

PETITIONER:
K. JAYAMOHAN

Vs.

RESPONDENT:
STATE OF KERALA & ANR.

DATE OF JUDGMENT: 25/04/1997

BENCH:
K. RAMASWAMY, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:
Present:

Hon'ble Mr. Justice K. Ramaswamy
Hon'ble Mr. Justice D.P. Wadhwa

T.L.V. Iyer, Sr. Adv., Ajit Pudussery, Adv. with him for the
appellant
Ms. Malini Poduval and N. Sudhakaran, Advs. for the
Respondents

O R D E R

The following Order of the Court was delivered:
Leave granted. We have heard learned counsel for the
parties.

This appeal by special leave arises from the judgment
of the High Court of Kerala, made on 25.7.1996 in Writ
Appeal No.997/96.

The admitted facts are the two posts of Lecturers in
Physical Education were advertised for recruitment in the
year 1988 through the Public Service Commission. Written
Test and oral interviews were conducted in the year 1992 and
the Select List, a long list of 10 candidates was prepared
by the have already been appointed. Since there often exist
some vacancies, the appellant, one of the selected
candidates, made a representation to appoint him. That was
rejected on the ground that pursuant to the amendment to the
Kerala Collegiate Education Service Special Rues, 1994,
which came into force with retrospective effect from March
13, 1990, higher qualifications were prescribed and since
the appellant did not fulfil the requisite qualification, he
was not eligible and could not be appointed. When the
appellant filed writ petition, the single Judge and on
appeal the Division Bench of the High Court held that merely
because he was kept in the select list, he acquired an
absolute right to appointment and it is not incumbent upon
the authorities to appoint him. Thus, this appeal by special
leave.

Shri T.L.V. Iyer, learned senior counsel for the
appellant, whether when asked to find out from page No.2 of
the selection is made only to two posts or more, points out
from page No.2 of the judgment of the High Court that the
advertisement was restricted to the existing vacancies,
namely, two appoint the candidate from the waiting list, He

has no right to appointment. It is contended that such an appointment is violative of Articles 14 and 16 (1) of the Constitution of India as the candidates eligible when selection and get their rights tested.

It is settled legal position that merely because a candidate is selected and kept in the waiting list, he does not acquire any absolute right for appointment. It is open to the Government to make the appointment or not. Even if there is any vacancy, it is not incumbent upon the Government to fill up the same. But the appointing authority must give reasonable explanation for non-appointment. Equally, the Public Service Commission/recruitment agency shall prepare waiting list only to the extent of anticipated vacancies. In view of the above settled legal position, on error is found in the judgment of the High Court warranting interference.

The appeal is accordingly dismissed. No costs.