

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE AMIT RAWAL
THURSDAY, THE 18TH DAY OF NOVEMBER 2021 / 27TH KARTHIKA, 1943
WP(C) NO. 5195 OF 2021

PETITIONER/S:

NOUSHAD K.P.,
AGED 33 YEARS
S/O.HASSAN KUTTY K.P., KARATTUPARAMBATH HOUSE, VALIYAPARAMBA P.O.,
PULIKKAL, MALAPPURAM, KERALA-673637.

BY ADVS.
THOMAS ABRAHAM
SRI.ANIL K.NAIR
SMT.MERCIAMMA MATHEW
SRI.ASWIN.P.JOHN
SHRI.THAYYIB SHA P.S.
SRI.R.ANANTHAPADMANABAN

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, HIGHER EDUCATION DEPARTMENT, GOVERNMENT
OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 UNIVERSITY GRANTS COMMISSION,
BAHADUR SHAH ZAFAR MARG, NEW DELHI-110002, REPRESENTED BY ITS
CHAIRMAN.
- 3 CALICUT UNIVERSITY,
CALICUT UNIVERSITY P.O., THENHIPALAM, MALAPPURAM-673635, REPRESENTED
BY ITS REGISTRAR.
- 4 VICE CHANCELLOR,
CALICUT UNIVERSITY P.O., THENHIPALAM, MALAPPURAM-673635, REPRESENTED
BY ITS REGISTRAR.

BY ADVS.
SRI.S.KRISHNAMOORTHY, CGC
SRI.P.C.SASIDHARAN, SC, CALICUT UNIVERSITY

OTHER PRESENT:

GP SRI JIMMY GEORGE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18.11.2021, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Petitioners, 2 in number, are aspirant of appointment to the post of Assistant Professor in Management/Business Administration Programmes in the Department of Commerce and Management Studies, Calicut University and in the colleges affiliated under Calicut University. University of Calicut vide notification dated 26.2.2014 amended the existing regulations and under regulation No.3 dealing with Management/Business Administration Programmes prescribes the qualifications of Assistant Professor as under:

I. Essential

1. First Class Masters Degree in Bushiness Management/Administration/in a relevant management related discipline of this University or an Indian/Foreign University recognized as equivalent thereto or First Class in two year full time PGDM declared equivalent by AIU/accredited by the AICTE/UGC;
2. First Class graduate and professionally qualified Chartered Accountant/Cost and Works Accountant/Company Secretary of the concerned statutory bodies.

II. Desirable

1. Teaching, research, industrial and/or professional experience in a reputed organization.

2. Papers presented at Conferences and/or published in referred journals.

2. Regulations was further modified vide notification dated 26.2.2020, P4(a) whereby the UGC Regulations 2018 have been made applicable to other subjects including the Business Administration.

3. Learned counsel for the petitioners submitted that clause 4.4.5 of the UGC Regulations, 2010 deals with the minimum qualifications for appointment of teaching faculty in Management/Business Administration courses. The essential and desirable criteria stipulated therein are extracted herein below:

4.4.5.1 Assistant Professor

I. Essential:

1. First Class Masters Degree in Business Management/Administration/ in relevant management related discipline or first class in two year full time PGDM declared equivalent by AIU/accredited by the AICTE/UGC.

2. First Class graduate and Professionally qualified Chartered

Accountant/Cost and Works Accountant/Company Secretary of the concerned statutory bodies.

II. Desirable:

1. Teaching, research, industrial and/or professional experience in a reputed organization;
2. Papers presented at conferences and/or published in referred journals.

It is synonymous with the regulations of the University but on making an enquiry it was found that the respondents had in 2013 came out with an order dated 11.10.2013 whereby the sanction was accorded for fixing the qualification for the post of Assistant Professors for B.B.A programme in the following manner:

60% of the post sanctioned for BBA programme can be filled with persons having M.Com degree and 40% with persons having MBA both with a minimum of 55% marks and a pass in National Eligibility Test.

4. Such sub classification of giving a weightage to candidates having M.Com and M.B.A is wholly irrational and against the the UGC Regulations 2010 and 2018 which are also made applicable to the University of Calicut. Pursuant to the Advertisement Ext.P5, the University is undertaking the task of

appointment by applying the order dated 11.10.2013 in the ratio of 60/40 ie., giving preference to M.Com over the M.B.A students, which is not permissible in the eyes of law and liable to be set aside. Even the order of the Board of Studies in Management Studies and PG Board of Studies in Commerce relied upon in Ext.P3 placed on record is of 20.11.2012, which is prior to the notification Ext.P4 of 2014.

5. On the contrary, learned counsel appearing on behalf of the University of Calicut opposed the aforementioned submissions and contended that the syllabus of the BBA programme was examined by the Board in Management Studies and PG Board of Studies in Commerce and on in depth consideration they opined that 60% of the course content are from Commerce and 40% from the Management. The teachers with commerce background are more effective for teaching commerce subjects viz-a-viz the teachers with management background. Thus the contention of the petitioners that only candidates with Management discipline alone should be appointed for teaching the BBA Programme is without any substance and urged this court for dismissal of the writ petition.

6. I have heard the learned counsel for the parties and appraised the paper book. The contents of the letter dated

11.10.2013 Ext.P3 reads thus:

Faculty of Commerce and Management Studies-qualification for the post of Assistant Professors for SBA Programme for new recruitment-foxed-approved-implemented-orders issued.

UNIVERSITY OF CALICUT (G & A - IV - E)
UO N 4733/2013/CU Dated, Calicut University PO, 11.10.2013

Read-1. Minutes of the combined meeting of Board of Studies in Management Studies and PG Board of Studies in Commerce held on 20.11.2012.

2. Item No. 9 of the minutes of the Faculty of Commerce and Management Studies held on 23.11.2012.

3. Item No. B-C of the minutes of the Academic Council held on 30.07.2013.

ORDER

As per paper read as first above, the combined meeting of the Board of Studies in Management Studies and PG Board of Studies in Commerce held on 20.11.2012 considered the agenda for foong qualification for the post of Assistant Professors for BBA Programme in detail. The combined Board scrutinized the syllabi of various courses offered for BBA Programme of this University and opined that 60% of the total courses are from the Commerce domain and 40% from the Management domain. The Board expressed its opinion that teachers with commerce background are more effective for teaching commerce subjects and teachers with management background are more effective in teaching management courses. Hence, the Combined Board unanimously resolved that 50% of the post sanctioned for BBA Programme can be filled with persons having M.Com degree and 40% with persons having MBA both with a minimum of 55% marks and a pass in National Eligibility Test. The Board suggested to effect the decision for the new recruitments.

As per paper read as second above, the Faculty of Commerce and Management Studies endorsed the resolution of the Combined Board of Studies in fixing the qualification for the post of Assistant Professors for BBA Programme.

Vide paper read as third above, the Academic Council at its

meeting held on 30.07.2013 has approved the minutes of the meeting of the Board of Studies and the Faculty referred to as (1) and (2) above.

Sanction is therefore accorded for fixing the qualification for the post of Assistant Professors for BBA Programme as follows:

1) 60% of the post sanctioned for BBA Programme can be filled with persons having M.Com degree and 40% with persons having MBA both with a minimum of 55% marks and a pass in National Eligibility Test.

After the promulgation of the aforementioned order, the University of Calicut vide notification dated 26.2.2014 notified the amendment by amending the University Regulations 2002 and 2009 of the Regulation of 1977 (Chapter IV) relating to the qualification, placement and promotion of University and College Teachers. As per clause 3 of the amended regulation dealing with the Assistant Professor pertaining to Management/Business Administration, the degrees prescribed are in-tandem with the clause 4.4.5.1 of the UGC regulations 2010 extracted above ie., First Class Masters Degree in Business Management/Administration/in relevant management related discipline of the university or an Indian/Foreign University recognized as equivalent thereto or First Class graduate and professionally qualified as Chartered Accountant.

7. Thus for all intents and purposes, the candidates having such qualifications are eligible. By limiting the scope of

consideration giving preference to M.Com over the M.B.A, it has amounted to discrimination under Section 14 much less 16 of the Constitution of India and for the process of selection, the University cannot give such type of weightage. Even otherwise, the decision of the Board of Studies placed on record, extracted herein below, is before the notification of the amendment of the Regulations.

The meeting considered the single item agenda of fixing qualification for the post of Assistant Professors for BBA Course in detail. The combined board scrutinized the syllabi of various courses offered for BBA of this University. The board of the opinion that 60% of the total courses are from the Commerce domain and 40% from the Management domain and Teachers with commerce background are more effective for teaching commerce subjects and teachers with management background are more effective in teaching management courses. Hence the Combined Board unanimously resolved that 60% of the post sanctioned for BBA programme can be filled with persons having M.Com degree and 40% with, persons having MBA, both with a minimum of 55% marks and pass in National Eligibility Test. This decision will be effected only for the new recruitments. The members of the combined board expressed their concerned opinion on the issue of Commerce/Management teachers.

8. Thus the action of the respondents inviting the online application Ext.P5 on 31.12.2019 by applying the order of 2013 is wholly preposterous and cannot escape the scrutiny of this Court while exercising the power under Article 226 of the Constitution of India.

In this view of the matter, action of the respondent University

in fixing the ratio of appointment for Assistant Professors by 60/40 is hereby quashed. Respondents are directed to accept the application of all the candidates and prepare a list in accordance with the merit, pertaining to the candidates belonging to both the streams.

Writ petition stands disposed of.

SD/-

sab

AMIT RAWAL
JUDGE

APPENDIX OF WP(C) 5195/2021

PETITIONER EXHIBITS

- EXHIBIT P1 THE TRUE COPY OF THE MBA DEGREE
CERTIFICATE ISSUED BY UNIVERSITY OF KERALA
TO THE 1ST PETITIONER DATED 03.12.2013.
- EXHIBIT P1 (A) THE TRUE COPY OF THE CERTIFICATE
EVIDENCING THAT THE 1ST PETITIONER HAS
CLEARED NET DATED 17.06.2011.
- EXHIBIT P2 THE TRUE COPY OF THE PROVISIONAL MBA
DEGREE CERTIFICATE ISSUED BY KANNUR
UNIVERSITY TO THE 2ND PETITIONER DATED
11.10.2015.
- EXHIBIT P2 (A) THE TRUE COPY OF THE CERTIFICATE
EVIDENCING THAT THE 2ND PETITIONER HAS
CLEARED NET DATED 29.11.2019.
- EXHIBIT P3 THE TRUE COPY OF THE U.O.NO.4733/2013/CU
DATED 11.10.2013.
- EXHIBIT P4 THE TRUE COPY OF THE NOTIFICATION DATED
26.02.2014 WHEREIN THE REGULATIONS OF
CALICUT UNIVERSITY ARE AMENDED IN TUNE
WITH THE UGC REGULATIONS, 2010.
- EXHIBIT P4 (A) THE TRUE COPY OF THE NOTIFICATION DATED
26.2.2020 WHEREIN THE UGC REGULATIONS 2018
ARE IMPLEMENTED IN TOTO IN CALICUT
UNIVERSITY.
- EXHIBIT P5 THE TRUE COPY OF THE NOTIFICATION DATED
31.12.2019 INVITING APPLICATIONS TO
VARIOUS POSTS OF ASSISTANT PROFESSORS IN
CALICUT UNIVERSITY DEPARTMENTS.
- EXHIBIT P6 THE TRUE COPY OF THE REPLY DATED
27.05.2020 TO THE QUERY UNDER THE RIGHT TO
INFORMATION ACT, 2005.

- EXHIBIT P7 THE TRUE COPY OF THE LETTER NO.233931/GA-II-F3/2019/ADMN DATED 03.01.2020 SENT BY THE REGISTRAR, CALICUT UNIVERSITY.
- EXHIBIT P8 THE TRUE COPY OF THE REPLY DATED 25.09.2020 GIVEN UNDER THE RIGHT TO INFORMATION ACT, 2005.
- EXHIBIT P9 THE TRUE COPY OF THE LETTER NO.B4/20925/2016/CO.ED.DEPT DATED 28.06.2016 ISSUED BY THE DIRECTOR OF COLLEGIATE EDUCATION TO THE PRINCIPAL, GOVERNMENT ARTS AND SCIENCE COLLEGE, MANKADA.
- EXHIBIT P10 THE TRUE COPY OF THE G.O. (MS)NO.471/2020/HEDN DATED 30.12.2020 AND THE RELEVANT PAGES OF THE APPENDED ANNEXURE ISSUED BY THE GOVERNMENT OF KERALA.
- EXHIBIT P11 THE TRUE COPY OF THE REPLY DATED 07.01.2021 IN ANSWER TO QUERY UNDER THE RTI ACT, 2005.
- EXHIBIT P12 THE TRUE COPY OF THE REPRESENTATION DATED 05.02.2021 SUBMITTED BY THE PETITIONERS BEFORE THE RESPONDENT AUTHORITIES.
- Exhibit P13 THE TRUE COPY OF THE NOTIFICATION ISSUED BY POCKER SAHIB MEMORIAL ORPHANAGE COLLEGE, TIRURANGADI INVITING APPLICATIONS TO THE POST OF ASSISTANT PROFESSOR IN COMMERCE/MANAGEMENT SUBJECT.
- Exhibit P14 THE TRUE COPY OF THE NOTIFICATION ISSUED BY SREEKRISHNAPURAM VTB COLLEGE, MANNAMPATTA INVITING APPLICATIONS TO THE POST OF ASSISTANT PROFESSOR IN COMMERCE/MANAGEMENT.