
(2010) 08 GAU CK 0133
In the Gauhati High Court
Case No : Writ Petition (C) No. 177 of 2002

Chitrajit Bhaumik (Dr.)

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Education (Youth Affairs and Sports) departments Recruitment Rules — Rule 1.3.3

Citation : (2011) 4 GLR 779 : (2010) 4 GLT 454

Hon'ble Judges : Madan B. Lokur, C.J;C.R. Sharma, J

Bench : Division Bench

Advocate : A.K. Bhowmik and R. Datta, for the Appellant; T.D. Majumder, A.S. Lodh and P. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

C.R. Sarma, J.—The writ Petitioner, on being appointed as a Physical Instructor, under the Education Department, Government of Tripura, has been working in the Regional College of Physical Education, Panisagar with effect from 11.11.91. According to the Petitioner, from the said date of his joining, he has been rendering service, in the said college, as a teacher. The Petitioner, who is a Bachelor in Physical Education and Master degree holder on the same subject obtained Ph.D. in Physical Education in 1999. At the time of the Petitioner's joining in the said college, there was a vacant post of Asst. Professor for want of adequate number of Assistant Professor, and as such, according to the Petitioner, he was required to discharge the function and duties of Assistant Professor in the said college. For a brief period of two years i.e. from January, 1998, the Petitioner on being transferred to Ambedkar college, Fatikroy, North Tripura, was away from the said college at Panisagar.

2. As the Petitioner was discharging his duties as a teacher, he made representation before the authority seeking appointment/absorption against the post of Assistant Professor and for granting him the pay scale, prescribed by the

University Grants Commission (for short, "UGC").

3. The Government of Tripura, vide notification, dated 31.3.89, adopted and implemented the revised UGC scale of pay and extended the said benefit to the teachers/teaching staff of Government Degree colleges, Government college of Physical Education, Regional College of Physical Education and Tripura Law College with effect from 1986.

4. As under UGC norms, it was optional for the university to exempt Ph.D. holders, from qualifying in the National Eligibility Test (for short, "NET") or the State Level Eligibility Test (for short, "SLET") for appointment as a lecturer in the university or colleges, according to the Petitioner, he being a Ph.D. holder was entitled for exemption from the requirement of qualifying in the NET/SLET, for his appointment against a post of Assistant professor.

5. As alleged by the Petitioner, the State Respondents, in order to deprive the Petitioner from being appointed as Assistant Professor and to facilitate the appointment of the Respondent No. 5 as Assistant Professor, framed the Recruitment Rules for the post of Assistant Professor in the Regional College of Physical Education by introducing a new clause being Clause No. 7 Sub-clause (2) of the Rules and relaxing the qualification vide sub-clause 2(c) of Clause No. 7 of the said Rules, thereby making NET clearance a compulsory qualification for recruitment to the post of Asst. Professor in the Regional College of Physical Education, in respect of the candidates who could not complete M. Phil degree or submit Ph.D. thesis upto December, 1993.

6. An advertisement was made, inviting applications for filling up various vacant posts, including three posts of Assistant Professor, Group-B Gazetted in the Regional College of Physical Education and the advertisement was published on 1.4.02. In the said advertisement it was mentioned that for the post of Assistant Professor in the Regional College of Physical Education, the candidate must clear NET or SLET which was subject to the relaxation as provided in the Recruitment Rules aforesaid.

7. The Petitioner, claiming the benefit of the pay, provided by the UGC scale, and re-designation of his post as lecturer/Assistant Professor with effect from 1.11.91 and challenging the validity of the Recruitment Rules as well as the advertisement aforesaid, has come up with this petition invoking writ jurisdiction of this Court.

The writ Petitioner has sought reliefs in the form of a direction to the State Respondents to grant him UGC pay scale after redesignating him as Assistant Professor/lecturer with effect from 1.11.91, for quashing the Sub-clause(2) of Clause 7, the relaxation clause provided by Sub-clause 2(c) of the Clause 7 of the Recruitment Rules, the advertisement, dated 01.4.2002, inviting applications for recruitment of three posts of Assistant Professor in the Regional College of Physical Education and for deleting the provision regarding requirement of NET/SLET qualification for the purpose of recruitment to the post of Asst. Professor in

the Regional College of Physical Education, Panisagar in respect of the candidates, who possessed Ph.D. degree.

8. During the pendency of the present writ petition, the State Respondents modified the recruitment Rules relating to the post of Assistant Professor in the Regional College of Physical Education, Tripura and issued Anr. advertisement on 15.2.04. In pursuance to the said advertisement, the Petitioner, on being selected, was appointed as Assistant Professor in the Regional College of Physical Education, Panisagar with effect from 17.8.04.

9. In view of the above development, the writ Petitioner amended the writ petition seeking a declaration that he was entitled to get payment of his salary etc as Assistant Professor with effect from 11.11.91 i.e. the date of joining in the said college to 16.8.04 i.e. the date prior to his appointment as Assistant Professor and a direction to the State Respondent Nos. 1 to 4 requiring them to give UGC pay scale to the Petitioner after re-designating him as Assistant Professor with effect from 11.11.91 to 16.8.04 and also for quashing the Sub-clause (2)(c) of Clause 7 of the Rules as well as the earlier advertisement dated 01.04.2002.

10. The State Respondents and the private Respondents contested the claim of the Petitioner by filing separate affidavit-in-opposition. The State Respondents, in their affidavit-in-opposition, while admitting the appointment of the Petitioner as Physical Instructor, categorically denied the claim of the Petitioner that he was asked to discharge the function of a teacher. It is stated, by the Respondents that, under the terms and conditions of his appointment, as the Petitioner was not required to discharge the function of a teacher he was not entitled to get any benefit extended to a teacher as well as the pay scale prescribed by the UGC for lecturer/Assistant Professor. Regarding the Recruitment Rules, it is stated, in the affidavit-in-opposition, that the Rule was in conformity with the UGC norms and that though, under the UGC norms, it was optional for the University to exempt a Ph.D. holder from the requirement of obtaining NET or SLET qualification, the Tripura University, to which the Petitioner's college was affiliated, did not exercise the said option, granting any relaxation to the said requirement. The State Respondent Nos. 1 and 2, in their affidavit-in-opposition, further contended, that the Petitioner was never required by the appointing authority to render service of a teacher/lecturer or Assistant Professor, that there was no policy decision of the Government for extending the benefit of UGC pay scale to the "Physical Instructors" serving in the colleges and that in view of absence of such policy decision, the Petitioner was not entitled to claim the said benefit.

11. Regarding the cut off date, mentioned in the recruitment Rules, it is stated, in the said affidavit-in-opposition, that the said provision was provided on the basis of the UGC notification, dated March, 2000, and that the recruitment Rules for the post of lecturer, Physical Education has also been framed by the Government in the light of the guidelines prescribed by the UGC.

On behalf of the Respondent Nos. 1 and 2, it has been categorically stated that it was not correct, on the part of the Petitioner, to say that he was a teacher in the Regional College of Physical Education. It is further contended that as the said college is affiliated to the Tripura University, covered by the UGC norms, the mode and manner of recruitment and the eligibility criterion for the post of Asst. Professor has been made in accordance with the instruction and guidelines prescribed by the UGC and the university. It is also averred, in the said affidavit-in-opposition, that the existence of any vacancy of the post of Assistant Professor, cannot be sufficient ground to absorb the Petitioner, as he was neither required to discharge the function and duties of a teacher nor did he possess the required qualification for such post. The Respondent Nos. 4 and 5 also, by filing separate affidavits-in-opposition, supported the contentions, made on behalf of the Respondent Nos. 1 and 2 and denied the claim of Petitioner.

12. We have heard Mr. A.K. Bhowmik, learned Senior Counsel appearing on behalf of the Petitioner, Mr. T.D. Majumder, learned Addl. Government Advocate for the State Respondents, Mr. P. Datta, learned Counsel for the Respondent No. 4 and Ms. A.S. Lodh, learned Counsel appearing for the Respondent No. 5.

13. Mr. A.K. Bhowmik, learned Senior Counsel, appearing on behalf of the Petitioner, has submitted that, pursuant to the subsequent advertisement, the Petitioner was select as Asst. Professor and that he has been presently working as Principal of the said institution. The learned Senior Counsel contends that, as the Petitioner was rendering service of a teacher from the date of his joining i.e. with effect from 11.11.91 till the date of his appointment as Assistant Professor i.e. 16.8.08, he was entitled to be re-designated as Assistant Professor with the benefit of pay and allowances under the UGC pay scale for the said period.

14. Controverting the said argument, advanced by the learned Senior Counsel, Mr. T.D. Majumder, learned Addl. Government Advocate has submitted that the Petitioner, who was appointed as Physical Instructor, was never asked by the Government to discharge the function of a teacher or lecturer and as such, under the terms and conditions of his appointment, he was not entitled to get the benefit, available to a teacher/lecturer/Assistant Professor. Mr. Majumder further submitted that it was made optional for the university to relax the requirement of SLET or NET clearance in respect of the candidates, who possessed Ph.D. degree, for their appointment as Assistant Professor and that as the Tripura University, to which the Regional College of Physical Education was affiliated, did not relax the said requirement, the Recruitment Rule were also made in conformity with the UGC norms and accordingly, the advertisement dated 1.4.02 was made as per the Rules as well as the UGC Regulation, 2000 aforesaid.

15. There is no dispute that the Petitioner was appointed as a Physical Instructor. Record does not reveal that he was ever engaged or required by the appointing authority to discharge the function of a teacher or lecturer. The nature of service, required to be rendered by an employee is determined by the terms and conditions of appointment as well as the Service Rules. The appointment letter,

issued by the Director of School Education, Government of Tripura, by which the Petitioner was appointed as Physical Instructor, nowhere indicated that he would be required to discharge the function of a teacher or a lecturer. According to the Petitioner, as the post of Assistant Professor was lying vacant, he had to discharge the function of a teacher/lecturer and as such he was entitled to get the benefit, extended to a teacher/lecturer. As the Petitioner had accepted the post of Physical Instructor and in the absence of any instruction or direction, from the appointing authority, requiring him to render the service of a teacher/lecturer, the existence of a vacancy of the post of Assistant Professor, cannot be a ground for the Petitioner to claim that he was entitled to be absorbed/appointed against the said vacancy and get UGC pay scale. In view of the above, he, having been appointed as "Physical Instructor", was not required to discharge any other function, except the function and duty of a "Physical Instructor". However, if he had volunteered to discharge any other function, in addition to his own duty, he cannot compel the appointing authority/Government to give him the benefits available to such a post, to which he was not appointed. Moreover, as per the prescribed Rules and procedure the post of Assistant Professor is required to be filled up by direct recruitment. There can be no dispute that all public appointments are governed by certain Rules and Regulations. The Petitioner, not having been selected for the post of Assistant Professor, as per Rules, cannot claim for absorption or appointment against the said post without due process of law.

According to the Petitioner, he, being a Ph.D. holder, was not required to clear NET or SLET and as such he was qualified for applying for the post of Assistant Professor. But the criteria fixed by the said advertisement, dated 1.4.02, debarred him from applying for the said post. As per the said advertisement, the candidates, besides having general qualification i.e. 55% marks or an equivalent grade at the master degree level, were required to have cleared the eligibility test i.e. NET conducted by UGC, CSIR or similar test accredited by the UGC i.e. SLET. However, provision for relaxation with regard to NET/SLET was provided to those candidates, who completed M. Phil degree or submitted Ph.D. thesis on or before 31.12.93. The Petitioner, who neither submitted his thesis prior to the said cut off date, nor qualified in NET/SLET, was not even qualified to apply for the post of Assistant Professor.

16. The contention of the answering Respondents is that the advertisement was made as per the Rules, which was in conformity with the UGC norms. The UGC regulations, 2000, regarding minimum qualifications for appointment and career advancement of teachers in universities and colleges, notified vide letter No. F.3-1/2000(PSX dated March 2000, while laying down the qualification for appointment to the post of lecturer made it compulsory, for those candidates, who did not complete M. Phil degree or had not submitted Ph.D. thesis in the concerned subject upto 31 December, 1993, to qualify in the NET. The note attached to Rule 1.3.3 of the said Regulation reads as follows:

Net shall remain the compulsory requirement for appointment as lecturer even for candidates having Ph.D. degree. However, the candidates who have completed M. Phil. Degree or have submitted Ph.D. thesis in the concerned subject upto 31st December, 1993, are excepted from appearing in the NET examination.

17. From the above, it transpires that NET was not a compulsory requirement only for those candidates, who could obtain M.Phil or submit Ph.D. thesis prior to 31st December, 1993. But the requirement of NET clearance was made compulsory, for those candidates, who did not fulfil the said terms and conditions. In the said notification, it was also made clear that any relaxation in the prescribed qualification could be made by the UGC in a particular subject in which NET is not conducted or enough number of candidates are not available with NET qualification for specific period only. It was also made clear that such relaxation would be given based on sound justification and would apply to affected Universities for that particular period. There is nothing on record to find that any such relaxation of qualification was granted by the UGC in respect of subject "Physical Education" under the Tripura University, thereby exempting the Petitioner from the requirement of NET or SLET clearance. In the notification No. F.3-1/94(PS), dated 24.12.98, issued by the UGC, it was provided that it would be optional for the University to exempt Ph.D. holders or from requirement of NET clearance, in their case either as a desirable or essential qualification, for appointment as lecturer in the University's departments and colleges. Despite such provision, there is no material on record to show that the Tripura University had granted any relaxation in this regard.

18. In view of the above provision prescribed by the UGC Regulation, the Recruitment Rules i.e. the "Education (Youth Affairs and Sports) departments Recruitment Rules" is found to be in conformity with the UGC Regulations.

19. Vide notification No. 51-F-1/2002 (PS) Exempt dated 31.7.02, the UGC, in partial modification of the earlier Regulation issued vide letter No. F.3-1/2000(PS) dated 4.4.2000, modified the qualification criterion by extending the cut off year to 31st December,2002. The modification reads as follows:

NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidates who have completed M. Phil degree by 31" December, 1993 or have submitted Ph.D. these to the university in the concerned subject on or before 31st December,2002 are exempted from appearing in the NET examination. In case such candidates fail to obtain Ph.D. Degree, they shall have to pass the NET examination.

20. In view of the above, till 30th June, 2002, the earlier norms, which prescribed the cut off year as 31.12.93, was applicable. The amended Regulation came into effect from 31.7.02. The impugned advertisement, inviting applications for post of Asst. Professor, was made on 1.4.02 i.e. prior to the modification of the earlier Regulation, which prescribed the cut off date as

31.12.93. In the above premise, the impugned advertisement, being made in conformity with the existing Regulation, no illegality was committed by issuing the advertisement in the said manner.

The Petitioner, who obtained Ph.D. in 1999 did not clear NE/SLET. Therefore, under the provision of UGC Regulation, till 30.7.02, the Petitioner was neither eligible for applying for the post of Assistant Professor nor qualified to be considered for appointment as Assistant Professor, because no retrospective effect was given by the said modified norms prescribed by the UGC.

21. In support of his claim, the Petitioner has relied on the decision rendered by a Division Bench of this Court in the case of *Sate of Tripura and Ors. v. Ramendranath Dey* (2001) 1 GLR 54. In the above referred case, the Petitioner was offered the post of senior lecturer in Government Music College, Agartala and he was discharging the function of a lecturer in terms of his appointment. He claimed UGC pay scale and re-designation of his post as Asst. Professor. The Government decided to grant UGC scale of pay to teachers of all colleges affiliated to the University. From the supplementary affidavit, filed by the Petitioner, it is revealed that the Government decided to grant the said pay scale to the teachers of "Regional College of Physical Education", affiliated to the University for the purpose of Degree as well as Diploma. In view of the above, the Division Bench observed that there was no justification for not granting the UGC pay scale to the Petitioner, as the college, in which the Petitioner was a senior lecturer, conducting "B-music course and that the college was affiliated to the University. The Petitioner in the said case was appointed as a lecturer i.e. as a teacher in the Government Music College. But the Petitioner in our present case, was not initially appointed as a teacher or lecturer. As indicated above, the factual position in the above referred case and the case in hand being different, the decision rendered in the case of *Ramendranath Dey* (supra) will not help the Petitioner.

22. In the above referred case, the Division Bench observed-

No doubt the writ court is a court of equity and equity must supplement the law meaning thereby that in exercising the power under Article 226 of the Constitution we cannot issue a mandamus or any other writ directing the authority to violate the law. But at the same time relief can be moulded by the Writ Court in such a manner that justice is given/made as pointed out by the Apex Court in the judgments quoted above. Writ Court is not a homed bull in a China day shop to put all things topsy turvy, but whenever and wherever without violating the law or without causing a topsy turvy situation, relief can be given within the bounds of law, such relief should be given because after all the aim of the Court is to wipe out injustice, the genuine tears from the eyes of persons.

23. In the light of the above, as the UGC Regulation/norms prescribed certain terms and conditions including the required qualification for appointment as Asst. Professor, the impugned advertisement and the Recruitment Rules, being made

in conformity with the said Regulation, cannot be termed as illegal and unjust. Any direction to appoint the Petitioner as Assistant Professor with effect from the date of his initial appointment would amount to compelling to do an act in violation of the existing Rules and Regulation, which the writ court would not encourage.

24. As stated by the Petitioner, the State Government, subsequently, in view of amendment of the partial modification of UGC Regulation, modified the Recruitment Rules and issued advertisement, on 5.2.04, notifying one post of Asst. Professor and, on being applied for the said post, the Petitioner was selected and appointed as Asst. Professor. Thereafter, the Petitioner was posted as Professor, the Head of the Department and the Principal of the Regional College of Physical Education. In the advertisement, dated 15.2.04, the cut off year was extended by inserting the following relaxation, which was in conformity with the modified norms prescribed by the UGC.

(c) The candidates who have completed M. Phil degree by 31st December 1993 or have submitted Ph.D. thesis to the university in the concerned subject on or before 31st December 2002 are exempted from appearing in the NET/SLET Examination. In case, such candidates fail to obtain Ph.D. degree they shall have to pass the NET/SLET examination.

25. In the light of the above, we have no hesitation in holding that the Petitioner failed to establish that, under the existing Rules and Regulations as well as the terms of his appointment, he was entitled for appointment/absorption as Assistant Professor and to get financial benefit available to an Assistant Professor under the UGC pay scale during the period from 11.11.91 to 16.8.04. There is nothing on record to find any illegality in respect of the Recruitment Rules and the impugned advertisement.

26. In view of the above discussion, we find no merit in this petition. Consequently, the writ petition is dismissed. No cost.