
(2019) 10 MAN CK 0005
In the Manipur High Court
Case No : Writ Petition (c) No. 898 Of 2017

Md. Feroz Khan And Others	Vs	APPELLANT
State Of Manipur And Others		RESPONDENT

Date of Decision : 14-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2019) 10 MAN CK 0005

Hon'ble Judges : M.V. Muralidaran, J

Bench : Single Bench

Advocate : H.S. Paonam, BP Sahu, S. Dijeshwor, A. Arunkumar, S. Gunabanta, Ksh. Harichaya, M. Tapan, I. Lalitkumar, Irom Denning

Final Decision : Allowed

Judgement

M.V. Muralidaran, J

1. This writ petition has been filed by the petitioners seeking to issue a writ of mandamus directing the respondents to issue appointment letters/orders to the petitioners to the post of Assistant Professor in Mathematics as per the notifications dated 06.11.2017 and 14.11.2017 issued by the Secretary, Manipur Public Service Commission against unreserved vacancy.

2. The case of the petitioners is that they were the members of minority community (Meetei Pangal) of the State of Manipur and had passed their Master Degree in Mathematics and also qualified National Eligibility Test (NET) in Population Studies. The second respondent issued an Advertisement No.15/2014 dated 15.11.2014 inviting applications from the qualified candidates for direct recruitment to the post of Assistant Professors in various disciplines for filling up of vacancies in 28 Government Colleges under Higher Education Department, Manipur. The petitioners applied for the post and they were selected under the subject Mathematics vide notification dated 06.11.2017, followed with merit list of the selected candidates vide notification dated 14.11.2017 wherein also the

petitioners names appeared at Serial Nos.16 and 17 under the subject Mathematics of the said list. However, a rider was added against their names in remark column that the selection is subject to their eligibility of NET in Population Studies. Since the petitioners have not been given any appointment order, they have filed the present writ petition.

3. The second respondent/Manipur Public Service Commission filed affidavit-in-opposition stating that in the Full Commission Meeting held on 08.03.2017, the recommendations in respect of the petitioners for the post of Assistant Professor in Mathematics was not confirmed, as the petitioners qualified NET in Population Studies only. As per the advice given by the UGC, the second respondent consulted with the experts and experts opined that Population Studies and Mathematics are quite different. The experts further opined that NET in Population Studies is not considered eligible in respect of Manipur University. The second respondent has accepted the views of the experts and the petitioners who were recommended against the unreserved vacancies were held ineligible for appointment to the post of Assistant Professor in Mathematics. Hence, prayed for dismissal of the writ petition.

4. The petitioners filed rejoinder to the affidavit-in-opposition stating that In the subject recruitment, NET in Population Studies was considered eligible In Statistics and a candidate, namely Oinam Premkumar, RoII No.11429, who possessed Master Degree In Statistics and NET In Population Studies has been recommended by the second respondent In the same recruitment and appointed In Government College affiliated under the Manipur University. Hence, the experts opinion that NET in Population Studies Is not eligible subject In Manipur University is not consistent with the fact of the present recruitment.

5. The learned counsel for the petitioners submitted that despite having been selected for the post of Assistant Professors under the subject Mathematics, the petitioners have not been issued appointment order till date and the act of the respondents in not giving the appointment order to the post of Assistant Professors in Mathematics is illegal, unlawful, arbitrary and also the petitioners have been deprived of their fundamental rights guaranteed by the Constitution of India.

6. The learned counsel further submitted that the Manipur University issued an Office Note dated 15.01.2008 thereby identifying some of the subjects as allied subjects. In that Office Note, for the Department of Mathematics, the allied subjects are Mathematics in Statistics / Operation Research / Population Studies / Econometrics / Computer Science / Information Technology / Physics. Thus, the subject Population Studies is an allied subject in Mathematics. However, a rider was added against their names in remark column that the selection is subject to their eligibility of NET in Population Studies, which is contrary to the Office Note dated 15.01.2008 issued by the Manipur University and prayed for a direction to the respondents to issue appointment orders to the petitioners to the post of Assistant Professors in Mathematics.

7. Per contra, the learned counsel appearing for the second respondent submitted that in respect of Mathematics subject, the recommendation of the petitioners was attached with a condition that subject to eligibility of NET in Population Studies. Further, many representations were received on various aspects and the issues were referred to the Full Commission and the Full Commission in its meeting held on 02.01.2018 has taken the petitioners issue and decided to send a remainder to the UGC and to wait order of the High Court. Despite several letters, the UGC vide its letter dated 08.02.2018 has clarified that the issue of equivalency and inter-disciplinary nature of essential qualification is to be decided by the concerned Appointing Authority/University with the help of subject experts in the relevant field.

8. The learned counsel further submitted that the Full Commission requested the Vice-Chancellor, Manipur University to nominate one Professor each of Computer Science, Mathematics and Political Science as subject expert and discuss the matters. After consideration, the expert opined that NET in Population Studies is not considered to be eligible in respect of Manipur University. The Commission has also accepted the opinion of the expert and decided that the petitioners who were recommended against the unreserved vacancies are ineligible for appointment to the post of Assistant Professor in Mathematics. According to the second respondent, there is no mala fide intention while considering the expert opinion. In support, the learned counsel relied upon the following decisions:

(i) Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University, Sirsa and another, reported in (2008) 9 SCC 284

(ii) Basavaiah (Dr.) v. Dr.H.L.Ramesh and others, reported in (2010) 8 SCC 372

(iii) University Grants Commission and another v. Neha Anil Bobde (Gadekar), reported in (2013) 10 SCC 519

9. Heard the submissions of the learned Government Advocate appearing for the first respondent State too.

10. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

11. The second respondent issued an Advertisement dated 15.11.2014 calling for applications from the qualified candidates for direct recruitment to the post of Assistant Professors in the disciplines mentioned therein for filling vacancies in 28 Government Colleges under the Higher Education Department, Manipur. The said Advertisement states "essential qualifications" as under:

(i) Good academic record, with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level and qualified in the National Eligibility Test (NET) or accredited test (State Level Eligibility Test SLET/SET).

(ii) NET/SLET/SET shall remain the minimum eligibility condition. However,

candidates, who are or have 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.

(iii) NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not conducted.

12. On 20.07.2015, the second respondent issued a notification, wherein it has been clarified that the Degree should be in the concerned subjects. On 23.10.2015, the second respondent issued corrigendum stating that Master's Degree in concerned subject and NET/SLET in the concerned subject should be read as "Master's Degree in the relevant subject and NET/SLET in the relevant subject".

13. The petitioners, who are the members of minority community and having Master Degree in Mathematics and also qualified NET in Population Studies have applied for the post of Assistant Professors in pursuance of the Advertisement dated 15.11.2014. On 06.11.2017, the second respondent declared results and the petitioners were selected under the subject Mathematics. In the said select list, against the name of the petitioners, a rider was added to the effect that the selection is subject to their eligibility of NET in Population Studies.

14. In the UGC NET-2013, guidelines were given in the application in respect of the subject and Population Studies appeared at Serial No.15. In the said application, it has been stated that the candidates with Master's Degree in Geography (with specialization in Population Studies) or Mathematics/Statistics are also eligible to appear in the subject Population Studies.

15. The Manipur University issued an Office Note dated 15.01.2008 thereby identifying some of the subjects as allied subjects and in that Office Note, it has been clearly stated that for the Department of Mathematics, the allied subjects are Mathematics in Statistics / Operation Research / Population Studies / Econometrics / Computer Science / Information Technology / Physics. The said Office Note of Manipur University has not been disputed by the respondents. Thus, it is clear that the subject Population Studies is an allied subject in Mathematics. However, the same has not been considered by the second respondent.

16. On the contrary, it is the say of the second respondent that they wrote a letter to the Higher and Technical Education Department, Government of Manipur qua technical issues of subject equivalence, wherein the Government has sought views from Manipur University. Since there is an urgency for recruitment to the post of Assistant Professors, the second respondent decided to initiate the process and totally 1471 candidates were admitted for the screening test while the issue of subject equivalence, NET etc., remained unresolved. Thereafter, the second respondent called 100 additional candidates for interview in respect of 13

subjects and the Full Commission recommended suitable candidates for Assistant Professors for the respective 13 subjects.

17. The learned counsel for the second respondent argued that despite several letters, the University Grants Commission, finally responded vide letter dated 08.2.2018 that the issue of equivalency and inter-disciplinary nature of the essential qualification is to be decided by the University with the help of subject expert in the relevant field. The second respondent consulted with the expert and the expert opined that NET in Population Studies is not considered eligible in respect of Manipur University. Accepting the views of the expert, the second respondent decided that the petitioners are not eligible for appointment to the post of Assistant Professors in Mathematics.

18. The aforesaid views taken by the second respondent is not in consonance with the Office Note dated 15.01.2008 issued by the Manipur University, wherein they have identified that for the Department Mathematics, the allied subjects are Mathematics in Statistics / Operation Research / Population Studies / Econometrics / Computer Science / Information Technology / Physics.

19. It is to be noted that the constitution of Full Commission and its meeting dated 08.03.2018 and also its reconsideration of petitioners recommendation are all after completion of all due process of recruitment and the final recommendation of petitioners appointment was made. Secondly, the second respondent never prescribed in its notification that NET should be in concerned subject i.e., Mathematical Science for Mathematics candidates, however, the second respondent prescribed NET in relevant subject and NET in Population Studies, which is relevant in Mathematics. Further, as rightly argued by the learned counsel for the petitioners, the University Grants Commission advised the second respondent to resolve the NET issue with consultation of subject expert and the advice could no be taken as freedom to decide the issue without conforming to the existing guidelines and recruitment notification.

20. Placing reliance upon the decision of the Hon'ble Supreme Court In Dr.Rajbir Singh Dalal, supra, particularly paragraph 25, the learned counsel for the second respondent contended that there is no mala fide Intention while considering the opinion of the expert and this Court cannot sit in an appeal over the opinion of the expert.

21. In Dr.Rajbir Singh Dalal, the Hon'ble Supreme Court held:

"25. In our opinion, in the present case, the anusanga principle of Mimansa should be utilised and the expression "relevant subject" should also be inserted in the qualification for the post of Reader after the words "at the Masters degree level. Hence, we cannot accept the submission of Mr.Patwalia in this respect. However we agree with Mr.Patwalia that since academic experts have regarded Political Science and Public Administration to be one discipline, it is not right for this Court to sit in appeal over the opinion of the experts."

22. The learned counsel for the second respondent contended that the Courts have to show deference and consideration to the recommendation of Expert Committee consisting of distinguished experts in the field. In support, he relied upon the decisions of the Hon'ble Supreme Court in *Dr. Basavaiah* (paragraphs 20, 21, and 38) and *Neha Anil Bobde* (paragraph 31), *supra*.

23. In *Dr. Basavaiah*, *supra*, the Hon'ble Supreme Court held:

"20. It is abundantly clear from the affidavit filed by the University that the Expert Committee had carefully examined and scrutinized the qualification, experience and published work of the appellants before selecting them for the posts of Readers in Sericulture. In our considered opinion, the Division Bench was not justified in sitting in appeal over the unanimous recommendations of the Expert Committee consisting of five experts. The Expert Committee had in fact scrutinized the merits and de-merits of each candidate including qualification and the equivalent published work and its recommendations were sent to the University for appointment which were accepted by the University.

21. It is the settled legal position that the courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High Court ought not to have sat as an appellate court on the recommendations made by the country's leading experts in the field of Sericulture.

.....

38. We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in academic matters, the courts have a very limited role particularly when no mala fide has been alleged against the experts constituting the selection committee. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an endeavour to sit in appeal over the decisions of the experts. The courts must realize and appreciate its constraints and limitations in academic matters."

24. In *Neha Anil Bobde*, *supra*, the Hon'ble Supreme Court held:

"31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the Regulations or the Notification issued, the Courts shall keep their hands off since those issues fall within the domain of the experts. This Court in *University of Mysore vs. C.D. Govinda Rao*, AIR 1965 SC 491, *Tariq Islam vs. Aligarh Muslim University* (2001) 8 SCC 546 and *Rajbir Singh Dalal vs. Chaudhary Devi Lal University* (2008) 9 SCC 284, has taken the view that the Court shall not generally sit in appeal over the opinion expressed by expert academic bodies and normally it is wise and safe for the Courts to leave the decision of academic experts who are more familiar with the problem

they face, than the Courts generally are. UGC as an expert body has been entrusted with the duty to take steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in the University. For attaining the said standards, it is open to the UGC to lay down any qualifying criteria, which has a rational nexus to the object to be achieved, that is for maintenance of standards of teaching, examination and research. Candidates declared eligible for Iectureship may be considered for appointment as Assistant Professors in Universities and colleges and the standard of such a teaching faculty has a direct nexus with the maintenance of standards of education to be imparted to the students of the universities and colleges. UGC has only implemented the opinion of the Experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or discriminatory or violative of Article 14 of the Constitution of India."

25. The University Grants Commission NET-2013 guidelines clearly mention that Master Degree in Mathematics/ Statistics can also appear in NET in Population Studies. However, the Full Commission has taken the decision without considering the recruitment notification, University Grants Commission's NET-2013 guidelines, Manipur University Office Note on allied subject and also the approach adopted in other disciplines of the same nature in the present recruitment. This Court is also of the view that the opinion of the expert which say Mathematics and Population Studies are quite different is not acceptable as the expert failed to notice that the prescribed NET qualification in the present recruitment is in relevant subject and not in concerned subject. Comparison of NET content in the concerned subject and relevant subject is illogical. More over, the comparison approach adopted by the expert is also not acceptable as the same lacks supporting guidelines, subjective in nature and also not applied in other disciplines which are of the same nature in the same recruitment. For an example, a candidate viz., Oinam Premkumar, Roll No.11429 who possessed Master Degree in Statistics and NET in Population Studies has been recommended by the second respondent in the same recruitment and appointed in Government College affiliated under the Manipur University. The said fact has not been disputed and/or denied by the second respondent.

26. According to the learned counsel for the petitioners, the University Grants Commission NET-2013 guidelines clearly mention that Master Degree in Mathematica/Statistics can also appear in NET in Population Studies. This clearly implies that Mathematics/Statistics and Population Studies are inherently relevant to each other in NET though they are separate as discipline of study. The said submission of the learned counsel for the petitioners merit acceptance. If Population Studies is not relevant in Mathematics, how could Manipur University consider the two subjects as allied subject. Further, Ph.D. and NET cannot be treated oppositely in relevancy issue and it cannot have two opposite view on the same issue that Ph.D. in Population Studies as relevant and NET in Population Studies as not relevant. As Population Studies is relevant/allied with Mathematics in Ph.D., it should have same implication in NET as well. Therefore, it is clear that

the expert opinion that NET in Population Studies is not eligible subject in Manipur University is not consistent with the facts of the present recruitment. Hence, this Court is of the view that in the given facts of the present case, the decisions relied upon by the learned counsel for the second respondent are not helpful to their case.

27. In the case on hand, the petitioners have fulfilled the eligibility criteria for the post of Assistant Professors as per UGC Regulation, 2010 by possessing the Master Degree in Mathematics with more than 55% mark and NET conducted by UGC. Having participated in the selection process and selected to the post of Assistant Professors, they cannot be denied the appointment on the question that they are not eligible for appointment to the post of Assistant Professors. In fact, the petitioners have established their case and therefore, they are eligible for the post of Assistant Professors in Mathematics. Thus, it is held that the decision of the second respondent that the petitioners are not eligible for appointment to the post of Assistant Professors in Mathematics is contrary to the existing guidelines, recruitment notification and other factual aspects. Therefore, this Court is of the considered view that the claim of the petitioners has to be considered positively by the second respondent by giving appointment to them.

28. In the result,

- a) the writ petition is allowed,
- b) the respondent authorities are directed to issue appointment orders to the petitioners to the post of Assistant Professors in Mathematics as per the notifications dated 06.11.2017 and 14.11.2017 issued by the second respondent against the unreserved vacancy. Since as per the orders of this Court dated 24.01.2018 two Assistant Professors in Mathematics posts were kept unfilled.
- c) the said exercise is directed to be completed within a period of twelve weeks from the date of receipt of a copy of this order. No costs.