

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.

WEDNESDAY, THE 2ND DAY OF MARCH 2022 / 11TH PHALGUNA, 1943

WA NO. 56 OF 2022

AGAINST THE JUDGMENT DATED 13.09.2021 IN WP(C) 7115/2009 OF
HIGH COURT OF KERALA

APPELLANT/ (PETITIONER) :

DR.SONIA K DAS
AGED 46 YEARS
PRATHIBHA NIVAS, R.S.ROAD, OTTAPPALAM, PALAKKAD -
679 101.

BY ADVS.
SRI.T.C.KRISHNA
SRI.P.RAMAKRISHNAN

RESPONDENTS/RESPONDENTS:

- 1 COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY
KOCHI - 682 022, REPRESENTED BY ITS REGISTRAR.
- 2 VANI KESARI A.
LECTURER, SCHOOL OF LEGAL STUDIES, COCHIN UNIVERSITY
OF SCIENCE AND TECHNOLOGY, KOCHI - 682 022.

BY ADVS.
SRI.S.P.ARAVINDAKSHAN PILLAY, SC, COCHIN UNIVERSITY
OF SCIENCE AND TECHNOLOGY
SRI.PETER JOSE CHRISTO
ADV.SRI.ELVIN PETER(B/O)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
02.03.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

A.K.Jayasankaran Nambiar, J.

The petitioner in WP(C).No.7115 of 2009 is the appellant before us, aggrieved by the judgment dated 13.09.2021 of the learned Single Judge.

2. The brief facts necessary for disposal of the Writ Appeal are as follows:

The appellant, while working as a Lecturer in the Government Law College, Thrissur, responded to Ext.P1 notification dated 14.10.2008 inviting applications for the post of Category 'C' Lecturer at the Cochin University of Science and Technology (CUSAT). The notification indicated that the qualifications and experience for the post would be as prescribed by the UGC, and further that the appointment pursuant to the notification will be made as per UGC Regulations and reservation principles according to the Cochin University of Science and Technology Act, 1986 (hereinafter referred to as 'the CUSAT Act 1986') and the State Government Rules. It is the case of the appellant

that while she applied for the post and was called for an interview on 29.12.2008, the respondent University, by Ext.P4 order dated 03.11.2008, announced that the Syndicate of the University had resolved to follow the provisions of the CUSAT Act in the matter of constitution of Selection Committees for appointment of Teachers in the University, till the Act was formally amended. When the appellant appeared for the selection process, however, she found that although the Selection Committee was one constituted in accordance with the University statutes it consisted of two Subject Experts, nominated by the Vice Chancellor and not by the Syndicate as was required by the University Statutes.

3. It would appear that in the selection process that ensued the appellant was ranked No.2 after the 2nd respondent, who was ranked No.1 and this led the appellant to approach this Court impugning the Selection process. In the Writ Petition, the appellant impugned Ext.P3 rank list to the extent it assigned rank No.1 to the 2nd respondent and also prayed for a writ of certiorari to quash Ext.P4 order, by which the University had resolved to carry out the Selection process in accordance with the University Statutes. There was also an incidental prayer for a direction to the University to conduct a fresh selection to

the post of Lecturer in Administrative Law in accordance with the UGC Regulations. Significantly, however, while an appointment order was issued to the 2nd respondent after the filing of the writ petition, the appellant writ petitioner did not obtain any order making the said appointment subject to the outcome of the writ petition or amend the writ petition to incorporate a challenge to the said appointment order issued to the 2nd respondent there was no challenge in the writ petition to the said appointment order

4. In the Writ Petition, the challenge of the appellant/writ petitioner was essentially on three grounds, namely,

i. That the Selection Committee ought to have been constituted in terms of the UGC Regulations and not in terms of the University Statutes more so because Ext.P1 notification had clearly indicated that the Selection would be in accordance with the UGC guidelines.

ii. That even if the selection procedure to be followed was to be in accordance with the University Statutes, the Selection Committee constituted in the instant case was not

in accordance with the statutory mandate in S.31 of the CUSAT Act in that the subject experts were nominated not by the Syndicate but by the Vice Chancellor.

iii. Lastly, it was contended that the Selection Committee, by devising its own procedure for awarding marks to the candidates subjected to the selection process in the absence of any norms being fixed either under the University Statutes or by the Syndicate/Vice Chancellor, had exceeded its jurisdiction under the statute. I support of the said contention, reference was made to the Full Bench decision of this Court in **Keshav Mohan v. University of Kerala [2009 (4) KLT 573]**.

5. A counter affidavit was filed on behalf of the 1st respondent, wherein the stand taken was that although the notification indicated that the selection would be in accordance with the UGC guidelines, it was subsequently clarified that the selection would be in accordance with the provisions of the CUSAT Act, 1986, because the Government order adopting the relevant UGC Regulations in force had made it clear that the selection procedure would continue to be in accordance with

the University Statutes. With regard to the allegation regarding the nomination of Subject Experts in the Selection Committee, it was stated that the nomination of the expert members to the committee was left to the Vice Chancellor who, apart from being a superior authority to the Syndicate, was also the person competent to act whenever there was no Syndicate available. It was also pointed out that even assuming there was any irregularity in the said nomination, the nomination made by the Vice Chancellor was subsequently ratified by the Syndicate. In specific response to the allegations raised in the Writ Petition regarding the erroneous award of marks to the 2nd respondent, it was stated that the writ petitioner had only 3 years of teaching experience, whereas the 2nd respondent had 7½ years of teaching experience and it was accordingly that the latter was awarded more marks for the teaching experience over that awarded to the appellant/writ petitioner. The general tenor of the averments in the counter affidavit are to the effect that the selection process having been undertaken in accordance with the University Statutes, and the selection done by a panel of academic experts, the selection ought not to be interfered with in proceedings under Article 226 of the Constitution of India.

6. The learned Singe Judge, who considered the matter found

that the persons nominated by the Vice Chancellor as Subject Experts were indeed Subject Experts, and further, that no mala fides had been attributed against the constitution of the Selection Committee and hence the Selection Committee was validly constituted. He also went on to hold that inasmuch as the appellant had participated in the selection process, she could not now turn around and challenge the constitution of the Selection Committee. The Writ Petition was, therefore, dismissed as devoid of merit.

7. We have heard Sri.P.Ramakrishnan, the learned counsel for the appellant, Sri.Aravindakshan Pillai, the learned counsel duly assisted by Sri.Peter Jose Christo for the 1st respondent University and Sri.Elvin Peter P.J., the learned counsel for the 2nd respondent.

8. Sri.Ramakrishnan would firstly contend that there was no warrant for the learned Single Judge to have found that merely because the appellant had participated in the selection process, she was estopped from challenging the legality of the actions of the respondent University while making the selection. It is contended that while it may be a fact that the appellant was aware that the selection process was going to be held in accordance with the University Statutes, she was

not aware of the irregularities such as nomination of Subject Experts by the Vice Chancellor instead of the Syndicate, and the awarding of marks on the basis of norms unilaterally fixed by the Selection Committee, till after the selection procedure was completed. He relies on the decisions of this Court in **Saurabh Jain v. State of Kerala [2011 (1) KLT 888 (F.B)]** as also the decision of the Supreme Court in **Civil Appeal No.9482 of 2019 (judgment dated 17.12.2019)** both of which are authorities for the proposition that a candidate while agreeing to participate in a selection process only accepts the prescribed procedure and not the illegality in it, and that in a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising there from, the same cannot be condoned merely because a candidate has partaken in it. He points out that the constitutional scheme is sacrosanct and violation in any manner is impermissible and hence, even assuming that her challenge against the adoption of the procedure under the University Statues cannot be maintained in view of his client having had knowledge of the same even before attending the interview, the alleged illegalities in the nomination of Subject Experts and in the matter of awarding marks at the interview, cannot be hit by the principles of estoppel.

9. With specific reference to the nomination of Subject Experts, the learned counsel would submit that the Subject Experts were nominated by the Vice Chancellor and not by the Syndicate of the University. This according to him was contrary to the provisions of Section 31 of the University Statutes where under the specific power in this regard was conferred on the Syndicate. As for the marks awarded by the Selection Committee to the candidates, the learned counsel would rely on the Full Bench decision of this Court in **Keshav Mohan v. University of Kerala [2009 (4) KLT 573]** to contend that in cases where, as in the present, norms governing selection were not laid down either in the statutory provisions or through administrative instructions, the Selection Committee constituted to conduct a selection would not have any inherent jurisdiction or authority to evolve its own norms for conducting the selection. It is pointed out that if such norms have been evolved by the Selection Committee, then the said action of the Selection Committee would have to be seen as without jurisdiction and the selection itself vitiated on that score.

10. Responding to the said arguments, it is the submission of Sri. Elvin Peter, the learned counsel for the 2nd respondent, as also Sri. Aravindakshan Pillai, learned standing counsel for the first respondent

University that the alleged irregularity regarding the nomination of the Subject Experts by the Vice Chancellor, in lieu of the Syndicate of the University, is not one that is significant at this stage since admittedly, the Syndicate itself had subsequently ratified the decision of the Vice Chancellor and there was no allegation of mala fides urged by the appellant in writ petition. It is further pointed out that the allegation that a wrong selection procedure had been followed by the University is also misconceived because, although the UGC Regulations in force had been adopted by the State Government through a GO(P) No.171/99/HEdn. Dated 21.12.1999, the said GO clearly indicated that the adoption of the UGC guidelines was subject to the condition that the selection procedure would continue to be in accordance with the University Statutes. Further, the appellant had knowledge of these facts and had participated in the selection process without demur. They would also contend that, while the appellant had not specifically impugned the appointment order issued to the 2nd respondent by suitably amending the writ petition or making the said appointment subject to the outcome of the writ petition, interfering with the selection at this distance of time would, while not serving any purpose of the appellant, severely prejudice the interests of the 2nd respondent who had left her earlier service in the School of

Legal Thought under the MG University, to take up the present appointment, almost 14 years ago. Reliance is placed by the learned counsel on the judgment of this Court in **M.P.Raghavan Nair v. State Insurance Officer and Others [1971 KLT 583 (F.B.)]** that holds that in the absence of a challenge to an order of appointment, which in service matters confers a title on the appointee, there cannot be a prayer to dislodge the appointee from the service covered by the appointment order. Reliance is also placed on the decisions in **Abraham v. Returning Officer [1993 (1) KLT 548]**, **Pradeep Kumar & Another v. Mohanan & Others [1998 (1) KLJ 494]** and **BEG Raj Singh v. State of U.P. and Others [(2003) 1 SCC 726]** to contend that even if the appellant succeeds in establishing a legal case against the selection done, the interests of justice would demand that this Court refrain from interfering with the selection at this distance of time.

11. We have considered the rival submissions. We have also gone through the pleadings and case law relied upon by the learned counsel. Before we proceed to deal with the same, however, we must point out that we do find considerable force in the point urged by the respondents herein as regards the futility of an adjudication on merits

at this distance of time. The appellant before us, who no doubt was an aspirant to the notified post of Assistant Professor in the respondent University in 2008, is now stated to be working as an Associate Professor at the Government Law College, Thrissur. The 2nd respondent, on securing the appointment to the notified post, left her job at the School of Legal Thought, M.G.University to take up the new assignment and has been continuing in the service of the respondent University for the last 14 years. Thus, even if we were to find the impugned selection as vitiated on any legal ground, the net result would be that the selection would stand set aside and the parties relegated to the stage where a fresh selection would have to be conducted pursuant to Ext.P1 notification. In such selection, neither the appellant nor the 2nd respondent would be able to participate for they would be over-aged for the post. That apart, it is unlikely that the appellant, who has since progressed in her career and is today an Associate Professor at a Government Law College would be interested in an appointment as an Assistant Professor at the 1st respondent University. The question therefore is whether we should interfere with the selection at this distance of time? On a consideration of the peculiar facts in the instant case, including that there was no challenge to the order of appointment issued to the 2nd respondent pursuant to the selection process that was

initiated through Ext.P1 notification and that there was no interim order passed by this Court, which made any subsequent appointment of the 2nd respondent subject to the result of the Writ Petition, we are of the view that equitable considerations require us to refrain from interfering with the selection at this distance of time. We find support for our conclusions in the decisions reported in **Abraham v. Returning Officer [1993 (1) KLT 548]**, **Pradeep Kumar & Another v. Mohanan & Others [1998 (1) KLJ 494]** and **BEG Raj Singh v. State of U.P. and Others [(2003) 1 SCC 726]** that were cited before us by the learned counsel for the 2nd respondent.

12. Notwithstanding our above finding, and since learned counsel for the appellant wants us to consider the issue of legality of the selection conducted by the respondent university, we deem it appropriate to deal with the submissions of the learned counsel for the appellant. We do find force in the contention of the learned counsel for the appellant that the learned Single Judge ought not to have shut out the case of the appellant for the sole reason that she had participated in the selection process with full knowledge of the fact that the procedure to be followed was to be in accordance with the University Statutes and not that prescribed by the UGC Regulations. The learned Judge was no

doubt right in holding the appellant estopped from impugning the selection on the ground that it was the procedure in the University Statutes and not that in the UGC guidelines that was followed, since she was aware of the procedure that was going to be followed well before the event. That, and the fact that the State Government had adopted the UGC Regulations subject to the said condition would, at any rate, have decided the point against the appellant. However, the decision of this Court in **Saurabh Jain v. State of Kerala [2011 (1) KLT 888 (F.B)]** and that of the Supreme Court in **Civil Appeal No.9482 of 2019 (judgment dated 17.12.2019)** are authorities for the proposition that a candidate while agreeing to participate in a selection process only accepts the prescribed procedure and not the illegality in it, and that in a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising there from, the same cannot be condoned merely because a candidate has partaken in it. We are of the view that the plea of the appellant that the selection was vitiated on account of a wrong nomination of Subject Experts and on account of the adoption of an erroneous norm for valuation ought to have been considered on merits by the learned Single Judge. That being said, we find that the said issues would also have to be decided against the appellant for the

following reasons:

13. While it is no doubt true that as per the statutory provisions the nomination of the experts had to be by the Syndicate, it is not in dispute in the instant case that the Subject Experts were nominated by the Vice Chancellor, who is the superior authority under the University Statutes and, more importantly, the decision of the Vice Chancellor was subsequently ratified by the Syndicate itself. Thus, the argument with regard to the manner in which the nomination of experts was done is merely one of a technical nature, which cannot have a bearing on the validity of selection procedure that was followed.

14. As regards the submissions made with regard to the legality of the procedure adopted by the Selection Committee, in the absence of statutory norms or guidelines by the appointing authority, we find that the sheet anchor of the appellant's case is the judgment of the Full Bench of this Court in **Keshav Mohan v. University of Kerala [2009 (4) KLT 573]**, that found as follows:

“(1) The selection committee, which has been statutorily constituted, should follow the norms for assessing the merit of rival candidates, if such norms are laid down in the statute. The Selection Committee

has no jurisdiction or authority to either relax any of the norms or vary the same.

(2) If the statute which provides for the constitution of the Selection Committee does not provide for the norms for the selection committee, then it is open to the appointing authority to lay down instructions and guidelines providing for such norms. In such a case, the Selection Committee is bound to follow such administrative instructions in conducting selection.

(3) In cases where the norms governing the selection are not laid down either in the statutory provisions or in administrative instructions, the Selection Committee constituted to conduct selection would not have any inherent jurisdiction or authority to evolve its own norms for conducting the selection. If it evolves its own norms, then its action will be without authority and jurisdiction and selection would be vitiated.”

15. Although at first blush it may appear that the 3rd finding above effectively denudes a statutory Selection Committee of the power to proceed with the selection process, in cases where the norms governing the selection are not laid down either in the statutory provisions or in administrative instructions, we find ourselves unable to read the findings of the Full Bench of this Court in such a restrictive manner. The interpretation of the said finding by the learned counsel for the appellant, if accepted, would lead us to ignore the subtle distinction between the existence of a statutory power and the exercise of it by the statutory authority. The said finding of the Full Bench can

only be seen as holding that a statutorily constituted Selection Committee, if called upon to conduct a selection in the absence of any statutory norms or guidelines to inform the exercise of such statutory discretion, must not by itself evolve such norms or criteria as would take it out of its statutory confines. In other words, a statutorily constituted Committee, while being obliged to exercise its discretionary function of conducting a selection as contemplated by the Statute, would be seen as transgressing its jurisdictional limits if it relies on norms or guidelines that militate against the provisions or object of the Statute in question. In the latter event, it would always be open to this Court to strike down such action of the statutory committee as ultra vires and illegal. In the instant case, when we look at the procedure that was followed by the Selection Committee, we find that, it has only awarded marks based on the experience and qualifications possessed by the rival candidates and it was on that criteria that the 2nd respondent scored more marks than the appellant in the selection process. Experience of a candidate being a relevant criteria in a selection to the post of Assistant Professor, we do not see the Selection Committee as having overstepped its jurisdictional limits while conducting the selection. The counter affidavit of the University reveals that the teaching experience of the 2nd respondent was of 7 ½ years as

against three years for the appellant/writ petitioner. We, therefore, do not find any illegality in the selection procedure on this score.

In the light of the above discussions, we find that there is no need to interfere with the judgment of the learned Single Judge and for the reasons stated therein as supplemented by the reasons in this judgment the Writ Appeal is dismissed as devoid of merit.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
MOHAMMED NIAS C.P.
JUDGE