
(2016) 11 KL CK 0053
In the High Court Of Kerala
Case No : WP(C).No. 21117 of 2016 (L)

Prasannakumari E.S.

APPELLANT

Vs

The Registrar, Kannur University

RESPONDENT

Date of Decision : 16-11-2016

Acts Referred:

Citation : (2017) 1 ILRKerala 481 : (2017) 1 KerLJ 650

Hon'ble Judges : Mr. Alexander Thomas, J.

Bench : Single Bench

Advocate : Sri. M. Sasindran, S.C, for the Respondent; Sri. Elvin Peter P.J., Sri. T.G. Sunil (Pranavam), Sri. K.R. Ganesh, Advocates, for the Petitioner

Final Decision : Disposed Off

Judgement

Alexander Thomas, J. - The case set up in the above writ petition is as follows: The petitioner is a visually impaired person with 100% disability as certified by Ext.P-1 disability certificate dated 30.10.2009 issued by the competent Medical Board. She acquired L.L.B. Degree and had also later successfully passed the L.L.M. (Master of Laws) course and had also cleared the National Eligibility Test (NET) qualification that is prescribed by the University Grants Commission (UGC) for appointment as Lecturers/Assistant Professors in colleges and universities. Ext.P-2(a) dated 21.03.2005 is the certification awarded by the University Grants Commission after her successfully clearing the NET examination held on 20th June, 2004 in the discipline of law and it is certified therein that she has "qualified the UGC-NET examination for eligibility for Lecturer-ship in the subject of law" and that she is a post graduate in the subject of law and that the validity of the said NET certification is forever. The 1st respondent Kannur University had issued Ext.P-3 selection notification dated 29.01.2008 inviting applications from eligible candidates for selection and appointment to the post of Lecturer/Assistant Professor in law reserved for persons with disability. It was also made clear in Ext.P-3 notification that if there are no eligible candidates from the reserved category, candidates belonging to other eligible categories including

open category will be considered strictly as per the norms stipulated in KS&SSR (Kerala State & Subordinate Service Rules). The petitioner had submitted her application in response to Ext.P-3 notification and she had fulfilled all the prescribed academic qualifications for the post of Lecturer/Asst. Professor in law. The upper age limit prescribed for the above post was 40 years as on 01.01.2008. It is further stipulated that usual relaxation in upper age will be given to candidates belonging to SC, ST, OBC and other categories as per the University rules. According to the petitioner, she was entitled for age relaxation by 10 years in view of the consistent norms followed by the State authorities as per Ext.P-5 G.O.(P)158/73/PD dated, 29.05.1973. Though the petitioner was permitted to participate in the interview as discernible from Ext.P-4 Memo (No.Ad B1/Appointment/Lr-Law/2010 dated 22.09.2010) later, she came to know that she was the sole applicant from the reserved category of physically disabled candidates and that the university had selected and appointed an open candidate to the above said notified vacancy. Thereupon, aggrieved by the non selection of the petitioner, she was constrained to file WP(C) No.19769/2012 before this Court. The respondent Kannur University took up the stand that the petitioner had completed 40 years and 7 months as on 01.01.2008 (the cut off date prescribed in the selection notification), and that Ext.P-5 G.O. dated 29.05.1973, was adopted by the respondent university only as per proceedings dated 21.01.2009 and that therefore the said age relaxation was not in force as on the last date of submission of applications as per Ext.P-3 and that therefore the petitioner was ineligible being age barred for the said selection and that the respondent university had selected and appointed an open candidate in the place of a reserved candidate in the selection, etc. The learned Single Judge, as per Ext.P-7 judgment rendered on 08.06.2015 had allowed W.P.(C) No.33953/2011 filed by the petitioner herein and found that Ext.P-5 (G.O. dated 29.05.1973) is applicable for age relaxation of physically disabled candidates even in university service as the university is a "State" within the meaning of Article 12 of the Constitution and that the rejection of the petitioner's case was illegal and had accordingly quashed the impugned decision and had also set aside the appointment granted to the open candidate and had directed the respondent university to consider the matter afresh with reference to the suitability of the petitioner, etc. Ext.P-7 judgment was challenged by the respondent Kannur University in Writ Appeal No.1459/2015 and the Division Bench as per Ext.P-8 judgment dated 20.07.2015 had dismissed the said appeal. The Division Bench found that much before the last date of submission of the application as per Ext.P-3, the State Government in exercise with its statutory powers conferred under Section 38 of the Persons with Disability (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 [Central Act 1 of 1996] enacted by the Parliament, whereby it was ordered as per various Government Orders issued from 1998 upto 2008 that relaxation in age as per the provisions in KS&SSR will continue to be extended to the physically handicapped candidates, etc. The latest such Government Order issued by the Government was on 19.07.2008. The Rule 10(C) of KS&SSR of Part II provides that upper age limit is extend-able by 5

years for SC/ST candidates and by 3 years for OBC candidates. Therefore the Division Bench found that without resolving the issue as to whether the age relaxation would be upto 3 years or 5 years, that physically disabled candidates like the petitioner herein is entitled for age relaxation, even if the lower age limit by 3 years is taken, going by her date of birth. On this ground the Division Bench found that the impugned rejection order passed by the University is illegal and ultravires and had thus confirmed the conclusions arrived at by the learned Single Judge as per Ext.P-7 judgment. Incidentally, it is very relevant to note that the petitioner herein, who is a 100% visually impaired person, and who is also a post graduate in law, had appeared before this Court as party-in-person in successfully prosecuting the above said writ proceedings, which culminated in Ext.P-7 and could efficiently place her arguments before this Court, without any assistance.

2. Pursuant to the directions issued by this Court, as per Exts.P-7 and P-8 judgments, the matter stood remitted to the respondent university for consideration of the petitioner's case afresh. The respondent university took up the stand that the specific direction in Ext.P-7 judgment rendered by the learned Single Judge was to consider the suitability of the petitioner for the post notified as per Ext.P-3, etc., and that therefore they constituted a selection committee to consider as to whether the petitioner, who is a physically disabled candidate, could successfully discharge the duties and functions attached to the post of Lecturer/Asst. Professor in law. In this regard it is also to be noted that the very basis of the reservation for physically disabled candidates as notified in Ext.P-3 is on the basis of the mandatory provisions contained in the above said Central Act 1 of 1996. Incidentally it is also to be noted that the State of Kerala had issued Ext.P-11 G.O. in exercise of its powers conferred under the above said Central Act, 1996, whereby it is found that the post of Lecturer/Asst. Professor in law is one that is identified as suitable for appointment of physically disabled candidates. After the consideration of the matter by the selection committee, the university had issued the impugned Ext.P-10 proceedings dated 08.01.2016 rejecting the candidature of the petitioner, on the ground that the petitioner, being a visually impaired candidate, cannot properly carry out and discharge the duties and functions attached to the post of Lecturer/Asst. Professor in law. It is this order at Ext.P-10 that is essentially under challenge in the present writ proceedings. The prayers in the above Writ Petition (Civil) are as follows:

- (i) To issue a writ of certiorari or any other appropriate writ, order or direction calling for the records leading to Ext.P-10 and quash the same;
- (ii) To declare that the petitioner is entitled to get appointment as Assistant Professor in the Department of Legal Studies, Palayad Campus, Kannur University;
- (iii) To issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to appoint the petitioner as Assistant Professor in the Department of Legal Studies, Palayad Campus, Kannur

University;

(iii) (a) : to declare that the Selection Committee has no authority to assess the suitability of the petitioner to be appointed to the post of Assistant Professor in the Department of Legal Studies in Kannur University.

(iii) (b) : to declare that the decision of the Selection Committee taken on 22.12.2015 that the petitioner is not suitable to be appointed as Lecturer in the Department of Law, School of Legal Studies, Kannur University is absolutely illegal, null and void;

3. The University has filed a statement dated 04.07.2016 in this case wherein it is contended that the direction issued by the learned judge in Ext.P-7 judgment that the University should consider the suitability of the petitioner, has not been varied in Ext.P-8 appellate judgment and that the said direction has become final and that therefore the exercise taken by the selection committee in assessing the suitability of the petitioner as referred to in the impugned Ext.P-10 proceedings is perfectly in order that the selection committee after elaborate consideration found that the petitioner is not suitable for appointment as Lecturer in the Legal Studies Department of the University and that the Syndicate has also approved the said findings of the selection committee referred to in Ext.P-10. It is specifically admitted in para 5 of the statement that there are no separate guidelines laid down by the University for the assessment of merits of the candidates for selection as Lecturer/Assistant Professor and that the sole method is to rely on the expertise of the persons nominated in the selection committee, who has to assess the suitability of the candidates. Further it is stated that the post of Assistant Professor/Lecturer in Law reserved for physically disabled candidates has not been filled up.

4. The matter was elaborately considered on a previous occasion and this Court had passed a detailed order on 12.7.2016 in this Writ Petition wherein it was held that prima facie the stand taken by the University in the impugned Ext.P-10 proceedings to reject the candidature of the petitioner is illegal and ultravires. It was also directed therein that the interim relief sought for in the Writ Petition for seeking appointment as Lecturer in Law would amount to grant of the main prayer in the Writ Petition. However, this Court found that the Kerala Services Rules, The Kerala State & Subordinate Services Rules, 1958, etc., as amended from time to time shall mutatis mutandis apply to the teachers of the University, etc. Therefore, Rule 9(a)(i) of the KS & SSR Part II would also apply to the instant case of University Teachers and therefore, directed that, as an interim measure, the petitioner should be provisionally/temporarily appointed by the respondent Kannur University to the above said post by virtue of Rule 9(a)(i) of the KS & SSR Part II, subject to all including the matters relating to pay, etc. It is common ground that the University has fully complied with the direction issued by this Court in the order dated 12.7.2016 and has granted provisional/temporary appointment to the petitioner under Rule 9(a)(i) of the KS & SSR Part II as per Ext.P-12 proceedings dated 1.8.2016. It is submitted by the learned

counsel for the petitioner that the petitioner has been effectively discharging the duties and functions as Assistant Professor in Law pursuant to her appointment as per Ext.P-12 and that she has even been given temporary/officiating charge in the responsibility as Head of the Department as well due to the exigencies of service and that itself shows that the petitioner has been effectively and properly discharging her duties as Assistant Professor in Law and the grounds stated in Ext.P-10 are without any proper basis. Sri. M. Sasindran, learned Standing Counsel appearing for the Kannur University, would also submit on the basis of the instructions from the University that so far no complaints have been received from any quarters after the appointment of her pursuant to Ext.P-12 order dated 12.7.2016.

5. Heard Sri. P.J. Elvin Peter, learned counsel for the petitioner and Sri. M. Sasindran, learned Standing Counsel for the Kannur University appearing for the respondents.

6. The main stand taken by the respondent University in the impugned Ext.P-10 proceedings is that the petitioner is not suitable for appointment as Assistant Professor in Law especially in view of the physical disability suffered by her. Though various aspects are mentioned in Ext.P-10, the respondent University has admitted in their pleadings that the respondent University do not have any norms for selection of teaching staff unlike any other Universities like Calicut University, Kerala University, etc. The respondent Kannur University has not framed any guidelines laying down the norms for appointment of Lecturers in University or teaching department as well as affiliated Colleges in the University. The selection committee conducts the interview. Reliance is placed on the expertise of the members of the selection committee adjudging the suitability and merit of the candidates. The said process of assessment and merit suitability is indisputably on the basis of interview. University does not have a case that the procedure adopted for assessing the suitability/merit of the petitioner has also been resorted to by them in respect of the candidates other than physically disabled candidates. For instance, in Ext.P-10, it is stated that the selection committee had undertaken the effort of assessing the teaching level of the candidates. Therefore, from a reading of Ext.P-10 it appears that such assessment of teaching level of the candidates could have been assessed by the selection committee only after subjecting the petitioner by offering a teaching session and then assessing her teaching skills, etc. It is also further stated therein that it was found by the selection committee that she will not be able to conduct moot court and practical training in L.L.B programmes. If the selection committee has resorted to some procedure for assessment, for this, it could only have been done by asking her to conduct moot court or practical training session. So also, it is stated that the candidate lacks the capability to have effective access to e-resources and the use of such materials for teaching, etc. All these aspects could have been assessed by the selection committee only if the candidate was directed to perform those specific functions. It is clear from the pleadings of the respondents that such a procedure is never adopted in the case of candidates

other than physically disabled candidates, including open selections. Therefore, the validity of the action if so taken by the selection committee is seriously open to doubt. If, on the other hand, the selection committee has not made the petitioner to undergo those functions as mentioned in items 1, 2 & 3 of Ext.P-10, then it will lead to the conclusion that the selection committee has arrived at those conclusions, without any proper assessment and merely on the ground that the petitioner happens to be a physically disabled candidate. Therefore, in any view of the matter, the conclusion arrived at in Ext.P-10 appears to be tainted with serious unfairness and impropriety. Further it is stated that the selection committee was of the opinion that the petitioner will not be able to properly carry out the setting of question papers confidentially, etc. It is further opined therein that the petitioner will not be able to properly discharge the duties of conducting examinations, class tests and evaluation of answer sheets because of her visual disability. Further it is stated that the selection committee is of the view that the petitioner will not be able to do justice to the rigorous academic requirements of a research oriented Masters Degree Programme and that the petitioner will not be able to properly carry out the responsibility involved in the design of course curriculum and updating from time to time, etc. The predominant aspect that emanating from Ext.P-10 is that the selection committee has arrived at a decision that the petitioner is not suitable for appointment as Assistant Professor in Law as she happened to be suffering from physical disability. It is not in dispute that the State Government in exercise of the statutory powers under the Central Act, 1996, has issued Ext.P-11 Government Order whereby the post of Lecturer/Assistant Professor in Law has been notified as one which is suitable for appointment from amongst visually disabled candidates (visually disabled, locomotive disability, cerebral palsy). So, the substantial question involved in this case is as to whether the selection authority like the respondent University can assess whether physically disabled candidates are suitable for discharge of duties and functions of the post in spite of Ext.P-11 notification? The issue in this regard is substantially covered against the University by a Division Bench of the Kerala Administrative Tribunal in O.A.No.2440 of 2012 in the case Bijoy M.S. v. Kerala Public Service Commission, Trivandrum and Others reported in 2014 KHC 370 as well as by the judgment of the Division Bench of this Court in the case Secretary, Kerala Public Service Commission, Trivandrum v. Seema.I. and Ors. reported in 2014 (4) ILR (KER) 773. The Division Bench of the Tribunal in the aforementioned ruling reported in 2014 KHC 370 (para.14), dealt with a case where the Public Service Commission contended that even if the post is identified as suitable by the State Government as per Section 32 of the above Central Act, the Commission, as the selecting authority, is fully within its power to assess the issue as to whether the physically disabled candidate is suitable in the matter of discharge of duties and functions to the post in question. In that case, post of Primary School Teacher was identified as suitable under Section 32 of the Central Act by the State Government as per the Government Order cited therein and the Public Service Commission contended that they are competent to assess such suitability on the basis of an earlier Government Order dated 29.5.1973, which

authorised the Commission to assess the suitability of physically disabled candidates along with others and to include them in the rank list only if they are found to be suitable, etc. The above said stand taken by the Commission was repelled by the Division Bench of the Tribunal, which has held in para.14 of the aforesaid ruling, as follows:

"In the light of the above provisions, Annexure - A2 GO was issued by the State Government identifying the post of Primary School Teacher as suitable for physically handicapped candidates and also further finding that the said post is suitable for blind and partially blind candidates. The learned Standing Counsel for the PSC argued that the GO dated 29.5.1973 authorised the PSC to assess the suitability of physically handicapped candidates along with others and to include them in the list if only they are otherwise suitable. We notice that the conditions, cited by the PSC from the general conditions of the notification, are those from the aforementioned GO dated 29/5/1973. This GO to the extent it is against Annexure - A2 GO is unenforceable. Annexure - A2 GO has identified Primary School Teacher's post as one suitable for the blind. So, the enquiry under the G.O dated 29.5.1973 to find out whether a blind candidate can discharge the duties of a primary School Teacher is not permissible now. The general conditions are a set of conditions annexed to all notifications issued by the PSC inviting applications. The vintage general condition pressed into service in this case is eclipsed by Annexure - A2. So, the stand of the PSC that a totally blind candidate, who cannot move without the help of others or cannot read or write is unsuitable for the post cannot be upheld. A blind person placed in a strange place cannot move without the help of others and no fully blind person can read or write. So, if the standard applied by the PSC is upheld, then the protection available under Section 32 of the aforementioned Act and the reservation granted by the Government under Section 33 read with Section 32 of the said Act will become a teeming illusion for the blind candidates. The Public Service Commission exercising its powers of selection cannot ignore or overrule the mandate of the above quoted statutory provisions and the orders issued thereunder. We notice that PSC is only a recruiting agency. The qualifications and eligibility criteria for the post are the exclusive domain of the employer, the Government. Once the Government under Section 32 of the aforementioned Act has decided that a fully blind candidate is eligible/suitable for appointment to the post of Primary School Teacher, the recruiting agency has no business to ignore it or act contrary to it. The stream cannot rise above the source."

The above said judgment of the Tribunal in O.A.No.2440/2012 reported in 2014 KHC 370 was challenged before the Division Bench of this Court in O.P(KAT).No.31/2014 & connected cases, and the Division Bench of this Court in the afore stated ruling in Secretary, Kerala Public Service Commission, Trivandrum v. Seema I. and Ors. reported in 2014 (4) ILR 773 in para 22 has held that the above said action of the Commission as the selecting authority to non suit a physically disabled candidate on the ground that he was unsuitable to perform the duties, in spite of the post being identified as suitable by the

appropriate Government, amounts to virtually defeating the very purpose and object of the identification and reservation of the post in question for disabled candidates as per the provisions of the aforementioned Central Act. The Division Bench of this Court incidentally also observed that the rejected candidate was 90% blind and was disqualified by the interview board of the Commission as unsuitable on the ground that he was unable to move without help and he cannot read or write and the Bench noted that these are inabilities of any blind person and undoubtedly, these disabilities arose out of 90% blindness of the candidate concerned and that in a case of the person, who is 90% blind, was considered for appointment, to a post identified and suitable for physically disabled candidates under Section 32 and which is reserved for such disabled persons as per Section 33 of the Central Act, then, the impugned action of the selecting authority in further assessing the suitability for such posts, etc., is clearly wrong, ultravires, etc. The Division Bench of this Court also noted that as per the mandatory provisions in the Central Act, 1995, any person, who suffers from the enumerated disability level of 40% or above, is eligible to be considered for appointment on the basis of reservation for such special category and that neither the Central Act nor the Rules framed thereunder lays down any maximum limit for such physical disability for such appointment and that therefore a candidate who is suffering from physical disability of requisite nature of the level of 40% above will be eligible and suitable for appointment even if the disability is of a large extent so long as the post has been identified as suitable for such physically disabled category in terms of the provisions contained in Section 32 of the Central Act.

7. The Apex Court, in a very recent judgment in the case *Rajeev Kumar Gupta and Ors. v. Union of India and Ors.* in Writ Petition (Civil) No.521 of 2008 and Civil Appeal No.5389 of 2016 (judgment dated 30.06.2016), reported in AIR 2016 SC 3228 = 2016 (3) KLT 263 (SC) has held that, once the post is identified as suitable for physically disabled candidates as per Section 32 of the Act, the mere fact that the method of appointment to the post in question is not by direct recruitment, but, by some other methods like promotion, etc., will not in any manner take away the rights of physically disabled candidates to seek appointments in the 3% special quota as per the Central Act even in respect of such posts which are to be filled up by methods of appointments other than direct recruitment. Therein, the Apex Court was constrained to observe in para 23 thereof that, it is indeed alarming to note that admittedly very low numbers of persons with disability (much below 3%) are in Government employment long years after the coming into force of the Central Act 1 of 1996 (which came into force on 01.01.1996) and that barriers to an entry must therefore be scrutinised by rigorous standards within the legal frameworks of the afore stated Central Act.

8. Now, coming to the basic facts of the case, it can be seen that the petitioner, who is a lady, is now more than 49 years of age and who is physically disabled person, has been running from pillar to post to get justice in respect of the selection process which had commenced as per Ext.P-3 notification issued on

29.1.2008. Initially, her case was rejected by the respondent University on the ground that she is over aged and that the provision for age relaxation has come into effect only after the last date of submission of the application in question. Therefore, the petitioner was constrained to knock the doors of this Court for justice and she had initiated the writ proceedings which culminated in Ext.P-7 judgment, wherein she was constrained to appear as party in person and her claim was substantially upheld by a learned Single Judge of this Court as evident from Ext.P-7 judgment. The University, dissatisfied with that verdict, challenged the same before the Division Bench of this Court by filing the Writ Appeal proceedings referred to in Ext.P-8. Their Lordships of the Division Bench in Ext.P-8 judgment conclusively found that the statutory provisions of the Rules framed by the State Government under the above said Central Act, indeed contained a specific provision in the matter of age relaxation and that the said provision was in force even long before the last date of submission of the application in question and that the petitioner is entitled to succeed, in her challenge in the previous round of litigation as regards the rejection of her candidature. It is thereafter that the matter was remitted to the University for consideration for the selection of the petitioner to the post of Assistant Professor in Law afresh. It is not in dispute that the post was notified as reserved for physically disabled candidates. It is also not in dispute that the petitioner was the sole candidate who was eligible for the said selection. It is also not in dispute that the State Government has issued the statutory notification wherein the post of Lecturer/Assistant Professor in Law is notified to be suitable for appointment of physically disabled candidates including visually disabled candidates by virtue of the provisions contained in Section 32 of the Central Act. Yet, the selection authority as per the impugned Ext.P-10 proceedings has rejected the petitioner's candidature on the ground that she, being a visually handicapped person, is not suitable to perform the duties and responsibilities of Assistant Professor in Law. The University Grants Commission, which has been established by virtue of the Legislative Competence of the Parliament referable to co-ordination and determination of standards in the higher education sector has chosen to prescribe a very tough and difficult test, viz, National Eligibility Test as the bench mark for teaching position in Colleges and Universities. The petitioner, who is a visually handicapped candidate, has succeeded in passing that tough and arduous test as evident from Ext.P-2(a), and the State Government themselves as per Ext.P-11 Government Order have identified the post in question as suitable to be manned by visually disabled candidates. So this Court fails to understand the rationale and logic of the impugned rejection of the candidature of the petitioner on the grounds stated therein. It is all the more so, in the light of the ratio decidendi laid down settled by the Division Bench of the Tribunal as well as the Division Bench of this Court as referred to herein above. The respondent University does not have any case that the petitioner is not having the requisite merit to hold the post and that therefore she is not suitable, etc. On the other hand, the respondents, without even properly assessing the suitability of the petitioner on the basis of transparent and objective merit criteria to hold

the post, have taken the unreasonable stand that she is not suitable to discharge the functions and duties of the post as she is visually disabled. The said stand reflected in Ext.P-10 rejection order is clearly illegal, unreasonable and improper, going by the above said reported rulings. There is yet another important dimension to this case. The University has virtually admitted that they have not laid down any norms for selection criteria in the matter of selection of appointment of teacher in the University and affiliated colleges. Many Universities in the State like the Calicut University, Kerala University, etc., appear to have clear norms whereby hardly 25% of the weightage is given for interview and the rest 75% is for assessing various objective parameters in academic credentials and such other related and relevant aspects. The Division Bench of this Court in Ext.P-13 judgment dated 23.3.2012 in W.A.No.7/2012 has even gone to the extent of observing that ordinarily the weightage for interview upto 25% may not be proper in selection of the Lecturers, etc., and that the respondent University therein (University of Calicut) should seriously consider to reduce such weightage to 10% or so. Further the so called exercise said to have been undertaken by the selection committee in Ext.P-10 for assessing the so called "suitability" of a physically disabled candidate like the petitioner has not been extended in any of the previous selection in that University either in the open category or even for community reservation quota candidates. Therefore, subjecting a physically disabled candidates like the petitioner, to those procedures as mentioned in Ext.P-10 is nothing but hostile discrimination and it is vitiated by gross unreasonableness. True that the learned Single Judge of this Court in Ext.P-7 judgment had also inter alia directed in the concluding portion of that judgment that the matter is remitted to the University for consideration afresh so as to consider the suitability of the petitioner to the said post. The said observations cannot be used as a licence for the selection authority to violate the legal principles clearly laid down by the Division Bench of this Court as referred to earlier here in above. What is clearly meant by the observations of the learned Single Judge in Ext.P-7 judgment is that the suitability, in the larger sense, of the candidate for direct recruitment should be considered, that is to say, merit of the candidate should be assessed through an open and transparent criteria. In the case of appointment by way of promotion or by transfer appointment, consideration of suitability in a selection post could be on the basis of objective criteria like confidential records, etc., but in a direct recruitment, it is for the competent authority to lay down any objective and transparent criteria to be followed in assessing the merit of candidates. To take resort to special procedures only for physically disabled candidates and which are not opted in the case of general candidates is highly objectionable in law. For all these reasons the impugned rejection order is liable to be interfered with and accordingly, it is ordered that the impugned Ext.P-10 proceedings and all decisions taken in pursuance thereof will stand quashed. Accordingly the matter is remitted to the selection committee for consideration of the case of the petitioner afresh. Sri.P.J.Elvin Peter, learned counsel for the petitioner, has raised serious apprehensions that if this Court is simply remitting the matter to the selection

committee, they might invent new methods to reject the candidature of the petitioner on hyper-technical grounds and accordingly, it is submitted by the learned counsel for the petitioner that this Court may not merely remit the matter to the selection committee but issue a writ of mandamus to the competent authority of the University to direct them to appoint the petitioner to the post in question on regular basis. Sri. M. Sasindran, learned Standing Counsel for the respondent University, submitted on the basis of instructions that the University authorities will certainly consider the case of the petitioner afresh on a reasonable and fair process and will not take any decision in order to create unnecessary hardship and difficulties for a visually disabled candidate like the petitioner. The apprehension raised by the learned counsel for the petitioner cannot be simply brushed aside, but, taking into consideration the fair assurance given by the learned Standing Counsel for the University, this Court, need not, as of now, issue a writ of mandamus to appoint the petitioner on a regular basis but need only remit the matter to the selection committee for consideration of the matter afresh so as to take a just and fair approach in the matter. However, while remitting the matter, a few aspects should be made clear to the respondent University authority in clear terms. Now, if the matter is to be remitted, the criteria that will be adopted by the selection committee is to assess the merits of the petitioner solely on the basis of the interview. The Apex Court in the celebrated case *K. Manjusree v. State of Andhra Pradesh & Anr.* reported in (2008) 3 SCC 512 has held in para 33 thereof that prescription of minimum marks for any interview is not illegal and that the competent authority making rules regulating the selection can prescribe by rules, the minimum marks both for written examination and interviews or prescribe minimum marks for written examination but not for interview or may not prescribe any minimum marks for either written examination or interview and where the rules do not prescribe any procedure, the competent authority may also prescribe the minimum marks for interview it should do so before the commencement of selection process, and if minimum marks have been prescribed only for the written examination, before the commencement of selection process, it cannot be changed subsequently. The Apex Court in the case *Ramesh Kumar v. High Court of Delhi & anr.* reported in (2010) 3 SCC 104 has held in para 14 thereof that the competent authority, if the statutory rules do not restrain, is fully competent to prescribe the minimum qualifying marks for written examination as well as for interview, but, such prescription must be done at the time of initiation of selection process and the change of criteria of selection in the midst of selection process is not permissible. It was also held by the Apex Court in the case *P.K. Ramachandra Iyer & ors. v. Union of India and ors.* reported in AIR 1984 SC 541 : (1984) 2 SCC 141 that if there is no provision in the rules for fixing minimum qualifying marks for viva voce, it is not open to the selection committee to stipulate that a candidate should also obtain the minimum qualifying marks in the viva voce and if such power is claimed by the selection committee it must be explicit in the rules and cannot be read by necessary implication, etc. (see paras 43 & 44 of AIR report). In the instant case, it is not in dispute that Ext.P-3 selection notification was

issued on 29.1.2008 and the last date of submission of the application in that regard was 28.2.2008. It is also not disputed by the respondent University that at the time of initiation of Ext.P-2 selection process, or even at this point of time, no norms have been framed by the competent authority laying down any minimum marks to be attained by the candidates in the interview, etc. Therefore, in the light of this aspect, the selection authority or appointing authority cannot non-suit the petitioner after consideration of a case afresh consequent to the remit on the ground that she has not secured any minimum bench mark in the interview to be conducted pursuant to this judgment. Ordinarily, in such a scenario, where there are no minimum marks prescribed for the interview and the sole criterion is on the basis of interview, it is the duty of the selection committee to interview the candidates and assess their merit and prepare a select list and forward it to the appointing authority, syndicate, and it is for the syndicate to examine the select list furnished by the selection committee and then to take necessary decision on the issue of appointment of the candidates from the select list based on the merit. Since that is the position, it is made clear that the selection committee should interview the petitioner, assess the merit and include her in the select list based on such assessment of merit. The candidate should be included in the select list and the select list should be forwarded to the appointing authority, syndicate, who should take a decision regarding the appointment issue. In this regard, it would be pertinent to refer to the provision in the Statute 4 of Chapter III of Kannur University Act (First statute framed under the enabling provisions of Act 1996), which reads as follows:

"4. Selection Committee for appointment of teachers.- (1)When posts are proposed to be filled up by inviting applications by advertisements, the applications received shall be referred to a Selection Committee as specified below:

- (i) The Vice-Chancellor, who shall be the Ex-Officio Chairman of the Committee;
- (ii) (a) For the post of Professor.- For selection to the post of professor, there shall be a Committee in addition to the Vice Chancellor as Chairman, one syndicate member to be selected by the Vice Chancellor, three outside experts chosen by the Syndicate and the Dean of the faculty concerned.
- (b) For the posts of Reader/Lecturer, etc.- There shall be a Committee in addition to the Vice-Chancellor as Chairman, one syndicate member to be selected by the Vice-Chancellor, two outside experts chosen by the Syndicate and head of the department or Professor-in-charge.

(2) No member of the Committee who is an applicant for the post or is related to or is otherwise interested in any of the applicants for the post shall take part in the deliberations of the committee, so far as that post is concerned.

(3) The recommendations of the Selection Committee shall be placed before the syndicate, which shall make the appointments: Provided that when the Syndicate

proposes to make the appointment otherwise than in accordance with the above provisions, the Syndicate shall record its reasons and submit its proposals for the sanction of the Chancellor."

Therefore, it is the bounden duty of the selection committee to furnish the select list to the appointing authority syndicate for their decision in the matter, in accordance with Statute 4(3).

9. From a reading of statute 4(1) it is seen that Vice Chancellor is the Chairman of the selection committee. He is also the Chairman of the Syndicate as per Section 10 of the Kannur University Act, 1996. Since the petitioner has been the victim of the consistent illegalities committed by the respondent University, this Court would call upon the 2nd respondent Vice-Chancellor to ensure that due fairness and care is shown while considering the case of the petitioner afresh consequent to the remit so that, she is not constrained to face any unnecessary hardships. In this regard this Court would refer to the observations made in the case *Marathwada University v. Seshrao Balwant Rao Chavan* reported in (1989) 3 SCC 132 wherein their Lordships of the Supreme Court in paras 16 to 18 thereof held regarding the decision and powers of the Vice Chancellor in Universities, as follows:

"16. With these provisions, we turn to consider the first question urged for the appellant. The question is whether the Vice-Chancellor was competent to direct disciplinary action against the respondent. In this context, we may make a few general observations about the position and powers of the Vice-Chancellor. The University Education Commission in its report (Vol. I December 1948 to August 1949) has summarised the powers and duties as follows (at 421):

"Duties of Vice-Chancellor. - A Vice-Chancellor is the chief academic and executive officer of his university. He presides over the court (Senate) in the absence of the Chancellor, Syndicate (Executive Council) Academic Council, and numerous committees including the selection committees for appointment of staff. It is his duty to know the senior members of the staff intimately and to be known to all members of the staff and students. He must command their confidence both by adequate academic reputation and by strength of personality. He must know his university well enough to be able to foster its points of strength and to foresee possible points of weakness before they become acute. He must be the "keeper of the university's conscience", both setting the highest standards by example and dealing promptly and firmly with indiscipline and malpractice of any kind. All this he must do and it can be done as constitutional ruler; he has not, and should not have autocratic power. Besides this he must be the chief liaison between his university and the public, he must keep the university alive to the duties it owes to the public which it serves, and he must win support for the university and understanding of its needs not merely from potential benefactors but from the general public and its elected representatives. Last, he must have the strength of character to resist unflinchingly the many forms of pressure to relax standards of all sorts, which are being applied to

universities today."

17. This has been approved by the Education Commission, 1964-66. In the report of the Education Commission, 1971 (at 610-11 para 13.32) it was stated:

"The person who is expected, above all, to embody the spirit of academic freedom and the principles of good management in a university is the Vice Chancellor. He stands for the commitment of the university to scholarship and pursuit of truth and can ensure that the executive wing of the university is used to assist the academic community in all its activities. His selection should, therefore, be governed by this overall consideration."

18. Dr. A.H. Homadi in his wise, little study about the role of the Vice-Chancellor in the university administration in developing countries has this to state (at p. 49):

"The President or the Vice-Chancellor:

The President must be willing to accept a definition of educational leadership that brings about change to the academic life of the institution. He must be fired by a deep concern for education. He should instil a spirit and keenness about growth and development in such a way that the professoriate feels that their goals are interlinked with those of the University, that their success depends upon the success of the University. The professors should be given detailed information about the jobs that they have to perform and their good performance should be given due recognition by administration leadership. Even such small encouragement will boost their morale to greater heights. The President should have faith in his own abilities as well as on the abilities of other professors and administrators and should provide guidelines about the kind of efforts he would like his professors and administrators to make, setting an example by his own actions and exercises. The negative force of fear, when used and no one denies that an element of hardheadedness is sometimes required as a persuasive inducement to professors and administrators of university should be employed judiciously. Under no circumstances should the apathy and belligerence of the professors and administrators be aroused. These call for strong but sympathetic leadership in the President."

In para 19 of the Marathwada University's case (supra) their Lordships of the Supreme Court further observed in clear and categorical terms that the Vice-Chancellor in every university is thus the conscience keeper of the University and constitutional ruler. He is the principal executive and academic officer of the University. He is entrusted with the responsibility of overall administration of academic as well as non-academic affairs, etc. Therefore this Court would call upon the Vice Chancellor to ensure that a just and fair treatment is afforded in the case of the petitioner, who has already suffered consistent illegalities at the hands of the respondent University ever since the issuance of Ext.P-3 notification dated 29.1.2008. Now, more than 8 ? long years have passed after the issuance of that notification. The petitioner is aged more than 49 years. The petitioner is a

visually disabled candidate and she has none but herself to take care of her needs. This Court would also refer to the observation made in para 2 of the decision of the Full Bench in *Kerala Water Authority v. Surendran* reported in 2006 (4) KLT 983 (FB), which reads as follows:

"2. The physically challenged are our less fortunate brothers. The fate has been cruel to them. Most of us, who are fortunate not to have physically challenged children, cannot fathom the depth of their pain and anguish, caused by their disability. It is the duty of the society to ensure that they are extended equal opportunities in all walks of life. Our Parliament has enacted the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, providing special protection to physically challenged persons, to enable them to gain equal opportunities in various fields, including the employment market where cut throat competition prevails and survival of the fittest is the rule. This legislation was framed, as evident from the preamble of the Act, to give effect to the Beijing Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. In a meeting to launch the Asian and Pacific Decade of the Disabled Persons, 1993-2002 held by the Economic and Social Commission for Asian and Pacific Region at Beijing from 1-12-1992 to 5-12-1992, a proclamation was adopted on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. India is a signatory to the said Proclamation. The Proclamation is on the following lines:

(i) to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities;

(ii) to create barrier-free environment for persons with disabilities;

(iii) to remove any discrimination against persons with disabilities in the sharing of development benefits, vis-a-vis non-disabled persons;

(iv) to counteract any situation of the abuse and the exploitation of persons with disabilities;

(v) to lay down a strategy for comprehensive development of programmes and services and equalisation of opportunities for persons with disabilities; and

(vi) to make special provision for the integration of persons with disabilities into the social mainstream." "

"To give effect to this proclamation, the above Act was enacted. Our Apex Court has noticed the above genesis of the Act in *Union of India v. Sanjay Kumar Jain* ((2004)6 SCC 708). We feel that the claim of the petitioner has to be adjudicated, keeping in mind the concern of the society, reflected in the above proclamation, for the welfare of physically challenged persons."

It is also pertinent to note the observations made by the Apex Court in a recent decision rendered on 12.5.2016 in W.P.(C).No.98 of 2012 in the case *Jeeja Ghosh*

v. Union of India reported in (2016) 7 SCC 761, wherein their Lordships have held in para 50 as follows:

"We would like to conclude this judgment by observing that to most disabled persons, the society they live in is a closed door which has been locked and the key to which has been thrown away by the others. Helen Keller has described this phenomenon in the following words:

"Some people see a closed door and turn away. Others see a closed door, try the knob and if it does not open, they turn away. Still others see a closed door, try the knob and if it does not work, they find a key and if the key does not fit, they turn away. A rare few see a closed door, try the knob, if it does not open and they find a key and if it does not fit, they make one."

After quoting the words of Helen Keller, their Lordships of the Supreme Court in Jeeja Ghosh's case (supra) closed the said Writ Petition with the following observation.

"These are persons we have to find out".

This Court hopes and expects that the respondent University authority will rise up the occasion so that due sensitivity and care is shown in completing the selection process in a flawless, just, fair and reasonable manner.

10. It is also made clear that in case the respondent University authorities decide to grant appointment to the petitioner, then the said appointment will relate back to the date of issuance of Ext.P-12 temporary appointment order dated 1.8.2016. Sri. P.J. Elvin Peter, learned counsel for the petitioner submitted that the respondent University authority had illegally rejected the candidature of the petitioner in the previous round of litigation and had granted appointment to an open candidate on 21.12.2011. The said appointment granted to that candidate was set aside by this Court in Ext.P-7 judgment. Accordingly, it is submitted by the learned counsel for the petitioner that this Court may direct that in case the respondent University grants appointment to the petitioner pursuant to the remit made by this Court, she should be given notional seniority with effect from 21.12.2011 (the date of appointment of the open candidate, who was granted illegal appointment bypassing the claim of the petitioner). This Court is not now prepared to consider the said submission as the matter has been remitted to the University. However, it is made clear that for the time being, in case the University decides to grant regular appointment to the petitioner pursuant to the remit made by this Court now, then the said appointment will relate back to the date of issuance of Ext.P-12 order dated 1.8.2016. However, the plea made by the petitioner for ante dated notional seniority may be put forward by the petitioner after the appointment order is issued to her by submitting necessary representation before the competent authority of the University, which shall then be considered in accordance with law.

11. As regards the absence of objective and transparent norms for selection of

Lecturers/Assistant Professors, Sri. M. Sasindran, learned Standing Counsel, submitted that the competent authority of the University is taking steps in that regard for regulating future selections. It is hoped and trusted that the Vice-Chancellor of the respondent University will take the initiative to ensure that the Syndicate, as the appointing authority, will take expeditious steps to frame such guidelines and norms based on transparent and objective criteria, for regulating future selections to the posts of Lecturers/Assistant Professors in University teaching Departments, aided and affiliated Colleges, etc. It is only in the interest of the University that such norms and guidelines are framed at least well before the commencement of the next academic year, viz., 2017-18. Accordingly, the following orders are passed:

(i) The impugned rejection order as per Ext.P-10 proceedings dated 8.1.2016 and all further proceedings taken in pursuance thereof are held to be illegal and ultra vires and it is accordingly, quashed.

(ii) The matter in relation to the selection of the petitioner is remitted to the competent authority of the University for consideration of her case afresh. In this regard, the selection committee will consider the merits of the petitioner and take necessary action for completing the selection process in terms of the various observations and directions made by this Court here in above.

(iii) On receipt of the select list forwarded by the selection committee, the syndicate of the respondent University will take a decision on the issue of appointment in accordance with Statute 4(3) of Chapter III of the Kannur University Act, 1998. The process for completing the selection process as directed above should be completed within a period of six weeks from the date of production of a certified copy of this judgment.

(iv) In case the respondent University decides to grant regular appointment to the petitioner, then the same would relate back to the date of issuance of Ext.P-12 order dated 1.8.2016. However, the petitioner will be at liberty to raise any claim for ante dated notional seniority in the manner observed here in above, which should then be considered by the competent authority in accordance with law.

(v) The 2nd respondent Vice-Chancellor is requested to oversee the entire process so that a just, fair and reasonable selection process is afforded to a visually disabled candidate like the petitioner so that she is not made to face any unnecessary hardship or difficulties in the matter.

(vi) The interim order dated 12.7.2016 which led to the issuance of Ext.P-12 order will continue to be in force until the outcome of the said selection process as directed here in above.

12. With these observations and directions, the Writ Petition (Civil) stands finally disposed of.