
(2014) 01 AHC CK 0324
In the Allahabad High Court
Case No : C.M.W.P. No. 66273 of 2013

Dr. Vinay Singh and Others	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

University Grants Commission Act, 1956 — Section 11, 20(1), 26, 26(3), 7

Citation : (2014) 1 ADJ 672 : (2014) 2 ALJ 366 : (2014) 103 ALR 192 : (2014) 2 AWC 1143 : (2014) 2 ESC 671

Hon'ble Judges : Surya Prakash Kesarwani, J;Arun Tandon, J

Bench : Division Bench

Advocate : K.K. Roy and Mukesh Kumar Singh, Advocate for the Appellant; Ajit Kr. Singh and Ritvik Upadhyaya, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon and Surya Prakash Kesarwani, JJ.—Petitioners, who are 12 in number after having obtained a degree of Post Graduation have been registered for Ph.D. Course in Banaras Hindu University under various subjects prior to 31st December, 2009. It is admitted that the petitioners had not been awarded a degree of Ph.D. prior to 13.12.2009. It is also admitted that the petitioners have not cleared the NET/SET Examination. The petitioners seek quashing of the circular dated 6th November, 2013 issued by the Deen, Faculty of Science, BHU (Annexure-4 to the present writ petition), where under it has been clarified that only those candidates, who have a degree of Ph.D. in accordance with the University Grant Commission (UGC) Regulations, 2009 shall be exempt from the requirement of minimum eligibility condition of NET/SET/SET. All the Heads/Coordinators have been directed to observe the above guidelines while shortlisting the candidates for Faculty positions.

2. Today an amendment application has been filed seeking quashing of the entire selection process in pursuance to the Advertisement No. 5/12-13 as uploaded on the website of the University on 14.2.2013.

3. A copy of the advertisement has been enclosed alongwith the counter-affidavit filed on behalf of the Banaras Hindu University, wherein the posts of Assistant Professors in various departments in Banaras Hindu University have been advertised. Under the heading of minimum qualifications it has been mentioned that the candidate must satisfy the minimum qualifications as per the UGC (Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for Maintenance of Standard in Higher Education) Regulations, 2010 (hereinafter referred to as "UGC Regulations, 2010). These regulations have been notified in the Official Gazette of India on 18th September 2010. A copy of the Gazette Notification has been enclosed as Annexure-1 to the counter-affidavit filed on behalf of the BHU.

4. The minimum qualifications under the UGC Regulations, 2010, for the posts subject-matter of consideration in this writ petition, has been provided as follows:

19. That in reply to the averments made in paragraphs 56 and 57 of the writ petition, it is submitted that the short-listing of candidates by the FAC-I and FAC-II Committees are underway and the petitioner, being an applicant for various positions have neither been accepted nor rejected in the short-listing process and, therefore, they do not have any grounds for moving this writ petition.

20. That in reply to the contents of paragraph 58 of the writ petition, it is submitted that the circular dated 6.11.2013 issued by the Dean, Faculty of Science, BHU and respondent No. 5 is conforming to the norms and regulations prescribed by UGC under University Grants Commission (Minimum Qualification for appointment of Teachers and Other Academic Staff in Universities and Colleges and other Measures for the Maintenance of the Standards in Higher Education) Regulations - 2010 and a clarification received by the UGC vide its letter No. F. 9-3/2010 (PS)/Misc. dated 20.11.2012. The petitioners being applicant to the various disciplines of Assistant Professor in the University have submitted their application forms, which is in possession of the University and are undergoing the process of scrutiny and short-listing which is yet to be completed and as of now the candidates are neither accepted nor rejected by the University. Therefore, there is no grounds to file this writ petition at this stage and also no cause of action arise at this stage.

5. From what has been stated above, it is apparently clear that the petitioners do not satisfy the minimum qualifications prescribed under UGC Regulations, 2010, inasmuch as they do not have Ph.D. Degree in their favour since prior to cut of date, i.e., 31.12.2009 nor they have cleared eligibility test of NET/SLET/SET.

6. Sri K.K. Rai, Counsel for the petitioners, however, submitted that the UGC in its 470th meeting held on 7th June, 2010 after taking into consideration the recommendation of the Expert Committee constituted for the purpose, has resolved as follows:

To consider applicability of the UGC Minimum Qualification for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for

the Maintenance of Standards in Higher Education) Regulations, 2010 and the UGC (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it-3rd amendment) Regulations, 2009.

The Commission examined the matter regarding applicability of the UGC (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it-3rd amendment) Regulations, 2009 and UGC (Minimum Qualifications for appointment of teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) Regulations, 2010.

After considering the agenda and above mentioned Regulations, the Commission resolved as under:

(i) UGC (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and institutions affiliated to it-3rd amendment) Regulations, 2009 has come into effect on 11th July, 2009.

(ii) UGC (Minimum Qualifications for appointment of teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) Regulations 2010 has come into effect on 30th June, 2010.

(iii) The Commission further resolved that since both the above mentioned Regulations are prospective and not retrospective.

In nature, therefore, all candidates having M.Phil. degree on or before 10th July, 2009 shall remain exempted from the requirement of NET for the purpose of appointment as Lecturer/Assistant Professor. Further, all candidates who have either obtained Ph.D. Degree on or before 31st December, 2009 and such candidates who had registered themselves for Ph.D. Degree on or before 31st December, 2009 and are subsequently awarded Ph.D. Degree shall remain exempted from the requirement of NET for the purpose of appointment as Lecturer/Assistant Professor.

And its 472 meeting held on 12th August, 2012 it has been resolved as follows:

To confirm the minutes of the 471st meeting of the University Grants Commission held on 12th August, 2012.

The Commission considered the letter dated 23.9.2010 received from Prof. K. Ramamurthy Naidu, Commission Member and agreed to the following changes:

It was decided to replace the sentence "While confirming Item No. 1.02 (iv) it was decided that letters received from Dr. Shivajirao Kadam and Prof. Ramamurthy Naidu be also sent to M/HRD" with "While confirming Item No. 1.02 (iv) it was decided that letters received from Dr. Shivajirao Kadam and Dr. Vidya Yervadekar and the note from Prof. Ramamurthy Naidu be sent to M/HRD".

The following modification was suggested in the first paragraph at Page 10 relating to Item No. 2.08:

The Commission further resolved that since both the above mentioned Regulations are prospective and not retrospective in nature, therefore, all candidates having M.Phil. degree on or before 10th July, 2009 shall remain exempted from the requirement of NET for the purpose of appointment as lecturer/Assistant Professor. Further, all candidates who have either obtained Ph.D. degree on or before 31st December, 2009 and candidates who had registered themselves for Ph.D. degree on or before 10th July, 2009 and are subsequently awarded Ph.D. Degree, shall remain exempted from the requirement of NET for the purpose of appointment as Lecturer/Assistant Professor.

With the above modification the minutes were confirmed.

7. With reference to the judgment of the Division Bench of this Court in the case of Dr. Ramesh Kumar Gupta and others v. University of Allahabad and others, Writ Petition No. 454777 of 2011, dated 10.1.2012 it is submitted that resolution made in the meeting of the UGC, specifically that in 472 meeting agenda Item No. 2.08 dated 27.9.2010 is binding on the Universities, including the University of Allahabad. He, therefore, submits that the Regulations of 2010 have to be read alongwith the resolutions agenda item No. 2.08 dated 12.8.2010 made in the 472nd meeting of the UGC and persons like the petitioners, who had been registered for Ph.D. prior to 31st December, are entitled to be treated as qualified and to be exempted from SET/SLET/NET Examinations.

8. Sri K.K. Roy, learned Counsel for the petitioners has placed reliance upon a Division Bench judgment of this Court in the case of Dr. Ramesh Kumar Yadav and another v. University of Allahabad and others, decided on 6th April, 2012, being Civil Misc. Writ Petition No. 45477 of 2011 specifically in paragraph Nos. 55, 84, 100 and 102 and the conclusions recorded in para 105, that the resolution made in the meeting of the UGC No. 471 dated 12.8.2010 is binding upon the University, and therefore, the candidates like the petitioners who had been registered for Ph.D. Degree prior to 3rd Amendment of the Regulations of 2009 would be entitled to exemption from NET/SLET, immediately after they are awarded Ph.D. Degree.

9. In counter-affidavit filed on behalf of Banaras Hindu University, the Gazette Notification dated 18th September, 2010 where under the Regulations of 2010 have been notified has been enclosed. Reference has also been made to the advertisement which has been published for various post and essential qualification prescribed as well as to the classificatory letter which has been received from the University Grants Commission to the effect of the resolution made in the meeting of the University Grants Commission No. 471st and 472nd held on 12.8.2010 and 27.9.2010 which have been heavily relied upon by the Counsel for the petitioner are only part of the process of deliberation. However,

the statutory provisions which are published in the official Gazette in accordance with section 26 of the UGC are binding. The UGC has reiterated that exemption from NET/SLET/SET etc. is to be provided to such candidates who have a degree of Ph.D. prior to 31st December, 2009 and not otherwise.

10. We have heard the learned Counsel for the parties and examined the record of the present writ petition.

11. It is not in dispute that u/s 26 of the UGC Act, the Commission has the power to make Regulations specifying the qualification that should ordinarily be required to be possessed by any person to be appointed to the teaching staff of the University having regard to the branch of education in which he is to be appointed. These Regulations are statutorily required to be notified in the Official Gazette.

12. We may also refer to the power conferred u/s 26(3) of the said Act upon the UGC to frame Regulations with retrospective affect which may not be latter than the date of commencement of the Act.

13. The composition of the Commission have been provided u/s 7. The authentication of the orders and other instrument of the Commission is to be done under the signature of the authorized members u/s 11. The power to frame the Regulation in the matter of minimum qualification required for faculty positions is controlled by section 26 which mandates that the Commission shall by way of Notification in Official Gazette make regulations for the purposes of laying down the minimum qualifications amongst other.

14. In the facts of the case, we find that the Regulations 2010 framed under Notification dated 10.6.2010 have been duly published in the Official Gazette on 18th September, 2010. This Notification provides that all earlier Regulations framed by the UGC in respect of minimum qualifications stand superseded. It is, therefore, clear that from the date of Regulations 2010 have come in force all appointments against vacancies which become available and are advertised after the enforcement of the Regulations-2010 have necessarily to be filled in accordance with the Regulations-2010. Any relaxation in the minimum qualification prescribed therein can only be by way of amendment in the Regulations and not otherwise. The Regulations-2010 do contemplate grant of relaxation in respect of the post of Assistant Professor under Clause 4.4.1 which reads as follows:

Notwithstanding anything contained in sub-clause (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.

15. From the simple reading of the Regulations 2010 in the matter of grant of relaxation from NET/SLET/SET qualification has been provided to only such candidates who have been awarded Ph.D. Degree in accordance with UGC (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009). Under the Regulations of 2009 only such persons who had a degree of Ph.D. Upto 31st December, 2009 have been provided such relaxation.

16. We may add that any resolution made by the UGC suggesting further relaxation in favour of candidates like the petitioner in his 471st and 472nd meeting will not have the affect of amending the Regulations 2010.

17. The position in that regard has specifically been clarified by the UGC itself under letter dated 20th November, 2012 wherein it has been recorded as follows:-

It has come to the notice of UGC that in the recent past, some of the universities and institutions have advertised the post of Lecturers/Assistant Professor without any stipulation regarding mandatory requirement of NET/SLET/SET as required by UGC Regulations, notified on 11.7.2009 and 18.9.2010, it has also been noticed by UGC that universities/institutions are relying on the Resolutions of the Commission in the 471st and 472nd meeting of the UGC held on 12.8.2010 and 27.9.2010. It is hereby clarified and informed for the benefit of all concerned Universities/Institutions and other stake holders including prospective candidates that the above resolutions are merely the part of the process of deliberation by the Commission on the issue of minimum qualification for appointment and not a final decision required to be implemented. In fact, the Central Government vide its D.O. Letter No. F. 8-7/2010-U-1 (A) dated 3rd November, 2010 did not concur with the said resolutions dated 12.8.2010 and 27.9.2010 of the Commission.

18. In view of the conclusion drawn by us herein above, we find no good reason to quash the Circular letter dated 6.11.2013.

19. So far as the judgment in the case of Dr. Ramesh Kumar Yadav and another v. University of Allahabad and others is concerned in paragraph No. 1 of the judgment itself it has been recorded that the petitioner in that case had been awarded the Ph.D. Degree in the year 2009 and 2003 respectively and it is in this factual background that the High Court has examined the applicability of the relaxation from the requirement of NET/SLET/SET etc. and held that the resolutions of the University Grants Commission made in 41 Amendment meeting would be binding on the Allahabad University in as much as the Central Government u/s 20(1) of the UGC Act, 1956 did not possess any power to approve or disapprove the recommendation of UGC.

20. We may also highlighted the conclusion in sub-para. 4 of para. 105 of the Division Bench in the case of Dr. Ramesh Kumar Yadav which reads as follows:

4. The Ph.D. holders, who were awarded Ph.D. degrees prior to 31.12.2009, cannot be said to have legitimate expectation maturing into any right to be

considered for appointment on teaching posts in the University, without obtaining the NET/SLET/SET qualifications, unless the UGC has provided for any exemptions.

In view of the above, the writ petition is dismissed with the direction that if any of petitioners had been awarded Ph.D. Degree prior to 31st December, 2009 and are therefore covered under Clause 4.4.1 sub-clause (3) of the Regulations 2010, then his claim shall be considered by the University.