

(2018) 04 J&K CK 0052
In the Jammu And Kashmir High Court
Case No : SWP No. 81 OF 2017

DEEPU PANDITA

APPELLANT

Vs

STATE OF Jammu & Kashmir AND ANR

RESPONDENT

Date of Decision : 26-04-2018

Acts Referred:

University Grants Commission Act, 1956 — Section 2(f)
J&K Public Service Commission (Business and Procedure) Rules, 1980 — Rule 51

Citation : (2018) 04 J&K CK 0052

Hon'ble Judges : DHIRAJ SINGH THAKUR

Bench : Single Bench

Final Decision : Dismissed

Judgement

Class,Category,Designation,"Pay Band

with Grade

pay",Minimum qualification,"Method

Â Â Â Â of

recruitment

V,A,"Assistant

Professor (All

disciplines

except those

mentioned

hereinafter)","Rs.

15,60039,100 +

6000","a) Good academic

record as defined by the
concerned university with
at least 55% marks
{50%, excluding any
grace marks, in case of
Scheduled
Caste/Scheduled
tribe/Differently abled
(Physically and visually
differently-abled)
Categories/Ph.D degree
holders, who have
obtained their
Master's
Degree prior to 19th
September 1991.} or an
equivalent grade in a
point scale wherever
grading system is
followed at the
Master's degree level
in the relevant subject
from an Indian
University, or an
equivalent Degree from
an accredited foreign
University.

b) The candidate
must have cleared
NET/SLET/SET

conducted by the UGC,

CSIR/AIU.","By

Â Â Â Â Â Â

Direct

Recruitment

,,,,,"c) The candidate

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.Â

d) NET/SLET/SET

shall also not be required

for such Masterâ??s

programmes in disciplines

f o r which

NET/SLET/SET is no

conducted.",t

Subject: Amendment to the - Rule 51 of the Jammu and Kashmir Public Service Commission (Business and Procedure) Rules, 1980 - Substitution of",,,,,,

Rule 51.,,,,,,

Ref:Â Public Service Commission Decision/Resolution under agenda item No. 7.2 taken/passed in its 7th meeting held on 30th March, 2011.",,,,,

NOTIFICATION No. PSC/EX/11/44,,,,,

DATED: 30.03.2011,,,,,

It is hereby notified for the information of the general public that the existing Rule 51 of the Jammu and Kashmir Public Service Commission,,,,,

(Business and Procedure) Rules, 1980 shall be substituted as under: The assessment at a selection, which is solely by means of an interview shall be",,,,,

based on a scale of 100 weightage points with break-up thereof as under:,,,,,

A. Performance of the candidate in the Viva Voce test.Â = 40 points,,,,,

B. Academic meritÂ Â Â,,,,,

i. Minimum prescribed qualification (on pro-rata basis with reference to = 45 percentage of marks)Â points,,,,,

ii. Higher Qualification in the relevant subjectÂ = upto 05 points,,,,,

Â 1.Â Â Â Â,,,,,

a. Where Bachelors Degree is prescribed as the minimum qualification.,

Â 1.Â Â = 01,,,,,

Â 1.Â Â point,,,,,

i. One year Post-graduate Diploma in the subject relevant to the job/post.,

Â 1.Â Â = 02,,,,,

Â 1.Â Â points,,,,,

ii. Two years Post-graduate Diploma in the subject relevant to the job/post.,

Â 1.Â Â = 03,,,,,

Â 1.Â Â points,,,,,

iii. Post-Graduate Degree in the subject relevant to the job/post.,

Â 1.Â Â = 04Â,,,,,

1.Â Â points iv.Â M.Phil.,

Â 1.Â Â = 05,,,,,

Â 1.Â Â points,,,,,

v. Ph.D/DM/M.Ch./DNB(Super-speciality as recognized by M.C.I.),

Â 1.Â Â Â Â,,,,,

b. Where Masters degree is prescribed as the minimum qualification,,,,,

1. = 03,,,,,

1. points,,,,,

i. M.Phil in the concerned subject,,,,,

1. = 05,,,,,

1. points,,,,,

ii. Ph.D (concerned subject)/DM/M.Ch./DNB (Super-specialty as recognized by M.C.I.). as the case may be,,,,,

C. Experience against the post in a Govt./Govt. recognized institution including the = upto institutions authorized by,,,,,

MCI/DCI/ICAR/ICVR/AICTE/Bar Council of India 03 (Certified by the Head of Institution and in case of private institutions to be points,,,,,

countersigned by the District/Divisional/State authority of the concerned Government Department and/or Director College Development,,,,,

Council/authorized officer of the university granting affiliation, as the case may be). The weightage shall be calculated at 0.25 points for every",,,,,

completed three months,,,,,

D?|?|,,,,,

E ?|?|. F?|?|,,,,,

viii) The weightage on account of higher qualification shall be admissible for the highest degree possessed by the candidate and not for other higher,,,,,

qualifications down the line. Where one of the higher qualifications possessed by the candidate gets consumed towards the requirement of eligibility,,,,,

(like M.Phil/Ph.D for NET/SLET) the candidate shall be entitled to weightage equivalent to the difference between the two viz. highest degree,,,,,

possessed and the degree considered against eligibility. If the highest degree possessed is itself consumed against the eligibility, no weightage shall",,,,,

flow to the candidate in that eventuality.â??,,,,,

5. A reference to the aforementioned rule would show that where a Master's degree is prescribed as minimum qualification, then an additional",,,,,

weightage of three points is envisaged for M.Phil and an additional weightage of five points is prescribed for a Ph.D degree (in the concerned,,,,,

subject)/DM/M.Ch/DNB as the case may be.Â,,,,,

6. It appears that based upon the advertisement notice and rule 51 of the PSC Rules of 1980, the PSC issued a short list dated 05.07.2016. At this",,,,,

stage, it becomes necessary to point out that there are two sets of petitioners, who are before the Court. Writ petitioners in SWP Nos. 81/2017,",,,,,

2424/2016 and 1543/2016 are those, who were not short listed and have challenged the short listing process in these petitions. The other set of",,,,,

petitioners are petitioners in SWP Nos. 16/2017 and 1522/2016, who participated in the process of selection but have challenged the final select list.Â",,,,,,

7. In the first batch of petitioners, who challenged the process of short listing, by virtue of various interim orders passed in their favour they were",,,,,

permitted to participate in the process of selection.Â",,,,,,

8. In the background of the aforementioned facts, the petitioners, in principle, challenge rule 51 of the PSC Rules, 1980Â to the extent that the said",,,,,

rule does not treat the Ph.D or NET/SLET/SET as the minimum qualification, otherwise, prescribed as per the rules and as advertised in the",,,,,

advertisement notice.,,,,,,

9. Learned counsel for the petitioners urged that while three points have been prescribed for M. Phil in the concerned subject and five points for Ph.D,",,,,,

the PSC had committed an error in prescribing five additional points for Ph.D degree treating it as an additional qualification which was contrary to the,,,,,

rules and the advertisement notice which had specifically envisaged Ph.D as one of the minimum qualifications along with Post Graduation in the,,,,,

concerned subject.Â",,,,,,

10. It was stated that those petitioners, who had to their credit NET/SLET/SET on this analogy were also being deprived of the additional weightage.",,,,,

It was urged that whereas the PSC treated NET/SLET/SET as an essential minimum qualification, it did not do so in regard to Ph.D and, therefore,",,,,,

while awarding points on account of academic qualification for Ph.D on pro-rata basis those not possessing Ph.D but possessing NET/SLET/SET,,,,,

should be given equal marks.,,,,,,

11. The second ground urged by the learned counsel for the petitioners was that according to UGC Regulations, 2010, and, in particular, 5.1.4 (6)(c),",,,,,

the PSC was under an obligation to invite three subject experts to be part of the selection process, for which the concerned University was required to",,,,,

be involved. Counsel for the petitioners urged that this certainly has not been done in the present case.Â,,,,,

12. It was stated that as per the UGC Regulations, 2010 whereas the marks in the interview were not to exceed 20%, but in terms of rule 51 of the",,,,,

PSC Rules, 1980 the marks prescribed were 40% and, therefore, any selection based upon such a criteria went in gross violation of the prescribed",,,,,

UGC Regulations.Â,,,,,

13. Another point urged was that since Post Graduation with 55% marks (50% in case of reserved category) along with NET/SLET/SET or Ph.D.,,,,,

was jointly treated as minimum qualification, for the purpose of allocation of marks for academic qualification, the candidates with NET/SLET/SET",,,,,

should have got equal weightage as was to be given to the post graduate.,,,,,

14. Counsel for the respondents including the Public Service Commission, however, vehemently opposed the assertions made by the learned counsel",,,,,

for the petitioners. It was stated that the UGC Regulations, 2010 were not binding either on the State Government or on the PSC unless they were so",,,,,

adopted.Â,,,,,

15. Reliance was placed on Kalyani Mathivanan v. K. V. Jeyaraj and ors., (2015) 6 SCC 363 to emphasize the point that the apex Court in the",,,,,

aforesaid judgment had held the UGC Regulations, 2010 to be directory for the Universities, Colleges and other higher Educational institutions under",,,,,

the purview of the State legislation and that the said regulations were mandatory to teachers and other academic staff in all the central Universities,,,,,

and Colleges thereunder and the institutions deemed to be Universities whose maintenance expenditure was met by the UGC.Â,,,,,

16. In regard to the issue as to whether equal weightage ought to have been given to Ph.D degree to those who had cleared the test of,,,,,

NET/SLET/SET, it was stated that while Post Graduation in the concerned subject with 55% marks was the minimum qualification prescribed, it was",,,,,

necessary for a candidate to have cleared NET/SLET/SET test as a condition precedent for ensuring his/her eligibility. An exemption was made only,,,,,

in such cases where a candidate had not cleared the NET/SLET/SET test but was possessed of a Ph.D degree. In that case, even such a candidate",,,,,

would be considered as eligible, but would not get any additional marks on account of his/her possessing Ph.D degree as that degree would be",,,,,

consumed towards his/her eligibility as was, otherwise, prescribed under clause (viii) of rule 51 of PSC Rules." , , , , ,

17. Heard learned counsel for the parties." , , , , ,

18. The following issues arise for consideration in the present petitions: , , , , ,

i. Whether the UGC Regulations, 2010 are binding on the State Government or the PSC in regard to the manner and procedure for conducting" , , , , ,

selection to the post of Assistant Professors." , , , , ,

ii. Whether the short listing criteria fixed by the PSC was bad and arbitrary as no marks have been prescribed for those who had been cleared the , , , , ,

NET/SLET/SET test." , , , , ,

iii. Whether rule 51 of PSC Rules, 1980 is bad to the extent that the said rule does not give equal weightage to those candidates who have acquired" , , , , ,

Ph.D or have cleared NET/SLET/SET test even when the same are a part of the minimum qualification as prescribed in the relevant rules and the , , , , ,

advertisement notice." , , , , ,

19. Counsel for the petitioners has placed a lot of emphasis on the UGC Regulations of 2010 and, in particular, clauses 1.2, 3.3.1, 5.1.4(c) and 7.4.0, all" , , , , ,

of which, are reproduced hereunder for facility of reference:" , , , , ,

1.2 They 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 University Grants Commission Act, 1956 and every Institution deemed to be a University under Section 3 of the said Act." , , , , ,

3.3.1 NET/SLET/SET shall remain the minimum eligibility condition for recruitment and appointment of Assistant Professors in , , , , ,

Universities/Colleges/Institutions. , , , , ,

Provided, however, that candidates, who are or have been awarded Ph.D Degree in accordance with the University Grants Commission (Minimum" , , , , ,

Standards and Procedure for Award of Ph.D. Degree) Regulation, 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. , , , , ,

5.1.4(c) For all levels of teaching positions in Government colleges, the State Public Services Commissions/Teacher Recruitment Boards must invite" ,,,,,

three subject experts for which the concerned University, be involved in the selection process by the State PSC.Â" ,,,,,

7.4.0 The Universities/State Governments shall modify or amend the relevant act/ Statutes of the Universities concerned within six months of adoption, ,,,,,
of these Regulations.â?? ,,,,,

20. Clauses 1.2 and 7.4.0 of the UGC Regulations, 2010 were relied upon to emphasize the point that the regulations framed by the UGC were binding" ,,,,,

on the Universities and the State Governments who were supposed then to amend their relevant Acts and Statutes with a view to ensure proper, ,,,,,

implementation of the said Regulations.Â" ,,,,,

21. Clause 5.1.4, on the other hand, was relied upon to show that the PSC had conducted the selection process without associating three subject" ,,,,,

experts in the process of selection and without any consultation with the concerned University. Clause 3.3.1 is relevant for the third proposition and, ,,,,,

shall be referred to later in the course of judgment.Â" ,,,,,

22. With a view to emphasize that the Government had, in fact, decided to adopt the UGC Regulations, 2010, in principle, reliance was placed upon the" ,,,,,

reply affidavit filed by the State in another writ petition. In my opinion, there cannot be any doubt that UGC Regulations, 2010 were adopted by the" ,,,,,

State Government, inasmuch as, it was only then that the Schedule-II to the Rules of 2008 was amended in the year 2014 to bring it in line with the" ,,,,,

qualification prescribed by the UGC in these regulations for the post of Assistant Professor. Nothing more can be read in the amendment to the, ,,,,,

Schedule, than what was permitted and done by the State in that regard. Amendment of the Schedule-II to the Rules of 2008 does not mean that the" ,,,,,

procedure prescribed by the PSC for selection should have also been accordingly adopted.Â" ,,,,,

23. Admittedly, the PSC was not bound to necessarily amend or alter its own mechanism for making selection to the post of the Assistant Professor." ,,,,,

The fact that any such statement, as regards, adoption of regulations by the State made on affidavit in an earlier round of litigation is, therefore, totally" ,,,,,

inconsequential and does not, in any manner, help the case of the petitioners." ,,,,,

24. Be that as it may, the issue as to whether the Regulations framed by the UGC are mandatory in character and are required to be followed by the" ,,,,,

State and other Universities is no longer res integra as held in Kalyani Mathivanan's case. The Apex court in paragraph 62 held thus: ,,,,,

62. In view of the discussion as made above, we hold: " ,,,,,

62.1. To the extent the State Legislation is in conflict with the Central Legislation including sub-ordinate legislation made by the Central Legislation, ,,,,,

under Entry 25 of the Concurrent List shall be repugnant to the Central Legislation and would be inoperative. ,,,,,

62.2. The UGC Regulations being passed by both the Houses of Parliament, though a sub-ordinate legislation has binding effect on the Universities to" ,,,,,

which it applies. ,,,,,

62.3. UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central Universities and Colleges thereunder and the" ,,,,,

Institutions deemed to be Universities whose maintenance expenditure is met by the UGC. ,,,,,

62.4. UGC Regulations, 2010 are directory for the Universities, Colleges and other higher educational institutions under the purview of the State" ,,,,,

Legislation as the matter has been left to the State Government to adopt and implement the Scheme. Thus, the UGC Regulations, 2010 are partly" ,,,,,

mandatory and is partly directory. ,,,,,

25. In view of the ratio of the aforementioned judgment, the argument that the process of selection conducted by the PSC was bad, inasmuch as, three" ,,,,,

subject experts were not associated in the process of selection after consultation with the concerned University or that the marks for viva-voce were, ,,,,,

in excess of 20 points are arguments which are clearly untenable and are, accordingly, rejected. ,,,,,

Issues No. (ii) and (iii), ,,,,,

26. The case of the petitioners is that the NET/SLET/SET and Ph.D degree is a part of the minimum essential eligibility condition and, therefore, ought" ,,,,,

to have been given equal weightage at the time of short listing as also at the time of final selection. It was also stated that as per the short listing, ,,,,,

criteria 90% marks had been prescribed for post graduate qualification, 04 points for M. Phil and 06 points for Ph.D, while there were no marks" ,,,,,

earmarked for those candidates, who had cleared NET/SLET/SET test. ,,,,,

27. Reliance was placed upon a Division Bench judgment of this Court in Jasbir Kour and ors. v. State of J&K and ors., 2004 (3) JKJ 63. Facts of the",,,,,

aforementioned case are required to be noticed at this stage. In that case, an advertisement notice was issued for the post of Laboratory Assistant in",,,,,

the Health Department. Criteria prescribed by the selection Committee was as under:,,,,,

Weightage to the basic qualification - 80 points

Viva-voce - 20

points.

Total - 100 points

According to the award sheet of the selection Committee, however, it transpires that weightage had been given only to the Technical qualification i.e.",,,,,

Diploma in Laboratory Technology and viva-voce and no weightage was given to the basic qualification or even the higher academic qualification. The,,,,,

entire selection was based on the weightage given to the technical qualification. The Division Bench noticed that the advertisement notice had,,,,,

prescribed matriculation with diploma as the basic qualification and held that weightage was required to be given to both these qualifications and,,,,,

further held that the criteria for selection could not be deviated by the selection committee as no weightage was given to the academic qualification.,,,,,

What was stated by the Division Bench with regard to grant of equal weightage is as under:,,,,,

"From the record, it appears that the entire weight-age of 80% applied to the technical qualification, whereas due weightage was required",,,,,

to be given to matric and higher qualification equally alongwith technical qualification. The advertisement notice clearly indicated the essential eligibility,,,,,

criteria matriculation with diploma in Laboratory Assistant or any other equal qualification and initially fixed by the selection committee. The selection,,,,,

having been made by the J&K SSRB being in contravention of the criteria laid down in the advertisement notice and fixed by the selection committee,,,,,

initially, is arbitrary and without application of mind. Both the academic qualification and the technical qualification as indicated in the advertisement",,,,,

notice were the essential eligibility criteria and weight-age was to be given to both these qualifications but the J&K SSRB has given weightage only to,,,,,

technical qualification and ignored and the academic qualification while making the selection. The learned Single Judge after having considered all,,,,,

these aspects of the matter in detail, in his elucid judgment, quashed the selection of private respondents before the Writ Court and directed the J&K",,,,,,

SSRB to make the selection afresh out of the candidates who appeared pursuant to both notifications (supra) and giving proper weightage to the,,,,,

academic and higher qualification alongwith technical qualification equally as per the criteria laid down in the advertisement notice. The view,,,,,

expressed by the learned Single Judge, in our considered opinion, is the view to which no exception can be taken. The very selection process stands",,,,,,

vitiated. We do not find any infirmity in the judgment and order impugned passed by the learned Single Judge, necessitating interference in an",,,,,,

appeal.â??,,,,,,

28. In my opinion, the aforementioned judgment does not apply to the facts of the present case, inasmuch as, in the instant case, the eligibility criteria",,,,,,

was possession of Post Graduate degree and clearance of the NET/SLET/SET test. Only those candidates were exempted from clearing the test of,,,,,

NET/SLET/SET, who had been awarded Ph.D degree in accordance with the procedure prescribed by the UGC.Â",,,,,,

29. It is pertinent to mention that when a candidate clears the NET/SLET/SET test, no marks are allotted but what is certified is his/her proficiency in",,,,,,

that particular subject and such a candidate is only held eligible to compete for the post of Assistant Professor but is not given any benefit of additional,,,,,

marks on that account. Merit would, thus, be determined with reference to his/her performance in the Post Graduation course for which he would be",,,,,,

given pro-rata marks out of the marks prescribed by the PSC. In a situation, when a candidate has not cleared such a test, but if he otherwise",,,,,,

possesses a Ph.D degree,Â then also he is considered to be eligible, but is not given any additional benefit on that account for the purpose of",,,,,,

Qualifications,Total Weightage out of 100 points,,,,,

Candidates possessing Masterâ??s

Degree with NET/SLET",Weightage given only to Masterâ??s Degree.,,,,,,

Candidates possessing Masterâ??s

degree with M.Phil and Ph.D", "Weightage given to Master's Degree out of 90 and no four additional marks awarded for M.Phil Degree as highest qualification subsumed on the basis of qualification/eligibility." , , , ,

Candidates possessing Master's

Degree with NET and M.Phil", "Weightage given to Master's Degree out of 90 and four additional marks awarded for M.Phil Degree" , , , ,

Candidates possessing Master's

Degree with NET/SLET/M.Phil and

Ph.D", "Weightage given to Master's Degree out of 90 and four additional marks for M.Phil Degree and six additional marks awarded for Ph.D Degree." , , , ,

Candidates possessing Master's

Degree with Ph.D", "Weightage given only to Master's degree out of 90 as there is no marks available in Ph.D Degree" , , , ,