

Sam Johnson vs State of Kerala,

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Court : Kerala

Decided On : Oct-29-2021

Judge : Honourable Mr. Justice Amit Rawal

Appeal No. : WP(C)/29877/2019

Appellant : Sam Johnson

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL FRIDAY,
THE 29TH DAY OF OCTOBER 2021 / 7TH KARTHIKA, 1943
PETITIONER/S: SAM JOHNSON ASSISTANT PROFESSOR,
DEPARTMENT OF ENGLISH, ST.MICHAELS COLLEGE,
MAYITHARA.P.O., CHERTHALA-688539. RESIDING AT POLLAYIL
HOUSE, KARINGATTAKUZHAY ROAD, PATHIRAPALLY.P.O.,
ALAPPUZHA-688521. BY ADVS. BABY ISSAC ILLICKAL ISAAC
KURUVILLA ILLIKAL RESPONDENT/S:

1 STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY
TO GOVERNMENT, GOVERNMENT SECRETARIAT,

THIRUVANANTHAPURAM-695001. 2 PRINCIPAL SECRETARY TO GOVERNMENT, HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001. 3 DIRECTOR OF COLLEGIATE EDUCATION, VIKAS BHAVAN, THIRUVANANTHAPURAM-695001. 4 DEPUTY DIRECTOR OF COLLEGIATE EDUCATION, MCRV HOSTEL, OLD BUILDING, GENERAL HOSPITAL ROAD, KOCHI-682011. 5 UNIVERSITY OF KERALA, REPRESENTED BY ITS REGISTRAR, THIRUVANANTHAPURAM-695034. 6 VICE CHANCELLOR, UNIVERSITY OF KERALA, THIRUVANANTHAPURAM-695003. 7 PRINCIPAL, ST.MICHAELS COLLEGE, MAYITHARA.P.O., CHERTHALA-688539. 8 MANAGER, ST.MICHAELS COLLEGE, MAYITHARA.P.O., CHERTHALA-688539. BY ADVS. SRI.THOMAS ABRAHAM, SC, UNIVERSITY OF KERALA SRI.LIJU.V.STEPHEN SMT.INDU SUSAN JACOB SHRI.VINAY M.E.

OTHER PRESENT: GP SRI JIMMY GEORGE THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29.10.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Challenge has been laid to impugned order Ext.P7 dated 30.8.2017 whereby the case of the petitioner for approval of his appointment as Assistant Professor in English has been declined on the ground that the post was not sanctioned by the Government.

2. Petitioner on 2.7.2014 was appointed against the retirement vacancy pursuant to a selection procedure envisaged under the Kerala University Law consisting of the representative of the Government and University. Petitioner is an M.A Degree holder

and passed the National Eligibility Test for Lectureship (NET) as evident from Ext.P1 and P1(a). The petitioner applied to the post of Assistant Professor in English in the college pursuant to the notification for filling up vacancies in the

English Department by the 8th respondent on 19.12.2013 and was accordingly appointed. The proposal for approval of appointment was duly forwarded to 5 th respondent ie., University of Kerala but certain objections were

raised by the 5th respondent as evidenced from Ext.P5. The petitioner and the other teachers of the college whose approval were denied approached this Court vide W.P.(C) No.25225/2017 which was disposed of by directing the 5 th respondent to reconsider the approval of appointment without raising any objections regarding conformity to the UGC Regulations 2010.

3. Learned counsel appearing for the petitioner submitted

that the respondents have erroneously rejected the case of the petitioner on the premise that the post against which the petitioner was appointed; Assistant Professor in English was non sanctioned whereas one Sri.Titus Augustine, the 1st rank holder in the select list had been appointed in the first vacancy in the Department of

English. The approval granted Sri.Titus Augustine by the 5 th

respondent was concurred by the 4th respondent on 19.2.2014. The contention of the respondents that there was no workload or any post to accommodate the petitioner, Ext.P10 is wholly incorrect as from the contents of Ext.P11 dated 1.3.1991, Appendix -I, the Assessment of work load of Degree and Post Graduate subject and fixation of staff strength under the University Grants Commission Scheme reveals that there were 28 working hours and the number of the posts admissible were 3. It is submitted that the introduction of the B.Sc Physics and B.Com with Computer Application led to an increase in workload of 22 hours in the English Department. As per the Post Adalath Review meeting held on 18.12.2002, the statement for reassessment of workload and the revised fixation of staff strength reveal that the working hours increased to 36 against the work load assessed as 14 and the number of teachers required were

1+2 ie., 3. Government vide order dated Ext.P15 and P16 dated 20.8.2010 and 11.9.2015 concurred with all the appointments made by the managements in the

conditionally sanctioned courses before

2010. It was submitted that B.A English course was introduced in the college w.e.f the academic year 2013-14 on the basis of the Government order, Ext.P17. From the perusal of the statement of work load for the year 2013-14 and 2014-15 based on the students

strength as on 1st November, in the ST.Michale's College in the department of English, there were three posts fortified from Exts.P22 and P23. All these documents have not been looked into by the respondents in rejecting the approval of the appointment of the petitioner. In the judgment of the Supreme Court in State of Kerala and Others v. Arun George and Others (2015 KHC 4067) it was found that the sanction of new courses led to the increase of work load and the services of the Assistant Professors were availed.

4. Per contra, Mr. Thomas Abraham learned counsel appearing for the respondent submitted that the first rank holder,

Sri. Titus Augustine filed the writ petition and as per the judgment

dated 2.7.2018 in W.P.(C) No.14063/2016 the University was directed to proceed as the petitioner, therein, was having all qualifications and take a decision for the grant of approval within one month. As per Post Adalath review 2002, there were 14 hours of workload permitting only one teacher. An additional workload of

22 hours was also mentioned in the Post Adalath. As per the Government order dated 20.8.2010 in the column for old workload 28 hours has been mentioned whereas no entries have been made in the columns for new workload, post eligible etc. There was a clerical error in the order dated 20.8.2010 in not having entered the

number of sanctioned posts or the new workload. The University granted approval of Sri. Titus Augustine as per judgment dated 2.7.2018 in W.P.(C) No.14063 of 2016 and the Government has given sanction to fill up one vacancy in English. Even though the University has assessed 36 hours permitting two teachers for the

year 2013-14, as per the Post Adalath review of 2002, only 14 hours have been identified permitting only one teacher.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the respondents have not taken to consideration the documents referred to during the submissions on behalf of the petitioner ie., Exts.P12, P13, P14, P15 and P16

sanction of new courses, approval of the courses and statement respondents would not have declined the approval of the petitioner on the sanctioned posts as the work load was there and therefore the appointment of the petitioner, prima facie cannot be said to be against the non sanctioned posts. In this view of the matter, without commenting any further, I set aside the orders Exts.P7 and

Ext.P10 and direct the respondents to revisit the issue by taking into consideration all the aforementioned documents, after affording an opportunity of hearing to the petitioner, who shall apprise the respondents all the documents referred to above and any other additional documents, he may deem it appropriate and pass

appropriate order, in accordance with law. Let this exercise be undertaken within a period of two months from the date of receipt of a certified copy of this judgment.

Sd/- sab AMIT RAWAL JUDGE APPENDIX OF WP(C) 29877/2019 PETITIONER EXHIBITS EXHIBIT P1 PHOTOCOPY OF THE CERTIFICATE OF M.A. OF THE PETITIONER. EXHIBIT P1 PHOTOCOPY OF THE CERTIFICATE OF NET OF THE PETITIONER. EXHIBIT P2 PHOTOCOPY OF THE NOTIFICATION IN THE MALAYALA MANORAMA NEWSPAPER DATED 19.12.2013. EXHIBIT P3 PHOTOCOPY OF THE MINUTES OF THE SELECTION COMMITTEE DATED 11.2.2014. EXHIBIT P4 PHOTOCOPY OF THE APPOINTMENT ORDER DATED 2.7.2014. EXHIBIT P5 PHOTOCOPY OF THE OBJECTIONS RAISED BY THE 5TH RESPONDENT DATED 31.5.2017. EXHIBIT P6 PHOTOCOPY OF THE JUDGMENT IN WPC.NO.25225/2017 DATED 31.7.2017. EXHIBIT P7 PHOTOCOPY OF THE COMMUNICATION DATED 30.8.2017 OF THE 5THRESPONDENT TO THE 7TH RESPONDENT. EXHIBIT P8 TYPED COPY OF

