

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 16TH DAY OF MARCH 2021/25TH PHALGUNA, 1942

W.A.No.222 OF 2021

AGAINST THE JUDGMENT DATED 8.12.2020 IN W.P(C) .NO.21522/2019 (M)
OF HIGH COURT OF KERALA

APPELLANT/PETITIONER NO.1:

BIJU.C.V.
AGED 45 YEARS
S/O. KUNJAPPAN, CHUNDAMKUZHYMARIYIL HOUSE,
OLIYAPPURAM POST, KOOTHATTUKULAM, ERNAKULAM DISTRICT.

BY ADVS.SRI.KALEESWARAM RAJ
SRI.VARUN C.VIJAY
KUM.A.ARUNA
SMT.THULASI K. RAJ
SMT.MAITREYI SACHIDANANDA HEGDE

RESPONDENTS/PETITIONER NO.2 & RESPONDENTS:

- 1 JASHNA K.J
AGED 35 YEARS
D/O.JOSEPH, KALATHIL HOUSE, MADAPLATHURUTH,
MOOTHAKUNNAM P.O, ERNAKULAM-683 516
- 2 COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY,
CUSAT P.O, PIN-682 022, REPRESENTED BY ITS REGISTRAR.
- 3 VICE CHANCELLOR,
COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY,
CUSAT P.O, PIN-682 022
- 4 KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, PATTOM P.O,
THIRUVANANTHAPURAM-695 004.
- 5 ADDL.R5 IMPLEADED
SREEJITH HEMACHANDRAN,
S/O.HEMACHANDRAN S.NAIR,SREEKAMAL HOUSE,
AYROOR (P.O.),KURUMASSERY VIA,
ERNAKULAM, PIN-683 579.

ADDITIONAL R5 IMPLEADED AS PER ORDER DATED 23.2.21 IN
I.A.2/21 IN W.A NO.222/2021.

R2 BY SRI.S.P.ARAVINDAKSHAN PILLAY, SC
R4 BY SRI.P.C SASIDHARAN, SC
ADDL. R5 BY ADV.SRI.SREEDHAR RAVINDRAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10-03-2021,
THE COURT ON 16-03-2021 DELIVERED THE FOLLOWING:

'C.R.'

J U D G M E N T

A.K. Jayasankaran Nambiar, J.

The 1st petitioner in W.P.(C).No.21522/2019 is the appellant before us, aggrieved by the judgment dated 8.12.2020 of the learned Single Judge dismissing his writ petition. The brief facts necessary for a disposal of this Writ Appeal are as follows:

2. The appellant was included in the rank list prepared by the Kerala Public Service Commission [hereinafter referred to as the "PSC"] for appointment to the post of University Assistant in the various Universities in Kerala. In the writ petition, it was his case that apart from the 211 posts of University Assistants that were sanctioned in the Cochin University of Science and Technology [hereinafter referred to as the "University"], there were 42 temporary posts of University Assistants created by the University at various points in time, pursuant to resolutions of the Syndicate of the University, for meeting the administrative requirements of the University. It was his contention that

inasmuch as there was a valid rank list in force during the time when vacancies arose to the said temporary posts created by the University, the persons in the rank list had to be considered for appointment to the said temporary posts of University Assistants also, over and above their right to be considered for appointment to the sanctioned posts that were notified.

3. Through a counter affidavit filed on behalf of the respondent University, the stand taken was that there were only 211 posts of Assistants sanctioned in the University, and the said posts were all filled up by regular hands from the rank lists prepared by the PSC. The 42 posts referred to by the petitioners in the writ petition were stated to be temporary posts, the costs of which were met by the University itself from the fee collected from the recognized institutions as 'fee for recognition'. It was the stand of the University that the posts were purely temporary in nature, since, the University, being a grantee Institution, could not find its own funds for the salary and other benefits attached to a regular post, which was ordinarily sanctioned by the Government, which would also bear the expenses in connection with the said regular posts. The mode of appointment, through the PSC, was applicable only for filling up the regular sanctioned

posts in the University, and the temporary posts were ordinarily filled by the University through contract appointments pursuant to a selection process conducted by the University for the same.

4. The learned Single Judge, who considered the matter, took note of the stand of the respondent University that there were no vacancies available in substantive sanctioned posts in the University, to which persons like the writ petitioners, who were included in the rank list prepared by the PSC, could be appointed, and found that, at any rate, inasmuch as the validity of the rank list in which the petitioners were ranked had expired, the petitioners could not claim any right for consideration to appointment, against the temporary posts, after the expiry of the validity of the rank list. The action of the respondent University in appointing daily wage/contract employees to the temporary posts created to meet the exigencies of service, was seen as unobjectionable.

5. Before us, it is the contention of Sri.Kaleeswaram Raj, the learned counsel appearing for the appellant, that inasmuch as the University had created 48 temporary posts of Assistants since 2001, and the said posts continued to exist in the University even

now, the clear indication was that there was a requirement in the University for the said 48 additional posts of Assistants, and the University could not, merely on account of the fact that the posts were classified as 'temporary posts', deny appointments in the said posts to candidates who were ranked in the rank list prepared by the PSC. It is pointed out that even at the stage of the writ petition, and prior to the expiry of the rank list in which the 1st petitioner was ranked, an interim order dated 7.8.2019 had been passed by the writ court, directing the University to report the said 42 vacancies of Assistants to the PSC, and the University had reported the said vacancies to the PSC. What the appellant now seeks is an accommodation to one of the temporary posts of Assistants, considering his position in the rank list that had not expired at the time when the interim order dated 7.8.2019 was passed by the writ court.

6. We have considered the submissions of Sri.Kaleeswaram Raj, the learned counsel for the appellant as also Sri.S.P.Aravindakshan Pillai, the learned Standing Counsel for the respondent University. We have also heard Sri.P.C.Sasidharan, the learned Standing Counsel for the PSC as also Sri.P.Ravindran, the learned senior counsel for the additional 5th respondent.

7. On a consideration of the submissions made on either side, we find that, inasmuch as the rank list in which the appellant was ranked, had already expired, and admittedly, there was no vacancy in the 211 sanctioned posts of University Assistants in the University, the appellant cannot claim any right for consideration to the regular sanctioned posts of University Assistants in the University. The question then arises as to whether the appellant could stake a claim for appointment to a vacancy in one of the 42 temporary posts of University Assistants that were created in the University. In this connection, it should be noticed that the selection process initiated by the PSC was in connection with the filling up of the regular sanctioned posts of University Assistants in the various Universities in the State. In the context of the appointments to be effected in the Cochin University, the selection process has to be seen as conducted for filling up the 211 sanctioned posts of University Assistants in the University. Admittedly, there were no vacancies that arose in the 211 sanctioned posts in the University during the period when the rank list was in force. However, we do find that some of the temporary posts of University Assistants were created during the time when the rank list, in which the appellant was ranked, was

submitted that as per University Order No.Ad.A5/Asst/DW/2012 dated 7.5.2015 the person can be engaged on daily wages for a period of 179 days (including holidays) at a stretch and such person can be re-engaged (if work is found satisfactory) for 60 more days (including holidays) with a break of at least one working day between the two engagements and also such engagement on daily wages shall be made in such a manner that in no case the engagement of the same person exceeds 240 days (including holidays) within 12 calendar months. A true copy of order No.Ad.A5/Asst/DW/2012 dated 07.05.2015 of the University is produced herewith and marked as Annexure-R2(C). Those who have completed three full terms on daily wage engagement are engaged only after a gap of two years.

5. It is submitted that the University has already issued a notification as per Ext.P22 dated 09.06.2020 calling for applications from qualified hands to fill up the anticipated vacancies in the temporary posts of Assistants in the University on contract basis. Even though applications have been received pursuant to Ext.P22, University is yet to process the same and once the selection pursuant to Ext.P22 is finalized, vacancies arising in the temporary posts of Assistant in the University will be filled up by candidates included in the rank list prepared pursuant to Ext.P22.

6. It is submitted that out of the total 48 temporary posts of Assistants in the University, at present 41 Assistants are working on daily wages 4 Assistants are working on contract basis and 3 posts of temporary Assistants are manned by permanent employees in the rank of Assistant in the University considering the administrative exigency. The term of the 4 Assistants working on contract basis is to expire in the month of June 2021. The next three vacancies in the temporary posts of Assistants on daily wages are likely to arise on 21.04.2021, 03.05.2021 and 14.08.2021.

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8. Taking note of the said averments in the affidavit filed on behalf of the University, and finding that, although the appellant cannot claim any right for appointment to any

substantive post of University Assistants, based on his position in an expired rank list, it would nevertheless be inequitable to deny him an appointment to a vacancy that exists in a temporary post, that was created during the time when the rank list in which he was ranked, was valid, we deem it appropriate to direct the University to accommodate the appellant in the vacancy that would arise on 21.4.2021 or thereafter, in the temporary post of University Assistant, either on daily wage basis or on contract basis. Needless to say, the terms and conditions of his appointment would be as applicable to daily wage appointments/contract appointments, and the appellant will not be entitled to claim any right based on the selection process conducted by the PSC or his ranking in the list that subsequently expired. We make it clear that this benefit will be available only to the appellant herein and not to any other person included in the rank list that has expired. We are extending this benefit only on the finding that certain temporary appointments were made at a time when the rank list was in force and since the appellant has been before this Court litigating his claims.

We might observe, in this connection, that we have chosen to grant this limited relief to the appellant solely because we

believe that the existence of a right of appointment in a candidate is not a necessary prerequisite for the discharge, by the University, of obligations that are required of an ideal employer. Inasmuch as the University is an entity that answers to the description of 'State' within the meaning of that term under Article 12 of the Constitution of India, it would be incumbent upon them to adhere to the principle of fairness in action which forms an integral aspect of the Rule of Law. The University cannot be seen as excluding a consideration of candidates found meritorious for filling up regular posts, while filling posts that are temporary in nature. In other words, merely because the empanelment of a meritorious candidate was in connection with recruitment to regularly sanctioned posts, it cannot follow that the said candidate will not be considered for appointment to temporary posts carrying the same nomenclature and responsibilities as that of the regular posts. In our view, when there are regularly sanctioned posts of University Assistants in the Cochin University, and there are temporary posts created in addition thereto for the purposes of meeting administrative exigencies, the principles of fairness would mandate that, while filling up the temporary posts, a right of first refusal be extended to those candidates who are empanelled in a list prepared by the PSC, and are waiting for

appointment to regular sanctioned posts of the same category. This is not to say that the PSC should be involved in the selection process of candidates to the temporary posts aforementioned, but only that the merit of a candidate, who has undergone a selection process, at the instance of the PSC, cannot be ignored while filling up temporary posts of University Assistants. Accordingly, while disposing the Writ Appeal, we deem it appropriate to direct that while effecting future appointments to the temporary posts of University Assistants, either through contractual appointment or on daily wage basis, the University shall give preference to such candidates as are included in the current lists prepared by the PSC, for appointment to the regularly sanctioned posts of University Assistants. The notifications issued by the University calling for applicants to such temporary posts should clearly indicate that due preference will be given to candidates empanelled in a current rank list. We make it clear that, in the event of any such empanelled candidates securing appointment to temporary posts, as aforementioned, the terms and conditions of their service under the University, would be regulated solely by the terms of their appointment be it on contractual or daily wage basis. They will have no claim whatsoever to any regularization or permanent absorption solely based on such engagement or on

account of their status as an empanelled candidate in a selection process intended for appointment to regular sanctioned posts.

The Writ Appeal is disposed as above.

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

**Sd/-
GOPINATH P.
JUDGE**

prp/

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE I COPY OF THE MEETING MINUTES OF THE SYNDICATE DATED 17.07.1999.

ANNEXURE II COPY OF ORDER NO. AD. A3/155068/87 DATED 04.09.1999 ISSUED BY THE DEPUTY REGISTRAR ADM. II.

ANNEXURE III COPY OF LETTER NO.AD.A1/35335/REGULARISATION OF TEMPORARY POSTS/ASSTS/2020 DATED 01.01.2021 ISSUED BY THE REGISTRAR OF THE 1ST RESPONDENT UNIVERSITY.

ANNEXURE IV COPY OF THE LETTER NO.24748/B2/H.EDN DATED 08.04.1999 ISSUED BY THE PRINCIPAL SECRETARY FOR HIGHER EDUCATION DEPARTMENT.

ANNEXURE V COPY OF THE LIST OF PERSONS WHO ARE APPOINTED ON CONTRACT BASIS FROM JUNE 2018 TO DECEMBER 2019.

ANNEXURE VI COPY OF THE APPOINTMENT ORDER DATED 14.02.2017 ISSUED BY DEPUTY REGISTRAR.

ANNEXURE VII COPY OF THE APPOINTMENT ORDER DATED 29.03.2017 ISSUED BY DEPUTY REGISTRAR.

ANNEXURE VIII COPY OF THE APPOINTMENT ORDER DATED 19.04.2017 ISSUED BY DEPUTY REGISTRAR.

ANNEXURE IX COPY OF THE APPOINTMENT ORDER DATED 16.06.2017 ISSUED BY DEPUTY REGISTRAR.

ANNEXURE X COPY OF THE APPOINTMENT ORDER DATED 22.09.2017 ISSUED BY DEPUTY REGISTRAR.

ANNEXURE XI COPY OF THE APPOINTMENT ORDER DATED 7.02.2017 ISSUED BY DEPUTY REGISTRAR.

ANNEXURE XII COPY OF XI PAY REVISION COMMISSION REPORT.

RESPONDENTS EXHIBITS:

ANNEXURE R2 (A) COPY OF THE ORDER NO.AD.A1/MISC/2015 DATED 22.08.2016 OF THE UNIVERSITY.

ANNEXURE R2 (B) COPY OF THE ORDER NO.AD.A1/153/2644/2011 DATED 22.10.2016 OF THE UNIVERSITY.

ANNEXURE R2 (C) COPY OF THE ORDER NO.AD.A5/ASST/DW/2012 DATED 07.05.2015 OF THE UNIVERSITY.

//TRUE COPY//

P.S. TO JUDGE