

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 31ST DAY OF JANUARY 2013/11TH MAGHA 1934

WP(C).No. 2917 of 2013 (I)

PETITIONER:

**SAJITHA P.SOMAN,
D/O.K.SOMAN, PUTHENVILA HOUSE, EDAYAM P.O,
ANCHAL, KOLLAM DISTRICT.**

BY ADV. SRI.LINDONS C.DAVIS.

RESPONDENTS:

- 1. UNIVERSITY GRANTS COMMISSION (UGC),
REPRESENTED BY ITS SECRETARY,
OFFICE OF THE UNIVERSITY GRANTS COMMISSION,
NEW DELHI - 110 001.**
- 2. THE COORDINATOR,
UNIVERSITY GRANTS COMMISSION,
NATIONAL ELIGIBILITY TEST FOR JUNIOR -
FELLOWSHIP AND ELIGIBILITY FOR LECTURESHIP - JUNE 2012 ,
OFFICE OF THE UNIVERSITY GRANTS COMMISSION,
NEW DELHI - 110 001.**
- 3. NATIONAL EDUCATIONAL TESTING (NET) BUREAU,
OFFICE OF THE UNIVERSITY GRANTS COMMISSION,
NEW DELHI - 110 001.**

BY SRI.S.KRISHNAMOORTHY, S.C.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 31-01-2013, ALONG WITH W.P.(C).NO.2972/2013 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Prv.

W.P.(C). NO.2917/2013-L:

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1. TRUE COPY OF THE NOTIFICATION PUBLISHED BY UNIVERSITY GRANTS COMMISSION FOR NATIONAL ELIGIBILITY TEST EXAMINATION.**
- EXHIBIT P2. TRUE COPY OF CHANGED CRITERIA PUBLISHED BY THE UGC FOR QUALIFYING LECTURESHIP IN UGC-NET.**
- EXHIBIT P3. TRUE COPY OF THE NET MARK LIST OF THE PETITIONER.**

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.A. TO JUDGE

Prv.

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 2917, 2972, 2981 and  
2987 of 2013

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Dated, this the 31st day of January, 2013

JUDGMENT

Whether 'Rules of the game' could be changed during the middle of the game, is the issue involved in all these cases.

2. The matter relates to acquisition of the requisite qualification for appointment as 'Lecturer' by clearing the 'National Eligibility Test' (NET for short). The test was notified to be conducted by the UGC, stipulating the norms as to the particulars of the papers, the minimum marks to be obtained and such other details. The examination was scheduled to be conducted on 24.06.2012.

3. The petitioners participated in the examination and according to them they have crossed the hurdle, with regard to the minimum marks prescribed and notified. But the UGC, just a few days before the declaration of the result, sought to change the norms, whereby some modification was

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and connected cases.*

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made with regard to the minimum qualifying marks and mode of reckoning the same; introducing the 'total/aggregate minimum' as well, apart from the minimum marks to be secured for each paper. This was quite to the disadvantage of persons like the petitioners, who were never told of such a course earlier, as a result of which, they could not get the clearance. It was in the said circumstance, that similarly situated persons approached this Court by filing several writ petitions, which were considered together and a common judgment was passed by a learned Single Judge of this Court on 17/12/2012 (W.P.(C)No.22187/2012 & connected cases).

4. As per the said judgment, the course pursued by the UGC was held as not correct or sustainable and accordingly, the impugned proceeding stipulating the category-wise qualifying criteria for lectureship was set aside. It was declared by this Court, that all the petitioners, who had obtained the separate minimum prescribed in the notification for Papers I, II and III, had cleared the 'NET' and appropriate follow up action was directed to be taken, to issue certificates

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and connected cases.*

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to them, within 'one month' from the date of receipt of a copy of the judgment. The petitioners in these writ petitions seek for similar benefit, as given by this Court in the aforesaid judgment.

5. Sri. Krishnamoorthy, the learned Standing Counsel for the UGC, entered appearance on behalf of the respondents and made a submission that the respondents are very much aggrieved of the verdict passed by the learned Single Judge and that steps are being taken to file writ appeal. It is pointed out that, if the relief sought for is granted, it will cause severe hardship to the UGC. It is also brought to the notice of this Court that in most of these cases, interim orders have been passed, in terms of the final verdict as mentioned hereinbefore.

6. After hearing both the sides, this Court finds that the judgment already passed by the learned Single Judge in W.P.(C) No.22187/2012 and connected cases is purely based on the question of law, as there is no dispute with regard to the facts and figures. The question of law has been considered

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and answered in favour of the petitioners concerned and a declaration of law has been made by this Court. The Court also considered the scope and applicability of judicial precedents cited from both the sides particularly, the law declared by the Apex Court in ***K.Manjusree v. State of Andhra Pradesh and another [(2008) 3 SCC 512]***, the Full Bench of this Court in ***Dr.Cyril Johnson v. State of Kerala and others [2009 (4) KHC 404 (FB)]*** and a Division Bench of this Court in ***Jayachandran v. High Court of Kerala (2010 (4) KLT 49)*** (to which I was also a member), in support of the case projected by the petitioners, to the effect that the rules of selection could not be changed after commencement of the process of selection. The reliance sought to be placed from the part of the UGC with reference to the recent judgment of the Apex Court in Civil Appeal Nos.4959 and 4962 of 2011 with regard to the question of minimum qualifying marks for 'viva voce', introduced just two or three days before the commencement of the oral tests, though it was not stipulated in the advertisement issued by

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the PSC, was also considered therein and it was distinguished for the reason that, such stipulation was very much incorporated in the relevant rules, but omitted to be incorporated in the advertisement and hence held as not applicable. It was after considering the rival contentions and also the binding judicial precedents, that a finding was rendered, leading to the judgment as aforesaid.

7. As mentioned hereinbefore, the verdict passed by the learned Single Judge is rather declaratory in nature. It has been held by the Apex Court that, if the verdict is of declaratory character, it shall be made applicable to all who are similarly situated; irrespective of the fact whether they are parties to the verdict or not. This is reported in ***Ashwani Kumar and others v. State of Bihar and others [(1997) 2 SCC 1]***. Since the petitioners seek for the benefit of such declaratory judgment, this Court does not find any reason to take a different course.

8. In the above circumstances, all these writ petitions are allowed, holding that the petitioners are entitled to have

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the benefit of the judgment passed in W.P.(C)No.22187/2012 & connected cases. The petitioners, who have obtained the separate minimum marks prescribed in the notification for Papers I, II and III, are declared as cleared the 'NET'. Appropriate follow up action shall be taken by the concerned respondent to issue certificates to them at the earliest, at any rate within 'one month' from the date of receipt of a copy of this judgment, subject to curing the defects if any pointed out, from the part of the respondents..

9. Considering the fact that petitioners are being given the benefit of the above declaratory judgment, it is also necessary to put the petitioners on alert, as to the steps stated as being taken by the UGC to challenge the basic judgment, by way of Writ Appeal.

10. In the above circumstances, it is made clear that, if the writ appeal being filed by the UGC comes to be allowed in favour of the UGC, naturally the law declared by the Division Bench will be made applicable to all the petitioners herein, as the benefit of declaration will stand equally applicable to both

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the sides.

Taking note of the submission made by the learned Standing Counsel for the UGC, the petitioners in all these cases are directed to furnish an additional set of the concerned writ petition to the learned Standing Counsel forthwith, to save time in respect of the procedural formalities to be completed.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

kmd