
(2019) 10 UK CK 0009

Uttarakhand High Court

Case No: Writ Petition (S/B) No. 270 Of 2018

Chandrapal Singh
Bohra

APPELLANT

Vs

State Of Uttarakhand
And Others

RESPONDENT

Date of Decision: Oct. 10, 2019

Acts Referred:

- Code Of Civil Procedure, 1908 - Section 11
- Constitution Of India, 1950 - Article 226

Hon'ble Judges: Ramesh Ranganathan, CJ; Alok Kumar Verma, J

Bench: Division Bench

Advocate: S.K. Mandal, J.C. Pandey, Yogesh Pandey, K.P. Upadhyay, Hemant Pant

Final Decision: Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. S.K. Mandal, learned Advocate for the petitioner, Mr. J.C. Pandey, learned Brief Holder for respondent No.1, Mr. Yogesh Pandey,

learned Advocate for respondent Nos.2 and 3 and Mr. K.P. Upadhyay, learned Senior Advocate assisted by Mr. Hemant Pant, learned Advocate for

respondent No.4.

2. The petitioner has invoked the jurisdiction of this Court, by way of the present writ petition filed on 27.06.2018, seeking a writ of mandamus

directing and commanding respondent Nos.1 and 2 to conduct a proper inquiry of the selection process started pursuant to the advertisement dated

13.12.2010; and to pass appropriate orders declaring the selection of the fourth-respondent to be null and void.

3. Facts, to the limited extent necessary, are that both the petitioner and the fourth-respondent submitted their respective applications seeking

appointment to the post of Assistant Professor (Forestry) in terms of the advertisement dated 13.12.2010, for which a corrigendum was issued on

14.01.2011 stating that candidates, who had obtained their Ph.D Degree on or before 31.12.2009 or had registered themselves for Ph.D. Degree on or

before 10.07.2009, shall remain exempt from the requirement of NET. The fourth-respondent obtained his Ph.D. degree in the year 2003, but has

admittedly not qualified in the NET examination. The petitioner, on the other hand, has not only secured his Ph.D. in the year 2008, but has also passed

his NET examination.

4. It is the petitioner's case that appointment of the fourth-respondent, as an Assistant Professor (Forestry), is contrary to the 2009 UGC

Regulations as clarified by the instructions issued by the Government of India which mandate passing the NET examination as the minimum

qualification for being considered for appointment to the post of Assistant Professor; and since the fourth-respondent was appointed as an Assistant

Professor, without having passed the NET examination, his appointment as an Assistant Professor in August, 2011 is liable to be set aside. Mr. S.K.

Mandal, Learned counsel for the petitioner, would rely on the judgment of the Supreme Court in P. Susheela and others Vs. University Grants

Commission and others, (2015)8 SCC 129 (order in Civil Appeal Nos.2891-900 of 2015 and batch dated 16.05.2015) in this regard.

5. On the other hand Mr. K.P. Upadhyay, learned Senior Counsel appearing on behalf of the fourth respondent, would submit that the writ petition as

filed is liable to be dismissed both on grounds of inordinate delay and laches, and the petitioner's failure to question the validity of the exemption,

prescribed in the advertisement dated 13.12.2010, in WPSB No.152 of 2011 filed by him before this Court; the UGC Regulations do not automatically

apply to the third-respondent-University which is a State University; it is only after these Regulations were adopted by the third-respondent on

30.09.2011 would they apply to recruitments held thereafter; and since the fourth-respondent was appointed, and had in fact joined duty as an

Assistant Professor on 10.08.2011 long before the UGC Regulations were adopted by the third-respondent, the said Regulations are inapplicable to the

selection process undertaken pursuant to the advertisement issued long prior thereto on 13.12.2010. Reliance is placed on the judgment of the

Supreme Court in Kalyani Mathivanan vs. K.V. Keyaraj and others: (2015) 6 SCC 363 in this regard.

6. The UGC (MINIMUM STANDARDS AND PROCEDURE FOR AWARDS OF M.PHIL/P.HD DEGREE) REGULATION, 2009 were notified

in the Gazette of India dated 11.07.2009. Likewise the UGC (MINIMUM QUALIFICATIONS REQUIRED FOR THE APPOINTMENT AND

CAREER ADVANCEMENT OF TEACHERS IN UNIVERSITIES AND INSTITUTIONS AFFILIATED TO IT) (3rd AMENDMENT),

REGULATION 2009 were also published in the Gazette of India dated 11.07.2009. Clause 4 of the 3rd Amendment Regulation, 2009 prescribed

NET/SLET to be the minimum eligibility condition for recruitment and appointment of Lecturers in Universities/Colleges/ Institutions. Under the

proviso thereto, candidates who were or had been awarded a P.hd Degree, in compliance with the UGC (MINIMUM STANDARDS AND

PROCEDURE FOR AWARDS OF M.PHIL/P.HD DEGREE) REGULATION, 2009, were exempted from the requirement of the minimum

eligibility condition of NET/SLET for recruitment and appointment as Assistant Professors or equivalent positions in Universities/Colleges/Institutions.

7. The petitioner had earlier filed WPSB No.152 of 2011 wherein he had questioned the action of the respondent in conducting a written examination

in addition to interview. The petitioner had contended that the advertisement made no mention of a written examination to be held; and when the basic

eligibility was NET/SLET, the wisdom of holding a written examination was not free from doubt. A Division Bench of this Court, in its order in WPSB

No. 152 of 2011 dated 20.06.2011, held that, in the absence of any bar, a convenient mode could be adopted; and holding a written examination for

selection of candidates was a convenient and transparent mode of ascertaining who was better amongst those who were eligible. The Writ Petition,

filed by the petitioner, was accordingly dismissed. The order of the Division Bench, in WPSB No.152 of 2011 dated 20.06.2011 has attained finality as

the petitioner chose not to prefer an appeal thereagainst before the Supreme Court.

8. As noted hereinabove, the petitioner did not challenge the advertisement dated 13.12.2010 exempting persons, who possessed a Ph.D. Degree,

from also passing the NET/SLET examination, in WPSB No.152 of 2011 which was filed by him after the corrigendum was issued, to the

advertisement, by the third-respondent, on 14.01.2011. Nothing prevented the petitioner from questioning this condition stipulated in the advertisement

dated 13.12.2010 when he filed WPSB No.152 of 2011. Explanation IV to Section 11 of the Code of Civil Procedure stipulates that any matter which

might and ought to have been made the ground of defence or attack in a former suit shall be deemed to have been a matter directly and substantially

in issue in such suit. The said provision has been applied to proceedings, under Article 226 of the Constitution of India, in *Forward Construction Co.*

and others Vs. *Prabhat Mandal (Regd.) Andheri and others*, AIR 1986 SC 391. In the said judgment, the Supreme Court held that, in view of S.11,

Expln. IV C.P.C., it could not be said that the earlier judgment would not operate as res judicata as one of the grounds taken in the subsequent writ

petition was conspicuous by its absence in the earlier writ petition.

9. It was always open to the petitioner to question the validity of this exemption, in the advertisement dated 13.12.2010, when he filed WPSB No.152

of 2011 before the Division Bench of this Court. His failure to do so notwithstanding, Explanation IV to Section 11 C.P.C. would require this Court to

deem that this contention was also in issue in WPSB No.152 of 2011 and to have been rejected by the order of the Division Bench dated 20.06.2011.

It was impermissible for the petitioner, thereafter, to question the appointment of the fourth-respondent, as an Assistant Professor, on this ground.

10. While Mr. K.P. Upadhyay, learned Senior Counsel, would submit that the petitioner had suppressed the fact of his having filed WPSB No.152 of

2011, in the affidavit filed in support of the present writ petition (i.e. WPSB No.270 of 2018), Mr. S.K. Mandal, learned Counsel for the petitioner,

would contend that it is only failure to refer to material and relevant facts which would require this Court to hold the petitioner guilty of suppression,

and since the challenge in the earlier writ petition was only regarding the prescription of a written examination besides interview, the stipulation in the

advertisement, exempting persons with Ph.D. from passing the NET examination, has no connection with the earlier writ petition filed by him. It is

wholly unnecessary for us to dwell on this issue since the Writ Petition is also liable to be dismissed on the ground of inordinate delay and laches.

11. As noted hereinabove, the fourth-respondent was appointed, and joined duty, as an Assistant Professor on 10.08.2011 nearly 07 years before the

petitioner invoked the jurisdiction of this Court by way of the present Writ Petition. In State of M.P. Vs. Nandlal Jaiswal : (1986) 4 SCC 566, the

Supreme Court observed:

“Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is

discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent of the acquiescent and the

lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court

may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number

of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to

cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is

exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on

third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile

is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction.

12. The only explanation furnished, for the inordinate delay of nearly seven years in invoking the jurisdiction of this Court, is that the petitioner had

submitted a representation to the Chancellor. Mere submission of representation would not, by itself, justify entertaining a writ petition after a lapse of

nearly seven years from the date on which the fourth respondent was appointed as an Assistant Professor. It would be wholly inappropriate for this

Court, at this belated stage, to interfere with the appointment of the fourth respondent, as an Assistant Professor, seven years ago in August, 2011.

13. While it does appear that the judgment of the Supreme Court in P. Susheela and others Vs. University Grants Commission and others, (2015)8

SCC 129 supports the petitioner contention that, notwithstanding possession of a Ph.D. Degree, a pass in the NET/SLET examination is a must, the

fact remains that for more than 03 years after this judgment of the Supreme Court, the petitioner has chosen not to avail his legal remedies by

invoking the jurisdiction of this Court under Article 226 of the Constitution of India. Both on the ground of a subsequent Writ Petition being barred in

terms of the Explanation IV to Section 11 C.P.C, and in view of inordinate delay and laches, the present Writ Petition is liable to be, and is

accordingly, dismissed. Since the petitioner is not being granted the relief sought for in the Writ Petition, it is unnecessary for us to examine the

applicability of the law declared by the Supreme Court in Kalyani Mathivanan vs. K.V. Keyaraj and others (2015) 6 SCC 363 to the facts of the

present case. No costs.