

## HIGH COURT OF KERALA

SELECTION FOR APPOINTMENT TO THE POST OF P.A. (Gr. II) TO JUDGE AND  
C.A. Gr. II ON TEMPORARY BASIS

29.4.2017

PASSAGE FOR DICTATION

It is seen that by securing the minimum marks, one does not get qualified in the NET. In order to qualify the NET, the candidates should come within the first 15 percent of the merit lists prepared on the basis of aggregate marks category-wise. The benefit of lower minimum marks prescribed for pass in the NET for candidates belonging to the reserved categories will enure to their benefit only if they come within the top 15 percent of the candidates in the respective categories. In other words, as indicated above, lower minimum marks are prescribed for candidates belonging to // reserved categories only to ensure that sufficient number of candidates are available for selection from those categories. As such, it cannot be contended that there cannot be any further classification after the pass in the NET and that the qualification in the NET shall thereafter be solely on the basis of the aggregate marks secured by the candidates, for, if the said course is adopted, selection thereafter will be virtually on the basis of merit and sufficient number of candidates from reserved categories cannot be ensured for selection. It has, therefore, to be conceded that a further classification of the candidates // securing minimum marks in the NET is necessary to ensure the right to equal opportunity guaranteed to the candidates belonging to the reserved categories. As noted above, the criterion to be adopted to

ensure the said right of the reserved categories in a case like this shall be a criterion which would ensure justice to the candidates belonging to the reserved categories, equity for the candidates belonging to the general categories and would ensure standards of the higher education system. Does the present criteria contained in Step III of Ext. P2 prospectus satisfy the said Constitutional requirement is the question // to be answered. While it is the Constitutional obligation of the instrumentalities of the State to ensure that sufficient number of candidates are NET qualified from reserved categories to stake claim for appointment against the seats reserved for them, the instrumentalities of the State are equally obliged to ensure that the provision made for protecting the rights of reserved categories does not affect the sufficiency of the candidates from general category to stake claim for appointment against open vacancies. If the candidates from general category are eliminated while ensuring the interests of the candidates from reserved categories, it is beyond // dispute that the candidates belonging to reserved categories will be able to claim not only the seats reserved for them, but also the open seats, for, there is no interdiction for them to claim appointment against open vacancies on merit. Situation of that nature would certainly be a situation of reverse discrimination. As noted above, after Step II, five separate lists are prepared for the five categories viz., General, OBC, SC, ST and Persons with Disability, based on aggregate marks secured by the candidates. Assuming that only a very few candidates from the general category

secure the high // minimum marks prescribed for pass in the NET in a particular year, 15 percent of the same will be very negligible. Likewise, if large number of candidates from the four reserved categories secure the lower minimum marks prescribed for pass in a particular year, 15 percent from each of the said categories will be substantially high. It is beyond dispute that candidates securing places in the merit lists would depend upon the number of candidates applied for the NET and their performance. As such, if almost equal number of candidates are securing places in all the five lists, the number // of candidates qualifying the NET from among the candidates belonging to general category would only be 20 percent. In all the said situations, the number of NET qualified candidates from reserved categories would far outnumber the number of NET qualified candidates from general category. That does not mean that the same will be the position always for every subject. Depending upon the number of candidates applied for the NET and their performance, the reverse situation is also possible. But, the fact remains that if the impugned criteria is adopted, the number of NET qualified candidates from general category reaching to // a skeleton percentage cannot be ruled out. As noted above, in the last selection process, the number of candidates qualified from the reserved categories for some subjects went upto 91.8 percent and the average was 62.17 percent. In other words, even in the last selection, the NET qualified candidates from general category were very minimal when compared to the NET qualified candidates from reserved categories for some subjects. There is no

dispute to the fact that more than 50 percent of the vacancies in the post of Assistant Professor in Universities and Colleges are open vacancies. When more // than 50 percent of the vacancies in the post of Assistant Professor in Universities and Colleges are open vacancies and when NET qualification is mandatory for staking a claim for selection in the said vacancies, a criterion which is likely to eliminate more than 50 percent of the candidates from general category from acquiring the NET qualification cannot be said to be a valid one, especially when they, or at least a substantial number among them, are more meritorious than the candidates who are NET qualified from the reserved categories. For the aforesaid reasons, I have no hesitation to hold // that the impugned criteria would infringe the fundamental right to equal opportunity guaranteed to the candidates belonging to the general category under Article 16(1) of the Constitution and hence unconstitutional.