

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

WEDNESDAY, THE 28TH DAY OF SEPTEMBER 2022 / 6TH ASWINA,
1944

WA NO. 1136 OF 2021

AGAINST THE JUDGMENT DATED 29.06.2021 IN WP(C) 3274/2020

OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

- 1 CENTRAL UNIVERSITY OF KERALA,
TEJASWINI HILLS, PERIYE, KASARAGOD-671316,
REPRESENTED BY ITS REGISTRAR.
- 2 THE REGISTRAR,
CENTRAL UNIVERSITY OF KERALA, TEJASWINI HILLS,
PERIYA, KASARAGOD-671316.
BY ADVS.
K.RAMAKUMAR (SR.)
T.RAMPRASAD UNNI, SC, CENTRAL UNIVERSITY OF
KERALA
S.M.PRASANTH

RESPONDENT/PETITIONER:

JOSHILA J.U.,
AGED 30 YEARS, W/O. AKHIL G.N., RESIDING AT
AKHILAM, PATTIYAKKALA, POOVAR P.O.,
THIRUVANANTHAPURAM-695525.
BY ADV S.KRISHNAMOORTHY CGC SR.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
28.09.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.B.SURESH KUMAR & C.S.SUDHA, JJ.

Writ Appeal No.1136 of 2021

Dated this the 28th day of September, 2022.

JUDGMENT

P.B.Suresh Kumar, J.

This appeal is directed against the judgment dated 29.06.2021 in W.P.(C) No.3274 of 2020. The appellants were the respondents in the writ petition. Parties are referred to in this judgment for convenience, as they appear in the writ petition.

2. The matter relates to the selection for appointment to the post of Pharmacist in the Central University of Kerala (the University). In terms of Ext.P1 notification, applications were invited from eligible candidates for selection for appointment against the sole vacancy. The essential qualifications prescribed in terms of the notification were (i) 10

+ 2 plus 2 years Diploma in Pharmacy and (ii) Registration with State Pharmacy Council. The petitioner who holds a Degree in Pharmacy (B.Pharm) as also a Post Graduation in Pharmacy (M.Pharm) applied for selection pursuant to Ext.P1 notification. The selection process was a 3-tier one, a preliminary examination, a final examination and a skill test. Though several candidates qualified in the preliminary examination, the petitioner alone qualified in the final examination. Even though the petitioner was called upon to participate in the skill test scheduled on 28.12.2019, she was not permitted to take part in the test after perusing her certificates, on the ground that she does not hold two years Diploma in Pharmacy, one of the qualifications prescribed in Ext.P1 notification. Insofar as the petitioner was found not holding the said qualification, the University issued Ext.P8 notice thereafter stating, "none found qualified". The writ petition was instituted challenging Ext.P8 notice. The case set out by the petitioner in the writ petition is that insofar as Ext.P1 notification does not preclude persons like the petitioner who hold higher qualifications from participating

in the selection process, Ext.P8 notice is bad.

3. A statement was filed on behalf of the University stating that the petitioner has made a false claim in the online application preferred by her for selection that she holds a Diploma in Pharmacy and but for the said false claim, she would not have been permitted to participate in the selection process.

4. A reply affidavit was filed by the petitioner to the statement filed on behalf of the University stating, among others, that the petitioner has not made any claim in the application that she holds a Diploma in Pharmacy and that she has specifically stated in the application that she does not possess a Diploma in Pharmacy.

5. The learned Single Judge found that having specifically stated in the application that the petitioner does not hold a Diploma in Pharmacy, the action of the University in disqualifying her from the selection process merely on the ground that she does not possess a Diploma in Pharmacy is unsustainable in law. Consequently, the writ petition was

allowed quashing Ext.P8 notice and directing the University to permit the petitioner to participate in the skill test. Persons similarly placed like the petitioner among the applicants were also directed to be given opportunity to participate in the skill test. The University is aggrieved by the said decision of the learned Single Judge.

6. Heard the learned counsel for the appellants as also the learned counsel for the respondent, the petitioner in the writ petition.

7. The learned counsel for the appellants submitted at the outset that the only prayer in the writ petition was for a direction to the University to consider Ext.P7 representation submitted by the petitioner against Ext.P8 notice and the learned Single Judge, in the circumstances, ought not have disposed of the writ petition in the manner aforesaid. It was asserted by the learned counsel that only those candidates who hold two years Diploma in Pharmacy were eligible to participate in the selection process and applications preferred by such candidates only were accepted. It was reiterated by the

learned counsel that the petitioner has made a false claim in the application that she holds a Diploma in Pharmacy and but for that, she would not have been permitted to participate in the selection process. It was argued that the petitioner cannot, therefore, be permitted to take advantage of the wrong committed by her. It was also argued by the learned counsel that candidates similarly placed like the petitioner who do not have two years Diploma in Pharmacy were not allowed to participate in the selection process in the light of the essential qualifications prescribed in the notification and the learned Single Judge, in the circumstances, ought not have entertained the writ petition. The learned counsel has relied on the decision of the Apex Court in **District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram v. M.Tripura Sundari Devi**, (1990) 3 SCC 655 as also the decision of the Division Bench of this Court in **Shabu v. State of Kerala**, 2013 (2) KLT 598, in support of the said argument. According to the learned counsel, the learned Single Judge, in the circumstances, should have dismissed the

writ petition.

8. Per contra, the learned counsel for the respondent supported the impugned judgment.

9. We have examined the arguments advanced by the learned counsel for the parties. We have also perused the materials on record, particularly the application submitted by the petitioner for selection which has been produced along with the statement filed on behalf of the University as Annexure R1(a).

10. The prescription as regards qualifications contained in Ext.P1 notification reads thus:

“2.Pharmacist:

Essential Qualifications:

- (i) 10 + 2 plus 2 years Diploma in Pharmacy
- (ii) Registration with State Pharmacy Council.”

As evident from the extracted portion of the notification, what is prescribed is the essential qualification. There cannot be any doubt that the expression “essential qualifications” made mention of in the notification refers only to indispensable qualifications required for participating in the selection process.

Possession of a qualification other than that mentioned in the prescription cannot therefore be a disqualification *per se* for appointment. The case on hand is not a case where the petitioner holds the essential qualifications along with other qualifications. On the other hand, it is a case where the petitioner does not hold one of the essential qualifications viz, Diploma in Pharmacy, but holds higher qualifications. As has been envisaged by the Full Bench in **Rina Dutta v. Anjali Mahato**, 2010 SCC OnLine Cal 1601, when a particular qualification is laid down in an advertisement relating to a distinct class of candidates, the candidates possessing a qualification higher than that advertised can ordinarily not be debarred or disqualified, but it is open to the employer to make a rule providing for disqualification of candidates possessing qualification higher than the prescribed qualification. Further, it is trite that a higher qualification, in order to become eligible for selection to a post for which a lower qualification has been prescribed, must presuppose the acquisition of the lower qualification. It is also trite that if one holds a higher

qualification in the same faculty, the same can certainly be stated to presuppose the acquisition of the lower qualification. The aforesaid aspect has been clarified by the Apex Court in **Jyoti K.K. v. Kerala Public Service Commission**, (2010) 15 SCC 596. The relevant paragraph of the judgment dealing with the said aspect reads thus:

“7. It is no doubt true, as stated by the High Court that when a qualification has been set out under the relevant Rules , the same cannot be in any manner whittled down and a different qualification cannot be adopted . The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the Rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post . If a person has acquired higher qualifications in the same Faculty, such qualifications can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far.”

As already noticed, one of the essential qualifications prescribed in the case on hand is two years Diploma in Pharmacy. The respondents have no case that the Degree in

Pharmacy and the Post Graduation in Pharmacy held by the petitioner cannot be considered as higher qualifications of the essential qualification prescribed in the notification viz, two years Diploma in Pharmacy or that the said qualifications do not presuppose the acquisition of the essential qualifications. The higher qualifications held by the petitioner, in the circumstances, can certainly be stated to presuppose the acquisition of the lower qualification prescribed for the post namely, two years Diploma in Pharmacy.

11. As noted, the contention of the University is that two years Diploma in Pharmacy being an essential qualification in terms of the notification, a candidate who does not hold the said qualification is not entitled to participate in the selection process. In other words, the stand of the University is that it was intended only for diploma holders in Pharmacy to apply for the selection, and not those who hold higher qualifications which presuppose acquisition of the lower qualification prescribed. In the light of the principle referred to in the preceding paragraph, if as a matter of fact, the University

had intended those who do not hold qualifications other than two years Diploma in Pharmacy to apply for selection, according to us, the same should have been made clear in the notification. When that position was not made clear in the notification, the University cannot be heard to contend that those who hold higher qualifications which presuppose acquisition of the lower qualification prescribed for the post are not entitled to participate in the selection process. Identical is the view taken by the Apex Court in **Jyoti K.K.** That was a case where the question was whether Graduates in Electrical Engineering were entitled to apply for selection to the post of Sub-Engineer (Electrical) in the service of the Kerala State Electricity Board to which the technical qualification prescribed was only a Diploma in Electrical Engineering. Of course, the rule governing the selection process provided that such of those higher qualifications which presuppose the acquisition of lower qualification prescribed for the post shall also be sufficient for the post. The relevant observation in paragraph 9 of the judgment reads thus:

“In the event the Government is of the view that only diploma - holders should have applied to post of Sub - Engineers but not all those who possess higher qualifications , either this Rule should have excluded in respect of candidates who possess higher qualifications or the position should have been made clear that degree holder shall not be eligible to apply for such post.”

Underline supplied

Be that as it may, reverting to the case on hand, the averment in the statement filed on behalf of the University that it was on account of the false claim made by the petitioner that she holds a Diploma in Pharmacy in addition to the Degree and Post Graduation in Pharmacy held by her, she was permitted to participate in the selection process, would indicate that the stand of the University is not that those candidates who hold higher qualifications shall not participate in the selection process, but is only that those candidates who hold higher qualifications were entitled to participate in the selection process only if they hold the essential qualifications prescribed in the notification. The said stand, according to us, would be wholly discriminatory, for the same would amount to depriving

employment opportunities to candidates who hold higher qualifications, on the ground that they do not possess a lower qualification.

12. Coming to the arguments advanced by the learned counsel for the appellants, as noted, the writ petition was essentially one challenging Ext.P8 notice issued by the University. The contention of the appellants that the only prayer in the writ petition was for a direction to the University to consider the representation submitted by the petitioner is therefore incorrect. As noted, the learned Single Judge has examined the correctness of Ext.P8 notice, and it is having found that the said notice is unsustainable in law, consequential directions have been issued. There is, therefore, no infirmity in the directions issued by the learned single judge.

13. Further, the contention of the University that the petitioner has made a false claim in the application that she holds two years Diploma in Pharmacy is also unsustainable. A perusal of the application submitted by the petitioner indicates that as found by the learned Single Judge, the petitioner has

categorically stated in the application that she does not hold a Diploma in Pharmacy. True, the portion of the application submitted by the petitioner intended for furnishing the particulars of the qualifications would indicate that the petitioner holds a Diploma in Pharmacy and the percentage of marks secured by her in the Diploma examination is one. The statement in the application that the petitioner secured Diploma with one percent mark appears to be on account of some technical glitch. The petitioner should have certainly explained the said anomaly in the writ petition. Insofar as it was clearly stated by the petitioner in the application that she does not hold a Diploma in Pharmacy, we do not think that merely on account of the said meaningless statement, it can be said that the petitioner has made a false claim in order to participate in the selection process.

14. As regards the contention of the University that candidates similarly placed like the petitioner were not allowed to participate in the selection process, we may observe that the same cannot be a ground at all to challenge the impugned

judgment, as it is found that the petitioner is entitled to participate in the selection process in the absence of any stipulation in the notification that the higher qualification possessed by her is a disqualification. True, it was held by the Apex Court in **Vizianagaram Social Welfare Residential School Society** that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, all those who had similar or better qualifications than the appointee but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement are deemed to be aggrieved and the courts cannot ignore the said fact. **Vizianagaram Social Welfare Residential School Society** was a case where a candidate who was holding only a lesser qualification than what had been prescribed in the notification was permitted to join duty, setting aside the decision of the competent authority in not allowing her to do so. Similarly, **Shabu** was a case where candidates who were lesser qualified than what had been prescribed in the rules participated in the selection process based on the interim

orders passed by this Court. At the time of final hearing, they prayed before the Kerala Administrative Tribunal to which the matter was transferred in the meanwhile, to make the interim order absolute on the ground that the rule was amended subsequently and that they are entitled to participate in the selection process in the light of the amended rules. It appears that the Administrative Tribunal did not accept the said argument and the decision taken by the Tribunal in this regard was affirmed by this Court, taking the stand that had the notification been in terms of the amended rules, there would have been a large number of other candidates as well and the candidates before the court cannot have a march over them. The principles on which the aforesaid cases are decided, according to us, have no application to the facts of the case on hand.

15. As noted, in terms of the impugned judgment, the learned Single Judge directed the University to permit even those applicants who have not qualified in the written examination to participate in the skill test. We do not find any

justification for the learned Single Judge in issuing such a direction, especially when those applicants who did not qualify the written examination were not before the learned Single Judge. The said direction, in the circumstances, is liable to be interfered with.

In the result, the appeal is allowed in part setting aside the impugned judgment to the extent it directs the University to permit those applicants who have not qualified in the written examination to undertake the skill test, and confirming the remaining part of the judgment.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

C.S.SUDHA, JUDGE.

YKB

APPENDIX

RESPONDENT 'S/S ANNEXURES :

**ANNEXURE-R1 (C) RELEVANT PORTION OF THE NOTIFICATION
ISSUED BY CNTRAL UNIVERSITY OF
TAMILNADU FOR RECRUITMENT OF NON-
TEACHING STAFF**

**ANNEXURE-R1 (D) RELEVANT PORTION OF INFORMATION
BOOKLET ISSUED FOR RECRUITMENT OF NON-
TEACHING STAFF IN THE CENTRAL
UNIVERSITY OF KARNATAKA.**