

**(1992) 03 KL CK 0037****High Court Of Kerala****Case No:** W.A. No's. 265, 267, 268, 272, 273, 274, 275, 276 and 277 of 1992

Ajet Kumar and Others

APPELLANT

Vs

K.V. Sunil Kumar and  
AnotherRESPONDENT

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**Date of Decision:** March 26, 1992**Acts Referred:**

- Constitution of India, 1950 - Article 14
- Kerala Agricultural University Act, 1971 - Section 43

**Citation:** (1992) 03 KL CK 0037**Hon'ble Judges:** M. Jagannadha Rao, C.J; P. Krishnamoorthy, J**Bench:** Division Bench**Advocate:** C.S. Rajan, Thomas John, P. Sankarankutly Nair and T.V. Ajayakumar, for the Appellant; K.P. Dandapani and B.S. Krishnan, for the Respondent

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**Judgement**

M. Jagannadha Rao, C.J.

These nine appeals arise out of the common judgment of the learned Single Judge in three writ petitions O.P. Nos. 8181, 8340 and 10155 of 1988. All the Appellants are Respondents in one or other of the above writ petitions. They are aggrieved by the directions issued in the common judgment quashing the select list dated 19th September 1988 (evidenced by Ext. P-8 in O.P. No. 8340 of 1988) and directing fresh interview to all the candidates (other than those who did not turn up) on 7th May 1988 afresh and for making a proper selection.

2. The facts of the case are as follows: There was a selection to the post of Overseer Gr. II in the Kerala Agricultural University, pursuant to the notification dated 7th November 1987 inviting applications. The Respondents writ Petitioners as well as the Appellants who had the requisite qualification applied for the said post. The interview took place on 7th May 1988, and thereafter a select list dated 19th September 1988 was published selecting 15 persons. Inasmuch as the Petitioners were not selected, they filed the three

writ petitions. Two points were raised in the writ petitions: one was that the communal reservation recognised by Section 43 of the Kerala Agricultural University Act, was not followed, and the other was that selection which was made solely on the basis of interview could not be sustained inasmuch as 62 candidates were, interviewed in three hours, and such interview could not have been meaningful. According to them, time was not sufficient even to assess the merit of the candidates. The University however contended before the learned Single Judge that communal rotation was followed, that the interview was effective, and that ranking was given to the various candidates, and a select list was prepared.

3. The learned Single Judge called for the files relating to interview and examined them. He found that there was no assessment sheet or mark-sheet throwing light on the manner in which candidates were assessed and selected. There was no means of knowing even the marks awarded at the interview to different candidates. In the absence of any material indicating the application of the mind by the committee which selected the candidates, the learned Single Judge thought that there was no meaningful selection. Further the learned Single Judge agreed that each candidate was interviewed on an average for three minutes, and taking into account the time taken for the candidate to come in and go out, and the time that would have been taken by the eight member committee which had discussed among themselves regarding the marks to be awarded, the learned single Judge thought that a few seconds alone were available to judge the merit of the candidate. Having come to the above said conclusion, the learned Single Judge quashed the select list dated 19th September 1988 and directed the University to interview all the candidates (other than those who did not turn up on 7th May 1988) afresh and make a proper selection. Various other directions were given as to how to conduct the interview and as to the communal reservation to be followed. The writ petitions were thus allowed by judgment dated 28th January 1992.

4. In these appeals, preferred by the Appellants, it has been argued that the learned Single Judge erred in coming to the Conclusion that there was no proper assessment of the merit of various candidates. It is also contended that on any event the selection having been taken place as long back as on 19th September 1988, and the Appellants having already been appointed as Overseer Gr. II and inasmuch as probation in several cases was completed and declared as such, the court should not have exercised discretion at this distance of time nearly 4 years to quash the select list and direct fresh interview.

5. We have heard learned Counsel for the Respondents writ Petitioners also.

6. So far as the main point is concerned, we also called for the relevant file of the selection committee. We found that there was no mark sheet which would show that each of the members of the selection committee had awarded any marks to the candidates, nor was there any list which would show that collectively the members of the selection committee awarded any particular mark. There is no material to show how the rank list

has been prepared, or how the tanking has been made. There is no means to know how many marks were awarded to the marks obtained at the S.S.L.C. or at the certificate examination or to the number of years of experience. However, the record contains a tabular statement of the year of passing of S.S.L.C. and the "O.G.P.A. obtained out of four for D.A.R.E." The marks ranged 2.00 and 4.00. Even going by these marks, we found that V.M. Roy, one of the writ, Petitioners, who secured 3.87 marks, and who had one and a half years of experience, and who was the first rank holder in the test examination was not selected. He belongs to open competition class. Similarly, we found that S.R. Antony, who is a latin catholic (backward), who secured 3.04 marks and had two years and four months" experience, was not selected, though the person who belongs to open competition class and who secured 2.68 marks as per the above list was selected. Again one K.V. Sunil Kumar who belongs to Ezhava community, who had secured 3.54 marks and who had one year and seven months experience was not selected, though a person at Sl. No. 67, who belongs to Ezhava community, who secured 3.09 marks and had only six months experience was selected. We have examined the above said tabular statement containing the O.G.P.A. marks obtained out of four D.A.R.E. and we found that several persons who secured higher marks than those selected did not find a place in the select list. As already stated, members of the selection committee did not award any marks after the interview. We have on record Anr. tabular statement containing the biodata of each candidate and the number of years of experience. We have compared the number of years of experience of the Appellants as against the experience of the writ Petitioners, and certain Ors. , whose names are found in the above said list. We found that quite a large number of persons with very large experience had not been selected. In any event, we are surprised as to how the selection committee omitted to select Sri V.M. Roy, Sl. No. 34 of the list, who belongs to open competition class, who got the first rank in the relevant test and had six months experience as Overseer Gr. II in Kerala Agricultural University from 15th September 1983 to 14th March 1984, six months experience as Gr. II Overseer in the same University from 15th February 1985 to 12th August 1985, and again six months" experience as Technician in the Kerala Agricultural University. We found therefore that persons with higher marks in the O.G.P.A. out of four for D.A.R.E. test, and persons with longer experience, had not been selected.

7. It is therefore difficult for us to come to any conclusion other than the one arrived at by the learned Single Judge that the selection was liable to be otherwise quashed on the merits, and that a fresh selection should be ordered. But the question then is whether at this distance of time the selection should be quashed. As already stated, interview, took place on 7th May 1988 and the select list was published on 19th September 1988, and subsequently appointments had been made to the post of Overseer Gr. II in the Kerala Agricultural University and in several cases probation has already been declared. Therefore the question is whether we should now set the clock back and order a fresh selection.

8. The learned Counsel for the Appellants relied upon a recent decision of the supreme Court in [Munindra Kumar and others Vs. Rajiv Govil and others](#), wherein the Supreme Court came to the conclusion that a particular selection process was not proper. However, the Supreme Court set aside the order of the Allahabad High Court, whereby the High Court had quashed the selection. No doubt the Supreme Court there was concerned with the validity of a rule fixing marks for interview and group discussion. The Supreme Court observed that the writ Petitioners appeared for the interview and group test knowing full well that there was such a rule, and if they were unsuccessful in the selection, they could not challenge the rule. The Supreme Court observed that even so, the writ Petitioners could not be stopped from challenging the rule if it was arbitrary and violative of Article 14 of the Constitution of India, but in modulating the relief, certain enquiries in favour of those who have been selected have to be borne-in-mind. The Supreme Court then observed as follows:

The Appellants have joined the post on 28th December, 1989 and after completing the training are discharging their duties at different places. It has been submitted on their behalf that some of them had left their earlier jobs and have also become overage. Thus we do not consider it proper in the interest of justice to set aside the selections of the Appellants.

In that view of the matter, and holding that the rule relating to award of percentage of marks to interview and group discussion was bad, the Supreme Court felt that equities of the case were such that the selection should not have been set aside by the High Court after several years. We have, therefore, carefully considered the question whether the selection should be quashed at this distance of time, and a fresh selection ordered. It may be noticed that there is no plea or proof of any mala fides. It may perhaps be that the selection committee followed some principle, but that is not evident from the record. No doubt, the fact remains that some candidates who appeared to be more merited from the point of view of their academic qualification or experience were not selected. It may perhaps be that the Appellants who were selected cannot be blamed for the peculiar procedure adopted by the selection committee. There is no proof that the members of the selection committee had any interest in the selection of the Appellants. In these circumstances, we are of the view that it would be wholly inequitable to set aside the select list at this instance of time.

9. The question arises whether, in the circumstances, directions could be issued to accommodate the three writ Petitioners who are the Respondents in these appeals. We enquired with the learned Counsel of the University to find out the position from the University. Learned Counsel has placed before us a letter addressed by the Registrar of the University to him which reads as follows:

With reference to the above, I am to inform you that University do not find it feasible to create supernumerary posts of Grade II Overseers to accommodate the three Petitioners in the above O.Ps. But if accommodation of the three persons in Kerala Agricultural

University can save the select list and protect the incumbents in service, University shall give postings to them by downgrading posts of Assistant Engineers at a temporary measure, so that, these persons can be accommodated in future vacancies arising either by creation or by promotion of the Overseers to the cadre of Assistant Engineers as per the Statutes and Rules. Such a measure will be resorted to if the Hon"ble High Court is of the opinion that this measure may be taken.

In the light of the above letter, we hereby direct the University to conduct an interview in so far as the three writ Petitioners are concerned and on the basis of the result of the said interview to accommodate the three writ Petitioners by giving posting to them by downgrading the posts of Assistant Engineers as a temporary measure, so that the said Petitioners can be accommodated in future vacancies arising either by creation or by promotion of the Overseers to the cadre of Assistant Engineers as per the Statutes and Rules.

10. Though a contention has been raised by the writ Petitioners that they should be given seniority over the persons already recruited, may be without any need to pay backwages, we do not propose to give any directions in this behalf. We also confine the benefit of the above said letter, dated 20th March 1992 to the three writ Petitioners who have come to Court.

In the result, the judgment of the learned Single Judge setting aside the selection is set aside and the directions given by the learned Single Judge are also set aside. In their place, the above directions shall be issued. The writ appeals are accordingly disposed of.