
(2023) 05 KL CK 0125

In the High Court Of Kerala

Case No : Review Petition Nos. 341, 348, 359 Of 2023 In Writ Appeal Nos. 1766, 1872 Of 2022, 49 Of 2023

Deputy Director Of Collegiate Education

APPELLANT

Vs

Santhosh.T

RESPONDENT

Date of Decision : 22-05-2023

Acts Referred:

Citation : (2023) 05 KL CK 0125

Hon'ble Judges : P.B.Suresh Kumar, J;Sophy Thomas, J

Bench : Division Bench

Advocate : A.J.Varghese, S.Muhammed Haneeff

Final Decision : Dismissed

Judgement

P.B.Suresh Kumar, J.

1. These review petitions arise from the common judgment in three writ appeals and they are, therefore, disposed of by this common order. The appellants in the appeals are the petitioners in the review petitions.

2. The matter relates to the appointment of the petitioners in the writ petitions from which the writ appeals arose, as Laboratory Assistants in the service of an aided private college. In terms of Statute 66 of the Calicut University (Conditions of Service of the Teachers and Members of Non-Teaching Staff) First Statutes, 1979 (the Statutes), vacancies in the higher grades in private colleges are to be filled up by promotion from the next lower categories, if qualified persons are available and if not, by direct recruitment, by inviting applications and conducting a selection as prescribed in the Statutes. As qualified hands were not available in the service of the College in the categories next lower to the grade of Laboratory Assistant, the College resorted to the process of direct recruitment when vacancies arose in the cadre of Laboratory Assistant and appointed the petitioners in the said post. The appointments of the petitioners were, however, not approved by the competent authority on the ground that candidates seeking

appointment to the post of Laboratory Assistant shall have to clear Attenders Test conducted by the Kerala Public Service Commission in terms of Statute 41(12) of the Statutes. As Attenders Test is conducted by the Kerala Public Service Commission only for in-service Office Attendants of private colleges, the Government downgraded the posts of Laboratory Assistant in the College in which the petitioners were appointed, to Office Attendant for a period of one year, so as to accommodate the petitioners in the said post until they complete their period of probation and ordered that they be promoted to the post of Laboratory Assistant thereafter. Consequent on the said decision of the Government, the appointment of the petitioners were approved initially for a period of one year as Office Attendants and then as Laboratory Assistants. As per the existing rules, Laboratory Assistants need not have to work during vacations as opposed to Office Attendants. Since the petitioners have not worked during vacation, the Directorate of Collegiate Education took the stand that they are not entitled to vacation salary for the first year of their service. W.P.(C) Nos.8766 of 2017 and 8767 of 2017 were instituted by the petitioners and similarly placed persons, in the circumstances, seeking a declaration that inasmuch as they are appointed as Laboratory Assistants, they are entitled to all service benefits attached to the said post. W.P.(C) No.1459 of 2021 was instituted later by another similarly placed person, for a direction to the respondents to approve the appointment of the petitioner therein as Laboratory Assistant with effect from the date of his original appointment.

3. The stand taken by the State and the official respondents in the counter affidavits filed in the writ petitions is that inasmuch as the petitioners were not qualified to be considered for appointment as Laboratory Assistants, they are not entitled to get their appointments approved as Laboratory Assistants with effect from the dates of their initial appointment and inasmuch as the petitioners have been appointed only as Office Attendants for a period of one year and they have not worked during the vacation of the first year of their service, they are not entitled to vacation salary for the period in which their appointments were approved only as Office Attendants.

4. The learned Single Judge took the view that insofar as Statute 66 enables appointment by direct recruitment to the post of Laboratory Assistant, the requirement in Statute 41(12) dealing with the qualification prescribed for appointment to the said post is liable to be read harmoniously with Statute 66 so as to allow the directly recruited Laboratory Assistants to clear the Attenders Test after their appointment, as permitted in the case of promotees to the post of Laboratory Assistant from the lower grades as provided for in the proviso to Statute 41(12). Consequently, the writ petitions were allowed, directing that the petitioners shall be disbursed all consequential monetary benefits as if they were never downgraded, subject, however, to the condition that they will clear the Attenders' Test within the chances permissible in terms of the proviso to Statute 41(12). The writ appeals were instituted by the State and its officials against the said judgment of the learned Single Judge.

5. This Court, on an elaborate consideration of the various arguments advanced by the State and its officials, affirmed the judgment of the learned Single Judge. It is seeking review of the said decision of this Court that these review petitions are instituted.

6. The learned Government Pleader reiterated the contention raised by the State and its officials in the writ appeals that inasmuch as the petitioners in the writ petitions were not qualified to be considered for appointment as Laboratory Assistants without clearing the Attenders' Test, they are not entitled to be appointed as Laboratory Assistants from their initial dates of appointment. It was all the more so since the petitioners have not challenged the relevant provision in the Statute insisting on the requirement of clearing the Attenders' Test for direct recruitment to the post of Laboratory Assistants, argued the Government Pleader. Placing reliance on Annexures A1 and A2 judgments in the review petitions, the learned Government Pleader has also contended that the petitioners, at any rate, are not entitled to the salary and other emoluments attached to the post of Laboratory Assistants, until they clear the Attenders Test.

7. We have considered the arguments advanced by the learned Government Pleader.

8. It is seen that the view taken by this court in the judgment sought to be reviewed is that as Statute 66 enables appointment by direct recruitment to the post of Laboratory Assistant and as it is impossible for a candidate aspiring appointment to the post of Laboratory Assistant by direct recruitment to clear the Attenders Test before appointment, and as the proviso to Statute 41(12) permits the last grade staff to be appointed by promotion without clearing the Attenders Test, subject to the condition that they should clear the test in one of the five consecutive chances, the learned Judge cannot be found at fault with, for having disposed of the writ petitions in the manner aforesaid.

9. True, going by the well settled principles of statutory interpretation, where the words of the Statute are clear and unambiguous, the provision should be given its plain and literal meaning, without adding or rejecting any words for departure from the literal rule, by making structural changes or substituting words in a statutory provision under the guise of interpretation, would amount to an encroachment into the legislative wisdom. There is, however, an exception to this general rule. Where the plain and normal meaning of the words in a Statute or its grammatical construction would lead to impossibility or impracticability, the courts may use the interpretative tools to set right the situation by adding or omitting or substituting the words in the Statute, for when faced with an apparently defective provision in a Statute, courts prefer to assume that the draftsman had committed a mistake rather than concluding that the legislature has deliberately introduced an absurd or irrational statutory provision [See *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24]. It is in the light of the said principle that we have taken the view aforesaid. Needless to say, in the light of the said understanding and

interpretation given to Statute 41(12), the contention raised by the learned Government Pleader that the petitioners do not have the qualification to be considered for appointment to the post of Laboratory Assistants, is not one that could be urged as an error apparent on the face of the record to seek review of the judgment, especially since the same was considered elaborately in the judgment sought to be reviewed.

10. There is also no substance in the argument advanced by the learned Government Pleader based on Annexures A1 and A2 judgments. First of all, the argument based on the said judgments was not one raised in the writ appeals. As such, it is doubtful whether a review of the judgment could be sought on that ground, for, if arguments of this nature are permitted to be raised in a review petition, the same would amount to rehearing of the appeals. Be that as it may, let us consider whether Annexures A1 and A2 judgments would improve the case of the State and its officials in any manner, whatsoever. Annexure A1 is a judgment rendered by the learned Single Judge of this court in W.P.(C) No.4824 of 2021. A reading of the said judgment indicates that the petitioners therein were last grade staff in a private college promoted to the post of Laboratory Assistant without clearing the Attenders Test, subject to the condition that they shall clear the Attenders Test in the manner indicated in the proviso to Statute 41(12) and were promoted later to the post of Lower Division Clerks before clearing the Attenders Test. Their appointments to the post of Lower Division Clerks were not approved by the competent authority on the ground that they were not entitled to be promoted to the said post before they clear the Attenders Test. It is the said decision that was impugned in the said writ petition. It is seen from the judgment that even their promotions to the post of Laboratory Assistant were not approved by the competent authority and when the petitioners therein approached this court voicing their grievance concerning the said inaction, this court directed approval of the appointment of the petitioners therein, subject to the condition that they will be entitled to draw pay and allowances as applicable only to the last grade staff, until they clear the Attenders Test. Annexure A1 is the judgment rendered based on the earlier judgment of this court directing approval of their appointments as Lower Division Clerks also, subject to the aforesaid two conditions. The said judgment, according to us, cannot be considered as an authority for the proposition that persons appointed by promotion to the post of Laboratory Assistant will be entitled to receive only pay and allowances applicable to the last grade staff until they clear the Attenders Test. Annexure A1 is only a decision on the facts of that case. Coming to Annexure A2 judgment, it is seen that the question considered in the said case was whether a last grade staff promoted to the post of Laboratory Assistant, subject to the condition that he/she shall clear the Attenders Test as permitted in the proviso to Statute 41(12) and who could not clear the said Test before retirement, is entitled to terminal benefits as if he/she was holding office as Laboratory Assistant. The said judgment also, according to us, cannot have any application on the facts of the present case.

The review petitions, in the circumstances, are devoid of merits and are accordingly, dismissed.