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BIJU K.K.

v.

COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY,
KOCHI & ORS.

B

(Civil Appeal No. 4144 of 2022)

JULY 11, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

- Service Law – Non-consideration of a specific plea by the High Court – Appellant was serving as Technical Assistant Grade - II on daily wages in school of Engineering – He applied for the post of Technical Assistant Grade -II in terms of notification issued by the respondent University – He was placed much below in the rank list by Selection Committee as he was awarded less marks on experience ignoring his earlier services rendered as daily wagers –*
- C *Decision of Selection Committee was challenged and plea was raised that the original respondent no.6 was also lacking the eligibility criteria – Single Judge of High Court held that Selection Committee decision is not arbitrary and Court cannot exercise power of judicial review – Appeal against the decision of Single Judge was dismissed by the Division Bench of the High Court – Held: The decision of the Selection Committee was challenged 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 – Specific plea raised by the appellant ought to have been considered by the High Court – Decision of Division Bench and of Single Judge set aside – The matter remitted to the Single Judge of the High Court 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 – Appeal partly allowed.*
- F *Decision of Division Bench and of Single Judge set aside – The matter remitted to the Single Judge of the High Court 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 – Appeal partly allowed.*
- G *Decision of Division Bench and of Single Judge set aside – The matter remitted to the Single Judge of the High Court 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 – Appeal partly allowed.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4144
of 2022.

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From the Judgment and Order dated 30.06.2016 of the High Court A
of Kerala at Ernakulam in W.A. No. 1593 of 2014.

Romy Chacko, Sudesh Kumar, Advs. for the Appellant.

Mathai M. Paikaday, Sr. Adv., Ms. Malini Poduval, Ms. Babita
Sant, Sanjay Jain, Shishir Pinaki, Amit Singh, Alexander M. Paikaday,
Advs. for the Respondents. B

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment C
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. D

2. That the appellant herein - original writ petitioner was serving E
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. F

2.1 By a detailed judgment and order the learned Single Judge G
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 H

- A 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
- B 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
- D 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.
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- G

- 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
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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.

Ankit Gyan
(Assisted by: Aarsh Choudhary, LCRA)

Appeal partly allowed.