
(2009) 05 GUJ CK 0050

In the Gujarat High Court

Case No : Special Civil Application No. 8208 of 2007

Harshaben Chatrabhuj Trivedi

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 05-05-2009

Acts Referred:

Bombay University Act, 1974 — Section 11(6), 26(1)
Saurashtra University Ordinance — Ordinance 164A
University Grants Commission Act, 1956 — Section 12, 26

Citation : (2009) 2 GLH 411

Hon'ble Judges : K.S. Radhakrishnan, C.J.; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : C.L. Soni, for the Appellant; Devang Vyas, Assistant Government Pleader for Respondent 1, A.R. Thacker, for Respondent 2, P.V. Hathi, Mitul K. Shelat for Respondent 3 and Pankaj R. Desai, for Respondent 4, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, C.J.—The question that has come up for consideration in this case is whether Ordinance 164-A framed under the Saurashtra University Act, 1965, would enable a candidate to round off fraction of marks obtained in a written competitive examination for bringing him in the field of choice for appointment to the post of Lecturer in law

2. University Grants Commission has framed Regulation dated 2.4.2000 laying down minimum qualifications for the post of Professors, Principals, Readers or Lectures in subjects other than Fine Arts, Management, Engineering and Technology in Universities and Colleges. For the post of Lecturer, the minimum qualification prescribed by the University is as under:

1.3.3 Lecturer:

Good academic record with at least 55% of the marks or an equivalent grade of B in the 7 point scale with latter grades O, A, B, C, D, E and F at the Master's

degree level, in the relevant subject from an Indian University, or an equivalent degree from a foreign University.

Besides fulfilling the above qualifications, candidates should have cleared the eligibility test (NET) for lecturers conducted by the UGC, CSIR or similar test accredited by the UGC.

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

3. Saurashtra University invited applications for filling up various teaching positions in the University Departments sanctioned under UGC Xth Plan (2003 to 2007) on contract basis in pay-scale of Rs. 8,000-275-13,500. Notification stipulated the qualification for the post of Lecturer as good academic record with at least 55% of marks or an equivalent grade of B in the 7 point scale with grades O, A, B, C, D, E & F at the Master's degree level in the relevant subject from an Indian University, or an equivalent degree from a foreign University. Further, it was also stated that besides fulfilling the above qualifications, candidates should have cleared eligibility test (NET) for lecturers conducted by the UGC, CSIR, or similar test accredited by the University Grants Commission. NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D degree.

4. Fourth respondent applied in response to the above Notification. He had secured 439 marks in the LL.M Examination, which was held in April, 1999. He was therefore, short of 1 mark for reaching at 55% at the relevant time i.e. in the year 1999. University followed Ordinance No. 164-A and gave one grace mark to the fourth respondent. On that basis mark-sheet was issued on 19.8.1999.

5. The question that is germane for consideration in this case is whether Ordinance 164-A would come to the rescue of the fourth respondent when he applies for a post of Lecturer, the qualification of which is laid down by the University Grants Commission. Minimum eligibility criteria stipulated in the UGC Regulation as well as the advertisement inviting applications for appointment to the post of Lecturer Law stated that the candidate should have good academic record with at least 55% marks.

6. Petitioner states that he was not duly qualified for the post and hence, he did not apply for the post of Lecturer, so also fourth respondent, but he applied for the post and University applied Ordinance 164-A and entertained his application though he did not meet with the minimum qualification laid down by the UGC and was selected and appointed. The contract period for which fourth respondent was appointed expired on 30.3.2007 and therefore, fourth respondent as such is not directly affected by the outcome of this petition. However, learned Counsel appearing for the petitioner as well as learned Counsel appearing for the

University Grants Commission submitted that this Court should finally decide the legal issue for future guidance.

7. University Grants Commission is established under UGC Act for co-ordination and determination of standards of teaching in Universities. Section 12 of the Act provides for functions of University Grants Commission. One of the functions is to determine and maintain standard of teaching. Section 26 of the Act provides for power of the University Grants Commission to make Regulations consistent with the Act. Clause (e) of the said Act provides for defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University. In exercise of the said power, University Grants Commission has framed Regulation which is annexed at Annexure ?A? and this Regulation is mandatory and binding to all Universities, including second respondent.

8. The question is whether Ordinance 164-A framed by the Saurashtra University can over-ride the minimum qualification laid down by the University Grants Commission? Ordinance 164-A is extracted hereunder for easy reference:

Ordinance 164-A:

A candidate whose total falls short of the requisite total for the 55% of marks at the post Graduate Degree Final Examination upto 5 marks shall be given the necessary marks to reach the 55% of total marks. 5 marks given under this provision shall be added in the grand total.

This provision shall not be applicable to the examinations under the faculties of Medicine & Technology including Engineering.

This provision shall be effective from the examinations held in March, 1993.

9. The University Grants Commission has specifically stipulated that for appointment to the post of Lecturer, a candidate should have good academic record with at least 55% of the marks or an equivalent grade of B in the 7 point scale with latter grades O, A, B, C, D, E and F at the Master's degree level, in the relevant subject from an Indian University, or an equivalent degree from a foreign University. Admittedly, fourth respondent was short of one mark for 55%, but applying Ordinance 164-A, mark obtained was rounded off and he was given 55%. In our view, unless there is specific provision in the University Grants Commission Regulation enabling a candidate to round off marks so as to obtain 55% marks applying Ordinance 164-A, the eligibility criteria laid down in the University Grants Commission Regulation cannot be diluted. The question raised is no more res-integra. Almost an identical question came up for consideration before the Full Bench of Punjab and Haryana High Court in *Kuldip Singh v. State of Punjab* 1997 (5) SLR 133, and by interpreting Rule 7 of Punjab Civil Services (Judicial Branch) Rules, it was held that method of rounding off fraction of marks obtained in the written competitive examination for bringing a candidate into the field of choice for selection to the post is not warranted by law unless the rules governing the selection specifically provide in this regard. The Court held that

while selecting candidates to any post on competition, marks obtained in the examination/test is not to be rounded off to the next whole number unless the rule specifically provides for the same. Later, above judgment was followed by a Division Bench of the same High Court in *Naresh Kumar v. State of Haryana* 2004(2) SLR 276. Identical question came up for consideration before the Bombay High Court in *Jahnavi Arun Navare v. Principal, Thane Municipal Council Law College* 2000 (8) SLR 646, in connection with appointment of a part-time Lecturer in Law and interpreting Sections 11 (6)(b) and 26(1) of Bombay University Act, 1974, and the University Grants Commission (Qualifications Required of A Person to be Appointed to the Teaching Staff of a University and Institutions Affiliated to it) Regulations, 1991, took the view that Circular dated 24.7.1998 speaks of the grant of grace marks to a candidate, but that Circular cannot be operated to dilute requirement of 55% marks at the Master's degree level, a condition of eligibility for full time lecturer in Law.

10. Further, we noticed that University Grants Commission has laid down the eligibility criteria for appearing NET Examination. Candidate belonging to General/ Other Backward Classes (OBC) who have secured at least 55% marks (without grace or rounding off in Master's Degree examination in Humanities (including languages) and Social Sciences, Forensic Science, Environmental Science, Computer Science and Applications, Electronic Sciences etc. are eligible to appear for this examination. The above facts would indicate that University Grants Commission Act and the Regulations framed thereunder do not approve the principle of giving grace marks or rounding off marks so as to make a candidate eligible for applying for various teaching posts. That being the factual and legal position, in our view, Ordinance 164-A cannot over-ride the University Grants Commission Regulations and qualification prescribed for various teaching positions, unless provision for adding grace marks or the criteria of rounding off marks is permitted by the University Grants Commission.

11. Now the term of contract of fourth respondent is already over and therefore, there is no question of interfering with his appointment.

Petition stands allowed to the above extent.