

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4144 of 2022

Biju K.K.

...Appellant

Versus

Cochin University of Science and Technology,
Kochi & Ors.

...Respondents

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 30.06.2016 passed by the High Court of Kerala at Ernakulam in Writ Appeal No.1593 of 2014 by which the Division Bench of the High Court has dismissed the said appeal and has not interfered with the judgment and order passed by the learned Single Judge dismissing the writ petition preferred by the appellant herein – original writ

petitioner, the original writ petitioner has preferred the present appeal.

2. That the appellant herein - original writ petitioner was serving as Technical Assistant Grade-II on daily wages in the School of Engineering under the Cochin University of Science and Technology. That he was continued in service as daily wager by giving periodical breaks. Thereafter he applied for the post of Technical Assistant Grade - II in terms of Notification dated 24.07.2010 issued by the respondent University. He was placed much below in the rank list as he was awarded less marks on experience ignoring his earlier services rendered as daily wagers. Therefore, he approached the High Court by way of Writ Petition No.27538 of 2012. All the other employees in the rank list were also made party to the writ petition.

2.1 By a detailed judgment and order the learned Single Judge specifically observed and held that the original respondent no.5 was given the appointment, and was found at serial no.2 in the merit list, his appointment was absolutely illegal as he was not having the requisite qualification and he

was not fulfilling the eligibility criteria. So far as the case of the writ petitioner is concerned, the learned Single Judge was of the opinion that as the Selection Committee has followed certain criteria and forwarded the same in respect of all the candidates awarding the marks on experience, cannot be said to be arbitrary and it is not open for the Court to exercise the power under judicial review and decide otherwise. That it was submitted on behalf of the writ petitioner that even the 6th respondent was not having the requisite qualification and was not fulfilling the eligibility criteria as he was not having the experience in the Computer Science Lab. The learned Single Judge again observed that the Selection Committee found that the experience certificate submitted by respondent no.6 did satisfy the criteria, and there was no reason to interfere with the same. Consequently, the learned Single Judge partly allowed the said writ petition and set aside the appointment of the 5th respondent and directed that the marks of the 5th respondent shall be deleted and fresh rank list be finalized and it shall be open for the respondent to make appointments based on the modified rank list. Appeal against the judgment and order passed by the learned Single Judge has been

dismissed by the impugned Judgment and Order passed by the Division Bench of the High Court, hence the present appeal at the instance of the original writ petitioner.

3. Having heard the learned counsel for the respective parties and having gone through the judgment and order passed by the learned Single Judge as well as the Division Bench of the High Court, it appears that when a specific plea was taken before the learned Single Judge that the appellant has been wrongly denied the marks on experience ignoring his earlier service rendered as a daily wager and that the original respondent no.6 was also lacking the eligibility criteria as respondent no.6 was not having the experience in a Computer Science Lab, the learned Single Judge refused to consider the same on merits. This was by observing that as the Selection Committee has taken the decision awarding marks for experience and that the Selection Committee has found that the Experience Certificate produced by respondent no.6 was sufficient and no interference was called for. However, when the aforesaid plea was raised the High Court ought to have considered the same on merits. It is required to be noted that

what was challenged was the decision of the Selection Committee and therefore, the High Court was not justified in not deciding the same on merits on the ground that when the Selection Committee has taken a decision, in exercise of powers under judicial review, the High Court is not required to interfere with the same. Under the circumstances to the aforesaid extent the matter has to be remanded to the learned Single Judge.

4. In view of the above and for the reason stated above, the present appeal succeeds in part. The impugned judgment and order passed by the Division Bench and the learned Single Judge are hereby quashed and set aside. The matter is remitted to the learned Single Judge to consider the writ petition afresh on whether the Selection Committee was justified in awarding the marks on experience ignoring the services rendered by the appellant as daily wager and also whether the respondent no.6 was fulfilling the requisite eligibility criteria as per the advertisement namely "I Class Diploma in Computer Science and 3 years' experience in respective laboratories of Engineering Colleges/Universities".

The learned Single Judge to consider the same in accordance with law and on its own merits and to permit the parties to produce additional documents, if they so choose to be filed within a period of four weeks from the date of the first hearing. The aforesaid exercise shall be completed by the learned Single Judge within a period of six months from the date of issuance of present order.

Present appeal is partly allowed to the aforesaid extent. However, in the facts and circumstances of the case there shall be no order as to costs.

.....J.
(M. R. SHAH)

.....J.
(B.V. NAGARATHNA)

New Delhi,
July 11, 2022.