

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4604 OF 2016
(Arising out of SLP(C) No. 28965 of 2014)

CHRISTY JAMES JOSE AND
ORS. .. APPELLANT(S)

VERSUS

STATE OF KERALA & ORS. .. RESPONDENT(S)

WITH

CIVIL APPEAL NO. 4605 OF 2016
(Arising out of SLP(C) No. 28968 of 2014)

CIVIL APPEAL NO. 4606 OF 2016
(Arising out of SLP(C) No. 36486 of 2014)

CIVIL APPEAL Nos. 4607-4608 OF 2016
(Arising out of SLP(C) Nos. 36482-36483 of 2014)

CIVIL APPEAL NO. 4609 OF 2016
(Arising out of SLP(C) No. 6952 of 2015)

CIVIL APPEAL NO. 4610 OF 2016
(Arising out of SLP(C) No. 6951 of 2015)

O R D E R

1. Applications for deletion of the names of

2 respondents are allowed at the risk of the petitioners.

2. Application(s) for impleadment is/are allowed.

3. Leave granted.

4. In all these appeals, the question for our consideration is the correctness or otherwise of the common judgment of the Division Bench of the High Court of Kerala in Writ Appeal No. 2706 of 2009 and the connected appeals affirming the judgment of the learned Single Judge, wherein the learned Single Judge struck down Rule 6A of the Kerala Technical Education Service (Amendment) Rules, 2004. To trace out the brief history of the litigation, initially the qualifications for appointment to the post of Assistant Professor in Engineering Colleges in Kerala were governed by the special Rules which were in vogue right from 02.09.1967. Rule

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6 read with the annexures to the Special Rules prescribed the qualification as under:

â- SPost-graduate Degree in the appropriate branch of Engineering, viz. Civil Mechanical/Electrical/Telecommuni-cation] or an equivalent qualification and a total of three year' teaching experience in Engineering Collegesâ- \235.

5. In 1987, All India Council for Technical Education Act, 1987 (for short, the AICTE Act- \235) was enacted by the Parliament which governs the Technical Education throughout the country. By proceedings dated 28.02.1989, the Ministry of Human Resources Development, Government of India, approved the recommendation of AICTE which prescribed the qualification for the post of Assistant Professor. The qualification was noted as under :

â- SFirst Class Master's Degree in appropriate branch of engineering/Technology with 5 years experience in teaching/ industry/ research at the appropriate level. Ph.D. degree in degree in

4 engineering/Technology was prescribed as a desirable qualification.â- \235 The said qualification prescribed by AICTE was adopted by the Government of Kerala, by its notification dated 27.03.1990. Thereafter, AICTE modified the qualification by notification dated 15.03.2000 and communicated the same to all the State Governments. As per the modified qualification, Ph.D. degree with first class degree at Bachelor's or Master's level in the appropriate branch of Engineering/Technology was the required qualification. In tune with the said modified qualification, the Government of Kerala amended the Special Rules by its proceedings dated 24.01.2003. BY its notification dated 18.02.2003, the AICTE made a modification by way of a revision of the eligibility condition for the post of Assistant Professor as per which the qualification prescribed was as under :

â- SPh.D. degree with first

5 class Degree at Bachelor's or Master's level in the appropriate branch of Engineering/Technology with 3 years experience in Teaching/Industry/Research at the level of Lecturer or equivalent.â- \235 Such modified eligibility condition was reiterated by AICTE in its proceedings dated 10.09.2003.

6. The Government of Kerala came forward with its amendment to the special Rules on 18.09.2004 by which Rule 6A came to be inserted in the special Rules. We are concerned with Sub Rule (2) of Rule 6A which reads as under :

â- S 6A(2) Candidates applying for the post of Assistant Professor are exempted from possessing Ph.D. Degree but they have to acquire Ph.D. Degree with seven years of appointment to the post of Assistant Professor as stipulated by the All India Council for Technical Education.â- \235

7. The whole of the amended Rule 6A came to

6 be challenged before the High Court in various

writ petitions, namely writ petitions Nos. 4468 of 2005, 20554/2008, 23490/2008, 27289/2008, 31862/2008, 31886/2008.

8. Before the learned Single Judge, a submission was made that the prescription made in the newly added special Rule 6A was in conflict with the qualification prescribed by the AICTE in its notification dated 15.03.2000 and consequently all appointments made to the post of Assistant Professor based on the amended Special Rule were liable to be set aside. The nomenclature was revised as Assistant Professor in 2010. The nature of conflict was highlighted by referring to the AICTE notification dated 15.03.2000 as per which the minimum qualification required was Ph.D. degree with first class degree at Bachelor's or Master's level in the appropriate branch of Engineering/Technology. According to the writ

7 petitioner(s), the amended Sub Rule (2) of Special Rule 6A diluted the said qualification to the extent that the acquisition of Ph.D. can be acquired within 7 years of appointment to the post of Assistant Professor as stipulated by the AICTE.

9. While dealing with the said contention the learned Single Judge after making a detailed reference to the law on the subject, held that having regard to Section 10(1)(i) of the AICTE Act, 1987, there could have been no contrary prescription of minimum qualification than what was already prescribed by the AICTE. In the light of the said conclusion arrived at by the learned Single Judge, after noting that under the AICTE notification dated 15.03.2000, the prescribed qualification was possession of a Ph.D Degree with first class degree at Bachelor's or Master's level in the appropriate branch of Engineering/Technology, by way of

8 Special Rule 6A(2), the State Government could not have made a different prescription by enabling those who did not possess such a minimum qualification namely, Ph.D, to get appointed to the post of Assistant Professor by enabling them to acquire the said minimum qualification within a period of 7 years. The learned Single Judge therefore struck down special Rule 6A on the whole as being violative of the prescription under the AICTE Act, 1987. The Division Bench having affirmed the said view of the learned Single Judge, the appellants who were not parties before the High Court in the various writ petitions after getting leave of this Court have come forward with these appeals.

10. We have heard Shri V.Giri, learned Senior Counsels, Shri Jayant Muth Raj, Shri M.P. Vinod, Mr. Nishad L.S. on behalf of Shri V.K. Sidharthan, Mr. Roy Abraham, learned counsel for

9 the appellants/applicant(s) and Ms. V.P.Seemanthani, learned senior counsel, Shri S. Radhakrishnan, learned counsel for the contesting respondents, Shri Ramesh Babu

M.R., learned counsel for the State of Kerala and Shri Anil Sony on behalf of Shri Gaurav Sharma, learned counsel for the AICTE.

11. In the course of their submissions, learned counsel for the appellants brought to our notice a vital document, namely, notification dated 18.02.2003 by which AICTE revised the eligibility conditions for the post of Assistant Professor. Though Ms. V.P.Seemanthani, Shri S. Radhakrishnan and other counsel appearing for the private respondents attempted to argue as to the validity of the said notification or certain other notifications followed by it and issued by AICTE, as the same were not subject matter of challenge before the learned Single Judge or the Division Bench or

10 even referred to before the High Court, we are not inclined to entertain any such submissions in there appeals, which submissions are however left open for being raised in accordance with law if so advised. We find that the same came to be issued under Section 10(i) of the AICTE Act, 1987, which empowers the AICTE to lay down among other things, the staff qualifications in order to maintain the standard of education in the technical institutions. Therefore, it will have to be held that when it comes to the prescription of qualification, the power vests with the AICTE under Section 10(i) by which AICTE can alone prescribe or modify the qualifications in order to ensure that the standard of education in the institutions are appropriately maintained. Therefore, by notification dated 18.02.2003, the AICTE itself prescribed a Ph.D degree along with First Class Degree at Bachelor's or Master's level in the appropriate branch of Engineering/Technology

11 with 3 years experience in teaching etc. and held further that the acquisition of Ph.D. degree can be made within a period of 7 years from the date of appointment as Assistant Professor. Therefore the question arise whether the prescription of the various qualification under Special Rule 6A (2) by the State Government can be held to be in any way contrary or conflicting with the prescription made by the AICTE.

12. Unfortunately, the said notification dated 18.02.2003 was not placed before the High Court, either by the writ petitioners or by the AICTE or by the State Government, which apparently seem to have misled the High Court to conclude that such a prescription found in the Special Rule 6A was not in consonance with the prescription made by the AICTE. Inasmuch as, now it has been brought to our notice that the said prescription found in notification of the

12 AICTE dated 18.02.2003 came to be made in exercise of the AICTE's power under Section 10(1)(i) of the AICTE Act, 1987, it must be held that there is no counter prescription in Special Rule 6A(2). In fact the prescription of the qualification made in the AICTE notification

dated 18.02.2003 was bodily lifted and incorporated in Rule 6A(2) and thereby it was brought in tune with the prescription made by the AICTE. Having regard to the said position, the striking down of Rule 6A insofar as Sub Rule (2) was concerned, it was uncalled for and to that extent, the impugned judgments of the High Court are liable to be set aside in these appeals.

13. Having reached the above conclusion, when we come to the case of the appellants in civil appeal arising out of SLP(C) No. 6951 of 2015, we find that appellant Nos. 3 and 4 namely, Reena P and Abdul Nizar M. came to be promoted

13 as Assistant Professors on 02.11.1999 and 08.11.1999 respectively. Inasmuch as the prescription of qualification namely, Ph.D. as the minimum qualification came to be introduced for the first time by the notification of AICTE dated 15.03.2000, the promotion of those two appellants which was prior to the said notification cannot be faulted. Insofar as appellant Nos. 1 and 2, namely, Thajudin Ahamed and T.D. John are concerned, they came to be promoted as Assistant Professors on 30.10.2000 and 12.06.2000. Though in respect of these two appellants, the prescribed notification dated 15.03.2000 was applicable, Shri Jayant Muth Raj appearing for those appellants submitted that their promotion, on the relevant date made in the year 2000 was never challenged and that they continue to remain in the promoted post of Assistant Professors till they came to be promoted as Professors on 23.03.2012 and 22.02.2012 respectively. The learned counsel

14 also pointed out that in the meantime while working as Assistant Professors they acquired Ph.D. qualification on 16.10.2010 and 10.06.2010. Learned counsel therefore contended that inasmuch as those two appellants have substantially complied with the requirement of Ph.D. qualification, at this distant point of time their initial promotion as Assistant Professor and subsequent promotion as Professors should not be interfered with. In this context, it is necessary to refer to a subsequent notification of AICTE issue under Section 10(1) (i) dated 05.03.2010, in and by which, while emphasizing for adhering to the norms fixed by it namely, possession of Ph.D. qualification as the minimum required qualification, it was prescribed that such of those persons who came to be appointed prior to that date and who did not possess the qualification shall be allowed to continue in service. Therefore, the peculiar facts of this case, when there was no specific

15 challenge to their promotions at the relevant point of time and having regard to the fact that prior to their promotion as Professors in the year 2012, they acquired the required qualification of Ph.D. in 2010 itself, we find that the submission of the learned counsel for the appellants merits acceptance and we are not

inclined to interfere with their appointment.

14. Insofar as appellant Nos. 3 and 4 are concerned, inasmuch as their promotion as Assistant Professor came to be made prior to the coming into force of the AICTE notification dated 15.03.2000 and on that date they possessed the prescribed qualification which was prevalent prior to the said notification, their promotion as Assistant Professors cannot be faulted on any count. In any case they also came to be promoted as Professors on 23.02.2012 and prior to their subsequent promotion they also acquired Ph.D. qualification on 29.06.2010

16 and 22.07.2011 respectively. In such circumstances, as they also possess the required qualification of Ph.D. and in the interest of justice their appointment cannot also be interfered with either in the post of Assistant Professor or in their subsequent promoted post of Professors.

15. Insofar as the appellants in civil appeals arising out of SLP(C) Nos. 28965, 28968, 36486, 36482-36483 of 2014 and SLP(C) Nos. 6952 and 6951 and 2015 as well as applicant in IA No. 10 of 2014 in SLP(C) No, 28965 of 2014 are concerned, we find that all the above appellants came to be promoted as Assistant Professor either on 04.06.09 or 18.08.2009. Therefore, even applying the subsequent notification dated 18.02.2003 of AICTE, they are entitled to acquire the prescribed qualification of Ph.D within seven years from the date of their appointment which would expire only in the month

17 of June, 2016. Therefore, as on date their appointments cannot be in any way faulted. That apart, it was brought to our notice that the AICTE has come forward with yet another notification dated 04.01.2016 again under Section 23(i) read with Section 10 (1)(i) and (v). Under the head "Miscellaneous Issues" at serial No. 53, AICTE has made a further prescription with regard to acquisition of the required qualification of Ph.D. by stating as under :

"Such candidates will be required to complete Ph.D. within 7 years from the date of Joining, failing which increments shall be stopped until Ph.D. is earned"

16. Therefore, in effect as on date the non-acquisition of Ph.D. can at best result in stoppage of increment after the prescribed period of 7 years and the resultant position would be that the same cannot result in either restraining or doing away with their appointment

18 to the post of Assistant Professor for failure to acquire the said qualification even within the stipulated period of 7 years.

17. Having regard to the fact situation narrated above, while setting aside the impugned judgment of the Division Bench of the High Court as well as that of the learned Single Judge, we hold that the appointment of the

appellants are not in any way contrary to the prescription of required qualification by the AICTE and the qualification prescribed under Special Rule 6A(2) is also in tune with the qualification prescribed by the AICTE in its notification dated 18.02.2003.

18. The appeals are accordingly allowed.

19. We make it clear that as the validity or otherwise of notification dated 18.02.2003 or any other subsequent notifications were not the subject matter of challenge in the impugned

19 proceedings, we have not dealt with the same in this order.

.....J .
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....J.
[S.A. BOBDE]

NEW DELHI,
APRIL 26, 2016.

1
ITEM NO.2 (PH) COURT NO.6 SECTION XIA
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
Petition(s) for Special Leave to Appeal (C) No(s). 7556/2014
(Arising out of impugned final judgment and order dated
16/12/2013 in WA No. 956/2012 In WP No. 31502/2007 passed by
the High Court Of Kerala At Ernakulam)
JIJI K.S. AND ORS Petitioner(s)
VERSUS
L. B. S. CENTER FOR SCIENCE & TECHNOLOGY Respondent(s)
(With appln. For impleadment and interim relief and office
report) (FOR FINAL DISPOSAL)
WITH
SLP(C) No. 28965/2014
(With appln.(s) for deletion of respondents and Office Report)
SLP(C) No. 28968/2014
(With Office Report)
SLP(C) No. 36486/2014
(With appln.(s) for deletion of the name of respondent and
Office Report)
SLP(C) No. 36482-36483/2014
(With appln.(s) for deletion of the name of respondent and
Office Report)
SLP(C) No. 6952/2015
(With Office Report)
SLP(C) No. 6953/2015
(With Office Report)
SLP(C) No. 6951/2015
(With Office Report)

Date : 26/04/2016 These petitions were called on
for hearing today.

CORAM :
HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA
HON'BLE MR. JUSTICE S.A. BOBDE

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For Petitioner(s) Mr. Mathai M. Paikaday, Sr. Adv.
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Mr. K Ramesh, Adv.
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Mr. Dileep Pillai, Adv.
Mr. Ajay K. Jain, Adv.
Mr. Atul Shankar Vinod, Adv.
Mr. M.P. Vinod, Adv.
Mr. Roy Ahbraham, adv.
Ms. Reena Roy, Adv.
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Mr. Jayant Muth Raj, Adv.
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Mr. Abid Ali Beeran P, Adv.
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Mr. Anil Soni, Adv.
Mr. Prateek Bhatia, Adv.
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Ms. V. Gaur, Adv.
Mr. M.T. George, Adv.
Mr. Saurab Bhargava, Adv.
Mr. V.K. Sidharthan, Adv.
Mr. Nishad L.S., Adv.
Mr. Maneesh N., Adv.

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UPON hearing the counsel the Court made the following

O R D E R

SLP(C) Nos. 7556/2014 and 6953/2015
SLP(C) Nos. 28965/2014, 28968/2014, 36486/2014,
36482-36483/2014, 6952/2015, 6951/2015
List tomorrow, the 27 th
April, 2016.
Applications for deletion of the names of
respondents are allowed at the risk of the
petitioners.
Application(s) for impleadment is/are
allowed.
Leave granted.
The appeals are allowed in terms of the
signed order.
[Charanjeet Kaur] [Sharda Kapoor]
A.R.-cum-P.S. Court Master
[Signed order is placed on the file]