

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY, THE 1ST DAY OF JUNE 2023 / 11TH JYAISHTA, 1945

WP(C) NO. 10487 OF 2019

PETITIONER:

NISHA T.S.

AGED 31 YEARS, D/O. SUKUMARAN, RESIDING AT
KUMPLANKEL HOUSE, MELUKAVU MATTAM P.O, KOTTAYAM
DISTRICT, PIN-686 652

BY ADVS.

T.M.RAMAN KARTHA

SMT.MANJU R. KARTHA

SMT.REMYA POULOSE

RESPONDENTS:

- 1 MAHATMA GANDHI UNIVERSITY
REPRESENTED BY ITS REGISTRAR, PRIYADARSHINI
HILLS P.O, KOTTAYAM, PIN-686 560
 - 2 REGISTRAR,
MAHATMA GANDHI UNIVERSITY, PRIYADARSHINI HILLS
P.O, KOTTAYAM, PIN-686 560
 - 3 UNIVERSITY GRANTS COMMISSION,
NEW DELHI-110 002
 - 4 SWATHYMOL P.S.,
RESEARCH SCHOLAR, DEPARTMENT OF PSYCHOLOGY,
KERALA UNIVERSITY - KARIAVATTOM CAMPUS,
THIRUVANANTHAPURAM-695 581
- BY ADVS.
SRI.S.KRISHNAMOORTHY, CGC
SRI.KALEESWARAM RAJ
SRI.ASOK M. CHERIAN, SC, M.G. UNIVERSITY
SRI.VARUN C.VIJAY
KUM.A.ARUNA
SMT.RIYA RAYMOL IYPE

WPC 10487/2019

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SRI.SURIN GEORGE IPE-SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01.06.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

The petitioner impugns the actions of the Selection Committee constituted by the 1st respondent – Mahatma Gandhi University (“University” for short), in making selection to the post of Assistant Professor in Behavioral Sciences, primarily on the ground that the marks awarded to her by them are wholly in error since it has denied her the eligible ones for no tangible reason.

2. Sri.Raman Kartha – learned counsel for the petitioner, argued that his client has been awarded only 20.43 marks by the Selection Committee; while the 4th respondent has been awarded 36.5, thus manifesting a difference of 16 marks between them. He argued that the 4th respondent has been offered the appointment though, when their credentials are properly evaluated, his client would be entitled to a minimum of 23.84 marks additionally than what has been now granted, thus being found more meritorious and eligible for being appointed. He explained his case by saying that, his client has been denied marks under the heads ‘PhD’, ‘UGC Scholarship’ and ‘Teaching Experience’; while she has been awarded only two out of twelve marks for ‘Publications’. He asserted that, as per

the judgment of this Court in ***Nisha Vellapan Nair & another v. MG University Kottayam & another*** [(2022) 5 KHC 609], the six marks for 'PhD' becomes indubitably eligible to his client; while further five marks become entitled under the head 'UGC Scholarship', since she has obtained UGC - BSR Research Scholarship, which is even more valuable than the Junior Research Fellowship (JRF) offered by the CSIR and which alone has been reckoned by the Selection Committee.

3. Sri.Raman Kartha then proceeded to his next limb of argument to assert that, even though his client had presented several publications, both in national books as well as in UGC listed journals before the Selection Committee, only two marks have been awarded out of a maximum of twelve, thus unfairly denying her the selection. He then conceded that none of the candidates have been given any marks under the head 'Teaching Experience' because, the Selection Committee appears to have taken the view that only those candidates who worked on permanent posts would be entitled to it. He argued that, nevertheless, since his client had teaching experience after she had obtained her PhD, atleast 2.84 marks ought to have been granted to her. He thus prayed that this writ petition be allowed and the appointment of the 4th respondent be set aside; with a

consequential direction to the University to appoint his client as Assistant Professor in Behavioural Sciences.

4. In response, Sri.Surin George Ipe - learned Standing Counsel for the University, submitted that the Selection Committee had devised its own method for conducting the selection, as is legally authorised to them; and that certain very specific yardsticks had been stipulated by them. He nevertheless conceded that, consequent to **Nisha Vellapan Nair** (supra), the petitioner is entitled to six marks under the head 'PhD'; but argued that this would be of no consequence to her, because the difference in marks, as seen above, between her and the 4th respondent is sixteen. He then submitted that, when only "JRF" was stipulated to be the scholarship to attract the award of five marks, the scholarship claimed by the petitioner could not have come to her aid and that the Committee acted without any error. He explained that "JRF" was chosen in preference to every other scholarship because, it is based on a national level competitive examination, unlike the various others, including that obtained by the petitioner, which is based on nomination.

5. On the question of marks awarded to the petitioner for 'Publications', Sri.Surin George Ipe submitted that a candidate would become eligible for points under this head only for research paper which appeared in UGC approved journals or in

edited books/book with ISBN/ISSN number. He asserted that, adopting these yardsticks, the Selection Committee carefully evaluated all the publications of the petitioner, to find that only one among them was eligible to be granted two marks and that this has been offered. He finally predicated that the competence of the Selection Committee has not been challenged; and that, since there are no *mala fides* alleged against them, the attempt of the petitioner, to draw their actions into a judicial scrutiny is impermissible.

6. As regards the final issue, namely 'Teaching Experience', Sri.Surin George Ipe submitted that the Selection Committee, in its wisdom, decided to award marks under this head only to those candidates who worked on permanent roll in a recognised establishment and not to the others. He submitted that, this is a well thought of criterion and that, in the absence of the same being assailed, the petitioner cannot seek any marks under this head, when she expressly admits that she had worked in a temporary capacity alone. He thus prayed that this writ petition be dismissed.

7. Smt.Thulasi K Raj - learned counsel appearing for the 4th respondent, substantially adopted the afore submissions of Sri.Surin George Ipe, however, clarifying that the reason why the petitioner's scholarship could not have been awarded any marks

by the Selection Committee is because, it is a nominated one and not one obtained through a competitive process. She concluded her submissions saying that, as regards the publications of the petitioner, Exts.P14 and P15 fall into the category of predatory publications which cannot be taken into account; while most of the others have appeared in journals which are not approved by the University.

8. In reply, Sri.T.M.Raman Kartha submitted that, since the scholarship enjoyed by his client is far more valuable than “JRF”, it was impermissible for the Selection Committee to have disregarded the same, though admitting - to a pointed question from this Court - that the selection format included only “JRF” and no other scholarship for evaluation. Coming to the question of ‘Publication’, Sri.Raman Kartha submitted that the submissions of Smt.Thulasi K Raj are not accurate; and that Exts.P4 and P15 ought to have been reckoned as national publications, deserving award of eligible marks; while the other publications appeared in journals which are listed by the UGC.

9. The afore rival submissions of the parties being so recorded, I now proceed to evaluate whether the petitioner would obtain benefit under any of the grounds impelled by her.

10. On the question of award of marks for ‘PhD’, it is now without contest, resultant to the declarations of this Court in

Nisha Vellapan Nair (supra), that the petitioner is entitled to six marks under it. However, it is without doubt that the petitioner still would not be able to upset the appointment given to the 4th respondent, unless she obtains a minimum of at least ten more marks. For this purpose, the grant of marks under the head 'Publications' becomes vital because, even if she is to be granted full marks for 'UGC Scholarship', in the absence of at least five more marks, she will not be able to obtain any relief from this Court.

11. In such perspective, I first deal with the award of marks under the head 'Scholarship'. It is conceded and without contest that the format prepared by the Selection Committee and which has been accepted by all the parties to this case, unreservedly shows only "JRF" to be the one species of scholarship eligible for award of marks. This has not been challenged by the petitioner and she admits that she does not have "JRF", but only another scholarship, perhaps approved or given by the UGC. I am afraid that when the Selection Committee specified a particular type of scholarship, it would not be open to this Court to sit in judgment over the same - particularly when it is not under challenge - or to offer an equivalency or enter into comparison of excellence between the same, thus virtually altering the stipulated modus of selection

accepted by the parties without assail. When I enter such view, it becomes barricaded for me to consider the difference in credentials between “JRF” and the other scholarships, though the submissions of Sri.Surin George Ipe, that the former is based on an all India evaluation, while the scholarship enjoyed by the petitioner is only through a nomination, certainly obtains some weight, justifying the classification of the two differently. The differentia is intelligible and, in any case, beyond the competence of this Court to assess.

12. We thus come to the question of ‘Publications’ and it is the specific case of the petitioner, as I have already said above, that the journals in which her research papers have been published are listed by the UGC, but without being able to say whether they were approved by it. She also has a case that Exts.P14 and P15 must be construed to be edited books/books, for which a mark each becomes warranted, even as per the selection criterion. Even if this Court is to accept the latter limb of this argument, the petitioner would, at the best, get two more marks; but again, as I have already seen above, this would be without any consequence, because, her marks would still be lower than that obtained by the 4th respondent.

13. Obviously, therefore, the petitioner will have to win in her contentions, that her research papers in the various journals

claimed by her are deserving of being awarded marks. In this regard, admittedly, the format approved by the Selection Committee offers marks to research papers only in UGC **approved** journals. Therefore, though the petitioner contends that her research papers were published in journals which are listed by the UGC, it would be of no force, unless she is able to show that they were also **approved** by it. In fact, Sri.Raman Kartha, to a pointed question, was unable to inform this Court, whether there is any difference between listed journals or approved journals by the UGC. When the Selection Committee insisted that the research papers be published in journals which are **approved** by the UGC, I cannot travel beyond such stipulation because, it is a well entrenched principle that this Court cannot substitute its wisdom for that of the Selection Committee, since they are the experts in the field. I also draw support for this from judgment of a learned Division Bench of this Court, in ***Gijo Ittoop (Dr) v. Kerala University of Fisheries*** [2018 (3) KLT 1008].

In the afore circumstances, it becomes apodictic that the petitioner would not be able to claim appointment over the credentials of the 4th respondent, even if six marks is awarded to her total score now obtained, under the head 'PhD'.

In the afore circumstances, declaring that the petitioner was certainly entitled to be awarded six marks under the head 'PhD', as per **Nisha Vellapan Nair** (supra); but finding that this would be of no consequence to her, I close this writ petition without any further orders.

Sd/-
DEVAN RAMACHANDRAN, JUDGE

ACR

To be spoken to on 19.07.2023

This matter has been listed today for being spoken to, at the request of the petitioner.

Sri.T.M.Raman Kartha - learned counsel for the petitioner, interestingly, conceded that some of the publications relied upon by his client are beyond the purview of assessment by the Selection Committee; and this has been affirmed by the University, which has now filed an additional counter affidavit dated 07.06.2023 making the following averments:

"It is submitted that all the books published by the petitioner are in the same month and year of notification to the post of assistant professor and it is published by a predatory publisher. The said publication house comes under the list of potentially predatory publishers under the Beall's List of Potentially Predatory Journals and Publishers. Predatory publishers are those publishers claims of unethical behaviours like "quick peer review", fake editorial boards, hidden charges, and fake Journal

Impact Factors. It is mandated by the regulatory body UGC vide a public notice to avoid publications in predatory journals and should not consider such publications for selection for ensuring quality of publications rather than the quantity. It has been further made clear by the UGC that the Vice-Chancellor, Selection Committee, research supervisors or guides and such other experts involved in academic research evaluation or assessments, are hereby advised to ensure that the decisions are primarily based on quality of research work and not merely on number of publication. In the said premise the claims put forth by the petitioner could not be considered as the claim is based only on mere number of publications. It is pertinent to note that the none of the publications relied upon by the petitioner have met the test and standard of quality. Therefore, she is not eligible and qualified to be appointed to the post of Assistant Professor, considering her insufficient credentials in her application and publication record. It is further submitted that the petitioner claims marks under "international" category.[4 marks). But none of her books/journal comes under international category. Merely writing "International" in the title could not in any manner be considered as a International journal. International

journal are journal with

- one-quarter (25%) of the editorial board/ associate or assistant editors reside/ are employed outside the country of publication.
- one-third (33%) of the total number of papers published originate from outside the country of publication.
- half (50%) the total number of subscriptions originates from institutions or individuals outside the country of publication. World wide accepted citation index also is an important criteria

In the case at hand the selection committee had assessed all the credentials claimed by the petitioner and has been rightly found the same as inferior. It is trite in law that when a Selection Committee recommends the selection of a person, the same cannot be presumed to have been done in an erroneous or mechanical manner in the absence of any allegation of favoritism or bias. That a presumption arises as regards the correctness of the decision of a Selection Committee and the party who makes the allegation of bias or favoritism is required to prove the

same. Thus, in the absence of mala fides against the members, selection by a Selection Committee cannot be doubted. Further it is submitted that the power of judicial review does not extend to conducting a microscopic inquiry beyond the pleadings in the writ petition. It is to be noted that the petitioner does not figure her name in the ranked list and therefore, the W.P.(c) itself is not maintainable on the ground of the same being devoid of any locus. In *Manish Kumar Shahi vs. State of Bihar*, (2010) 12 SCC 576, the Hon'ble Supreme Court authoritatively declared that having participated in a selection process without any protest, it would not be open to an unsuccessful candidate to challenge the selection criteria subsequently."

In fact, in **Mary Senteria v. Mahatma Gandhi University** [2011 (4) KLT 740], this Court has affirmatively held that the wisdom of the Screening Committee cannot be substituted by that of this Court; nor can it sit in appeal over the decision of such an academic body, invested with full expertise in the field.

To summate, it is obvious that nothing remains to be modified in the judgment.

Sd/-
DEVAN RAMACHANDRAN, JUDGE

APPENDIX OF WP(C) 10487/2019

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF NOTIFICATION DATED 28.4.2018 ISSUED BY THE 2ND RESPONDENT.
EXHIBIT P2	TRUE COPY OF APPLICATION SUBMITTED BY THE PETITIONER ALONG WITH ANNEXURES.
EXHIBIT P3	TRUE COPY OF ORDER DATED 14.9.2018 PUBLISHED BY THE 2ND RESPONDENT.
EXHIBIT P4	TRUE COPY OF INFORMATION GIVEN TO THE PETITIONER ON 29.10.2018 IN RESPONSE TO HER APPLICATION DATED 8.10.2018.
EXHIBIT P5	TRUE COPY OF LETTER DATED 18.12.2018 SENT BY THE RESPONDENT.
EXHIBIT P6	TRUE COPY OF UGC REGULATIONS, 2010 (MINIMUM QUALIFICATIONS FOR APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES AND MEASURES FOR MAINTENANCE OF STANDARDS OF HIGHER EDUCATION), AND THE 4TH AMENDMENT, UGC REGULATION 2016.
EXHIBIT P7	TRUE COPY OF NOTIFICATION DATED 30.6.2010 ISSUED BY THE UGC.
EXHIBIT P8	TRUE COPY OF THE APPLICATION OF THE 4TH RESPONDENT UNDER THE RIGHT TO INFORMATION ACT
EXHIBIT P9	TRUE COPY OF ARCHIVE OF THE INTERNATIONAL JOURNAL OF INDIAN PSYCHOLOGY.
EXHIBIT P10	TRUE COPY OF LETTER DATED 03/04/2019 EXPLAINING THE GUIDELINES FOR AWARDING MARKS BY THE SELECTION COMMITTEE
Exhibit P11	TRUE COPY OF APPENDIX III, TABLE -1 OF THE UGC REGULATIONS 2010
Exhibit P12	TRUE COPY OF TEMPLATE FOR CALCULATION OF API ISSUED BY UNIVERSITY OF KERALA
Exhibit P13	TRUE COPY OF LETTER OF THE UGC DATED 08.03.2011.
Exhibit P14	TRUE COPY OF THE RELEVANT PAGES OF THE FAMILY ENVIRONMENT OF HEARING IMPAIRED HOMOSEXUALS.
Exhibit P15	TRUE COPY OF THE RELEVANT PAGES OF THE

	CHILDHOOD DISABILITIES, AN AWARENESS STUDY
Exhibit P16	TRUE COPY OF THE RELEVANT PAGES OF KAAV INTERNATIONAL JOURNAL OF ECONOMICS, COMMERCE AND BUSINESS MANAGEMENT
Exhibit P16(a)	TRUE COPY OF THE RELEVANT PAGES OF INTERNATIONAL RESEARCH JOURNAL OF COMMERCE, ARTS AND SCIENCE
Exhibit P16(b)	TRUE COPY OF THE RELEVANT PAGES OF INTERNATIONAL RESEARCH JOURNAL OF MANAGEMENT SCIENCE AND TECHNOLOGY.
Exhibit P16(c)	TRUE COPY OF THE RELEVANT PAGES OF INTERNATIONAL RESEARCH JOURNAL OF MANAGEMENT SOCIOLOGY AND HUMANITIES.
Exhibit P16(d)	TRUE COPY OF THE RELEVANT PAGES OF NEPAL JOURNAL OF EPIDEMIOLOGY
Exhibit P17	TRUE COPY OF THE RELEVANT PAGES OF ANNUAL REPORT 2010-2011 ISSUED BY UGC.
RESPONDENT EXHIBITS	
EXHIBIT R1(a)	A TRUE COPY OF THE PROCEEDINGS OF THE SELECTION COMMITTEE FOR THE POST OF ASSISTANT PROFESSOR IN THE SCHOOL OF BEHAVIOURAL SCIENCES HELD ON 10.7.2018
EXHIBIT R1(b)	TRUE COPY OF THE PRINT FROM OF THE WEBSITE WHEREIN LINK TO RESEARCH PAPER TITLED "SATISFACTION WITH LIFE, ANXIETY, RESILIENCE AND SENSATION SEEKING AMONG HIGH AND LOW ACHIEVING VARSITY ATHLETS"
EXHIBIT R1(c)	A TRUE COPY OF THE FIRST PAGE OF THE RESEARCH PAPER TITLED "DEMOGRAPHIC CORRELATED OF ENVIORNMENTAL WORRY: AN EXPLORATIVE INVESTIGATION"
Exhibit R4(a)	True copy of Frequently Asked Questions regarding NET from the website of the UGC
Exhibit R4(aa)	True copy of the relevant pages of the Beall's List of Potentially Predatory Journals and Publishers.
Exhibit R4(b)	True copy of the relevant pages of the list of predatory journals and publishers by Jiban Shrestha.
Exhibit R4(c)	True copy of the list published by the ECEBM, which is an academic

independent research centre, and which aims to disseminate review of research evidence and which provides training to strengthen research capacity.

Exhibit R4(d) True copy of the public notice on academic integrity dated 14.06.2019.

Exhibit R4(e) True copy of the relevant pages of recognition of journal from the website of the UGC.

Exhibit R4(f) TRUE COPY OF THE RELEVANT PAGES OF THE LIST OF JOURNALS REJECTED BY UGC