

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 2ND DAY OF NOVEMBER 2022/11TH KARTHIKA, 1944

WA NO. 387 OF 2021

AGAINST THE JUDGMENT IN WP(C) 8647/2020 DATED 21.01.2021

OF HIGH COURT OF KERALA

APPELLANT/PETITIONER IN THE W.P.(C):

**DR.FEROSH M BASHEER
THUNDUVILAKAM, KALAKUDIYOORKONAM, NEMOM P.O,
THIRUVANANTHAPURAM - 695020.**

**BY ADVS.
P.CHANDRASEKHAR
SRI.K.K.MOHAMED RAVUF
SHRI.SATHEESH V.T.
SMT.RANI MADHU
SMT.MANJARI G.B.**

RESPONDENTS/RESPONDENTS IN THE W.P.(C):

- 1 THE UNIVERSITY OF KERALA
REPRESENTED BY ITS REGISTRAR,
THIRUVANANTHAPURAM, PIN - 695034.**
- 2 DR. P.B. BALAMURALI,
DEPARTMENT OF PHILOSOPHY, UNIVERSITY OF KERALA,
THIRUVANANTHAPURAM, PIN - 695034.**
- 3 THE SELECTION COMMITTEE
FOR SELECTION OF ASSISTANT PROFESSOR(1 OPEN), IN
THE DEPARTMENT OF PHILOSOPHY,
UNIVERSITY OF KERALA, THIRUVANANTHAPURAM, PIN -
695034, REPRESENTED BY CHAIRMAN AND VICE
CHANCELLOR, PROF.V.P. MAHADEVAN PILLAI.**

**ADDL.R4 UNIVERSITY GRANTS COMMISSION, REPRESENTED BY ITS
SECRETARY, BAHADUR SHAH, ZAFAR MARG, NEW DELHI -
110002 .**

**IS SUO MOTU IMPEADED AS THE ADDITIONAL FOURTH
RESPONDENT AS PER ORDER DTD.23-8-2022 IN WA
NO.387/2022.**

BY ADVS.

SHRI.THOMAS ABRAHAM, SC, UNIVERSITY OF KERALA

SRI.S.P.ARAVINDAKSHAN PILLAY

SMT.N.SANTHA

SRI.V.VARGHESE

SRI.PETER JOSE CHRISTO

SRI.S.A.ANAND

SMT.K.N.REMYA

SHRI.VISHNU V.K.

KUM.ABHIRAMI K. UDAY

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
02.11.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

C.R.

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

Writ Appeal No.387 of 2021

Dated this the 2nd day of November, 2022

J U D G M E N T

P.B.Suresh Kumar, J.

This writ appeal is directed against the judgment dated 21.1.2021 in W.P.(C) No.8647 of 2020. The appellant was the petitioner in the writ petition. Parties and documents are referred to in this judgment, unless otherwise mentioned, as they appear in the writ petition.

2. The matter relates to the selection for appointment to the post of Assistant Professor in Philosophy in the University of Kerala (the University). In terms of Ext.P1 notification, the University invited applications from eligible and qualified candidates for appointment against the sole

vacancy. The qualifications required were as prescribed by the University Grants Commission (the UGC) in the UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 (the Regulations). It was specified in the notification that besides fulfilling the qualifications, the candidates must have cleared the National Eligibility Test (NET). It was, however, clarified that candidates who are, or have been awarded a Ph.D degree in accordance with the UGC (Minimum Standards and Procedures for Award of Ph.D Degree) Regulations, 2009 shall be exempted from the requirement of NET. But, it was stated in Clause 5(ii) of Ext.P1 notification that in order for a Ph.D degree to be considered for exemption from the requirement of NET, those candidates who had registered for Ph.D prior to 11th July, 2009 shall produce along with the application, a certificate from the Vice Chancellor/Pro- Vice-Chancellor/Dean (Academic Affairs)/Dean (University Instructions) of the University to the effect that the Ph.D has

been awarded fulfilling the following conditions: (a) that Ph.D degree has been awarded to the candidate in regular mode only, (b) that evaluation of the Ph.D thesis has been made by at least two external examiners, (c) that open Ph.D. viva-voce of the candidate had been conducted, (d) that the candidate has published two research papers from his/her Ph.D. work out of which at least one must be in a referred journal and (e) that the candidate has made at least two presentations in conferences/seminars, based on his/her Ph.D work.

3. As per the norms prevailing then, a maximum of 50 marks was prescribed for 'Academic Record and Research Performance', a maximum of 30 marks was prescribed for 'Domain Knowledge and Teaching Skills' and a maximum of 20 marks was prescribed for performance in the interview. Out of the 50 marks prescribed for 'Academic Record and Research Performance', a maximum of 20 marks was prescribed again for publications in journals/books with ISSN (International Standard Serial Number)/ISBN (International Standard Book Number).

4. The petitioner and the second respondent applied for selection pursuant to Ext.P1 notification. Between them, the petitioner was awarded 45 marks including 10 marks for the interview and the second respondent was awarded 55 marks including 18 marks for the interview and consequently, the second respondent was appointed against the vacancy notified. According to the petitioner, he is entitled to 68 marks in the place of 45 marks awarded to him and he should have, therefore, been selected for appointment in the place of the second respondent. He elaborates the said case pointing out that he should have been awarded 20 marks in the place of 4, for publications in journals and for publication of books, 2 marks for the Fellowship of Indian Council of Philosophical Research, 3 marks for Paper Presentation in Seminar/Conferences and 2 marks for teaching experience. That apart, it was also alleged by the petitioner that the second respondent who has not cleared NET was not eligible to participate in the selection process. The petitioner concedes that the second respondent holds a Ph.D Degree, but according

to him, the second respondent is not entitled to exemption from the requirement of NET since he has not produced the certificate in terms of Clause 5(ii) of the notification along with the application. On the said grounds, the petitioner challenged the selection of the second respondent in the writ petition. The petitioner also sought a direction in the writ petition to the University to appoint him as Assistant Professor in the place of the second respondent.

5. A statement was filed in the writ petition on behalf of the University. Along with the statement, the University has produced the statement of marks awarded to the candidates by the Selection Committee as Annexure R1(c). It is stated by the University in the statement that the second respondent has produced the certificate in terms of Clause 5(ii) of the notification. As regards the marks awarded to the petitioner, the stand of the University is that the petitioner was awarded marks which he is entitled to. It was specifically stated in the statement that the petitioner has not been awarded any marks for teaching skills as he has not claimed any marks

under that head.

6. In the counter affidavit filed by the second respondent in the writ petition, it was stated that four candidates referred to against serial Nos.4, 12, 16 and 34 in Annexure R1(c) statement have secured 50, 51, 47 and 46 marks respectively in the selection; that without them in the array of parties, the petitioner is not entitled to the relief claimed in the writ petition and that the writ petition is therefore, not maintainable. The second respondent has produced along with the counter affidavit the certificate produced by him in compliance with Clause 5(ii) of the notification as Ext.R2(l) and a certificate issued by the concerned University later concerning the Ph.D Degree awarded to him as Ext.R2(m). In the light of Exts.R2(l) and R2(m), it was contended by the second respondent that even though he has not cleared NET, he was fully qualified and eligible to participate in the selection process.

7. The learned Single Judge dismissed the writ petition holding that insofar the four candidates who secured

more marks than the petitioner have not been arrayed as parties to the writ petition, the writ petition is not maintainable. The petitioner is aggrieved by the said decision of the learned Single Judge.

8. A counter affidavit has been filed by the University in the writ appeal stating further that marks have not been awarded to the petitioner for the publications made by him in two journals namely Kerala Studies and International Journal of Humanities and Social Sciences since those are not journals approved by the UGC. As far as the books for which the petitioner claimed marks are concerned, it is stated in the counter affidavit that those books do not have ISBN.

9. The second respondent has also filed a counter affidavit in the writ appeal stating, among others, that searches made by him revealed that the ISBN mentioned by the petitioner in the application in relation to the books stated to have been published by him, are non-existent.

10. Heard the learned counsel for the petitioner, the learned Standing Counsel for the University as also the learned

counsel for the second respondent.

11. The learned counsel for the petitioner attacked the impugned judgment mainly on the ground that the second respondent, inasmuch as he has not complied with the requirement in Clause 5(ii) of the notification, was not eligible to participate in the selection process. It was argued by the learned counsel that Ext.R2(l) certificate cannot be accepted as one in compliance with the requirements in Clause 5(ii) of the notification as it does not deal with any of the matters mentioned therein. Referring to Ext.R2(m) certificate, the learned counsel argued that the same cannot be accepted as a certificate in terms of the requirement in Clause 5 (ii), for it was one issued after the completion of the selection process. He relied on the decisions of the Apex Court in **Ramana Dayaram Shetty v. International Airport Authority of India**, AIR 1979 SC 1628, **State of Gujarat v. Shantilal Mangaldas**, AIR 1969 SC 634, **University of Kashmir v. Dr. Mohd. Yasin**, AIR 1974 SC 238 and **Ramchandra Keshav Adke(Dead) by Lrs. v. Govind Joti Chavare**, AIR 1975 SC 915, in support of

his argument that in the absence of a certificate in tune with the requirement of Clause 5(ii) of the notification, the second respondent ought not have been permitted to participate in the selection process. It was reiterated by the learned counsel that the papers claimed to have been published by him are in international and national journals with ISSN and there is no requirement in the notification that the publications shall be made in journals approved by the UGC. As regards the books claimed to have been published by the petitioner, the learned counsel submitted that those are books with ISBN and the petitioner should have been awarded marks for the same as well. As regards the view taken by the learned Single Judge that the petitioner should have impleaded in the proceedings, those candidates who have secured more marks than him in the selection process, the submission made by the learned counsel was that the Selection Committee had recommended only the name of the second respondent for appointment.

12. The learned Standing Counsel for the University reiterated the contentions urged in the statement filed in the

writ petition and also in the counter affidavit filed in the writ appeal. In addition, it was also pointed out by the learned Standing Counsel that the Selection Committee has made a search to find out whether the books claimed to have been published by the petitioner have ISBN, and it was revealed in the said search that there are no books corresponding to the ISBN provided by the petitioner.

13. Placing reliance on the Full Bench decision of this court in **Vimala Kumari v. State**, 1994 (2) KLT 47, the learned counsel for the second respondent argued that even if it is found that the second respondent is not eligible to participate in the selection process, the appointment could have been made only as per the ranking and since the petitioner is not entitled to be appointed going by the ranking, the writ petition on that ground is not maintainable. It was also contended by the learned counsel that it was obligatory for the petitioner to implead the candidates who have secured more marks than him in the proceedings and in their absence, the learned Single Judge cannot be blamed for having dismissed

the writ petition. Further, the learned counsel argued that Ext.R2(m) certificate would show that the Ph.D of the second respondent satisfies the requirements of Clause 5 (ii) of the notification as on the last date fixed for preferring the applications for selection and there is nothing illegal in perusing Ext.R2(m) certificate for the purpose of ascertaining the said fact.

14. We have examined the arguments advanced by the learned counsel for the parties on either side.

15. As noted, the view taken by the learned Single Judge in the matter of rendering the impugned judgment is that those candidates who have secured more marks than the petitioner should have been arrayed as parties to the writ petition and in their absence in the array of parties, the writ petition is not maintainable. Let us examine whether the learned Single Judge was right in taking the said view, before dealing with the arguments advanced by the learned counsel for the parties, for if it is found that the writ petition is not maintainable, it is unnecessary to examine the sustainability or

otherwise of the various arguments advanced by the learned counsel for the parties.

16. The petitioner does not dispute the fact that the candidates who have been assigned serial Nos.4, 12, 16 and 34 in Annexure R1(c) statement have secured 50, 51, 47 and 46 marks respectively in the selection. The petitioner has secured only 45 marks. The selection was conducted for appointment against the sole vacancy. As noted, the contentions of the petitioner were mainly two fold, of which one is that the petitioner should have been awarded 58 marks under the heads 'Academic Record and Research Performance' and 'Domain Knowledge and Teaching Skills' in the place of 35 marks awarded to him and the other is that the second respondent was not eligible to participate in the selection process inasmuch as he has not cleared NET and failed to produce the certificate in terms of Clause 5(ii) of the notification.

17. A Constitution Bench of the Apex Court in **Udit Narain Singh Malpaharia v. Additional Member, Board of**

Revenue, Bihar, AIR 1963 SC 786, in the context of examining the question whether in a petition seeking a writ in the nature of certiorari, the party in whose favour an authority had made an order which is sought to be quashed, is a necessary party, has held that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made, but whose presence is necessary for a complete and final adjudication on the question involved in the proceedings. In the case on hand, insofar as there was only one vacancy and the second respondent alone was recommended by the Selection Committee for appointment, it cannot be said that the interests of the other four persons who have secured more marks than the petitioner would be affected, if the relief sought for in the writ petition is granted. But, at the same time, if the contention of the petitioner that he should have been awarded 58 marks under the heads 'Academic Record and Research Performance' and Domain Knowledge and Teaching Skills' in place of the 35 marks awarded to him, is accepted, the petitioner will certainly

have a march not only over the second respondent, but also over the four persons who have secured more marks than him in the selection process. Even though a mere inclusion in the ranked list does not confer on any one a right to get appointment, a candidate whose name is included in the ranked list certainly has a right to be considered for appointment, especially in contingencies such as death of the candidate/candidates recommended for appointment, non-acceptance of the offer of appointment by the candidate/candidates etc. As such, in a case of this nature, not only candidates whose interests would be affected directly on account of the outcome of the proceedings, but also candidates whose interests would be jeopardised, are necessarily to be arrayed as parties to the writ petition. This aspect of the matter is clarified by the Apex Court in the recent decision in **Vishal Ashok Thorat v. Rajesh Shrirambapu Fate**, (2020)18 SCC 673. Paragraph 39 of the judgment in the said case reads thus:

“Shri Naphade further submitted that by mere inclusion of the name in the select list, no right has accrued to the selected candidate for appointment. It may be true that by mere inclusion

in the select list, there is no right of appointment but by inclusion in the select list the candidate is entitled for consideration for his appointment, which could not have been denied without there being any valid reason. Thus, we find force in the submission of the appellant that in the present case, the High Court could not have modified the select list without the selected candidates, whose interest was jeopardised by the High Court, being impleaded in the writ petition. Thus, directions issued [Rajesh v. State of Maharashtra, 2018 SCC OnLine Bom 17538] by the High Court in para 51 are not sustainable also in view of the fact that Respondent 1 had not impleaded the selected candidates in his writ petition.” (underline supplied)

Reverting to the facts, it cannot be said that if the relief sought for in the writ petition is granted on the basis of the contention of the petitioner that he should have been awarded 58 marks under the heads 'Academic Record and Research Performance' and 'Assessment of Domain Knowledge and Teaching Skills' in the place of 35 marks, the right of the aforesaid four persons to be considered for appointment would not be affected. As such, we are in complete agreement with the view taken by the learned Single Judge that the writ petition instituted without the aforesaid four persons in the array of parties, is not maintainable.

18. Let us assume that the petitioner does not have a case that he should have been awarded 58 marks under the heads mentioned herein above in the place of 35 marks and that the case of the petitioner is only that the second respondent was ineligible to participate in the selection process in the absence of NET. There cannot be any doubt that in the event the court accepts the said contention and sets aside the appointment of the second respondent on that ground, the petitioner still cannot claim appointment in preference to those who secured more marks than him in the selection process, for appointment at any rate can be made only as per the ranking in the select list [See **Vimala Kumari** (*supra*)]. But, in such a scenario, the larger question is whether the petitioner has the *locus standi* to institute the writ petition. It is well settled that a person who brings a petition even for invocation of a fundamental right must be a person having some direct or indirect interest in the outcome of the petition on his behalf or on behalf of some person under a disability and/or unable to have access to the justice system for patent reasons [See

Kishore Samrite v. State of U.P., (2013) 2 SCC 398].

Generally speaking, a person shall have no *locus standi* to file a writ petition unless he is personally affected by the impugned order or his fundamental rights have been directly or substantially invaded or there is any imminent danger of such rights being invaded. It is all the more so since the relief under Article 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction, and the exception to the general rule is only in cases where the writ applied for is a writ of habeas corpus or *quo warranto* or filed in public interest. Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that legal wrong or legal injury or illegal burden is threatened and such person or determined the class of persons is, by reason of poverty, helplessness, disability or socially or economically disadvantaged position, unable to approach the court for relief [See **Vinoy Kumar v. State of U.P.**, (2001) 4 SCC 734]. In the case on hand, as indicated, even if the petitioner succeeds in the writ petition on the

ground that the second respondent was not eligible to participate in the selection process, he is not entitled to be considered for appointment in the place of the second respondent. If that be so, according to us, the petitioner is not entitled to challenge the appointment of the second respondent on the said ground.

19. In the light of the finding aforesaid, it is unnecessary to examine the sustainability or otherwise of the contentions, on the basis of which reliefs were claimed by the petitioner in the writ petition.

The writ appeal, in the circumstances, is without merits and the same is, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

C.S.SUDHA, JUDGE.

Mn

APPENDIX OF WA.387 OF 2021

APPELLANTS' ANNEXURE

- ANNEXURE A1** **A COPY OF THE ISBN SEARCH PAGE ON THE WEBSITE OF RAJA RAMMOHAN ROY AGENCY FOR ISBN**
- ANNEXURE A2** **A TRUE COPY OF LETTER NO.F.NO.909700/2009-ISBN DATED 19.11.2009 OF DR.SURESH CHAND, SPECIAL OFFICER (BP), RAJA RAMMOHAN ROY NATIONAL AGENCY FOR ISBN, NEW DELHI**
- ANNEXURE A3** **A TRUE COPY OF LETTER OF DR.M.RAJEEV KUMAR, DIRECTOR, PARIDHI PUBLICATIONS ADDRESSED TO THE APPELLANT**
- ANNEXURE A4** **A TRUE COPY OF THE NOTIFICATION APPEARED ON THE WEBSITE OF RAJA RAMMOHAN ROY NATIONAL AGENCY FOR ISBN**
- ANNEXURE A5** **A TRUE COPY OF THE PAGE DOWNLOADED FROM ISBN WEBSITE IN RESPECT OF COLLECTED SHORT STORIES OF WILLIAM SOMERSET MAUGHAM VOLUME 1 PUBLISHED BY VINTAGE CLASSICS**
- ANNEXURE A6** **A TRUE COPY OF THE PAGE IN RESPECT OF ISBN NO. OF CIVIL RULES OF PRACTICE IN KERALA DOWNLOADED FROM ISBN SITE**
- ANNEXURE A7** **THE BOOK OF NICHOLAS ROERICH NAMED 'SHAMBHALA' PUBLISHED BY INTERNATIONAL ROERICH MEMORIAL TRUST THROUGH VEDAMS EBOOKS PVT.LTD., NEW DELHI HAS ISBN NO.817936012-1. THE FRONT AND BACK PAGES OF THE SAID BOOK ARE PRODUCED.**
- ANNEXURE A8** **A TRUE COPY OF THE ISBN SEARCH PAGE IN RESPECT OF ISBN NO.817936012-1**
- ANNEXURE A9** **A TRUE COPY OF THE PAGE OF 'ETHICAL**

AND PHILOSOPHICAL ISSUES IN GENETIC TECHNOLOGY' OF THE APPELLANT PUBLISHED ON GOOGLE BOOKS

ANNEXURE A10 A TRUE COPY OF THE SEARCH RESULT ON ISBN SEARCH FOR 'ETHICAL AND PHILOSOPHICAL ISSUES IN GENETIC TECHNOLOGY' OF THE APPELLANT.

RESPONDENTS' ANNEXURE

Annexure R2(a) TRUE COPY OF THE RELEVANT EXTRACT OF THE UGC APPROVED (OLD) LIST OF JOURNAL OF INDIAN HISTORY AS DOWNLOADED FROM THE WEBSITE OF THE UGC.

Annexure R2(b) TRUE COPY OF THE RELEVANT EXTRACT OF THE UGC APPROVED (OLD) LIST OF JOURNAL OF SAMYUKTA, A JOURNAL OF WOMEN'S STUDIES AS DOWNLOADED FROM THE WEBSITE OF THE UGC.

Annexure R2(c) TRUE COPY OF THE PRINT OUT OF THE ONLINE APPLICATION SUBMITTED BY THE 2ND RESPONDENT.

Annexure R2(d) TRUE COPY OF THE RELEVANT EXTRACT OF THE ONLINE EDITION OF ENCYCLOPAEDIA BRITANNICA

Annexure R2(e) TRUE COPY OF THE RELEVANT EXTRACT OF THE HOME PAGE OF RAJA RAMMOHAN ROY NATIONAL AGENCY FOR ISBN

Annexure R2(f) TRUE COPY OF THE PRINT OUT OF THE DOWNLOADS OBTAINED FROM THE WEBSITE OF ISBN

Annexure R2(g) TRUE COPY OF THE PRINT OUT OF THE DOWNLOADS OBTAINED FROM THE WEBSITE OF ISBN

Annexure R2(h) TRUE COPY OF THE PRINT OUT OF THE DOWNLOADS OBTAINED FROM THE WEBSITE OF ISBN

