

(2010) 01 KL CK 0068
In the High Court Of Kerala
Case No : W.A. No. 2225 of 2008

G. Vasudhara, Reader

APPELLANT

Vs

Dr. Sallas Benjamin, Lecturer, The University of Calicut and
The Vice Chancellor

RESPONDENT

Date of Decision : 18-01-2010

Acts Referred:

Citation : (2010) 1 ILR (Ker) 531 : (2010) 1 KLT 533

Hon'ble Judges : K. Balakrishnan Nair, J;C.T. Ravi Kumar, J

Bench : Division Bench

Advocate : K.R.B. Kaimal, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

K. Balakrishnan Nair, J.—The 3rd respondent in the Writ Petition is the appellant. The 1st respondent herein was the writ petitioner. The point that arises for decision in this appeal is whether the teaching experience of a Guest Lecturer could be taken as the teaching experience prescribed for appointment to the post of Reader in Life Science, as per the Regulations of the University.

2. The brief facts of the case are the following: The 2nd respondent University invited applications for appointment to the post of Reader in Life Science by Ext.P7 notification dated 11.01.2005. Later, an addendum notification was published as per Ext.R3(1) on 31.01.2005, clarifying that the applicants should have specialisation in Biochemistry. The last date for receipt of applications was 28.02.2005. The selection committee conducted an interview of the candidates and prepared a select list. The appellant being rank No. 1, the selection committee recommended the appointment of the appellant to that post and the Syndicate of the University approved the same as per Ext.P11 resolution. Pursuant to that, she was appointed as Reader in the Department of Life Science, as per Ext.P12 memo dated 31.10.2005. The 1st respondent herein filed the Writ Petition, challenging Exts.P11 and P12.

3. The main ground of attack against the selection of the appellant was that she did not have the requisite qualification of five years' teaching experience. According to the 1st respondent, even the claim of the appellant was that she had only 4 = years' teaching experience as Guest Lecturer. It was also pointed out that most part of the experience gained was before she acquired the Ph.D qualification.

4. The appellant filed a detailed counter affidavit, supporting her selection. She also questioned the locus standi of the 1st respondent to impugn the selection, as he was not having the notified qualification of specialisation in Biochemistry. The appellant claimed that when experience is prescribed as a qualification, the same need not be gained after getting appointment on regular basis. The experience gained in the post of Guest Lecturer is equally good. After obtaining the Ph.D degree, she had some research experience also. It was also reckonable for the purpose of computing the total period of teaching experience, it was contended.

5. The University initially filed a counter affidavit, supporting the selection of the appellant. It submitted that the appellant and the 1st respondent were qualified for the post. But, having regard to the superior merit of the appellant, the selection committee recommended her for appointment. Later, the University filed an additional counter affidavit, pointing out that the selection was full of irregularities and the appellant did not have the prescribed teaching experience and therefore, the selection was bad.

6. The learned Single Judge, after hearing both sides, upheld the contention of the 1st respondent/writ petitioner that the experience gained in the post of Guest Lecturer and that too, obtained before the acquisition of Ph.D degree, cannot be taken into account. In view of the said finding that the appellant does not have the requisite teaching experience, her selection was set aside. Feeling aggrieved by the said judgment, this appeal is preferred by the appellant, who was the 3rd respondent in the Writ Petition.

7. We heard the learned senior counsel Sri. K.R.B. Kaimal for the appellant, learned Counsel Sri. K. Jaju Babu for the 1st respondent and learned standing counsel Sri. P.C. Sasidharan for the University. The learned senior counsel for the appellant submitted that the 1st respondent/writ petitioner does not have the specialisation in Biochemistry and therefore, he is disqualified for the post. So, the challenge at his instance should not have been entertained by the learned Single Judge. Though that point was raised as a ground in the counter affidavit, the learned Single Judge did not deal with that aspect. The Regulations of the University prescribing the qualification for the post of Reader only speak of teaching experience. It does not say, the teaching experience should be one gained after regular selection and appointment or approval of the appointment. It also does not say that the teaching experience must be one acquired after the acquisition of Ph.D qualification. It is also pointed out that in the Writ Petition there was no ground that teaching experience after the acquisition of the Ph.D

qualification alone could be reckoned. In view of the above position, the learned senior counsel prayed for allowing the appeal and dismissing the Writ Petition.

8. The learned Counsel for the 1st respondent/writ petitioner and the learned standing counsel for the University supported the judgment under appeal. The learned standing counsel brought to our notice the definition of "teacher", contained in Section 2(27) of the Calicut University Act. The said definition reads as follows:

(27) "teacher" means a principal, professor, associate professor, assistant professor, reader, lecturer, instructor or such other person imparting instruction or supervising research in any of the colleges or recognised institutions and whose appointment has been approved by the University.

Going by the definition quoted above, a Guest Lecturer is not treated as a teacher. When the Regulations speak of teaching experience, it must be the experience gained by a teacher as defined in the Act, it is submitted. The learned standing counsel further pointed out that in the additional counter affidavit filed, it was specifically pointed out that the teaching experience must be that of a regular teacher and the experience must be one gained after the acquisition of the Ph.D qualification. The learned Counsel for the 1st respondent supported the above submissions and pointed out that when the University in its first counter affidavit submitted that both the appellant and 1st respondent were qualified, thereafter the lack of qualification of the 1st respondent/writ petitioner was not argued by the learned Counsel for the appellant/3rd respondent before the learned Single Judge.

9. The point whether teaching experience should be one acquired before or after the acquisition of the Ph.D qualification, is no longer *res integra*. That point is covered by the decision of this Court in *Dr. Vijayachandran Pillai v. University of Calicut* ILR 2009 Ker 874. In the said decision, it was held as follows:

8. The stipulation in Ext.P1 regarding teaching experience is as follows:

Five years of teaching and/or research excluding the period spent for obtaining the research degree and has made some mark in the areas of scholarship as evidenced by quality of publications, contribution to educational innovation, design of new courses and curricula.

Ph.D degree is an essential qualification for the post of Reader. The 3rd respondent was awarded Ph.D degree only on 23.9.2003. The last date for receipt of applications was 15.10.2003. That means, after the acquisition of the basic qualification of Ph.D., the 3rd respondent did not have any teaching or research experience.

10. In view of the above legal position, even if the appellant's experience as a Guest Lecturer is taken into account, she is not qualified. Even assuming this point was not specifically raised by the 1st respondent/writ petitioner, the same was brought to the notice of the Court by the University through its additional

counter affidavit. When this fact was brought to the notice of this Court, we think, this Court is not justified in ignoring that, as it is a pure legal question. The nature of the teaching post held by the incumbent, based on which experience is claimed, according to us, is also relevant in this case. Normally, a Lecturer in a University or in an aided College is appointed by a duly constituted selection committee. Thereafter, the appointment has to be approved by the University. In the case of Government Colleges, appointment is made based on the selection held by the Public Service Commission. A Guest Lecturer is appointed, in most of the cases, based on walk-in interview. Publications are usually made in local newspapers and based on that the candidates approach the head of the institution concerned and the incumbent is appointed as Guest Lecturer on hourly basis. The experience gained by such a candidate cannot be treated as the qualification prescribed by the University, based on U.G.C norms, for appointment to the post of Reader, which is a fairly senior teaching post. Normally, the candidate should be one, who must have teaching experience in the post of Lecturer, who got appointment after a regular selection. We think, the same is the reasonable view that should be taken, having regard to the qualification prescribed by the University, which is based on the norms formulated by an august body like the U.G.C. So, the view taken by the learned Single Judge, accepting the contention of the University in its additional counter affidavit that teaching experience should be one which is gained after regular selection and appointment to a teaching post, is a plausible view on the facts of the case. We think, it is a correct view also.

11. In view of the above position, we find that the appellant was not qualified for the post of Reader. Even assuming the 1st respondent/writ petitioner was not qualified in some respects, we think, the Court would not be justified in non-suiting him on that technical ground. We find considerable force in the submission of the learned Counsel for the 1st respondent that the alleged lack of qualification of the said respondent was not argued before the learned Single Judge. If it was argued and the same was not considered, at least there should be a pleading in the appeal memorandum that the said point was argued but it was not considered by the learned Single Judge. In the absence of such a pleading, the technical contention that the 1st respondent was not qualified and therefore, at his instance the validity of the selection should not have been reviewed, cannot be accepted.

In the result, the Writ Appeal fails and it is, accordingly, dismissed.