
(2011) 02 MAD CK 0523

In the Madras High Court

Case No : Writ Appeal (MD) No. 469 of 2010 and M.P (MD) No. 1 of 2010

K. Diravianathan and Others

APPELLANT

Vs

The University Grants Commission and Others

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Advocates Act, 1961 — Section 7(1)
Constitution of India, 1950 — Article 21, 39A

Citation : (2011) 02 MAD CK 0523

Hon'ble Judges : R. Subbiah, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : B. Saravanan, for the Appellant; K.K. Senthilvelan, Assistant Solicitor General for Respondent 1, V. Chellammal, A.A.G. and R. Janakiramalu, Special Govt. Pleader for Respondents 2 and 4, R. Alagarsamy, for Respondent 3, M. Rajarajan, Government Advocate for Respondent 5 and K. Sreekumaran Nair, for M. Ramadhas, for Respondent 6, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—This writ appeal is directed against the order passed by the learned single Judge dated 6.7.2010 made in W.P.(MD) No. 5057 of 2010, wherein the learned single Judge dismissed the writ petition praying to declare the entry of Column No. 3 for Column 1 of Category 2 of Class 2 of the Table under Sub-rule (b) of Rule 4 of the Special Rules for Tamil Nadu Legal Educational Service and the consequential notification issued by the 5th Respondent dated 30.3.2010 calling for applications for direct recruitment of Lecturers (Senior Scale)/Lecturers Senior Scale (pre-law) for Government Law Colleges (2007-2008, 2009-2010) in respect of the selection and appointment of Lecturers (Senior Scale) as illegal.

2. The learned single Judge dismissed the writ petition following the earlier order passed in W.P.(MD) No. 8191 of 2010 dated 21.4.2010, which was confirmed in W.A.(MD) No. 1071 of 2010 dated 14.6.2010.

3. The contention of the Appellants in this appeal is that only the consequential notification issued by the 4th Respondent inviting applications for the said posts were challenged which alone was upheld and no declaration of rule as illegal, was sought for. Therefore the learned single Judge ought to have gone into the validity of the rules and dismissal of the writ petition by following the earlier judgments are not valid.

4. The brief facts necessary for disposal of this writ appeal are that the Appellants have passed Post Graduate Degree (M.L.) with more than 55% marks, except 5th Appellant, who secured 54% marks. The Appellants are practising Advocates before this Court as well as in the District Court, Madurai. They are also working as Guest Lecturers in Government Law College, Madurai. They have not passed NET (National Eligibility Test) conducted by UGC nor passed SLET (State Level Eligibility Test) conducted by the Government of Tamil Nadu. The first Respondent, through G.O. Ms. No. 263 Law (LS) Department, dated 20.12.2005 issued an amendment in column 3 of column 1 of Category 2 of Class 2 of the Table under Sub-rule (b) of Rule 4 of the Special Rules and incorporated passing of NET or Accredited Test as a mandatory requirement for appointment to the post of Lecturers in Law Colleges. The said amendment was introduced pursuant to the regulations issued by UGC viz., The University Grants Commission (Minimum Qualification required for the appointment and career advancement of Teachers in University and Institutions affiliated to it) Regulations, 2000.

5. It is stated in the regulation that in respect of the subjects viz., Humanities, Social Sciences, Commerce Education, Foreign Languages and Law, passing of eligibility test is made mandatory, even for candidates having PhD degree. However, the candidates who have completed M. Phil degree or have submitted PhD thesis in the concerned subject upto 31st December, 1993 were given exemptions from appearing in the NET examination. It is contended in the affidavit that the said regulation provides for relaxation, if in any subject NET is not being conducted or enough number of candidates are not available with NET qualification for a specified period only. It is the contention of the Appellants that the said UGC regulation cannot be made applicable to the Law College Lecturers as already qualifications are prescribed u/s 7(1)(h) of the Advocates Act, 1961 as well as Rule 15 of the Bar Council of India Rules, 1975. It is also the contention of the Appellants that even if the regulations of the UGC is applicable, in the impugned amendment to the rules issued by the State Government, no provision is available for approaching the UGC for the grant of relaxation in case of non availability of sufficient number of candidates and therefore the impugned amendment is to be declared as invalid and the consequential notification has to be declared as invalid.

6. In answer to the said contentions, 4th Respondent has filed counter affidavit in the writ appeal stating that the educational qualification of the faculty of the Law Colleges are governed by the Rules of Legal Education 2008 made by the

Bar Council of India under the Advocates Act, 1961, which has been approved and adopted by the Bar Council of India on 14th September, 2008, wherein it is stated that teaching faculty of Law Colleges should possess the qualification prescribed by the UGC and the Teachers should take as many classes in the subject assigned to them on the basis of the standards prescribed by UGC. Therefore the special rule is not repugnant to the Bar Council of India Rules as contended by the Appellants. It is also stated in the counter affidavit that applications were invited for 29 vacant posts of Lecturers (Senior Grade) and 16 posts of lecturers (Senior Grade) (Pre-law) by direct recruitment by notification dated 30.3.2010 prescribing the said qualification, including pass in NET. The contention of the Appellants regarding the non-availability of candidates is answered in the counter affidavit stating that sufficient number of candidates with NET qualifications have applied and UGC guidelines, which is now 6 approved by the Bar Council of India, which was followed in the impugned rules, is mandatory for appointment to the post of Lecturers in Law Colleges to maintain the standard of Legal Education.

7. The learned Counsel appearing for the Appellants reiterated the two contentions raised in the appeal as stated supra and further submitted that the only objection now available to the Appellants is that in case of non-availability of candidates, the impugned rules need not stand in the way of the University/ Respondents in approaching UGC as well as Central Government seeking relaxation for not passing NET to fill up the post in Law Colleges and therefore the impugned rule may be read down in such a manner, so that the Law Colleges would be in a position to have sufficient number of Lecturers to handle classes to the students of five year course, three year course and M.L.degree courses.

8. The learned Additional Advocate General appearing for the Respondents 2 and 4 submitted that whether sufficient number of candidates are available for selection to the posts notified or not will be known only after the selection is over and that contingency has not arisen as on today and therefore the apprehension expressed by the Appellants need not be considered now.

9. The learned Counsel for the third Respondent submitted that the UGC has addressed a letter on 6.2.2010 stating that even for the post of Guest Lecturer/ Part-time Teachers in Law Colleges, candidates must have passed NET and only exception is, retired Teachers who are also eligible for appointment as Guest Lecturers/Part-time Teachers need not have passed NET. The said guidelines were issued with effect from 1.1.2010. The learned Counsel, relying upon the said letter of UGC addressed to the third Respondent submitted that the standard of law education is the paramount consideration and therefore the Government is justified in prescribing NET as required qualification along with M.L. degree.

10. We have considered the rival submissions made by the learned Counsel for the Petitioner and the respective counsels for the Respondents.

11. The impugned amended Rule, in Column No. 3 for Column 1 of Category 2 of

Class 2 of the Table under Sub-rule (b) of Rule 4 of the Special Rules for Tamil Nadu Legal Educational Service, reads as follows:

"(i) Master's degree in Law of any recognised University with not less than 55 percent marks and a good academic record;

Provided that candidates belonging to Scheduled Castes and Scheduled Tribes shall possess not less than 50 percent marks:

Provided further that the holders of Ph.D. in Law, who have passed their Master's degree in Law prior to the 19th September, 1991, shall possess not less than 50 percent marks in the Master's degree in Law:

(ii) Must have qualified in the National Eligibility Test (NET) or an accredited Test; and (iii) Must have enrolled as an advocate in the Bar Council.

Provided that other things being equal, preference shall be given to persons who have actual experience at the Bar or Teaching experience."

The notification dated 30.3.2010 issued by the 5th Respondent is in terms of the said amended rule.

12. Earlier, the very same notification issued by the 5th Respondent was challenged in W.P. No. 8191 of 2010 which was upheld by this Court by order dated 21.4.2010 holding that for maintenance of standards of Teaching, the UGC has wide range of powers and such powers would comprehend the power to require those who possess the educational qualifications required for applying to the Lecturer post. The learned Judge following the earlier orders of this Court upheld the notification. The said order of the learned single Judge was confirmed by the Division Bench in W.A. No. 1071 of 2010 dated 14.6.2010.

13. The First Bench of this Court (Principal Bench at Madras) in the decision reported in 2011 WLR 1 (P. Suseela and 10 Ors. v. University Grants Commission and Anr.) considered similar issue regarding appointment of Lecturers in Tamil Nadu Collegiate Education. The Division Bench held that passing of NET/SLET examination as eligibility for selection to Lecturer post was prescribed on rationale basis and on public interest and also in tune with national policy to upgrade the standards of education in the country.

14. Therefore we are also of the view that the Appellants cannot object the prescription of pass in NET/similar test accredited by the UGC as eligibility and the impugned rule and the notification are valid.

15. The only further issue to be considered in this writ appeal is with regard to the contention of the Appellants that in case of non-availability of sufficient number of candidates for selection to the post of Lecturers in Law Colleges what course can be adopted.

16. The learned Additional Advocate General even though submitted that sufficient number of candidates are available, no particulars regarding availability

of number of candidates who possess NET examination in each subject is not produced before us. Admittedly, the UGC regulations provide for grant of relaxation in case of non-availability of candidates on any valid reason. The said issue was considered by the Supreme Court in the decision reported in *University of Delhi Vs. Raj Singh and others*, wherein it is held that the UGC regulation itself provide for the grant of relaxation if any specific request is made by the concerned University, pointing out any genuine reason. Thus there is no difficulty to meet the said situation which may arise, as contended by the learned Counsel for the Appellants.

17. Insofar as the contention that the impugned rules do not enable the Government and the University in approaching the UGC to seek relaxation, as rightly contended by the learned Counsel for the Appellants, the Doctrine of Reading Down can be applied and the impugned rules need not be held illegal. In the Constitution Bench decision reported in *D.S. Nakara and Others Vs. Union of India (UOI)*, , it is held that "while examining the case under Article 14, the approach is not: "either take it or leave it", the approach is removal of arbitrariness and if that can be brought about by severing the mischievous portion the court ought to remove the discriminatory part retaining the beneficial portion." The same is the view taken in the decisions reported in *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, and in *The State of West Bengal Vs. Kesoram Industries Ltd. and Others*, .

18. Before parting with this case, we are constrained to note that insofar as the functioning of the Law Colleges in the State of Tamil Nadu is concerned, the Division Bench of this Court noticed the improper functioning of the Law Colleges in the order dated 1.12.2008 made in W.P. No. 27140 of 2008 and suggested various measures to be taken as short term measures and long term measures. It is directed in the said order that twenty hours of Teaching per week is to be strictly enforced in Law College courses, among other directions issued. In the said judgment in paragraph 9 it is held as follows:

"9. Legal education being the foundation where the edifice of the great institution namely the JUDICIARY is built, we feel that it is our duty and responsibility to step in authoritatively and set right things in the interest of the society at large. In our considered opinion, in exercise of the plenary power vested in this Court, it will be well in order for this Court to issue appropriate directions to the administrative heads of the institution, as well as, the State Government in the best interest of the students, parents and the public at large."

From the perusal of the above order it is evident that the said directions were issued by the Division Bench of this Court based on the report submitted by the then Advocate General, who was directed to submit a report regarding the functioning of Dr. Ambedkar Law College, Chennai, after his personal visit. To comply with the direction to conduct 20 hours of Teaching per week to all Law Courses (3 year course, 5 year course and M.L. Degree courses), more number of qualified Lecturers are required and all the sanctioned posts shall be filled up

without fail. Thus, the Respondents are duty bound to consider as to whether sufficient number of candidates are available for selection to the post of Lecturer in Law Colleges in each branch with required NET qualification. After the selection is made, if it is found that sufficient number of candidates are not available for filling up the posts in any discipline, the Respondents 2 to 4 are bound to approach the first Respondent for the grant of relaxation of the requirement of pass in NET examination for a limited period, so that all the posts in Law Colleges can be filled up and the direction issued by the Division Bench by order dated 1.12.2008 could be complied with. By adopting the same, the Law Students will be in a position to get some coaching to prepare for law examinations and acquire basic knowledge in Law, professional ethics and procedures. More number of properly trained law graduates are essential for upholding the Rule of Law and to enforce the fundamental rights of the citizen conferred under Articles 21 and 39-A of the Constitution of India. The Supreme Court in the decision reported in *State of Maharashtra Vs. Manubhai Pragaji Vashi and others*, in paragraphs 9 and 16 held thus, "9. One facet of education cannot be selected for hostile discriminatory treatment, whatever may be the other laudable activities pursued by the Government in the matter of education or its discretion to assign the order of priorities in different spheres of education. In a fit case, it is open to the court to direct the executive to carry out the directive principles of the Constitution, when there is inaction or slow action by the State.

16. In order to enable the State to afford free legal aid and guarantee speedy trial, a vast number of persons trained in law are essential. Legal aid is required in many forms and at various stages, for obtaining guidance, for resolving disputes in courts, tribunals or other authorities. It has manifold facets. The explosion in population, the vast changes brought about by scientific, technological and other developments, and the all-round enlarged field of human activity reflected in modern society, and the consequent increase in litigation in courts and other forums demand that the service of competent persons with expertise in law is required in many stages and at different forums or levels and should be made available. The need for a continuing and well-organised legal education, is absolutely essential reckoning the new trends in the world order, to meet the ever-growing challenges. The legal education should be able to meet the ever-growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situations. Specialisation in different branches of the law is necessary. The requirement is of such a great dimension, that sizeable or vast number of dedicated persons should be properly trained in different branches of law, every year by providing or rendering competent and proper legal education. This is possible only if adequate number of law colleges with proper infrastructure including expertise law teachers and staff are established to deal with the situation in an appropriate manner. It cannot admit of doubt that, of late there is a fall in the standard of legal education. The area of "deficiency" should be located and correctives should be effected with the

cooperation of competent persons before the matter gets beyond control. Needless to say that reputed and competent academics should be taken into confidence and their services availed of, to set right matters."

19. For the foregoing reasons the writ appeal is dismissed with the above observations. As the Law Colleges must have the Lecturers to teach Law students and the selection process is delayed due to the pendency of the writ petition and writ appeal filed by the Appellants, we direct the Respondents 2 to 5 to complete the selection process as notified within three months from the date of receipt of copy of this order. No costs. Connected miscellaneous petition is also dismissed.