

(2013) 01 SHI CK 0052

In the High Court Of Himachal Pradesh

Case No : CWP No. 1924 of 2012-C with CWP No. 2255 of 2012-F

Dharam Prakash

APPELLANT

Vs

State of H.P. and Others
 Narender Kumar Vs State of
Himachal Pradesh and Others

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Citation : (2013) 01 SHI CK 0052

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : Rajinder Thakur in both petitions, for the Appellant; D.S. Nainta, Addl. A.G. with Mr. Vikram Thakur, Dy. A.G. for respondent No. 1-State of H.P. in both petitions, Mr. D.K. Khanna, Advocate for respondent No. 2 in both the petitions, Mr. Sandeep Sharma, Assistant Solicitor General of India for respondent No. 3 in both the petitions, Mr. Shubham, Advocate for respondents No. 4 and 5 in CWP No. 2255 of 2012. and Mr. Anup Rattan, Advocate for respondents No. 4 to 6 in CWP No. 1924/2012, for the Respondent

Final Decision : Dismissed

Judgement

Justice Dharam Chand Chaudhary, Judge

1. This common judgment shall dispose of the present writ petition and also CWP No. 2255/2012 as common issues have been brought to this Court therein for adjudication. The complaint is that the petitioners though are duly eligible in accordance with the Recruit and Promotion Rules for appointment to the post of Acharya (Sanskrit College Cadre), however, their candidature has been rejected by the 2nd respondent erroneously and arbitrarily.

2. In this petition a prayer has been made to quash communication dated 6.3.2012 Annexure P-6, whereby the candidature of the petitioner has been rejected for the reasons that he has "not qualified NET/SET in Sanskrit Traditional Subjects", with a direction to the 2nd respondent to conduct his interview. IN CWP No. 2255/2012 a direction has been sought to be issued to the 2nd

respondent to conduct viva-voce of the petitioner pursuant to the call letter dated 20.3.2012, Annexure P-5, issued in his favour.

3. The facts not in controversy, in a nutshell, are that the petitioner in this writ petition is Post Graduate (Acharya) from H.P. University in the subject of Sahitya. It is apparent from detail of marks Annexure P-1. Petitioner in CWP No. 2255/2012 is also Post Graduate (Acharya) in the subject of Darshan, which he has passed from Sampurnanand Sanskrit University, Varanasi, as per detail of marks Annexure P-1.

4. The 2nd respondent issued advertisement Annexure P-2, thereby inviting applications from eligible candidates for appearance in the State Eligibility Test (SET), however, only their subject of Post Graduation, as per the list of subjects alongwith the Code, mentioned in the advertisement itself. Also that post-graduation of those candidates not covered in the list of subjects, they may appear in related subjects. Consequently, both the petitioners submitted their respective applications for appearance in SET pursuant to advertisement Annexure P-2. They both appeared in the test and were declared successful as per the result Annexure P-3 in this writ petition, whereas Annexure P-2 in CWP No. 2255/2012.

5. Subsequently, the 2nd respondent advertised 16 posts of Acharya (Sanskrit College Cadre), Class-1 (Gazetted) vide advertisement dated 23.9.2011 Annexure P-4. The break-up thereof reads as follows:

6. The essential qualification prescribed under the Rules and also published in the advertisement Annexure P-4 reads as follows:

Essential Qualification:

(i) A good academic record with at least 55% marks or an equivalent of 55% (wherever the grading system is followed) in Acharya Degree in the relevant subject from an India University or an equivalent degree from Foreign University recognized by the Govt. of India.

(ii) A relaxation of 5% is provided from 55% to 50% marks and the Acharya degree for the SC/ST category

AND

A relaxation of 5% (From 55 to 50%) of marks at Master's level to the Physically and Visually Handicapped persons in appointment as Acharya (Sanskrit College Cadre)

(iii) A relaxation of 5% is provided from 55% to 50% of the marks to the Ph.D. degree holders, who have passed their Acharya degree prior to Sept., 1991.

(iv) "B" in the 7 point scale with letter grades O, A, C, D, E & F shall be regarded as equivalent of 55% wherever the grading system is followed.

(7 point scale is displayed in the foot-note)

(v) Candidates besides fulfilling the above qualifications should have cleared the eligibility test (NET/SET) for Acharyas conducted by the UGC/State Public Service Commission.

7. Consequently, the petitioners pursuant to advertisement Annexure P-4 applied for the post in question. However, candidature of the petitioner in this writ petition was rejected for the following reasons vide Annexure P-4:

Not qualified NET/SET in Sanskrit Traditional subjects.

8. As regards the petitioner in CWP No. 2255/2012, though he was called vide letter dated 20.3.2012 Annexure P-5 to appear in the interview before the Commission, i.e. the 2nd respondent on 7.4.2012, alongwith original certificates and attested copies thereof, however, with the understanding that mere invitation to appear in the interview does not confer any right on him for selection against the post. However, he was also not interviewed on the same ground, i.e. having not qualified NET/SET in Sanskrit traditional subjects.

9. The grouse in a nutshell, as brought to this Court in these writ petitions, is that the petitioners have qualified SET successfully pursuant to advertisement Annexure P-2 issued by the 2nd respondent and that they were not required to qualify SET in traditional subjects under the Rules. Their candidature is thus stated to be erroneously rejected.

10. Response of respondent No. 2, which is common in these writ petitions, reads as follows:

4. It is submitted that the University Grants Commission, New Delhi conducts Eligibility Test in "SANSKRIT" and in "SANSKRIT TRADITIONAL SUBJECTS" separately. The Sanskrit Traditional Subjects include the subject of Veda/Sahitya/Sidhanta/Jyotish etc. which subjects the candidates are having at Post Graduation level i.e. Acharya Degree. As per extract taken from the Book issued by the National Educational Testing Bureau, University Grants Commission, New Delhi, both the subjects i.e. Sanskrit & Sanskrit Traditional Subjects have different syllabus and appear under different code. Code wise list of NET subjects is annexed as R-2/1. Sanskrit subject has Code-25 and Sanskrit Traditional Subject has Code 73. The University Grants Commission, New Delhi had granted accreditation to the H.P. Public Service Commission to conduct the State Eligibility Test in the subject of "SANSKRIT" only. As per the guidelines of the UGC, the candidates having the MASTER DEGREE OR EQUIVALENT in the subject were admitted for the State Eligibility Test conducted by the Commission and were issued the SET certificate "SANSKRIT". Since, the UGC had not granted accreditation in "SANSKRIT TRADITIONAL SUBJECTS" therefore no test was conducted in the subject separately. Other candidates who have qualified SET in Sanskrit from the H.P. Public Service Commission have also cleared the NET in Sanskrit Traditional Subjects.

5. As per essential qualification (v) of the advertisement and Recruitment and

Promotion Rules for the post candidate should have cleared the eligibility test (NET/SET) for Acharyas conducted by the UGC/State Public Service Commission or degree of Ph. D in relevant subject. The petitioner has not qualified the (NET/SET) in "Sanskrit Traditional Subjects" which is conducted by the UGC for Acharyas and which is also the relevant stream of specialization in which the candidate is post graduate. The candidates are required to qualify either Ph.D. or NET. SET in the relevant subject. The petitioner has passed post graduation i.e. Acharya Degree in Sahityacharya and was therefore, required to qualify either NET/SET or Ph. D in Sahityacharya. Petitioner has neither qualified NET/SET in Sanskrit Traditional Subjects nor completed his Ph.D. before the last date for receipt of applications. His candidature was rightly rejected by the Commission, however, in compliance of the orders dated 3rd April, 2012 of the Hon"ble High Court the petitioner has been provisionally allowed to appear in the interview on 7.4.2012. The petitioner is not entitled for any relief as no injustice has been done, therefore, the CWP may be dismissed.

11. Similar is the stand of the private respondents in separate replies, they filed in these writ petitions.

12. University Grants Commission, the 3rd respondent, in an exhausted and detailed affidavit, filed in counter, has contended that the University vide its Regulation dated 11.7.2009 and 30.6.2010 prescribed the minimum qualification for the post in question, which reads as follows:

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, in the relevant subject from an Indian University, or, and equivalent degree from a foreign University. Besides fulfilling the above qualifications, candidates should have cleared the eligibility test (NET) for lecturers conducted by the University Grants Commission, CSIR or similar test accredited by the University Grants Commission.

Note: 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 exempted from appearing in the NET examination.

13. The aforesaid Regulations were amended from time to time in the year 2002, 2006 and finally in 2009. The Regulations amended vide UGC (3rd amendment) Regulation, 2009, read as follows:

NET/SET shall remain the minimum eligibility condition or recruitment and appointment of Lecturers in Universities/Colleges/Institutions.

Provided, however, that candidates, who are or have been awarded Ph.D. degree in compliance of 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 for recruitment and appointment of Assistant Professor or equivalent positions in Universities/ Colleges/Institutions.

14. The stand taken by the 3rd respondent in its counter affidavit thus reads as follows:

39. That further submitted that in the present case advertisement for selection on the post of Acharya (Sanskrit College Cadre) Class-1 (Gazetted) was published on 23.9.2011, hence selection procedure for appointment is subsequent to 11.7.2009, hence same shall have to be made strictly in accordance with the minimum qualification prescribed by the UGC vide its regulations dated 11.7.2009 and vide UGC Regulation dated 30.6.2010.

40. That it is further submitted that UGC conducts NET in 78 subjects including Sanskrit and Sanskrit Traditional Subject. The selection of the suitable candidate for the post comes under the jurisdiction of appointing authority according to their norms.

15. In order to explain some other issues, the 3rd respondent has filed additional counter affidavit dated 30.11.2012 to the following effect:

3. That it is submitted that UGC conducts NET in 78 subjects. It is further submitted that NET is conducted in both "Sanskrit" (Subject Code 25) and "Sanskrit Traditional Subjects" (including Jyotisha/ Sidhanta Jyotisha/ Navya Vyakarna/ Vyakarna/ mimamsa/ Navya Nayaya/ Sankhya Yoga/Tulanatmaka Darsana/ Shukla Yajurveda/Madhva Vedanta/ Dharma Sastra/Sahitya/Purana-itihasa/ Agama Advaita Vedanta)" (subject Code 73). As is evident from the nomenclature of "Sanskrit Traditional Subjects", it entails study of several specialized texts. It is respectfully submitted that Himachal Pradesh Public Service Commission conducts Himachal Pradesh-SET in the subject "Sanskrit" but not in "Sanskrit Traditional Subjects".

4. That it is relevant to point out that NET has all India validity, i.e. the NET qualified candidates are eligible to apply and get selected for teaching positions all over India. ON the other hand, SET has State specific validity i.e. the candidates qualified in SET are eligible for any teaching position situated within that State.

5. That it is respectfully the NET Bureau, University Grants Commission does not prescribe suitability of any discipline for a particular teaching position. The selection of any candidate for a teaching position comes under the jurisdiction of appointing authority according to its norms.

16. Shri Rajinder Thakur, learned counsel, representing the petitioner has forcefully contended that under the R & P Rules, there is no requirement of clearance of SET in traditional subject and as pursuant to advertisement Annexure P-2 their candidature to appear in SET was entertained against Code-24 and they even were declared successful also, they cannot be made to

suffer at this belated stage for want of clearance of NET in traditional subject. Had it been so, the 2nd respondent should have not entertained their applications for SET and in that event they would have qualified the NET by this Time. It is also pointed out that the procedure prescribed under the rules on the day when the vacancy arises has to be followed and the same cannot be changed in the mid of selection process without good and sufficient reasons therefor.

17. On the other hand, the learned standing counsel appearing on behalf of the 2nd respondent and also learned Additional Advocate General and for that matter, learned counsel representing the private respondents, strenuously contended that clearance of NET in traditional subject is an essential qualification for appointment as Acharya (Sanskrit College Cadre) in the case of those candidates who are only post graduate like the petitioners. Otherwise also, according to them, it is for the Appointing Authority to prescribe essential qualification and other eligibility criteria for a post taking into consideration the nature and duties and function attached to a particular post.

18. Learned Assistant Solicitor General of India while taking this Court to the counter affidavit and additional counter affidavit has pointed out that NET is the essential qualification for appointment to the post in question as per the Regulations framed by the UGC from time to time and that the 2nd respondent has not been authorized by the 3rd respondent to conduct NET in traditional subjects.

19. Before coming to the rival contentions, it is desirable to take note of the law attracted in a proposition of this nature. It has been held by the Hon'ble Apex Court in Chandigarh Administration through the Chandigarh Administration through the Director Public Instructions (Colleges), Chandigarh Vs. Usha Kheterpal Waie and Others, that the Appointing Authority alone is competent to prescribe rules for a post and the Court/Tribunal should not prescribe qualification nor entrench upon the power of the concerned authority so long as the qualification prescribed by the employer is reasonable relevant and has a rational nexus with the functions and duties attached to the post and are not violative of any provision of Constitution, Statute and Rules.

20. The recruitment and Promotion Rules for the post of Acharya (Sanskrit College Cadre) Class-1 (Gazetted) notified vide Notification NO. EDN-A-Kha(15)4/2004 dated 2.8.2012 reveal that the cadre of Acharya (Sanskrit College Cadre) is comprising 30 posts, the break-up whereof reads as follows:

21. This is a Class-1 Gazetted post;. The qualification essential for appointment as Acharya stands already reproduced in this judgment at the very outset. So far as the educational qualification is concerned, both the petitioners being Acharyas (Post Graduates) in the subjects of Sahitya and Darshan are eligible for being considered against the post in question, because vide advertisement Annexure P-4, while posts of Acharya (Darshan) as advertised are 3, in the subject of Sahitya also 3 posts of Acharya have been advertised. However, the clearance of

eligibility test (NET/SET) is also one of the eligibility conditions in the case of those candidates who are post graduates.

22. The Regulations amended by the 3rd respondent in the year 2009, reproduced supra, however, exempt those candidates from clearance of NET/SET, who have been awarded the Ph.D. degree as per the minimum standard and procedure prescribed by the said respondent for award thereof. The petitioners, admittedly, are not Ph.D. degree holders, but only post graduates in the subjects of Sahitya and Darshan. They were, thus, required to clear SET/NET certainly in the subject concerned, i.e. Sahitya and Darshan, viz. nomenclatures as "Sanskrit Traditional Subjects", notice whereof can be taken from additional counter affidavit filed on behalf of the 3rd respondent. The SET cleared by the petitioners pursuant to advertisement Annexure P-4, in my considered opinion, cannot be treated SET in Sahitya and Darshan, as admittedly the petitioners appeared in SET under subject Code-24, which as per advertisement Annexure P-2, is Sanskrit subject. No doubt one of the eligibility conditions in advertisement Annexure P-2 provides for appearance only in his own subject of post-graduation and if his/her subject is not entered in the list of subject, may appear in related subject. However, by any stretch of imagination, it cannot be inferred therefrom that they had appeared in their respective subject i.e. Darshan and Sahitya, more particularly when as per the specific stand of the 2nd and 3rd respondents, the 2nd respondent had never been authorized by the 3rd respondent to conduct SET in Sanskrit traditional subjects, like Sahitya and Darshan.

23. Not only this, but the certificate Annexure P-3 issued by the 2nd respondent to the petitioner in this writ petition reveals that he had qualified H.P. SET for lecturership in the subject of Sanskrit. He, however, is post-graduate (Acharya) in Sahitya. Similarly, the petitioner in CWP No. 2255/2012 has also been shown to have appeared in HP SET in the subject of Sanskrit as is reflected in his certificate Annexure P-2. True it is that in this document his subject in post-graduation has been shown as Acharya (Darshan), but that cannot be taken to form an opinion that he has appeared in HP SET in his own subject, i.e. Darshan. No doubt in the R & P Rules no specific mention is there that clearance of NET/SET should be traditional Sanskrit subject, but in case rules are read together with the Regulations framed by the UGC, the same leave no manner of doubt on this aspect of the matter and make it crystal clear that NET/SET in the subject concerned shall remain the minimum eligibility condition for appointment as lecturer in Universities/ Colleges/Institutions. It would thus not be improper to conclude that both the petitioners have not qualified NET from UGC in the traditional subject of their post-graduation and as the 2nd respondent has no authority to conduct such test, they are not eligible for being considered against the post in question."

24. It is worthwhile to mention here that the candidates allowed to appear in the interview have qualified their SET in the respective subject of their post-graduation/exempted from clearance of such test in accordance with the

Regulations framed by the 3rd respondent as the learned counsel, representing the 2nd respondent has submitted, during the course of arguments. The issuance of direction to the said respondent to entertain the candidature of the petitioners and allow them to appear in the interview would amount to fixing of two different criterion for the same post, which neither is legally warranted nor appreciated nor is it the function of the Court/Tribunal to do so, as has been held by the Hon"ble Apex Court in Chandigarh Administration's case, cited supra. In a case of similar nature i Jatinder Singh Vs. Gurmeet Singh Sidhu and Others, the Hon"ble Apex Court whole holding that the clearance of eligibility test conducted by the UGC for appointment as a Lecturer is an essential qualification, has been pleased to reverse the judgment of the High Court.

25. True it is that the petitioners being post graduates (Acharyas) in Sahitya and Darshan should have not been considered for appearance in SET and had it been so, by this time they would have qualified for NET in their respective subjects. However, they cannot be held eligible merely on account of such lapse attributed to the 2nd respondent and for that, if so advised, they may seek appropriate remedy against the respondent in accordance with law.

26. It is also pointed out that the present is not a case of change in the eligibility criteria by the respondents in the mid of selection process. Therefore, with due regard to the law laid down by the Hon"ble Apex Court in P. Mohanan Pillai Vs. State of Kerala and Others, the same is not applicable in the present case.

27. For the foregoing reason, both the writ petitions fail and the same are accordingly dismissed. Interim order(s) stand vacated. In view of the disposal for the main petitions, pending application(s), if any, shall stand disposed of.