

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 7TH DAY OF NOVEMBER 2022 / 16TH KARTHIKA, 1944

WP (C) NO. 33759 OF 2022

PETITIONER:

GISHA MARIN JOSE, AGED 41 YEARS,
W/O. RAIGON ANTONY, KOOTANGATTU-(H) ,
11/MAITHRI NAGAR, KARIPPAL- SUNDARAGIRI ROAD,
NORTH KALAMASSEERY, ERNAKULAM 683104.

BY ADVS.O.A.NURIYA
REVATHY P. MANOHARAN
ASHEEK ANTONY
NEBIL NIZAR

RESPONDENTS:

- 1 STATE OF KERALA,
HIGHER EDUCATION DEPARTMENT, REPRESENTED BY ADDITIONAL
CHIEF SECRETARY TO GOVERNMENT, THIRUVANANTHAPURAM.
- 2 CENTRE FOR CONTINUING EDUCATION, KERALA
REPRESENTED BY ITS DIRECTOR, ANANTHARA LANE,
CHARACHIRA, KOWDIAR P.O, THIRUVANANTHAPURAM,
KERLA PIN-695003.
- 3 COLLEGE OF ENGINEERING, MUNNAR,
REPRESENTED BY ITS PRINCIPAL CENTRE FOR CONTINUING
EDUCATION, KERALA; P.B NO.45, COUNTY HILLS,
MUNNAR -685612.

SMT.PARVATHY.K-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
07.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

JUDGMENT

The question impelled for the consideration of this Court by the petitioner in this case is whether the Government Authority concerned is authorized and competent to summarily dismiss an application for leave to pursue Doctoral or Post Doctoral Research - made under the ambit of Rule 91A of Part I of the Kerala Service Rules (hereinafter referred to as the 'KSR', for short) - on the ground that they have taken a general policy decision not to grant it, irrespective of the credentials of the candidate.

2. I must say that this Court cannot find favour with the afore proposition; and will presently record the reasons for it.

3. The petitioner applied for leave before the 2nd and 3rd respondents, under the provisions

of Rule 91A of Part I 'KSR', for pursuing Research leading to Ph.D; but it was allowed only as Leave Without Allowances (LWA). The petitioner asserts that this is illegal and untenable because, going by Rule 91A aforementioned, if a candidate is able to establish that the proposed course is for the benefit of State, then there can be no inhibition in granting the same under its purlieus. She thus argues that Exts.P11 to P14 orders, rejecting her application, but granting leave without allowances is improper and impermissible.

4. Smt.O.A.Nuriya - learned counsel for the petitioner, submitted that, as is evident from the impugned orders and in particular Ext.P11, the sole reason given by the Government is that they have taken a policy decision not to grant leave under Rule 91A of Part I 'KSR' for the

purpose of Doctoral or Post Doctoral Research. She argues that this could not have been done, because a learned Division Bench of this Court in **Secretary, Higher Education Department and Others v. V.R.Rajalakshmi and Others** [2012 (3) KHC 498] has unequivocally declared that Government must consider each case on its merits; and that if it is satisfied that the candidate is likely to accomplish the commitment of Doctoral Research within the time frame promised, then such an application cannot be rejected under Rule 91A of Part I 'KSR'. She thus prayed that this writ petition be allowed.

5. Smt.Parvathy Kottol - learned Government Pleader, in response, submitted that, as perspicuous from Ext.P11, Government has issued the same based on a general decision that "*LWA under Rule 91A need not be extended for pursuing Ph.D*" (sic). She submitted that it is within the

power of the Government to have done so and therefore, that petitioner cannot assail the impugned orders.

6. One can never find forensic favour with the afore submissions of the learned Government Pleader because, as rightly argued by Smt.O.A.Nuriya, **V.R.Rajalakshmi** (supra) declares the law unambiguously that *"while considering application from candidates, it is worthwhile for Government to consider academic records and the potential of the candidate to acquire Ph.D. within the promised time frame and if Government is satisfied that the candidate is unlikely to accomplish the commitment, application could be rejected forthwith, no matter it is recommended by the management or University."* (sic).

7. It is thus apodictic that, in **V.R.Rajalakshmi** (supra), this Court has made it ineluctably clear that the application of a

candidate cannot be rejected summarily because what has been sought for is LWA for the purpose of Doctoral or Post Doctoral Research. The only discretion given to the Government is, based on his/her credentials and educational achievements, to verify whether he/she is likely to accomplish the commitment within the time frame; and if a satisfaction to the contrary is validly recorded, then to reject it, citing such reasons.

8. Testing the impugned orders from the afore stand point, it is evident that this Court cannot offer them imprimatur, because it is luculent that the sole reason stated by the Government in rejecting the petitioner's application for leave under Rule 91A of Part I 'KSR' is that *"no such can be granted for Ph.D Research or Post-Doctoral Research, since it is not a time bound course, which culminates in a*

public examination." (sic). It is needless to say that this runs antipodean to the declaration of law by this Court in **V.R.Rajalakshmi** (supra); and I am, therefore, of the firm view that impugned orders are deserving to be set aside and Government must be directed to reconsider the matter, advertng to the afore binding precedent.

Resultantly, I order this writ petition and set aside Ext.P11; with a consequential direction to the Government of Kerala to reconsider the petitioner's application for leave, under the ambit of Rule 91A of Part I 'KSR', after affording her an opportunity of being heard and of producing all relevant documents to prove her credentials and academic accomplishments; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible, but not later

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than two months from the date of receipt of a copy of this judgment.

Sd/-

**DEVAN RAMACHANDRAN
JUDGE**

akv

APPENDIX OF WP(C) 33759/2022

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE APPOINTMENT ORDER DATED JUNE 19TH 2007 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P2 TRUE COPY OF PROVISIONAL OFFER LETTER FROM AMRITA SCHOOL OF ENGINEERING TO PETITIONER DATED 15.01.2021.
- EXHIBIT P2 A TRUE COPY OF CERTIFICATE DATED 18.08.2021 ISSUED BY THE CHAIRMAN AMRITA SCHOOL OF ENGINEERING; BANGALORE.
- EXHIBIT P3 TRUE COPY OF LEAVE APPLICATION DATED 29.01.2021 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXHIBIT P3 A TRUE COPY OF LEAVE APPLICATION DATED 29.01.2021 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXHIBIT P4 TRUE COPY OF LETTER DATED 04.02.2021 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXHIBIT P5 TRUE COPY OF LETTER NO. CE/E/548/21 DATED 16.02.2021 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE LETTER NO. J2/59/2021/HEDN DATED 30.11.2021 ISSUED BY 1ST RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE LETTER DATED 07.03.2022 SENT BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P8 TRUE COPY OF THE REVISED LEAVE APPLICATION DATED 23.12.21.
- EXHIBIT P9 TRUE COPY OF THE RELIEVING CERTIFICATE NO. CEM/E/2149/2018 DATED 03.08.2020 ISSUED BY THE 3RD RESPONDENT COLLEGE TO VIDYA SOJAN.

- EXHIBIT P10 TRUE COPY OF THE LETTER NO. CE/E/4388/2019 DATED 03.12.2019 ISSUED BY THE 2ND RESPONDENT TO INDHU K.K AS WELL AS THE 3RD RESPONDENT.
- EXHIBIT P11 TRUE COPY OF THE LETTER NO. HEDN-J2/59/2021-HEDN DATED 17.06.2022 SENT BY ADDITIONAL CHIEF SECRETARY TO GOVERNMENT, HIGHER EDUCATION (J) DEPARTMENT TO THE 2ND RESPONDENT.
- EXHIBIT P12 TRUE COPY OF THE LETTER NO. CE/A/548/2021 DATED 24.06.2022 SENT BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT.
- EXHIBIT P13 TRUE COPY OF THE LETTER NO. CEM/E/693/2019 DATED 30.08.2022 .
- EXHIBIT P14 TRUE COPY OF THE LETTER NO. CEM/E/693/2019 DATED 27.09.2022 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER, .

RESPONDENT'S/S EXHIBITS : NIL.

**//TRUE COPY//
P.A. TO JUDGE**