

Sujith A Vs. Secretary, Ministry of Human Resources Development

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Court : Kerala

Decided On : May-20-2015

Judge : Honourable Mr. Justice a.Muhammed Mustaque

Appellant : Sujith A

Respondent : Secretary, Ministry of Human Resources Development

Advocate for Pet/Ap. : Shri. T.B.Siva Prasad

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937 WP(C).No. 14088 of 2014 (I) ----- PETITIONER: ----- SUJITH A, AGED 36 YEARS, S/O.VELAYUDHAN, ATHIYANATHIL, CHELANUR P.O, CALICUT - 16, SECRETARY, ALL INDIA FEDERATION OF NIT TEACHERS (AFNITT) CAMPUS OF NIT, CALICUT-673601. BY ADVS.SRI.T.B.SIVAPRASAD SRI.ABHILASH AKBAR RESPONDENT(S): ----- 1. SECRETARY, MINISTRY OF HUMAN RESOURCES development, DEPT OF HIGHER EDUCATION, NITS DIVISION, NEW DELHI, PIN-110001.

2. DIRECTOR(NITS), MINISTRY OF HUMAN RESOURCES DEVELOPMENT, SASTRI BHAVAN, NEW DELHI, PIN-110001.

3. REGISTRAR, NATIONAL INSTITUTE OF TECHNOLOGY, CHATHAMANGALAM, CALICUT DISTRICT, PIN-673601. *ADDL. R4 TO R12 IMPEADED4 DR.DEEPAK LAWRENCE, KOCHERIL HOUSE, KUMBALANGHY, KOCHI - 682 007.

5. DR.SUJITH.R., GAYATHRI, T.C.25/1718, S S KOVIL ROAD, THAMPANOOR, THIRUVANANTHAPURAM - 695 001.

6. DR.ANJANA BHASI, MANJARI, ARA-21, MUNDAKKAL EAST, KOLLAM - 691 001.

7. LINI DEVI.K, VELUTHEDATH, VELLANNUR, CHOOOLUR.P.O., CALICUT. --2--
--2-- WP(C).No. 14088 of 2014 (I) ----- 8. MEENU FRANCIS, UZHUNNUMKAT HOUSE, V.P.MARAKKAR ROAD, VETTEKUNNAM, EDAPPALLY NORTH.P.O., KOCHI - 682 024.

9. DR.P.V.NIDHEESH, UTHIYA VEETIL, KARIVANNUR, VILAMANA, IRITTY P.O., KANNUR.

10. DR.RAVIKUMAR DUMPALA, 16-23-1, 10TH LINE, P.N.COLONY, GUJARATHIPETA.P.O., SRIKAKULAM, ANDHARA PRADESH - 532 005.

11. DILEESH.P.V., PARAYIL HOUSE, NEAR P.M.G.COLLEGE, POTTA.P.O., THRISSUR - 680 722.

12. DR.SHERON FIGARADO, PATHICHERIL HOUSE, OCHANATHURUTH.P.O., KOCHI - 682 508. ADDL. R4 TO R12 ARE IMPEADED AS PER

ORDER

DATED2303.2015 IN IA.4111/2015. **ADDL. R13 & R14 IMPEADED13
GEORGE K.VARGHESE, AGED39 S/O.K.P.VARGHESE, ASSISTANT PROFESSOR, DEPARTMENT OF CIVIL ENGINEERING, NIT CALICUT, RESIDING AT KUTTIPANICHEL HOUSE, OTTAPILAKKAL PARAMBU, MIE KUNNAMANGALAM.P.O., KOZHIKODE - 673 571.

14. SHIJO THOMAS, AGED36 S/O.C.D.THOMAS, ASSISTANT PROFESSOR, SCHOOL OF NANO SCIENCE & TECHNOLOGY, NIT CALICUT, RESIDING AT

CHERUVILLIL, VADAYAMPADY.P.O., PUTHENCUIZ, ERNAKULAM - 682 308.
ADDL. R13 & R14 ARE IMPEADED AS PER

ORDER

DATED 2005.2015 IN IA.5301/2015. R1 & R2 BY SRI.N.NAGARESH, AS G R3 BY
ADV. SRI.MILLU DANDAPANI, SC ADDL.R4 TO R12 BY ADV. SRI.S.VISHNU
ADDL. R13 & R14 BY ADVS. SMT.DENNIS VARGHESE SMT.B.BINDU THIS
WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07.04.2015 ALONG
WITH WPC.27599/2012 & CONNECTED CASES, THE COURT ON 20.05.2015
DELIVERED THE FOLLOWING: mbr/ WP(C).No. 14088 of 2014 (I)
----- APPENDIX PETITIONER(S)' EXHIBITS:
----- P1:- TRUE COPY OF THE RULES AND
REGULATION OF ALL INDIA FEDERATION OF NIT TEACHERS. P2:- TRUE
COPY OF THE ADV. NO P1/2276/05 ISSUED BY THE DIRECTOR IN CHARGE
NIT CALICUT. P3:- TRUE COPY OF THE

ORDER

NO F.NO231/2008 TS11DTD188/2009 ISSUED BY THE 1ST RESPONDENT
MINISTRY OF HUMAN RESOURCES. P4:- TRUE COPY OF THE

ORDER

F.NO339/2011-TSIII DATED 23.8.2013 ISSUED BY THE 2D RESPONDENT. P5:-
TRUE COPY OF THE

ORDER

F.NO339/2011 DATED 15.1.2014 ISSUED BY THE RESPONDENT. P6:- TRUE
COPY OF THE NOTIFICATION ISSUED BY THE REGISTRAR NATIONAL
INSTITUTE OF TECHNOLOGY, CALICUT FOR FACULTY RECRUITMENT 2013
FOR THE POST OF ASSISTANT PROFESSORS IN PAY BAND 3PB3.
RESPONDENT(S)' EXHIBITS & ANNEXURES:
----- ANNEXURE R1(A) : TRUE
EXTRACT OF SECTION 322) (B) OF THE NATIONAL INSTITUTE OF
TECHNOLOGY, SCIENCE, EDUCATION & RESEARCH ACT, 2007. ANNEXURE
R1(B) : TRUE COPY OF LETTER F.NO.33-9/2011-T.S.III DATED 15.1.2014,
ISSUED BY GOVERNMENT OF INDIA, MINISTRY OF HUMAN RESOURCES

DEVELOPMENT, DEPT. OF HIGHER EDUCATION. EXT.R4(A): TRUE COPY OF NOTIFICATION 2013 AVAILABLE IN THE WEBSITE OF NIT CALICUT. EXT.R4(B): TRUE COPY OF THE DECISION OF THE BOARD OF GOVERNORS OF NIT CALICUT. EXT.R4(C): TRUE COPY OF NOTIFICATION NO.NITC/P1/433/ADHOC/FACULTY/2013 DATED147.2014 FOR WALK IN INTERVIEW FOR119FACULTY POSITIONS. EXT.R4(D): TRUE COPY OF NOTIFICATION NO.NITC/P1/433/ADHOC/FACULTY/2013 DATED2411.2014 FOR WALK IN INTERVIEW FOR114FACULTY POSITIONS. EXT.R4(E) : TRUE COPY OF COMMUNICATION NO.MNIT/AES-22/58/2013/1475-1504 DATED1812.2013 ISSUED BY THE DIRECTOR, MALAVIYA NATIONAL INSTITUTE OF TECHNOLOGY, JAIPUR. --2-- --2-- WP(C).No. 14088 of 2014 (I) ----- EXT.R4(F) : TRUE COPY OF COMMUNICATION NO.MNST/DIR/F-61-A/2015 DATED223.2015 ISSUED BY MEMBER SECRETARY OF OVERSIGHT COMMITTEE. EXT.R4(G) : TRUE COPY OF COMMUNICATION DATED122.2015 FROM THE ADDITIONAL SECRETARY, MINISTRY OF HUMAN RESOURCES DEVELOPMENT, DEPARTMENT OF HIGHER EDUCATION. EXT.R4(G)(1) : TYPED VERSION OF EXHIBIT R4(G). /TRUE COPY/ P.S. TO JUDGE mbr/ A.MUHAMED MUSTAQUE, J.

~~~~~ W.P.(C).No.14088/2014

~~~~~ Dated this the 20th Day of May, 2015

JUDGMENT

The petitioner is an Assistant Professor and also the Secretary of the All India Federation of NIT Teachers. He filed this writ petition for himself and on behalf of other similarly situated Assistant Professors, with an apprehension that the third respondent is proceeding to select candidates to the post of Assistant Professors based on the newly introduced four-tier flexible faculty system without mapping the existing directly selected Assistant Professors from the three-tier faculty structure to the four-tier faculty structure. Thus, Ext.P6 notification issued for faculty recruitment is under challenge in this writ petition.

2. By interim order dated 03/07/2014, this Court restrained the third respondent from making actual appointments. This Court also in the interim order directed the

Ministry of Human Resources Development to clarify with regard to the apprehension of the petitioner. W.P.(C).No.14088/2014 -:2:- 3. In this matter, the first respondent has filed a statement and other respondents have filed counter affidavits.

4. Heard Shri T.B.Siva Prasad learned counsel for the petitioner, the learned Central Government Counsel for respondents 1 and 2, Shri Millu Dandapani, learned Standing Counsel appearing for National Institute of Technology (for short, the "NIT") and Shri Vishnu S.Chempazhanthiyil for additional respondents 4 to 12 and Smt.Dennis Varghese for additional respondents 13 and 14.

5. The petitioner is a directly selected Assistant Professor. The pay scale of faculty members of NIT was revised based on the Sixth Central Pay Commission Report and the existing directly selected Assistant Professors were placed in Pay Band 3 in various Academic Grade Pay (AGP) in the pay scale of Rs.6000-8000/- depending upon their experience. The three-tier faculty system consists of 3 layers, 1st being Assistant Professors, 2nd-Associate Professors and 3rd-Professors. The three-tier system is based on upgradation with an interval of three years for each W.P.(C).No.14088/2014 -:3:- upgradation based on interview by a selection committee.

6. Government of India introduced four-tier flexible faculty system in the NIT as per Ext.P4. The four-tier system having four layers, 1st layer being Assistant Professors on contract, then Assistant Professors, 3rd-Associate Professors and finally 4th-Professors. Ext.P4 also prescribes procedure for selection of faculty.

7. The apprehension of the petitioner is that without mapping the Assistant Professors like the petitioner, by the introduction of the four-tier system, the existing Assistant Professors are denied their opportunity for upgradation at appropriate level. Ext.P6 is the notification issued for filling up of existing vacancies of Assistant Professors.

8. The question that arises for consideration is whether the petitioner has a vested right for upgradation based on the three-tier system, overlooking the method of upgradation as contemplated under the four-tier system. W.P.(C).No.14088/2014 -

:4:- 9. It is to be noted that under four-tier system, the initial appointment is based on contract. The petitioner submits that in the government order issued for implementation of four-tier system, there is no mention of upgradation of existing Assistant Professors placed under the three-tier system. In fact, Ext.P5 clearly indicates that there will be no automatic migration to salaries and AGP's of the four-tier flexible faculty structure and it further stipulates that any change of Grade Pay under four-tier will be purely through open advertisements and on the recommendation of duly constituted Selection Committees.

10. Thus, it is clear that those Assistant Professors, who were already selected will have to compete with others and only those who fulfil the essential qualifications will be eligible for higher grade. It is also clarified by the statement filed by the Union Government that existing faculties who do not fulfil the essential qualifications will continue in the present post and AGP's till they are selected under W.P.(C).No.14088/2014 -:5:- the higher grade four-tier system. Thus, four-tier system layers abundantly make it clear that higher grade promotion is on fulfilling qualification and based on merit. The petitioner will also be entitled for consideration to higher grade provided, he fulfils the essential qualification. Thus, the petitioner's apprehension that Ext.P5 is silent about existing faculty members is misconceived.

11. The introduction of four-tier system and merit oriented upgradation is with the intention to bring NIT in par with other premier institutions like IIT. It is only with the aid of faculties, the objectives of the Government can be secured. Therefore, fixing structured formula to enhance capabilities of faculties, is with objective to secure the best interest of the institution. The petitioner is also having an opportunity for upgradation, provided he competes with others for upgradation. The petitioner cannot expect a promotion based on the length of service when institution's interest is the criteria for upgradation. It is to be noted that claim of the W.P.(C).No.14088/2014 -:6:- petitioner is based on three-tier system which was subsequently introduced, referable to the Sixth Pay Commission. The introduction of four-tier system in no way would affect the right of the petitioner available to him as on date of his appointment. It is only when the right of the petitioner available to him at the time of appointment is fundamentally affected, this Court need to step

into protect such right or else the petitioner has to establish arbitrariness in fixing such criteria. This Court cannot substitute the wisdom of the academic or of the Government in fixing the criteria for upgradation. In that view of the matter, I do not find any merit in this writ petition. It is accordingly dismissed. The interim order granted by this Court is vacated. No costs. Sd/- A.MUHAMED MUSTAQUE, JUDGE ms

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