
(2014) 02 P&H CK 0078

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. Nos. 2386, 2657, 2679, 2821, 2835, 2838, 2944 and 2947 of 2014

Rajeev

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Feb. 19, 2014

Acts Referred:

- University Grants Commission Act, 1956 - Section 12, 2, 26, 26(1), 26(1)(e)

Citation: (2014) 175 PLR 705

Hon'ble Judges: Jasbir Singh, J; Harinder Singh Sidhu, J

Bench: Division Bench

Advocate: Amit Khatkar, Raman Gaur, Raj Kapoor Malik, Ashish Chaudhary, Piyush Gaur and Devinder Arya for Sandeep Goyat, Advocate for the Appellant; S.S. Pattar, Sr. DAG and H.N. Metani, Advocate for the Respondent

Final Decision: Allowed

Judgement

Jasbir Singh, J.

In response to order dated 07.02.2014, the State has filed affidavit, which is taken on record. This order shall dispose of eight writ petitions i.e. CWP Nos. 2386, 2821, 2835, 2838, 2944, 2947, 2679, 2657 of 2014. However, the facts are being taken from CWP No. 2386 of 2014. By filing this writ petition, petitioner has laid challenge to notification dated 03.09.2013 (P-3) making amendment in Haryana Education (College Cadre) Group B Service Rules 1986 whereby in Appendix B, under columns 3 and 4 after serial No. 9 in note 1 for item (c), the following qualification shall be substituted:

2. It is grievance of the petitioner that despite relaxation of not passing eligibility test granted by the University Grants Commission (for short the Commission") under the University Grants Commission Act, 1956 (for short "the Act") for those who have Ph.D. degrees to their credit, the contrary eligibility condition of passing eligibility test has been laid down by the above said notification. Further challenge

has been made to the advertisement inviting applications for the post of Lecturers in various subjects issued on 24.01.2014 in which besides other conditions, passing of eligibility test is one of the criteria. As per above advertisement for the post of Assistant Professor in all subjects, good academic record with at least 55% of the marks or an equivalent grade of B in the 7 point scale with letter grades O, A, B, C, D, E and F at the Master's Degree level is necessary qualification in the relevant subjects. The knowledge of Hindi/Sanskrit upto Matric standard is also necessary. Besides the conditions for entry in service as above, it is provided that National Eligibility Test (NET) and State Level Eligibility Test (SLET) shall remain minimum eligibility condition for recruitment and appointment for the post of Assistant Professors in Colleges. Proviso states that NET/SLET shall not be required for such Master Programme in the subject for which the NET or SLET is not conducted.

3. It is stated by the petitioners that the above eligibility condition runs contrary to norms fixed by the Commission to be eligible for the post in question. To say so, reference has been made to Regulation 4.4.0 of the UGC Regulation On Minimum Qualification for Appointment of Teachers and other Academic Staff in the Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010. In those Regulations, following qualification has been provided for the post of Assistant Professor:

"4.4.0 Assistant Professor

4.4.1 Arts, Humanities, Science, Social Sciences, Commerce, Education, Languages, Law, Journalism and Mass Communication.

i. Good academic record as defined by the concerned university with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign university.

ii. Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET.

iii. Notwithstanding anything contained in sub clauses (i) and (ii) to this clause 4.4.1 candidates, who are, or have been awarded a Ph.D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009 shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions.

iv. NET/SLET/SET shall also not be required for such Masters Programmes in discipline for which NET/SLET/is not conducted."

4. In the above said Regulations, it is provided that necessary qualification of passing the eligibility test is not mandatory in the case of those who have Ph.D.

degree to their credit and they shall be exempted from passing the eligibility test.

5. It is vehemently contended by counsel for the petitioners that the Regulations framed by the UGC are binding upon the State and Education qualifications contrary to one laid down by the Commission cannot be prescribed for the post in question.

6. It is not in dispute that all the petitioners in these writ petitions have Ph.D. Degree to their credit. They have not passed the eligibility test. However, they fulfill other qualifications for the post.

7. To claim relief, reliance has been placed on a judgment of Division Bench of this Court in the case of Anil Kumar and another v. State of Haryana and others (CWP No. 24447 of 2012 decided on 05.03.2013) and also another Division Bench of this Court in the case of Neerja Malik v. State of Haryana 1997 (1) RSJ 246. It is stated that as per ratio of the judgments mentioned above, the Regulations framed by the Commission are binding upon the University and education qualification for the post contrary to the one provided in the Regulations cannot be fixed.

8. By filing an affidavit today in the Court, it is averred by the respondent-State that the qualification of passing eligibility test has been fixed with a view to maintain higher standard in University. It was further stated that as per past experience, many degrees of Ph.D. were found fake. It was further stated that during Ph.D., the research area is only a miniscule portion of the subject whereas NET is based on the entire syllabus of UG and PG, hence only the candidate having a thorough knowledge of the particular subject can pass the NET. By making the above said averments, it is prayed that the writ petition be dismissed.

9. After hearing counsel for the parties, we are of the opinion that the grievance raised by the petitioner has substance. It is not in dispute that the Regulations prepared by UGC in the year 1991 were accepted by the State of Haryana. Subsequent thereto as and when amendments were made, those amendments were also accepted by the State of Haryana.

10. It is not in dispute that the amendments made in the year 2010 granting relaxation from appearing in eligibility test to those who have Ph.D. Degree by the Commission was also accepted by the State of Haryana. These facts emerge from a document, which was produced at the time of arguments. It is a letter written by Director General, Higher Education, Haryana to Ministry of Human Resources Development, Department of Higher Education, New Delhi seeking financial assistance to the State Government after revision of pay of teachers in Universities and Colleges following the revision of pay scales of Government Employees on the recommendation of 6th Pay Commission. With that letter, one annexure is attached which shows that the State Government has adopted revised scales as per Ministry's letter dated 31.12.2008 and the Commission and the UGC Regulations, 2010. If that is so, it is not open to the State Government to prescribe educational qualification to the contrary for the post in question.

11. In Anil Kumar's case (supra), similar act of the State Government came under consideration. In that case, similar qualification was prescribed for the post of Assistant Professor. Relaxation was granted to those, who have Ph.D. Degree to their credit but a proviso had been added that the relaxation will be available to those, who have acquired Ph.D. Degree from those Universities which have been accredited as "A" Grade Universities by the National Assessment and Accreditation Council. The said condition was challenged. The State of Haryana supported that condition. The question for consideration was as to whether the State can have a rule or stipulation, which is contrary to Regulations framed by the Commission. In the judgment reliance has been placed on the judgment of Hon'ble Supreme Court in the case of [University of Delhi Vs. Raj Singh and others](#), and a Division Bench judgment of this Court in Neerja Malik's case (supra). It was authoritatively opined as under:

"20. The only difference is that UGC has now framed Regulations, 2009, as noted above. Regulation-2 thereof also provides that these Regulations shall apply to every University established or incorporated by or under a Central Act, Provincial Act or a State Act, every Institution including a constituent or an affiliated College recognized by the Commission, in consultation with the University concerned under clause (f) of Section 2 of the UGC Act and every Institution deemed to be a University u/s 3 of the said Act. These regulations are also framed in exercise of powers conferred on it by Clauses (e) and (g) of sub-section (1) of Section 26 of the UGC Act which have been amended vide University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) (3rd Amendment) Regulation, 2009. As per these Regulations, those candidates who are or have been awarded Ph.D. degrees in compliance of the Regulations, 2009 are to be exempted from requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/institutions. It is not in dispute that all these petitioners have obtained Ph.D. degrees in compliance with Regulation, 2009. Following the ratio of University of Delhi v. Raj Singh (supra) and Neeraja Malik (supra), such Regulations have a binding effect. Once the petitioners become entitled for exemption on the application of Regulations framed by the UGC, they cannot be debarred by virtue of impugned Regulations, which are contrary to the regulations framed by the UGC. We feel that instead of amending their Regulations and bringing them in conflict with UGC Regulations, the appropriate course of action could have been to point out justification and necessity for such a provision as is made by the respondents in their Regulations and to persuade the UGC to come out with similar amendments.

21. We, thus, have no option but to set aside the Service Rules, 2010 as also the Haryana Education (College Cadre) Group B Service (Amendment) Rules, 2013 to the extent these rules specify that Ph.D. degrees awarded by only those private universities be considered which have been accredited as "A" Grade Universities by

the NAAC for relaxation in lieu of NET."

12. It was also noticed by the Division Bench that the Regulations framed by the Commission and as accepted by the State are binding. The above view was supported on the basis of ratio of judgment in Neeraja Malik's case (supra) wherein it was held that any relaxation in qualification for the post of Lecturers is binding upon the University. In that judgment, it was observed as under:

"10. In exercise of the powers vesting in it u/s 26(1)(e) of the Act, the University Grants Commission framed the University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of the University and institutions affiliated to it) Regulations, 1991 (for short, "the Regulations"). These Regulations have been published in the Gazette of India on 5.10.1991. Regulation 1(ii) of the Regulations says that the same are applicable to every University; every institution including a constituent or an affiliated college recognized by the Commission and every University will be deemed to be a University u/s 3 of the Act. Regulation 2 provides for qualifications. These Regulations have been amended by notification dated 21.6.1995. The provisions contained in Regulation 2 and Item No. 3-A of Schedule I read as under:-

"Regulation 2: Qualification:

No person shall be appointed to a teaching post in University or in any of institutions including constituent or affiliated colleges recognised under clause (f) of Section 2 of the University Grants Commission Act, 1956 or in any institution deemed to be a University u/s 3 of the said Act in a subject if he does not fulfill the requirements as to the qualifications for the appropriate subjects as provided in the Schedule-I.

Provided that any relaxation in the prescribed qualifications can only be made by a University in regard to the posts under it or any of the institutions including constituent or affiliated colleges recognized under clause (f) of Section 2 of the University Grants Commission Act, 1956 or in an institution deemed to be a university u/s 3 of the said Act with the prior approval of the University Grants Commission.

Provided further that these regulations shall not be applicable to such cases where selections through duly constituted selection committees for making appointments to the teaching posts have been made prior to the enforcement of these regulations. Minimum qualifications for the post of Professors, Readers and Lecturers in Subjects other than Fine Arts, Management, Engineering and Technology in Universities or Colleges for appointment of persons through open advertisement and for promotion of persons as Reader and placement in Selection Grade

Lecturer and Senior Scale Lecturer,

Item Nos. (1) & (2) xxx xxx xxx

Item No. (3) A - Lecturer

(a) Arts, Science, Social Science, Commerce, Education, Physical Education, Foreign Language and Law.

Good academic record with at least 55% marks or an equivalent grade at Master's degree level in the relevant subject from an Indian University or an equivalent degree from a foreign University. Candidates besides fulfilling the above qualifications should have cleared the eligibility test for lecturers conducted by UGC, CSIR or similar test accredited by the UGC."

One of the decisions taken by respondent No. 3 in its 347th meeting dated 14.2.1995 is in the following terms:-

"The University Grants Commission vide its letter No. F.I. 15/86 (P.S.) dated 15.2.1994 has already agreed that the revised qualifications for appointment of lecturers are not applicable to the teachers who are in service as lecturers on permanent basis prior to the revision of pay scales. However, this relaxation may be made applicable to the lecturers who are working against permanent post upto 19.9.1991 (the date of enforcement of the regulations of 1991).....

"If there is any other specific case which is not covered under the above points, the matter may be referred to the Commission with specific facts supporting the reasons for seeking relaxations, on case to case basis."

Even in the cases of those persons who were appointed against temporary posts, the University Grants Commission took the following decision:-

"If a candidate was appointed on recommendation a duly constituted selection committee before 1991 and is still working on a temporary post, he/she may be eligible to apply for a post of Lecturer without qualifying eligibility test for lectureship."

It is therefore, clear that in so far as respondent No. 3 is concerned, after the promulgation of Regulations of 1991 which contain a specific provision for relaxation in the prescribed qualifications, the University Grants Commission has considered the proposals made by various Universities and educational institutions and has granted approval for relaxation in the prescribed qualifications. All such relaxation have been duly communicated to various Universities and Governments so that uniformity may be maintained in regard to the conditions of eligibility in recruitment of lecturers all over the country."

11. Undisputedly the State of Haryana has accepted the Regulations framed by the University Grants Commission in the year 1991 and these Regulations have been treated as applicable for the purpose of recruitment to various teaching posts in the colleges affiliated to different Universities. Therefore, if it is found that

relaxation/clarifications made by the University Grants Commission from time to time are not in consistent with Regulations, they will be binding on the State Government as well as the Commission (respondent No. 2).

12. The argument of the learned counsel for respondent Nos. 1 and 2 that the decisions taken by the University Grants Commission in its 347th meeting held on 14.2.1995 are not required to be followed because they have not been notified in the Gazette of India as required by Section 26(1) of the Act, in our considered view, is misconceived. Once the Regulations framed by the University Grants Commission have been notified and these Regulations contain a provision for relaxation in the prescribed qualifications, which can be brought about with prior approval of the University Grants Commission the relaxation, if any, approved by the University Grants Commission will be effective irrespective of the fact that the decision of the University Grants Commission is not published in the Official Gazette. If the University Grants Commission wanted to amend the Regulations of 1991, then the same could have become effective only after their publication in the Gazette of India, but a decision taken by the University Grants Commission in exercise of its power under proviso to Regulation 2, is not required to be published so as to become effective. Circulation of such decision and communication thereof to the educational institutions and State Government is sufficient. Therefore, we do not find any substance in the plea of the counsel for respondents No. 1 and 2 that the relaxation granted by the University Grants Commission in its 347th meeting is not effective and binding because it has not been published in the Gazette of India. In our opinion, the proviso (1) of Regulation 2 empowers the University Grants Commission to take administrative decision on the issue of relaxation of the prescribed qualifications and such decision is binding on all those authorities which are required to follow the provisions of the Act while making recruitment of lecturers etc.

13. In this connection, it would be useful to refer to a recent decision of the Supreme Court in [University of Delhi Vs. Raj Singh and others](#), That was a case in which the University of Delhi had shown its unwillingness to comply with the provisions of 1991 Regulations. On writ petitions filed before it, the High Court of Delhi issued mandamus to the University to make selection of candidates strictly in accordance with the provisions of 1991 Regulations. In appeal, their Lordships of the Supreme Court affirmed the directions given by the High Court and held that the regulations framed by the University Grants Commission did not in any manner entrench upon the autonomy of the University. Their Lordships held :-

"The ambit of entry 66 has already been the subject of the decision of this Court in the cases of the Gujarat University and the Osmania University. The U.G.C., Act is enacted under the provisions of entry 66 to carry out the objective thereof. Its short title, in fact, reproduces the words of entry 66. The principal function of the U.G.C. is set out in the opening words of section 12, thus "It shall be the general duty of the

Commission to take all such steps as it may think fit for the promotions and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities...." It is very important to note that a duty is cast upon the Commission to take "all such steps as it may think fit...for the determination and maintenance of standards of teaching". These are very wide ranging powers. Such powers, in our view, would comprehend the power to require those who possess the educational qualifications required for holding the post of lecturers in Universities and colleges to appear for a written test, the passing of which would. Establish that they possess the minimal proficiency for holding such post."

From these observations of the Supreme Court, it is clear that the Apex Court unequivocally recognized right of the University Grants Commission to make regulations prescribing qualifications for recruitment of various teachers etc. As a logical corollary it must be held that the University Grants Commission has full power to grant relaxation in the right of the first proviso to Regulation 2 of the 1991 Regulations and there can be no justification for any Government or University to ignore such relaxation on the pretext that the same is not published in the gazette."

13. It was specifically held that the Commission has power to make Regulations prescribing qualification for recruitment of various teachers etc. in the University and Colleges in the State. It was also held that the Commission has power to relax qualification as well and the Universities cannot ignore relaxation given by the Commission. It is very clear that after passing of the judgment in Anil Kumar's case (supra), the State Government has not taken up the matter with the Commission with a request to fix higher qualification. To the contrary, the qualifications for the post have been fixed in a very arbitrary manner ignoring the well considered judgment in the above case, which is binding on the respondent/State. The relaxation which was given earlier, was altogether taken away from the candidates who have Ph.D. Degree.

14. Under the above circumstances, action of the respondent-State is not justified. Accordingly, the writ petitions are allowed and the directions are issued to respondent-State that those candidates who have not passed the eligibility test but who have Ph.D. Degree to their credit, be considered for the post of Assistant Professor. The petitioners are permitted to submit their applications within 10 days from today. Counsel for the State assures that the applications of the petitioners will be accepted if otherwise in order.