior counsel Sri.O.V. Radhakrishnan, duly assisted by Adv.Sri.S. Abhilash, Adv.Sri.M.C. Gopi and the learned Government Pleader, briefly stated, are as follows:

- Both Dr. Padmaja Devi and Dr. Asha Sreedhar had rendered service as Tutor, Lecturer and Reader based on the exemption that they had obtained in terms of the Special Rules from obtaining the PG qualification. Their service in the posts concerned had therefore to count towards the ten years experience contemplated under the Special Rules for the post

of Professor. Reliance was placed on the following decisions in support of the said contention, namely; **The Distt. Registrar, Palghat and others v. M. B. Koyyakutty and others - [AIR 1979 SC 1060]**, **M.B. Joshi and Others v. Satish Kumar Pandey and Others - [1993 Supp (2) SCC 419]**, **D. Stephen Joseph v. Union of India and Others - [(1997) 4 SCC 753]**, **Anil Kumar Gupta and Others v. Municipal Corporation of Delhi and Others - [(2000) 1 SCC 128]** and **A. K. Raghmani Singh and Others v. Gopal Chandra Nath and Others - [(2000) 4 SCC 30]** and **Suresh v. State of Kerala - [2021 (1) KLT 566]**.

- The Special Rules governing recruitment to the post of Professor speaks only of the requirement of ten years of teaching experience in the concerned subject of which five years experience had to be as Reader/Assistant Professor in the Government Ayurveda College. Since there was no prescription in the Special Rules that the experience had to be gained after the acquisition of the PG qualification, the provision of Rule 10 (ab) Part II KS & SSR could have no application as the said Rule itself contemplates its application only in cases where a contrary intention is not expressed in the Service Rules concerned.
- The applicants had raised the allegation as regards ineligibility only against Dr. Padmaja Devi and not against Dr. Asha Sreedhar and hence even if a finding as regards ineligibility was entered against the former, that could not have been a

ground to find the latter also ineligible for promotion as Professor.

7. Per contra, the arguments of Sri.Elvin Peter P.J., the learned counsel for the applicant Dr. Shahinamole, briefly stated, are as follows:

- The provisions of the Special Rules have to be read in the backdrop of the provisions of the Indian Medicine Central Council Act and the Regulations issued thereunder since the Minimum Standards of Education prescribed under the Central Act and Regulations cannot be diluted by the Special Rules. He relies on the following judgments in support of this contention, namely; **Dr. Preeti Srivastava and Another v. State of M.P. and Others - [(1999) 7 SCC 140] and State of Tamil Nadu and Another v. S.V. Bratheep (minor) and Others - [(2004) 4 SCC 513].**
- Dr. Padmaja Devi and Dr. Asha Sreedhar who did not acquire the PG qualification that was a mandatory qualification for the post of Lecturer and Reader cannot claim experience as Lecturer or Reader for the period spent in those posts without the PG qualification. It is pointed out that the Special Rules only extended them time to obtain the minimum qualifications prescribed for the posts and did not waive the requirement of obtaining the said qualifications as indeed it could not in the

light of the specific provisions in the Central Regulations.

- Rule 10 (ab) of Part II KS & SSR has to be seen as supplementing the provisions and Special Rules, and when so read, it is clear that the teaching experience contemplated for the post of Professor is one gained after acquiring the PG qualification that is prescribed for the post of Professor. He relies on the following decisions to substantiate the said contention namely; **Sirajudheen v. Public Service Commission - [1998 (2) KLT 1046]**, **Sirajudheen v. Kerala Public Service Commission - [2001 (2) KLT 268]**, **Rabi v. State of Kerala - [2007 (4) KLT 335]**, **Basheer v. Saiful Islam - [2014 (4) KLT 521 (FB)]**, **Aboobacker P. and Others v. Emilia Morris and Others - [I.L.R. 2020 (2) Kerala 599]** and the unreported judgment dated **20.1.2017 in O.P. (KAT).No.1360 of 2013 [Dr. Jyothish L.S. v. State of Kerala and Others]**.
- He also points out that it is now a settled principle in Service law that exemption if any granted in acquiring the qualifications for the lower post will not enure to the incumbent for the purposes of promotion to the higher post where although the qualifications prescribed are the same as that of the lower post, the nature of duties to be discharged in the higher post are different. He relies on the decisions in **D. K. Jain and Others v. State of Haryana and Others - [1995 Supp. (1) SCC 349]**, **Subramonian Namboodiri v. State of Kerala - [1980 KLT 839]** and **P. Bhaskaran & Others v.**

**Addl. Secretary & Others - [1987 (2) KLT 903]** for the said proposition.

Our findings:

8. We have considered the rival submissions and gone through the pleadings and the decisions cited before us by the learned counsel for the parties. On a consideration of the same, we find that the short issue that arises for consideration in these cases is whether the experience requirement prescribed in the Special Rules for the post of Professor [Prasuti Tantra and Striroga] is one that has to be gained after obtaining the basic qualification for the post of Professor, namely, a PG Degree in the concerned subject ? The prescription in the Special Rules is ambiguous when it says "teaching experience for ten years in the concerned subject of which there should be five years experience as Reader/Assistant Professor in the Government Ayurveda College". Rule 10 (ab) of Part II KS & SSR however clarifies that "where the Special Rules or Recruitment Rules for a post in any service prescribe qualification of experience, it shall, unless otherwise specified, be one gained by persons on temporary or regular appointment in capacities other than paid or un paid apprentices, trainees and Casual Labourers in Central or State Government Service or in

Public Sector Undertaking or Registered Private Sector Undertaking, after acquiring the basic qualification prescribed for the post”. That the provisions of Part II of KS & SSR have to be read together with the Special Rules to determine the meaning of the term “teaching experience” is no longer *res integra*. A Division Bench of this Court in **Sirajudheen v. Kerala Public Service Commission - [2001 (2) KLT 268]** observed as follows at paragraph 7:

“7. R. 10(ab) uses the expression “Special Rules” as well as “Recruitment Rules”. 'Special Rules' has been defined in the Kerala State and Subordinate Services Rules under R. 2(16) as follows: “Special Rules, shall mean the rules in Part II applicable to each service or class of service. We notice the expression 'Recruitment Rules' has not been defined in the Kerala State and Subordinate Services Rules. We are therefore of the view the same should be given a wider meaning. Recruitment Rules take in not only the Recruitment Rules framed by the State Legislature, even executive orders framed for recruitment. When we give a wider meaning to the words “Recruitment Rules” there is no reason why the rules framed by the Central Government under S.213(4) be not come within the meaning of “Recruitment Rules” under R.10(ab) of K.S. & S.S.R. We are of the view the recruitment rules framed by Central Government in exercise of powers conferred under S. 213(4) would satisfy the definition of “recruitment rules” under R. 10 (ab) of the Kerala State and Subordinate Services Rules.”

9. When we read the provisions in the Special Rules along with Rule 10 (ab) of Part II KS & SSR, as the Tribunal did in the instant case, the conclusion is inescapable that the teaching experience of ten years mentioned for the post of Professor is one

that has to be gained after obtaining the basic PG qualification required for the post. The decisions relied on by the learned senior counsel for the petitioners in these O.P.(KAT)'s in support of the contention that the experience need not be one gained after obtaining the basic qualification, are all cases where a provision similar to Rule 10 (ab) of Part II KS & SSR did not come up for consideration before the Court. In our view, those decisions cannot be of any assistance to the petitioners in the instant case.

10. We are also of the view that there are other reasons why the teaching experience should be seen as one gained after obtaining the PG qualification. After the decision of the Constitution Bench of the Supreme Court in **DR Preeti Srivastava and Another v. State of Madhya Pradesh and Others - [(1999) 7 SCC 120]**, while interpreting the provisions of the Special Rules governing a State service that prescribes standards of education and admission criteria, one cannot ignore the mandate of any Central Legislation then in force for, the State Government's prescription of Standards of Education cannot be interpreted in a manner inconsistent with the Central Legislation governing the field. The observations in paragraphs 35, 36 and 37 of **DR Preeti**

**Srivastava (supra)** are relevant, and read as follows:

“35. The legislative competence of the Parliament and the legislatures of the States to make laws under Article 246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, Entry 11 of List-II gave to the States an exclusive power to legislate on

"education including universities subject to the provisions of Entries 63, 64, 65 and 66 of List-I and Entry 25 of List-III."

Entry 11 of List-II was deleted and Entry 25 of List-III was amended with effect from 3-1-1976 as a result of the Constitution 42<sup>nd</sup> Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows:

"25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I: vocational and technical training of labour."

Entry 25 is subject, inter alia, to Entry 66 of List-I. Entry 66 of List-I is as follows:-

"66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List-I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also co-ordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union Legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List-I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254 .

36. It would not be correct to say that the norms for admission

have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List-I. For example, a State may, for admission to the post-graduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List-I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can, and do have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:

- (1) the calibre of the teaching staff;
- (2) a proper syllabus designed to achieve a high level of education in the given span of time;
- (3) the student-teacher ratio;
- (4) the ratio between the students and the hospital beds available to each student;
- (5) the calibre of the students admitted to the institution;
- (6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;
- (7) adequate accommodation for the college and the attached hospital; and
- (8) the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged.

37. While considering the standards of education in any college or institution, the calibre of students who are admitted to that institution or college cannot be ignored. If the students are of a high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. Education involves a continuous interaction between the teachers and the students. The pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive, depend as much on the calibre of the students as on the calibre of the teachers and the availability of adequate infrastructural facilities. That is why a lower student-teacher ratio has been considered essential at the levels of higher university education, particularly when the training to be imparted is highly professional

training requiring individual attention and on-hand training to the pupils who are already doctors and who are expected to treat patients in the course of doing their post-graduate courses.”

11. In the instant case, the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations, 1986 that came into force with effect from 1.7.1989 clearly mandates that the essential qualification for appointment to the post of Professor, Reader/Associate Professor and Assistant Professor is a PG qualification in the subject/speciality concerned. It follows therefore that in the absence of such a qualification, the incumbent to the post concerned cannot be seen as legitimately discharging his/her duties in the said post. While he/she may have obtained a relaxation from the State Government in the matter of obtaining the qualification within a prescribed time limit, it is unambiguously clear that the qualification requirement cannot be dispensed with to continue in the said post. It follows therefore that any experience gained in the post, without having the qualification required for the post, cannot enure to the benefit of the incumbent for the purposes of his/her career progression.

12. There is yet another aspect of the matter. It is clear from the Special Rules itself that the teaching experience of ten years in

the concerned subject must include at least five years experience as Reader/Assistant Professor in the Government Ayurveda College. Thus, as per the Special Rules, the quality and nature of experience must be the same for the entire period of ten years that is stipulated under the Rules and five years of such experience must be as Reader/Assistant Professor. It is apparent from the discussion above that one cannot gain experience as Reader/Assistant Professor unless one is qualified in all respects to hold the post of Reader/Assistant Professor in accordance with the Special Rules. If that be so, the five years experience as Reader/Assistant Professor must be one that is gained after obtaining the PG qualification and it follows that since the experience required for the post is qualitatively to be the same for the entire period of ten years, the entirety of the teaching experience must be one gained after obtaining the PG qualification.

13. Thus, in any view of the matter, we find that the argument of the learned senior counsel for the petitioners before us that, in view of the exemption/relaxation granted to them for obtaining the essential PG qualification, they should be seen as having gained the required teaching experience of a PG teacher in the various posts that they had occupied, cannot be legally

countenanced. We reiterate that the teaching experience prescribed under the Special Rules has to be read along with the provisions of Rule 10 (ab) of Part II KS & SSR and in the light of the Central Regulations holding the field, and when so read, the teaching experience can only be one that is gained after the acquisition of the essential qualification required for the post of Professor. We see no reason to interfere with the impugned order of the Tribunal, and for the reasons stated therein as supplemented by the reasons in this judgment, we dismiss the O.P.(KAT)'s. There will however be no order as to cost.

The O.P.(KAT)'s are dismissed.

**Sd/-**  
**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

**Sd/-**  
**MOHAMMED NIAS C.P.**  
**JUDGE**

**prp/**

APPENDIX OF O.P(KAT) .NO.124/2017

PETITIONER ANNEXURES:

- ANNEXURE A1 TRUE COPY OF KERALA STATE AYURVEDA MEDICAL EDUCATION SPECIAL RULES, 2007.
- ANNEXURE A2 TRUE COPY OF GO(P) NO. 4/98/P&ARD DATED 20/01/1998.
- ANNEXURE A3 TRUE COPY OF GO DATED 20/01/2006.
- ANNEXURE A4 TRUE COPY OF GO DATED 20/07/2010.
- ANNEXURE A5 TRUE COPY OF EXPERIENCE CERTIFICATE OF THE APPLICANT.
- ANNEXURE A6 TRUE COPY OF THE PROCEEDINGS OF THE 3RD RESPONDENT DATED 14/11/2008 AND SENIORITY LIST.
- ANNEXURE A7 A TRUE COPY OF THE ORDER DATED 14/07/2015 ISSUED BY THE 3RD RESPONDENT DECLARING PROBATION OF DOCTOR M.P. SREEKALA.
- ANNEXURE A8 THE TRUE COPY OF GO(P) NO.573/2012/FIN. DATED 16/10/2012.
- ANNEXURE A9 THE TRUE COPY OF THE GO(RT) NO.408/2016/AYUSH DATED 19/08/2016.
- ANNEXURE A10 THE TRUE COPY OF THE JUDGMENT DATED 07/06/2013 IN OP KAT 52/2015 OF THE HON'BLE HIGH COURT OF

KERALA.

- ANNEXURE A11 THE TRUE COPY OF THE MINUTES OF THE DPC HELD ON 25/08/2016.
- ANNEXURE A12 THE TRUE COPY OF THE COMMUNICATION DATED 21/10/2016 ISSUED BY PUBLIC INFORMATION OFFICER AYUSH DEPARTMENT THIRUVANANTHAPURAM ALONG WITH THE NOTES.
- ANNEXURE A13 THE TRUE COPY OF THE ORDER DATED 15/10/2016 ISSUED BY THE 1ST RESPONDENT.
- ANNEXURE A14 TRUE COPY OF GO(MS) NO.143/96/J&FWD DATED 19/03/1996 ISSUED BY THE GOVERNMENT.
- ANNEXURE A15 TRUE COPY OF THE REVISED REGULATIONS ISSUED BY THE INDIAN SYSTEM OF MEDICAL COUNCIL.
- ANNEXURE A16 THE TRUE COPY OF THE GO(RT) 207/2006/H&FWD DATED 20/01/2006 PROMOTING THE APPLICANT AS LECTURER.
- ANNEXURE A17 A TRUE COPY OF GO(P) NO.344/2005/J&FWD DATED 26/12/2005.
- ANNEXURE A18 A TRUE COPY OF GO(RT) 978/2007/H&FWD DATED 20/03/2007.
- ANNEXURE A19 A TRUE COPY OF GO(P) NO.106/2009/H&FWD DATED 29/04/2009.
- ANNEXURE A20 A TRUE COPY OF GO(RT) NO.2794/2010/H&FWD DATED 20/07/2010.

- ANNEXURE A21      A TRUE COPY OF GO(RT) NO.4182/2011/H&FWD DATED  
03/12/2011.
- ANNEXURE A22      A TRUE COPY OF COMMUNICATION DATED 14/11/2008  
ISSUED BY THE DIRECTOR OF AYURVEDA MEDICAL  
EDUCATION.
- EXHIBIT P1          COPY OF THE ORIGINAL APPLICATION NO 2396/2016
- EXHIBIT P2          A PHOTOCOPY OF THE REPLY STATEMENT DATED 08-11-  
2016 OF THE 6TH RESPONDENT IN THE O.A
- EXHIBIT P3          A PHOTOCOPY OF THE REPLY STATEMENT DATED 10-12-  
2016 OF THE PETITIONER
- EXHIBIT P4          A PHOTOCOPY OF THE REJOINER FILED BY THE  
APPLICATION THE O.A
- EXHIBIT P5          A PHOTOCOPY OF THE REPLY STATEMENT FILED BY THE  
KPSC
- EXHIBIT P6          A TRUE COPY OF ORDER DATED 30-03-2017 IN O.A NO  
2396/2016
- EXHIBIT P7          THE PHOTO COPY OF ORDER DATED 16-12-1995
- EXHIBIT P8          THE PHOTO COPY OF GO(RT) NO 2253/98 DATED 11-09-  
1998
- EXHIBIT P9          A PHOTOCOPY OF THE ORDER DATED 31-5-2005

- EXHIBIT P10      A TRUE COPY OF G.O(P) NO 88/2003 DATED 13-5-2003
- EXHIBIT P11      A PHOTOCOPY OF THE DEGREE CERTIFICATE DATED 12-4-  
2007
- EXHIBIT P12      A PHOTOCOPY OF THE LETTER DATED 23-5-2017 ISSUED  
UNDER RTI ACT

APPENDIX OF O.P(KAT).NO.148/2017

PETITIONER ANNEXURES:

- ANNEXURE A1 TRUE COPY OF THE KERALA STATE AYURVEDA MEDICAL EDUCATION SPECIAL RULES, 2007.
- ANNEXURE A2 TRUE COPY OF THE GO(P) NO.4/98/P&ARD DATED 20/01/1998 ISSUED BY THE GOVERNMENT.
- ANNEXURE A3 TRUE COPY OF GO DATED 20/01/2006.
- ANNEXURE A4 TRUE COPY OF THE GO DATED 20/07/2010.
- ANNEXURE A5 TRUE COPY OF THE EXPERIENCE CERTIFICATE OF THE APPLICANT.
- ANNEXURE A6 TRUE COPY OF THE PROCEEDINGS OF THE 3RD RESPONDENT DATED 14/11/2008 AND THE SENIORITY LIST.
- ANNEXURE A7 TRUE COPY OF THE ORDER DATED 14/07/2015 ISSUED BY THE 3RD RESPONDENT DECLARING PROBATION OF DR.M.P.SREEKALA.
- ANNEXURE A8 TRUE COPY OF THE GO(P) NO.573/2012/FIN. DATED 16/10/2012.
- ANNEXURE A9 TRUE COPY OF THE GO(RT) NO. 408/2016/AYUSH DATED 19/08/2016.

- ANNEXURE A10 TRUE COPY OF THE JUDGMENT DATED 07/06/2016 IN OP (KAT) 52/2015 OF THE HON'BLE HIGH COURT OF KERALA.
- ANNEXURE A11 TRUE COPY OF THE MINUTES OF THE DPC HELD ON 25/08/2016.
- ANNEXURE A12 TRUE COPY OF THE COMMUNICATION DATED 21/10/2016 ISSUED BY PUBLIC INFORMATION OFFICER, AYUSH (A) DEPARTMENT, THIRUVANANTHAPURAM ALONG WITH NOTES.
- ANNEXUREA13 TRUE COPY OF THE ORDER DATED 15/10/2016 ISSUED BY THE 1ST RESPONDENT.
- ANNEXURE A14 TRUE COPY OF GO(MS) NO.143/96/H&FWD DATED 19/03/1996 ISSUED BY THE GOVERNMENT.
- ANNEXURE A15 TRUE COPY OF THE REVISED REGULATIONS ISSUED BY THE INDIAN SYSTEMS OF MEDICAL COUNCIL.
- ANNEXURE A16 TRUE COPY OF GO(RT)207/2006/H&FWD DATED 20/01/2006 PROMOTING THE APPLICANT AS LECTURER.
- ANNEXURE A17 TRUE COPY OF THE GO(P) NO.344/2005/H&FWD DATED 26/12/2005 ISSUED BY THE GOVERNMENT.
- ANNEXURE A18 TRUE COPY OF GO(RT) 978/2007/H&FWD DATED 20/03/2007 ISSUED BY THE GOVERNMENT.
- ANNEXURE A19 TRUE COPY OF GO(P) NO.106/2009/H&FWD DATED 29/04/2009 ISSUED BY THE GOVERNMENT.
- ANNEXURE A20 TRUE COPY OF GO(P) NO.2794/2010/H&FWD DATED

20/07/2010 ISSUED BY THE GOVERNMENT.

- ANNEXURE A21 TRUE COPY OF GO(P) NO.4182/2011/H&FWD DATED 03/12/2011 ISSUED BY THE GOVERNMENT.
- ANNEXURE A22 TRUE COPY OF COMMUNICATION DATED 14/11/2008 ISSUED BY THE DIRECTOR OF AYURVEDA MEDICAL EDUCATION.
- EXHIBIT P1. COPY OF THE OA 2396/2016 ON THE FILE OF THE HONOURABLE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.
- EXHIBIT P2. COPY OF THE REPLY STATEMENT FILED BY THE 4TH RESPONDENT IN THE OA DATED 27.2.17.
- EXHIBIT P3. COPY OF THE REPLY STATEMENT FILED BY THE 5TH RESPONDENT IN THE OA DATED 8.11.16.
- EXHIBIT P4. COPY OF THE REPLY STATEMENT FILED BY THE 6TH RESPONDENT IN THE OA 13.12.16.
- EXHIBIT P5. COPY OF THE REJOINDER FILED BY THE APPLICANT TO THE STATEMENT FILED BY THE 5TH RESPONDENT DATED 14.1.17.
- EXHIBIT P6. COPY OF APPLICATION DATED 24.4.17 FILED UNDER RIGHT TO INFORMATION ACT.
- EXHIBIT P7. COPY OF ANSWER GIVEN TO THE APPLICATION FILED UNDER RIGHT TO INFORMATION ACT ON 23.5.17 BY THE 4TH RESPONDENTS OFFICE.

O.P.(KAT).NOS.124,  
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EXHIBIT P8. COPY OF JUDGMENT DATED 30.3.17 IN OA [EKM]  
NO.2396/2016.

Exhibit P9 TRUE COPY OF THE P.G CERTIFICATE ISSUED BY THE  
UNIVERSITY OF KERALA TO THE PETITIONER DATED  
18-7-2005

APPENDIX OF O.P(KAT).NO.319/2017

PETITIONER ANNEXURES:

- ANNEXURE A1 TRUE COPY OF KERALA STATE AYURVEDA MEDICAL EDUCATION SPECIAL RULES, 2007.
- ANNEXURE A2 TRUE COPY OF G.O.(P)NO.4/98/P&ARD DATED 20.01.1988 ISSUED BY THE GOVERNMENT.
- ANNEXURE A3 TRUE COPY OF G.O.DATED 20.01.2006.
- ANNEXURE A4 TRUE COPY OF G.O. DATED 20.07.2010.
- ANNEXURE A5 TRUE COPY OF THE EXPERIENCE CERTIFICATE OF THE APPLICANT.
- ANNEXURE A6 TRUE COPY OF THE PROCEEDINGS OF THE 3RD RESPONDENT DATED 14.11.2008 AND THE SENIORITY LIST.
- ANNEXURE A7 TRUE COPY OF THE ORDER DATED 14.07.2015 ISSUED BY THE 3RD RESPONDENT DECLARING PROBATION OF DR.M.P.SREEKALA.
- ANNEXURE A8 TRUE COPY OF THE G.O.(P)NO.573/2012/FIN DATED 16.10.2012.
- ANNEXURE A9 TRUE COPY OF THE G.O.(RT)NO.408/2016/AYUSH DATED 19.08.2016 RESPONDENT.

- ANNEXURE A10 TRUE COPY OF THE JUDGMENT DATED 07.06.2016 IN O.P.KAT 52/2015 OF THE HON'BLE HIGH COURT OF KERALA.
- ANNEXURE A11 TRUE COPY OF THE MINUTES OF THE DPC HELD ON 25.08.2016.
- ANNEXURE A12 TRUE COPY OF THE COMMUNICATION DATED 21.10.2016 ISSUED BY PUBLIC INFORMATION OFFICER, AYUSH (A) DEPARTMENT, TRIVANDRUM ALONG WITH NOTES.
- ANNEXURE A13 TRUE COPY OF THE ORDER DATED 15.10.2016 ISSUED BY THE 1ST RESPONDENT.
- ANNEXURE A14 TRUE COPY OF G.O.(MS)NO.143/96/H&FWD DATED 19.03.1996 ISSUED BY THE GOVERNMENT.
- ANNEXURE A15 TRUE COPY OF THE REVISED REGULATIONS ISSUED BY THE INDIAN SYSTEMS OF MEDICAL COUNCIL.
- ANNEXURE A16 TRUE COPY OF G.O.(RT)NO.207/06/H&FWD DATED 20.01.2006 PROMOTING THE APPLICANT AS LECTURER.
- ANNEXURE A17 TRUE COPY OF G.O.(P)NO.344/05/H&FWD DATED 26.12.2005 ISSUED BY THE GOVERNMENT.
- ANNEXURE A18 TRUE COPY OF G.O.(RT)NO.978/07/H&FWD DATED 20.03.2007 ISSUED BY THE GOVERNMENT.
- ANNEXURE A19 TRUE COPY OF G.O.(P)NO.106/09/H&FWD DATED

29.04.2009 ISSUED BY THE GOVERNMENT.

ANNEXURE A20 TRUE COPY OF G.O.(RT)NO.2794/10/H&FWD DATED  
20.07.2007 ISSUED BY THE GOVERNMENT.

ANNEXURE A21 TRUE COPY OF G.O.(RT)NO.4182/11/H&FWD DATED  
03.12.2011 ISSUED BY THE GOVERNMENT.

ANNEXURE A22 TRUE COPY OF COMMUNICATION DATED 14.11.2008  
ISSUED BY THE DIRECTOR OF AYURVEDA MEDICAL  
EDUCATION.

EXHIBIT P1 PHOTOCOPY OF THE O.A NO.2396/2016 ALONG WITH  
ANNEXURES.

EXHIBIT P2 PHOTOCOPY OF THE REPLY STATEMENT FILED BY THE  
5TH RESPONDENT IN O.A

EXHIBIT P3 PHOTOCOPY OF THE REPLY STATEMENT FILED BY THE  
6TH RESPONDENT IN O.A

EXHIBIT P4 PHOTOCOPY OF THE REJOINDER STATEMENT ALONG  
WITH ANNEXURES.

EXHIBIT P5 PHOTOCOPY OF THE ABOVE ORDER DATED 30.3.2017  
IN O.A NO.2396/2016.

RESPONDENT EXHIBITS:

Exhibit R1(a) TRUE COPY OF THE APPLICATION FILED BY THE 1ST  
RESPONDENT/PETITIONER HEREIN UNDER THE RIGHT  
TO INFORMATION ACT BEFORE THE OFFICE OF THE  
ACCOUNTANT GENERAL DATED 21/01/2022 REGARDING

APPOINTMENT OF THE 3RD RESPONDENT.

Exhibit R1(b) TRUE COPY OF THE APPLICATION FILED BY THE 1ST  
RESPONDENT/PETITIONER HEREIN UNDER THE RIGHT  
TO INFORMATION ACT BEFORE THE OFFICE OF THE  
ACCOUNTANT GENERAL DATED 21/01/2022 REGARDING  
APPOINTMENT OF THE 4TH RESPONDENT.

Exhibit R1(c) TRUE COPY OF THE REPLY NO.DAG(A)/C.CELL/RTOI-  
193 & 194/2021-22/732 DATED 23/02/2021 ISSUED  
BY THE SR.ACCOUNTANT GENERAL (ADMIN) & CENTRAL  
PUBLIC INFORMATION OFFICER.

//TRUE COPY//

P.S. TO JUDGE