
(2015) 07 KL CK 0111

In the High Court Of Kerala

Case No : Writ Petition (C) No. 20534 of 2013 (N)

Laya K.S.

APPELLANT

Vs

The University of Kerala and Others

RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Citation : (2015) 07 KL CK 0111

Hon'ble Judges : P.V. Asha, J

Bench : Single Bench

Advocate : N. Nandakumara Menon, Senior Advocate and P.K. Manojkumar, for the Appellant; George Poonthottam and Bechu Kurian Thomas, SCs, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.V. Asha, J—The petitioner is challenging the selection and appointment of 4th respondent to the post of Lecturer (redesignated as Assistant Professor) in Demography in the University of Kerala on the ground that he does not possess the requisite test qualification. By Ext. P1 notification the University of Kerala (hereinafter referred to as "the University") invited applications for appointment to the post of Lecturers, Readers etc., nomenclature of which was subsequently changed as Assistant Professors/Associate Professors. As far as the Department of Demography is concerned one vacancy of Assistant Professor was notified. The qualification as notified in Ext. P1, for the post of Lecturers, reads as follows:

"Good Academic record with at least 55% marks or an equivalent grade at Masters Degree level in the relevant subject from an Indian University or an equivalent Degree from a Foreign University.

Note: 1 Candidates besides fulfilling the above qualifications should have cleared eligibility test for Lectureship conducted by the UGC, CSIR or similar tests accredited by the UGC.

However, the candidates who have Ph.D Degree in the concerned subject are

exempted from NET qualifications."

Ext. P2 is the form of application, where the column 14 reads as follows:-

"Whether the candidates meets the eligibility criteria as per UGC Regulations 2010 for the applied post: (the UGC Regulation of 2010 are available for reference on both the UGC Web site and the Kerala University Web site at www.KeralaUniversity.ac.in:Yes/No)."

2. 20 candidates including the petitioner as well as the 4th respondent were called for the interview, based on applications submitted pursuant to Ext. P1 notification. On the basis of the interview held on 12.6.2013, the selection committee as per Ext. P3, selected 3 candidates, after assessing the qualification, merit, performance of the candidates in the interview, exposure in the field of specialisation, co-curricular activities, aptitude for research and the ability to teach. It was further resolved to offer the post to the 4th respondent who was ranked No. 1. The petitioner was ranked No. 2.

3. The index mark of the candidates is also available in Ext. P3, obtained by the petitioner on an application under Right to Information Act (RTI Act). As per this, the 4th respondent secured a total of 85.68 marks, whereas the petitioner secured 84.40 marks. According to the petitioner the minimum qualification required for appointment to the post of Lecturer, which is subsequently designated as Assistant Professor is governed by Ext. P5-the UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 (hereinafter referred to as "the UGC Regulations, 2010"). Clause 3 provides for the recruitment and qualification of the teaching posts including that for Assistant Professor. Clause 3.3 reads as follows:-

"The minimum requirements of a good academic record, 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the master's level and qualifying in the National Eligibility Test (NET), or an accredited test (State Level Eligibility Test-SLET/SET), shall remain for the appointment of Assistant Professors.)."

4. Clause 3.3.1 is the relevant provision as far as this case is concerned, because the petitioner's grievance is that the 4th respondent does not have pass NET and he does not have a Ph.D Degree also, as required under Clause 3.3.1. Clause 3.3.1 reads as follows:-

"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 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."

5. Thus it can be seen that only those candidates who have been awarded Ph.D degree in accordance with the UGC (Minimum standards and Procedure For Award of Ph.D Degree) Regulations, 2009 (hereinafter referred to as 2009 Regulations) are exempted from the requirement of minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professors. Ext. P6 is the UGC (Minimum Standards and Procedure For Awards For M.Phil, Ph.D Degree) Regulations 2009. As per Regulation 13 of these 2009 Regulations, a candidate who got admission to Ph.D shall be required by the Universities, Institutions, Deemed Universities and Colleges/Institutions of national importance as the case may be, to undertake course work for a minimum period of one semester. The course work shall be treated as pre-M.Phil/Ph.D preparation and must include a course on research methodology which may include quantitative methods and Computer Applications. Regulation 13 of the 2009 Regulations relating to course work reads as follows:

"After having been admitted, each M.Phil/Ph.D student shall be required by the Universities, Institutions, Deemed to be Universities and Colleges/Institutions of National Importance, as the case may be, to undertake course work for a period of one semester. The course work shall be treated as pre-M.Phil/Ph.D preparation and must include a course on research methodology which may include quantitative methods and Computer Applications. It may also involve reviewing of published research in the relevant field. The individual Universities, Institutions, Deemed to be Universities and Colleges/Institutions of National Importance, as the case may be, shall decide the minimum qualifying requirement for allowing a student to proceed further with the writing of the dissertation."

6. The case of the petitioner is that the 4th respondent has not undergone course work, even though he was a Ph.D holder. Despite this, the Syndicate of the University, as per Ext. P7, approved the ranked list drawn by the selection committee and resolved to offer the post of Assistant Professor in Demography to the 4th respondent. The petitioner has produced Ext. P8 letter of the Government addressed to the Registrar of Kerala Universities, the Circular issued by the UGC to the Vice Chancellors regarding compliance of UGC Regulations, in which the Universities are informed that they cannot dilute the qualification fixed in the UGC Regulations and insisted that the minimum eligibility conditions for recruitment and appointment of Lecturers shall be NET/SLET and in the case of candidates who are having Ph.D the exemption shall be granted only in accordance with 2009 Regulations. This has been reiterated in Ext. P10 notice issued by the UGC on 12.10.2012 also. Relying on these, the petitioner approached this court challenging the decision of the selection committee of the Kerala University to the extent it relates to the appointment of the 4th respondent and seeking a direction to the University to appoint the petitioner in the place of 4th respondent.

7. Subsequent to the filing of this writ petition, the petitioner filed I.A. No. 15354/2013 producing the copy of the application submitted by the 4th respondent, which he obtained from the University on application under the Right to Information Act. Petitioner submits that the 4th respondent had furnished incorrect information in his application, as can be seen from column No. 14 of Ext. P11. The allegation is that as against column No. 14 in the application, against the entry as to whether the candidate meets the eligibility criteria as per UGC Regulations, 2010 for the applied post, he furnished the answer "yes". According to the petitioner the proforma of application itself in column No. 14 specifically provides, UGC Regulations 2010 are available in the website of UGC and of the University. Even then the 4th respondent who acquired Ph.D without undergoing course work in accordance with the 2009 Regulations, hence ineligible for exemption from acquiring NET, and hence unqualified, by furnishing the incorrect information in the application committed serious lapses and incurred disqualification. Hence he should not have been selected by the selection committee and the Syndicate should not have approved such a rank list.

8. The petitioner is a candidate with NET in Population Studies. Petitioner has produced Ext. P12 list of candidates who attended the interview on 12.6.2013, for the post of Lecturer in Demography, which he obtained under the RTI Act, in which the name of 17 candidates are given along with their qualifications. From this list it can be seen that there were only 6 candidates having UGC/NET qualifications and all of them had NET in Population Studies. Petitioner therefore claimed that she was the eligible candidate with NET in Population Studies who should have been ranked 1.

9. Along with the reply affidavit, the petitioner produced Ext P13-the copy of Government Order G.O.(P) No. 58/2010/H.Edn. dated 27.3.2010 by which the Government had implemented UGC Regulation 2010 i.e. Ext. P5 Regulations, in which Clause 5.6 relates to NET and provides that NET shall be compulsory for appointment at the entry level of Assistant Professor, subject to the exemptions to the degree of Ph.D in respect of those persons obtaining the award through a process of registration, course-work and external evaluation, Clause 5.6 of Ext. P13 Government order dated 27.3.2010 reads as follows:

"National Eligibility Test (NET) shall be compulsory for appointment at the entry level of Assistant Professor, subject to the exemptions to the degree of Ph.D in respect of those persons obtaining the award through a process of registration, course-work and external evaluation, as have been laid down by the UGC through its regulations, and so adopted by the University. NET shall not be required for such Masters" Programmes in disciplines for which there is no NET".

10. Petitioner points out that while implementing the pay revision and the newly prescribed qualifications, as per the UGC Regulations 2010, Government has made it clear that these provisions contained in Ext. P13 order are compulsory. Ext. P13 Government Order was implemented by the University by Ext. P14 order dated 1.6.2010. It can be seen from Ext. P14 that the Vice Chancellor had

issued the order in exercise of powers of the Syndicate, implementing the Government Order issued on 27.3.2010 (Ext. P13). Clause 5.6 of this order is the same as Clause 5.6 of Ext. P13 order of the Government.

11. The case of the petitioner is that the University which is bound to follow the UGC Regulations 2010 was not correct in selecting the 4th respondent who did not have NET qualification or Ph.D in accordance with the 2009 Regulations and therefore the selection of the 4th respondent is liable to be set aside.

12. The 4th respondent has filed a counter affidavit, in which the most relevant contention, according to me is that the UGC is not conducting NET in the subject Demography. As per the Regulations of the UGC itself, NET shall not be required for such Masters Degree Programmes in disciplines for which NET accredited test is not conducted, as provided in Clause 3.3.2. The further contentions raised by the 4th respondent are that though UGC had issued Regulations regarding the minimum qualification for appointment of Teachers and other Academic Staff the University in the year 2010, it was implemented in the University only with effect from 23.11.2013, as per Ext. R4(a) resolution of the special meeting of the academic council held on 23.11.2013 and that decision of the academic council was approved by the senate in its meeting held on 26.11.2003 as per Ext. R4(b). Even that implementation is with certain amendments. The amendment is to the effect that those who acquired Ph.D before 2009 are exempted from qualifying in NET. Therefore the qualifications as stipulated in Ext. P5 -UGC Regulations 2010, were not required as far as the selection based on Ext P1 notification, is concerned. Therefore according to the 4th respondent exemption to Ph.D holders could not have been limited to those who underwent course work. It is further stated that in the University of Kerala, course work was started only in the year 2007 and the petitioner or the 4th respondent, while doing their Ph.D were not required to undergo any such course work. According to the 4th respondent since the notification itself was issued only in 2012 and the UGC Regulation 2010 were implemented in the University only in 2013, provisions in the regulations were not applicable to the selection in question. Therefore the 4th respondent stated that he is eligible in all respects for selection and appointment to the post of Assistant Professor in Demography.

13. The University has filed counter affidavit, in which it is stated that as per Ext. P1 notification issued on 17.9.2012 the qualifications prescribed for the posts were good academic record with at least 55% marks at masters degree level with pass in the eligibility test for Lectureship conducted by UGC/CSIR and similar tests accredited by the UGC and the candidates who have Ph.D degree in the concerned subject were exempted from NET qualification. Therefore the 4th respondent who is a Post Graduate Degree holder with Ph.D in Demography was exempted from having cleared NET. It is stated that UGC Regulations 2010 were implemented in the University only in November, 2013. It is further stated that the application form was framed in such a manner referring to the terms of 2010 Regulations so as to enable University to follow the method of selection in

accordance with 2010 Regulations as and when they were implemented in the University. According to them information sought for in column 14 did not have any relevance. The selection conducted does not suffer from any illegality.

14. UGC has filed a counter affidavit furnishing various orders issued by the Central Government, as well as UGC Regulations and explaining the qualifications prescribed as per UGC Regulations for teaching staff, purpose for the same etc. In fact according to the UGC the qualifications prescribed under UGC Regulations are mandatory in respect of any selection to teaching posts in colleges or universities.

15. I heard the learned Senior Advocate Sri. Nandakumara Menon appearing for the petitioner, Sri. Bechu Kurian Thomas, learned Standing Counsel for Kerala University and Sri. T.R. Ravi the learned Counsel for the 4th respondent and Sri. Krishna Murthi, the learned Standing Counsel for UGC.

16. The main ground of attack against the selection is that the 4th respondent does not have pass in NET and he is not eligible for exemption from passing NET on the ground that he is having a Ph.D degree since he has not undergone compulsory course work in accordance with Ext. P10 -2009 Regulation i.e. UGC (Minimum Standards and Procedure For Awarding Ph.D) Regulations 2009, read with UGC Regulation 2010. On examination of the pleadings and contentions raised by either side, I find it unnecessary to go into the question raised by the petitioner regarding Ph. D and course of study if any undergone by him for the selection to the post of Assistant Professor in Demography, since the 4th respondent is seen qualified even otherwise.

17. In this context it is necessary to have a look at the qualification prescribed in Ext. P5- UGC Regulations 2010 for appointment as Assistant Professors. While Clause 3.3.1 prescribes that the minimum eligibility condition for recruitment and appointment of Assistant Professors shall be NET/SLET/SET, which further provides in Clause 3.3.2 and NET/SLET/SET shall not be required for such Masters Degree Programmes in disciplines for which NET/SLET/SET accredited test is not conducted. Clause 3.3.1 reads as follows:-

"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 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."

Clause 3.3.2 reads as follows:

"3.3.2. NET/SLET/SET shall not be required for such Masters Degree Programmes in disciplines for which NET/SLET/SET accredited test is not conducted."

18. It is admitted by all parties to this Writ Petition that no accredited test is conducted by the UGC or any authority for those with Masters Degree Programmes in Demography. Ext. P14 list also does not contain the names of any candidate with NET in Demography. There is no provision in any of these regulations which insist for pass in any equivalent tests or tests in equivalent subjects. Therefore when Demography is a subject for which no accredited test is conducted coming under the purview of regulation 3.3.2 of Ext. P5 UGC Regulation 2010, clause 5.6 of Ext. P13 Government Order and Ext. P14 order of the University, which gives an unconditional exemption to the 4th respondent who is a Master's Degree holder in Demography, with requisite marks, he is eligible for appointment to the said post even without a Ph.D Degree. Therefore the very basis of the writ petition falls down. The question as to whether the Ph.D acquired by the 4th respondent was in accordance with the 2009 Regulations or that 4th respondent was entitled to exemption from NET on the basis of Ph.D acquired by him other than by way of Ext. P6 Regulations, becomes irrelevant. The appointment of the 4th respondent is assailed on the sole contention that he is not eligible for exemption from NET. When NET itself is not necessary for the discipline Demography there is no basis for the attack.

19. In the above circumstances I do not find it necessary to venture into the larger questions posed by the learned Senior Counsel regarding the binding nature of the UGC Regulations from the date of its publication in the Government of India Gazette notwithstanding the later date of implementation in the University or the recent judgments of the apex court relied on by the learned Senior Counsel i.e. Kalyani Mathivanan Vs. K.V. Jeyaraj and Others(2015) 3 AD 238 : AIR 2015 SC 1875 : (2015) LabIC 1899 : (2015) 1 LLN 545 : (2015) 3 SCALE 369 : (2015) 4 SCJ 400 : (2015) 2 SCT 676 : (2015) 2 SLJ 107 , and P. Suseela & others v. University Grants Commission -SLP Nos. 36023-36032 of 2010.

Under the above circumstances, I am of the considered view that there is no infirmity in the selection and appointment of the 4th respondent, as alleged by the petitioner and hence there is no reason to interfere with the selection and appointment of the 4th respondent.

Accordingly, this writ petition fails and is dismissed.