

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 25TH DAY OF AUGUST 2022 / 3RD BHADRA, 1944

WA NO. 957 OF 2022

AGAINST THE JUDGMENT IN WP(C) 1861/2020 OF HIGH COURT OF

KERALA

APPELLANT/PETITIONER:

NISHA VELLAPAN NAIR,
AGED 42 YEARS,
D/O. VELAPPAN NAIR,
CHANDRIKALAYAM HOUSE, MOOLAVATTOM P.O.,
KOTTAYAM 686 026.

BY ADV S.M.PRASANTH

RESPONDENT/RESPONDENTS:

- 1 THE MAHATMA GANDHI UNIVERSITY,
PRIYADARSINI HILLS P.O., KOTTAYAM 686 560.
REPRESENTED BY ITS REGISTRAR.

- 2 REKHA RAJ,
ASSISTANT PROFESSOR,
SCHOOL OF GANDHIAN THOUGHT AND DEVELOPMENT
STUDIES, KOTTAYAM 686 560.

BY ADV. SHRI.SURIN GEORGE IPE, SC,
M.G.UNIVERSITY
BY SR.ADV. SRI.S.SREEKUMAR FOR R2

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
25.08.2022, ALONG WITH WA.1071/2022, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 25TH DAY OF AUGUST 2022 / 3RD BHADRA, 1944

WA NO. 1071 OF 2022

AGAINST THE JUDGMENT IN WP(C) 1861/2020 OF HIGH COURT OF
KERALA

APPELLANT/RESPONDENT NO.2:

SMT.REKHA RAJ,
AGED 44 YEARS, D/O.RAJAPPAN S,
ASSISTANT PROFESSOR,
SCHOOL OF GANDHIAN THOUGHT AND DEVELOPMENTS
STUDIES, KOTTAYAM PIN - 686560

BY ADVS.
P.MARTIN JOSE
P.PRIJITH
THOMAS P.KURUVILLA
R.GITESH
AJAY BEN JOSE
MANJUNATH MENON
SACHIN JACOB AMBAT
ANNA LINDA V.J
HARIKRISHNAN S.
S.SREEKUMAR (SR.)

RESPONDENT/PETITIONER & RESPONDENT NO.1:

- 1 SMT.NISHA VELLAPAN NAIR, AGED 40 YEARS
D/O.VELAPPAN NAIR, CHANDRIKALAYAM HOUSE,
MOOLAVATTOM P.O., KOTTAYAM PIN - 686026
- 2 THE MAHATMA GANDHI UNIVERSITY,
PRIYADARSINI HILLS P.O., KOTTAYAM PIN - 686560
REPRESENTED BY ITS REGISTRAR

W.A. Nos.957 & 1071 of 2022

-: 3 :-

BY ADV. S.M.PRASANTH

BY ADV.SHRI.SURIN GEORGE IPE, SC, M.G.UNIVERSITY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
25.08.2022, ALONG WITH WA.957/2022, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

C.R.

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

Writ Appeal Nos.957 & 1071 of 2022

Dated this the 25th day of August, 2022

JUDGMENT

P.B.Suresh Kumar, J.

Both the above appeals arise from the judgment in W.P. (C) No.1861 of 2020 and they are, therefore, disposed of by this common judgment. Among the appeals, W.A.No.957 of 2022 is by the petitioner in the writ petition and W.A.No.1071 of 2022 is by the second respondent in the writ petition. Parties and documents are referred to in this judgment for convenience, as they appear in the writ petition.

2. The matter relates to selection for appointment to the post of Assistant Professor in the School of Gandhian Thought and Development Studies (the School) under the Mahatma Gandhi University (the University).

3. Ext.P1 is the notification issued by the University for the selection. In terms of the notification, out of the three vacancies, two were reserved for candidates belonging to Other Backward Classes and one for candidates belonging to General Category. The petitioner as also the second respondent applied for

selection pursuant to Ext.P1 notification against the vacancy earmarked for General Category candidates. It is stated that the University evolved a scheme for evaluation of the merits of the candidates in which 20 marks were set apart for the interview and 80 marks for different other criteria. The petitioner who secured second rank in the selection was awarded 46.61 marks out of 100 and the second respondent who secured first rank in the selection was awarded 49.40 marks out of 100. The second respondent was consequently selected and appointed. The selection and appointment of the second respondent were impugned in the writ petition.

4. In terms of the scheme evolved for evaluation of the merits of the candidates, candidates holding PhD are entitled to six marks. Similarly, in terms of the said scheme, candidates who have secured awards from academic bodies are entitled to two marks. Even though the petitioner is a Post Graduate in Economics with M.Phil. in Development Studies (Economics) and PhD in Economics, it was alleged by the petitioner that she was not awarded any marks for her PhD. Similarly, it was alleged by the petitioner that although she was awarded Dr.S.Radhakrishanan Post Doctoral Fellowship in Economics by the University Grants Commission (the UGC), which is a prestigious award in the academic circles, she was not awarded any marks for having

secured the said award. It was further alleged by the petitioner in the writ petition that the second respondent, on the other hand, was awarded marks under different heads which she is not entitled to. It was specifically pleaded by the petitioner in the writ petition that the second respondent was awarded six marks for her PhD which should not have been taken into account under the scheme of evaluation of merits since it is not a PhD in any of the subjects indicated in the notification. The petitioner has stated that even though the second respondent claimed to have made four research publications, one international, two national and one local, none of those are publications made in UGC approved journals, which is a mandatory prerequisite for awarding marks. Nevertheless, it was alleged that the second respondent has been awarded eight marks for research publications. The case set out by the petitioner in the writ petition, therefore, was that the petitioner should have been awarded 54.61 marks, the second respondent should have been awarded only 35.40 marks and the second respondent ought not have, therefore, been appointed. The petitioner, therefore, prayed for a direction to the University to appoint her as Assistant Professor pursuant to Ext.P1 notification against the vacancy notified for General Category candidates, after setting aside the selection and appointment of the second respondent.

5. A counter affidavit was filed by the University in the writ petition. As regards the claim made by the petitioner that she should have been awarded six marks for her PhD, the stand taken by the University is that the qualification criteria prescribed in terms of the notification was the criteria prescribed by the University Grants Commission (Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) Regulations, 2010 (the UGC Regulations, 2010); that in terms of the UGC Regulations, 2010, for appointment to the post of Assistant Professor, besides fulfilling the academic qualifications prescribed namely, Masters Degree with at least 55% marks in the relevant subject, the candidate must have cleared the National Eligibility Test (NET) as well; that candidates who are/have been awarded PhD were exempted from the requirement of NET; that since the petitioner did not have NET qualification, but only PhD, she was exempted from the requirement of NET; that since the petitioner was exempted from the requirement of NET on the strength of her PhD, the PhD of the petitioner is liable to be treated as her basic qualification and that being so, she was not entitled to additional marks for her PhD as it is specifically provided in the scheme that no marks will be awarded, if PhD of the candidates is the basic qualification. As regards the claim made by the petitioner

that she should have been awarded two marks for having secured an award from the academic body, the stand taken by the University in the counter affidavit is that the Post Doctoral Fellowships obtained by the candidates are not treated as awards from academic bodies as provided for under the scheme for evaluation of merits. As regards the contention of the petitioner that the second respondent ought not have been awarded marks for her PhD, the stand of the University in the counter affidavit is that the School being an institution offering Programmes in interdisciplinary areas, and the PhD of the second respondent being one on a topic which is dealt with by the School, the second respondent is entitled to be awarded marks for her PhD. As regards the case of the petitioner that the second respondent ought not have been awarded marks for research publications, inasmuch as her research publications were not in UGC approved journals, the stand taken by the University in the counter affidavit is that marks have been awarded to the second respondent having regard to the quality of the works published by the second respondent in terms of the guidelines issued by the UGC.

6. A reply affidavit was filed by the petitioner to the counter affidavit filed on behalf of the University producing the application submitted by the second respondent for the selection and also the report forwarded by the Registrar of the University to the Principal Secretary to the Chancellor of the University, on a

complaint lodged by the petitioner before the Chancellor. Ext.P7 is the application of the second respondent and Ext.P8 is the report. It was contended by the petitioner in the reply affidavit, among others, that the second respondent has furnished the particulars of only four Research Publications in her application and she has been awarded marks for publications stated to have been made by her, the particulars of which are not furnished in the application also.

7. The learned Single Judge did not examine the correctness of the contentions of the petitioner except the contention that she should have been awarded marks for her PhD, taking the view that this Court is not expected to consider contentions of that nature in a proceedings under Article 226 of the Constitution of India. As regards the contention of the petitioner that she should have been awarded marks for her PhD, the learned Single Judge though accepted the same, did not allow the writ petition on that ground. Instead, the learned Single Judge took the view that the Selection Committee ought to have given some marks to the second respondent for having secured NET qualification and consequently, disposed of the writ petition directing the Selection Committee to grant marks to the petitioner for her PhD and directing consideration by the Selection Committee on the question whether any marks could be given to the second respondent for her NET qualification. Both the petitioner as also the second respondent

are aggrieved by the said decision of the learned Single Judge and hence, these appeals.

8. Heard the learned counsel for the petitioner, the learned Standing Counsel for the University as also the learned Senior Counsel for the second respondent.

9. The learned counsel for the petitioner reiterated the case of the petitioner in the writ petition that there was no justification for the Selection Committee to refrain from awarding marks for the PhD of the petitioner merely on the ground that she has claimed exemption from NET on the strength of the same. The learned counsel has also argued that the stand taken by the University that Dr.S.Radhakrishanan Post Doctoral Fellowship obtained by the petitioner cannot be regarded as an award is *per se* arbitrary. The learned counsel has further argued that the second respondent ought not have been given marks for her PhD as it has nothing to do with subjects indicated in the notification. The learned counsel has strenuously and persuasively argued that the second respondent ought not have been given marks for her Research Publications as none of the Research Publications were made in UGC approved journals. It was also pointed out by the learned counsel that even among the Research Publications, the particulars of which are mentioned by the second respondent in her application, there was no International Publication, and yet she has been awarded four

marks for the same merely for the reason that a translation of an article written by her has been published in an International Journal, though it is not a journal approved by the UGC. According to the learned counsel, marks, at any rate, ought not have been granted for the translation, especially when the translation is not one made by the second respondent. He has alternatively argued that at any rate, marks ought not have been awarded to the second respondent for Research Publications, the particulars of which were not furnished in the application.

10. Per contra, the learned Standing Counsel for the University supported the decision of the Selection Committee.

11. The learned Senior Counsel for the second respondent has reiterated the stand of the University. In addition, it was pointed out that the scheme formulated for awarding marks categorically prescribes that marks are not liable to be awarded for PhD, if such PhD is the basis qualification. According to the learned Senior Counsel, but for the PhD held by the petitioner, she was ineligible for participating in the selection process and therefore, as far as the petitioner is concerned, PhD is to be construed as the basic qualification and if that be so, she is not entitled to be awarded marks for the said qualification. Regarding the rest of the contentions raised by the petitioner, the submission made by the learned Senior Counsel is that in the absence of any malice

attributed by the petitioner to the members of the Selection Committee, their decision to award marks for the PhD held by the second respondent, their decision to decline marks for the Post Doctoral Fellowship held by the petitioner and their decision to award marks for the research publications of the second respondent, cannot be impugned in a proceedings under Article 226 of the Constitution. It is all the more so since, according to the learned Senior Counsel, these are matters over which the Selection Committee alone has the requisite expertise.

12. We have anxiously examined the contentions raised by the learned counsel for the parties on either side.

13. Let us begin with the question whether the Selection Committee was justified in declining marks to the petitioner for her PhD. As noted, the stand of the University in this regard has not been accepted by the learned Single Judge and it is challenging the finding rendered by the learned Single Judge on this point that the second respondent has preferred the appeal. We therefore propose to examine the correctness of stand of the University on the said point afresh.

14. It is not disputed that in terms of the scheme formulated by the University for awarding marks in the selection, a candidate holding PhD is entitled to six marks. It is in the light of the said norm that the Selection Committee has awarded six marks

to the second respondent. Admittedly, marks have not been awarded to the petitioner for the PhD held by her. As noted, the stand taken by the University in this regard is that since the petitioner was exempted from acquiring NET qualification on the strength of her PhD, the PhD held by her is liable to be treated as her basic qualification and since it is provided categorically in the scheme that no marks shall be awarded if PhD is the basic qualification, the petitioner is not entitled to marks for her PhD. True, in the score sheet prepared for grant of marks for PhD, it is stated that “if PhD is the basic qualification at entry level, no marks shall be awarded.” The question therefore is as to whether the University was justified in declining marks to the petitioner for her PhD for the reason that she was exempted from acquiring NET qualification on the strength of the PhD.

15. To resolve the said question, it is necessary to refer to the relevant portion of the notification dealing with the eligibility and qualification. The relevant portion of the notification reads thus:

“II. ELIGIBILITY:

1. **Age:** Not more than 40years as on 01.01.2018

Usual relaxation in upper age limit is admissible to candidates (5 years for SC/ST and 3 years for Other Backward Communities) as per rules.

3 years relaxation in upper age limit is admissible for those regular teachers presently employed in Universities, Government and Aided Colleges in Kerala, subject to the condition that in no case shall the maximum age limit exceed 50 years.

2. **Qualification:** As per UGC Regulations 2010 as amended from time to time.”

As evident from the extracted portion of the notification, the qualification for selection is as prescribed in the UGC Regulations, 2010 as amended from time to time. The qualifications for appointment to the post of Assistant Professor as prescribed in the UGC Regulations, 2010 at the time of the notification, were as follows:

“4.4.0 ASSISTANT PROFESSOR

4.4.1. Arts, Humanities, Sciences, Social Sciences, Commerce, Education, Languages, Law, Journalism and Mass Communication

- i. Good Academic record as defined by the concerned University with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University or an equivalent degree from an accredited foreign University.
- ii. Besides fulfilling the above qualification the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET.

- iii. Notwithstanding anything contained in sub-clauses (i) and (ii) to this clause 4.4.1, candidates who are or have been awarded a Ph.D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D.Degree) Regulations 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent position in Universities/ Colleges/Institutions.”
- iv. NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not conducted.

As evident from the extracted prescription, those who are holding PhD are exempted from acquiring NET qualification. In other words, a candidate who holds PhD is not required to have NET qualification so as to become entitled to participate in the selection process. Needless to say, candidates holding PhD are exempted from acquiring NET only with a view to create a level playing field for a fair competition without any advantage to either side and once a candidate enters the zone of consideration by availing the benefit of exemption, he/she is entitled to equal treatment in the selection process. In other words, when exemption from acquiring NET qualification is granted to candidates who hold PhD for the purpose of creating such a level playing field, the same shall not and cannot tilt the balance in the evaluation of the *inter se* merits of the

candidates. To be precise, if a candidate holding PhD with NET qualification is entitled to additional mark for his/her PhD, a candidate holding PhD and who is exempted from acquiring NET qualification shall also be given the same marks for his/her PhD. This aspect has been explained by the Apex Court in **Jitendra Kumar Singh v. State of U.P.**, (2010) 3 SCC 119. It is of course a judgment dealing with the question as to whether relaxation of age or concession in fee would in any manner infringe Article 16(1) of the Constitution. Paragraph 75 of the judgment reads thus:

“75. In our opinion, the relaxation in age does not in any manner upset the “level playing field”. It is not possible to accept the submission of the learned counsel for the appellants that relaxation in age or the concession in fee would in any manner be infringement of Article 16(1) of the Constitution of India. These concessions are provisions pertaining to the eligibility of a candidate to appear in the competitive examination. At the time when the concessions are availed, the open competition has not commenced. It commences when all the candidates who fulfil the eligibility conditions, namely, qualifications, age, preliminary written test and physical test are permitted to sit in the main written examination. With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit. Once the candidate participates in the written examination, it is immaterial as to which category, the candidate belongs. All the candidates to be declared eligible had participated in the preliminary test as also in the physical test. It is only thereafter that successful

candidates have been permitted to participate in the open competition.”

(underline supplied)

It is, therefore, clear that marks should not have been denied to the petitioner for her PhD merely for the reason that she was exempted from acquiring NET qualification on the strength of her PhD. That apart, if one examines the prescription “if PhD is the basic qualification at entry level, no marks shall be awarded”, there is no scope for any doubt that the same was intended and would apply only to a selection process for which the basic qualification is prescribed as a PhD on the subject. Admittedly, the basic qualification for appointment to the post of Assistant Professor is not PhD. We have therefore no doubt in our minds that the decision of the Selection Committee to decline marks to the petitioner for her PhD is arbitrary and unreasonable. Needless to say, the Selection Committee ought to have awarded six marks to the petitioner for her PhD.

16. Another contention raised by the petitioner is that she should have been granted two marks for the Post Doctoral Fellowship obtained by her. The prescription in the score sheet for award of marks under that head is “Young Scientists Award/other Awards by Academic Bodies”. According to the petitioner, the Post Doctoral Fellowship obtained by her is liable to be treated as an

award falling under the above category. We are unable to accept. Since the criteria for awarding marks have been fixed by the University, it is for the University to decide as to whether the Post Doctoral Fellowship is to be treated as an award. In the absence of any prescription having the force of law that Post Doctoral Fellowships by the UGC is to be treated as an award given by an academic body, the decision taken by the University has to be respected.

17. Similarly, the contention of the petitioner that the second respondent ought not have been granted marks for her PhD is only to be rejected. As noted, the case set out by the petitioner in this regard is that the PhD of the second respondent has nothing to do with the various subjects to be taught at the University. The specific contention taken by the University in the counter affidavit in this regard is that the School being an institution offering Post Graduate, M.Phil and Doctoral Programmes in interdisciplinary areas, and the PhD of the second respondent being on a topic relating to interdisciplinary subjects that are dealt with by the School, she is entitled to be awarded marks for her PhD. It is trite that in matters of this nature, this Court is empowered to interfere with the decisions of this nature only if it is found to be malicious or *per se* arbitrary and unreasonable. As indicated, there is no allegation of malice levelled against the officials of the University or

against the members of the Selection Committee. We as well do not think that the stand of the University aforesaid would fall within the category of *per se* arbitrary or unreasonable decisions. The contention raised by the petitioner in this regard is therefore rejected.

18. Coming to the contention raised by the petitioner as regards the decision of the Selection Committee to award eight marks to the second respondent for Research Publications, it is necessary to refer to the prescription in the score sheet. The prescription reads thus:

“Research Paper (UGC Approved Journals), Chapter in Edited Books/Books (With ISBN/ISSN No.) (4 marks for International & one mark for National)”

The application submitted by the second respondent for selection which is part of the records as Ext.P7 indicates that even the second respondent does not claim that any of her research papers have been published in UGC approved Journals. The claim made by the second respondent in the application is only that the research papers referred to therein have been published in other journals. The question therefore is as to whether the research publications claimed to have been made by the second respondent as referred to in her application would fall within the category “Chapter in Edited

Books/Books (With ISBN/ISSN No.)". The petitioner has no case in the writ petition that the publications referred to by the second respondent in her application would not fall under the said specification. On a query from the court, the learned Standing Counsel for the University asserted that three out of the four publications referred to by the second respondent in her application would fall under that category. We are therefore proceeding as if three out of the four research publications referred to by the second respondent in her application are publications falling under the category specified in the score sheet. As noted, in Ext.P7 application, the second respondent has claimed that she has only four research publications. In the additional statement filed in the matter by the University on 17.08.2022, it is conceded that the second respondent has been awarded only three marks for the publications disclosed in the application.

19. As noted, the stand taken by the University as revealed from Ext.P8 report forwarded to the Chancellor of the University and Ext.P9 reply given to the petitioner under the Right to Information Act, 2005 to justify the award of eight marks to the second respondent under the head 'Research Publications' is that she has made available some of her publications, the particulars of which are not mentioned in the application, at the time of interview. We are unable to accept the said stand of the University at all.

Insofar as there is a prescription in the application that the particulars of the research publications of the candidates shall be furnished in the application, we are of the view that the University is not empowered to relax the said stipulation in favour of one candidate, for such relaxations would certainly affect the right to equality guaranteed to the remaining applicants under Articles 14 and 16 of the Constitution, as such relaxation would enable the candidate concerned to have a march over the remaining candidates who were not told that they are free to make their research publications, the particulars of which are not mentioned in the application, at the time of interview. This is therefore, a clear case where the rules of the game have been changed after the commencement of the game. Needless to say, at any rate, the second respondent is not entitled to more than three marks under the head 'Research Publications'.

20. If the marks awarded to the second respondent is reduced by five and the marks awarded to the petitioner is increased by six, the marks of the petitioner would work out to be 52.61 and the marks of the second respondent would only be 44.40. If that be so, the petitioner should have been selected for appointment in the place of the second respondent.

21. In this context, it is necessary to mention that the view taken by the learned Single Judge to remit the matter to the

Selection Committee even after holding that the petitioner should have been granted marks for PhD, for the Selection Committee to consider whether marks could be awarded to the second respondent for NET qualification is clearly flawed. The view aforesaid is against the scheme of the selection as NET qualification is only an eligibility criterion for which no marks could be awarded at all.

In the result, the writ appeals are disposed of setting aside the impugned decision of the learned Single Judge, quashing the selection of the second respondent and directing the University to appoint the petitioner in the place of the second respondent as Assistant Professor in the School forthwith.

**Sd/-
P.B.SURESH KUMAR, JUDGE.**

**Sd/-
C.S.SUDHA, JUDGE.**

APPENDIX

PETITIONERS EXHIBITS:

ANNEXURE A1:- TRUE COPY OF THE GUIDELINES FOR 11TH PLAN (2012-2017) FOR DR.S RADHAKRISHNAN POSTDOCTORAL FELLOWSHIP IN HUMANITIES AND SOCIAL SCIENCES (INCLUDING LANGUAGES) ISSUED BY THE UNIVERSITUY GRANTS COMMISSION.