
(2016) 02 AHC CK 0276
In the Allahabad High Court
Case No : Misc. Single No. 6577 of 2014

Aseem Goswami	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 05-02-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226

Citation : (2016) 5 ADJ 115

Hon'ble Judges : D.K. Upadhyay, J.

Bench : Single Bench

Advocate : Party-in-Person and Sudeep Seth, for the Appellant; C.S.C., Akshat Srivastava, Manik Sinha, Vaibhav Srivastava and Yashovardhan Swarup, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Upadhyay, J.—1. Heard Shri Aseem Goswami-petitioner, who appeared in person and Shri Manik Sinha, learned counsel representing Dr. Ram Manohar Lohiya National Law University, Lucknow.

2. Aggrieved by the process adopted by the respondent-University for registration of candidates to Ph.D. Degree Course, these proceedings under Article 226 of the Constitution of India have been instituted by the petitioner.

3. The petitioner, who is a practising Advocate of this Court, has submitted that if the entire process adopted by the University for the purpose of registering the candidates for Ph.D. Degree Course is scrutinized, it would be found that the same actually has resulted in discrimination between a candidate, who is a teacher in the University and a candidate, who, though is otherwise eligible for registration, is not a teacher. He has submitted that the instructions issued for the candidates which are based on the Academic Regulations framed by the University relating to admission to Ph.D. Degree Course in law & allied subjects provides exemption to a particular category of candidates from appearing in the

written examination and such exemption does not have any justifiable basis and in fact has resulted in subjecting the petitioner and other non-teacher candidates to hostile discrimination.

4. Apart from pleading the ground of discrimination between the teacher and non-teacher candidates in the matter of consideration of their cases for registration to Ph.D. Degree Course, the petitioner has also stated that even if the exemption can be said to be available to the teacher candidates, the respondent Nos. 5 to 9 do not fulfill the requirement for making them eligible for being granted the said exemption in terms of the provisions made by the University itself which are contained in the instructions as annexed as annexure No. 2 to the writ petition. Elaborating the said arguments, it has been submitted by the petitioner that there are three categories of candidates who are eligible and entitled to be granted exemption from appearing in the written examination; (a) a permanent teacher, (b) a teacher who is not permanent but has qualified NET (National Eligibility Test) or the similar Tests accredited by the UGC and has put in a minimum of one year teaching experience in the University on the date of the Written Test and (c) an awardee of fellowship/scholarship by the UGC (University Grants Commission) or by national/international institutions of repute, for Ph.D. Degree Programme of the University. However, he further states, respondent Nos. 5 to 9 are neither permanent teachers nor had they completed one year in the University as a teacher and hence, they were not eligible or entitled to be granted the exemption from Written Examination.

5. The petitioner, apart from canvassing the aforesaid grounds, has also stated that the provision contained in Clause 4 of the instructions contained in annexure No. 2 to the writ petition relating to fees and other charges is also discriminatory inasmuch as the same exempts the teachers of the University from fee except the registration and examination fees.

6. Shri Manik Sinha, learned counsel appearing for the University, has, however, submitted that all the aforesaid arguments raised by the petitioner are not tenable in view of the fact that the respondents No. 5 to 9 are permanent teachers having been appointed after being subjected to regular process for selection in terms of the Rules and Law applicable thereto, that too, against substantively and permanently available posts. He has also stated that the exemption from certain fee to the teachers has been granted as a policy decision of the University and that such an exemption has a rationale.

7. No one has put in appearance on behalf of respondent Nos. 5 to 9.

8. Dr. Ram Manohar Lohiya Law National University has been created under a State Legislation, namely, Dr. Ram Manohar Lohiya National Law University Uttar Pradesh Act, 2005. In the course of time, this University has acquired its own reputation in the field of imparting legal education, both at the under Graduate as well as Postgraduate level. It also runs a programme leading to award of Ph.D. Degree. For the purposes of regulating and governing its business and various

functions, the University has framed the Academic Regulations. Chapter-III of the said Academic Regulations relate to admission to Ph.D. Degree Course in law and allied subjects. According to Clause 1 of the said Regulations, registration to Ph.D. Degree is open to candidates who have obtained LL.M. Degree of the University or its equivalent degree of any other University or has acquired Master's Degree with a Bachelor's Degree in law or the Master's Degree from any University. Such candidates are required to qualify in the Written Test and Interview. According to the prescription contained the Regulations, certain categories of candidates are exempted from appearing in the Written Examination. The relevant extract of the Regulations where exemption has been provided to different categories of candidates is quoted below:--

"(III) The candidate has qualified in the Written Examination and Interview; however, candidates belonging to the following category will not be required to sit in the Written Examination:--

(a) A permanent teacher of Dr. Ram Manohar Lohiya National Law University or such teacher of Dr. Ram Manohar Lohiya National Law University, who has qualified NET or similar Tests accredited by the UGC and has put in a minimum of one year teaching experience in the University on the date of the Written Test.

(b) An awardee of Junior Research Fellowship by the UGC or national and international institutions of repute for the Ph.D. Programme of the University."

9. A perusal of the aforequoted provisions of the Regulations reveal that there can be three possible categories of candidates desirous of registration to Ph.D. Degree Course who are exempted from appearance in the Written Examination. These categories are; (i) a permanent teacher of the University (ii) a teacher of the University who is not permanent and has qualified NET or similar Test and has put in a minimum of one year teaching experience in the University on the date of written test; (iii) an awardee of fellowship/scholarship by the UGC or any other national or international institutions of repute.

10. So far as the respondents No. 5 to 9 are concerned, all of them were appointed in the month of October, 2013 and Written Examination for registration to Ph.D. Degree Course was held on 04.07.2014. The respondents No. 5 to 9 were appointed on their respective posts of Assistant Professor, however, on the date when the Written Test was held i.e. on 04.07.2014 they had not rendered their services as teacher in the University for a period of one year. This fact is clear from a perusal of annexure No. 6 appended to the writ petition, which is a letter containing information given to the petitioner by the Deputy Registrar and Public Information Officer of the University under the Right to Information Act. The position as regards the date of appointment of the respondent Nos. 5 to 9 has not been denied by the learned counsel for the respondents. Thus, there is no dispute to the fact that all these persons had not completed one year of service on the date when the entrance examination for registration to Ph.D. Degree Course was held.

11. At this juncture, the petitioner has drawn attention of the Court to the general conditions of service of the employees appointed against teaching/administrative/technical/ministerial posts. According to the said service conditions prescribed by the University, every person appointed in the University, except those appointed on the post of Vice-Chancellor, Registrar, the Finance Officer and any other officer appointed by the Executive Council and those appointed by invitation on specific terms and conditions or on contract basis for a limited term, are appointed on probation for a period of one year. The said rule further provides that the period of probation shall be watched carefully for performance and suitability of an employee and in suitable cases, the period of probation can be terminated. On probation period being found unsatisfactory, services of such employees are terminable or in such a situation the period of probation is also extendable. After completion of the period of probation, the order of confirmation is required to be issued based on the report of the certifying officer and approved by the Vice-Chancellor. Thus, in terms of the provisions contained in the Rules regulating the service conditions of the employees of the University, which include the teachers as well, every appointment is to be made on probation basis for a period of one year which is followed by confirmation.

12. Submission of the petitioner is that unless and until the period of probation is successfully completed, the appointment of any employee including that of the respondent Nos. 5 to 9 cannot be termed to be permanent appointment.

13. I am unable to agree with the aforesaid submission made by the petitioner in the context in which the "permanent appointment" is to be construed in this case, that is, in the context of registration of a teacher for Ph.D. Course.

14. Permanent appointment in common service jurisprudence means an appointment of an incumbent against a permanently available post made strictly by following the Rules or Regulations governing such appointments. The permanent appointment is opposed to part time or short term appointment which are made in certain exigencies or requirement of the employer.

15. In public services, posts are created or sanctioned on permanent basis or on temporary basis. Posts created permanently would mean posts created or sanctioned without limit of time. An appointee on a permanent post would thus be entitled to hold the post indefinitely subject to the rules which generally curtail this unlimited duration by providing for retirement or superannuation.

16. As opposed to a permanent post, a temporary post is created for a limited period of time. In case an appointment is made on a temporary post, the appointee thereon will hold the post only till the completion of the period for which such temporary post has been created.

17. Appointment to both these categories of posts, namely, the permanent posts and temporary posts can be made on probation. After successful completion of probation an appointee is confirmed on both these categories of posts. However,

a confirmed employee appointed on a permanent post will hold the post till he retires or superannuates as per the Rules whereas a confirmed employee appointed against a temporary post will have right to hold the post only till the end of the period for which temporary post has been created.

18. It is also noticeable that as per the Rules governing service conditions of the teachers in the University, if the period of probation is successfully completed by an incumbent appointed on probation, the same results in his confirmation. Confirmation for the purposes of pursuing Ph.D. Course has no relevance. The same may have relevance for grant of certain service and post retiral benefits in a given set of circumstances depending upon the Rules governing the conditions of service. However, it is not relevant for the purposes of determining the question involved in this petition. The terms "Permanent Teacher" occurring in the Regulations relating to exemption available to teachers for registration for Ph.D. Course has to be construed and understood accordingly. Permanent employee or teacher would thus mean an employee or a teacher appointed against a permanent post. The petitioner has not been able to dispute that the respondent Nos. 5 to 9 were appointed against the permanently created posts. He has also been able to refute that they were appointed as per the prescribed rules or regulations governing their appointments.

19. In view of the aforesaid discussion, the submission of the petitioner that the respondent Nos. 5 to 9 are not permanent teachers for the purposes of grant of exemption to pursue Ph.D. Course, in my considered opinion, is fallacious and is liable to be rejected.

20. Submission of the petitioner to the effect that all the respondents No. 5 to 9 had not completed one year of service from the date of their respective appointments in the University and hence, even if they are NET qualified or an awardee of junior research fellowship by the UGC, they are not eligible to be exempted from the Written Examination, is thus, also flawed.

21. A finding has already been recorded above that the respondent Nos. 5 to 9 are permanent teachers for the purposes of pursuing Ph.D. Course, as such according to the exemption clause in the Academic Regulations, they are legally entitled to be exempted from being subjected to Written Examination for their registration to Ph.D. Degree Course. They have rightly been given such exemption and no fault can be found, in this regard, to have been committed by the authorities of the University.

22. As regards the other submission made by the petitioner that grant of exemption of any kind in favour of the teacher candidates is discriminatory as against the non-teacher candidates, what needs to be examined is the purpose for which such exemptions have been granted to the teacher candidates.

23. Mandate of a University, like the respondent-University, is not confined to teaching alone. One of the basic functions of the University is to carry out research so that the teachers, the students and every one associated with the

University gets a conducive environment to add and contribute to already existing knowledge. Further, it may also be noticed that so far as the teachers in the Universities in India are concerned, for their further promotions as per the guidelines and Regulations issued by the University Grants Commission, they are required to achieve a certain level of excellence in academic research in their respective fields and in case of failure by any teacher to acquire such requisite level of academic achievement in the field of research, their career gets hampered. The distinction between a "teacher who conducts research work" and a "research scholar" has to be always borne in mind. The research scholar undertakes and carries his research work as a full time occupation whereas a teacher, apart from carrying the research work, has to necessarily impart teaching to his students. Considering the fact that there are limited number of seats in the Ph.D. Course, if exemptions like the one provided by Dr. Ram Manohar Lohiya National Law University in the shape of exemption from appearance in the Written Examination and deposition of certain fee is provided to the teacher-candidates, the same though would result in differential treatment, however, the same is based on a rational classification between two separate sets of candidates, namely, the teachers and non-teachers. This rationale can be found in the difference in the duties and functions which are to be performed by a "Research Scholar" and a "teacher who conducts research work". These two, thus, form distinct class and hence the plea of alleged discrimination is not available to the petitioner. Providing exemption to the teachers to get themselves registered in Ph.D. Course may even act as an incentive so that the teachers are able to pursue their research besides the teaching work.

24. Any exemption which is based on and emanates from such a classification between a teacher candidate and a non-teacher candidate, thus, is permissible under law and can not be said to be in infringement of Article 14 of the Constitution of India.

25. In respect of concessions given to the teacher candidates in fee, I may only observe that such exemption does not result in any hostile discrimination to a non-teacher candidate; it only acts as a further incentive to a teacher to pursue research work leading to award of Ph.D. degree.

26. At this juncture, the petitioner has drawn attention of the Court to clause 5 (iii) of the guidelines contained in annexure 2 to the writ petition, according to which, no research scholar registered for Ph.D. Degree is permitted to take simultaneously any other course of study or any full time employment. He has thus, submitted that since the teachers are in full time employment, therefore, they will never be in a position to fulfill the aforesaid condition, if they are registered as a scholar for Ph.D. Degree Course because as teacher they will always be in full time employment. In these circumstances, his submission is that the said condition, in fact, acts as a bar on registration of teachers to Ph.D. Course.

27. The aforesaid submission is again not only highly misconceived but full of fallacies as well. The bar put by clause 5(iii) is for research scholars and not for the teachers. What has been prescribed by clause 5(iii) is that in case any candidate is registered as a Research Scholar, then he will neither take any other full time course of study nor would he be allowed to take any other full time employment. The said clause, if appropriately construed, only means that the same has been put in place only with the purpose of putting an embargo on the research scholars so that they are not admitted in other courses of study, nor are they engaged in full time employment. The said clause cannot be read as converse to the purpose for which the same is meant. If interpretation which is being sought to be given to clause 5(iii) by the petitioner is accepted, the same would not only be doing mischief but would result in doing violence to the said provision. The provision is meant to regulate the research scholars with the purpose that they are not engaged elsewhere. If the regulations framed by the University makes a provision permitting a teacher to take up Ph.D. Programme, it is a decision taken by the University consciously and knowing fully well that the teachers will always and always be in full time employment.

(Emphasis supplied)

28. In view of above, the interpretation being insisted upon by the petitioner to clause 5(iii) of the instructions which are contained in annexure No. 2 to the writ petition cannot be accepted on any count.

29. For the discussions made and reasons given above, the writ petition fails which resultantly is hereby dismissed.

30. There will be, however, no order as to costs.