
(2015) 05 RAJ CK 0148

In the Rajasthan High Court

Case No : Civil Writ Petition No. 13449 of 2012

Meena Kumari Gurjar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Jai Narain Vyas University Jodhpur Act, 1962 — Section 23(j)
National Commission for Backward Classes Act, 1993 — Section 11, 9(2)
University Grants Commission Act, 1956 — Section 26

Citation : (2015) 3 RLW 2371

Hon'ble Judges : Sunil Ambwani, C.J.;Ajit Singh, J

Bench : Division Bench

Advocate : Nihar Jain, for the Appellant; M.S. Singhvi, Abhishek Mehta, Vineet Dave, Sachin Acharya, Girish Joshi, Mohit Singhvi, R.S. Saluja, Tarun Joshi and Arpit Bhoot, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Sunil Ambwani, C.J.

1. We have heard learned counsel appearing for the parties.
2. Relying on the latest judgment of the Supreme Court in P. Suseela and Ors. Etc. Etc. v. University Grants Commission and Ors. Etc. Etc. (Arising out of SLP (Civil) Nos. 36023-36032 of 2010) decided on March 16, 2015, it is submitted by learned counsel appearing for the petitioner that the Jai Narain Vyas University, Jodhpur (for short "the University") could not insist upon the qualifications in the Ordinance No. 317, vide Notification dated 27.09.2011, for appointment as Assistant Professor/Lecturer under section 23(j) of the Jai Narain Vyas University, Jodhpur Act, 1962, in accordance with the qualifications provided in the University Grants Commission Regulations (Minimum Qualifications Required for the Appointment And Career Advancement of Teachers in Universities and Institutions affiliated to it) (the third Amendment) Regulation 2009 (for short, "the Regulations of 2009") made by University Grants Commission, for which the

NET/SLET, and not Ph.D. is to be the minimum eligibility criteria for recruitment and appointments of Lecturers in all the Universities/Colleges/Institutions, after 11.07.2009.

3. The petitioner has prayed for the following reliefs:--

"A. By an appropriate writ order or direction, the respondents may kindly be refrained from conducting interview for the said posts.

B. By an appropriate writ order or direction, the note: The candidates, who are admitted/awarded the Ph.D. degree prior to 11th July, 2009 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 as amended from time to time shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor/Lecture". In the advertisement No. 74/2011-12 issued in the month of November, 2011 (Annexure-5) may kindly be quashed and set aside.

C. By an appropriate writ order or direction, the respondents may kindly be directed to suspend the granting of appointment to the ineligible applicants on the said posts.

D. By an appropriate writ order or direction, the Ordinance No. 317 Jai Narain Vyas University Act (as amended) Notification dated 27.09.2011 (Annexure-4) may be declared Ultra vires the regulations of the 2009 and 2010 to the extent of inconformity with the UGC regulations may be declared unconstitutional and inoperative.

E. By an appropriate writ, order or direction, the respondents may kindly be directed to grant appointment to the petitioner if found eligible candidate according to the Eligibility criteria as prescribed in the Regulations of 2009 and the Regulation of 2010 for the post of Assistant Professor/Lecturer.

F. By an appropriate writ, order or direction, any rejection or any order which is passed in relation to the petitioner for the post of Assistant Lecturer during the pendency of the writ petition then the same may kindly be treated as part and parcel of the writ petition and it may be quashed and set aside.

G. By appropriate writ, order or direction the respondent may kindly be directed to make necessary amendment in the Ordinance of the Jai Narain Vyas University in conformity with the Regulation of 2009 and the regulations of 2010.

H. By appropriate writ, order or direction the record of the Case may kindly be called for and after examining the same this Hon''ble Court by an appropriate writ, order or direction quash and set-aside the impugned Advertisement No. 74/2011-12 (Annexure-5) and the impugned Ordinance No. 317 (Annexure-4).

I. By an appropriate writ, order or direction a mandate be issued to the respondent University to abide by the UGC Regulations of 2009. The

appointments which has been made if any in pursuance of Ordinance 317 may kindly be quashed and set-aside and fresh selection process may be directed to be started in pursuance of the UGC Ph.D. Regulation 2009.

J. By appropriate writ, order or direction If need be the UGC Regulation of 2009 may kindly be quashed and set-aside to the extent it permits exemption to Ph.D. degree holders upto 11.07.2009. If during pendency of this Writ Petition if selections are being made then same may be quashed.

K. By appropriate writ, order or direction It is further submitted that appropriate action including the contempt proceedings be initiated against the Chairman and Secretary UGC as well as against the Principal Secretary of Higher Education.

L. By appropriate writ, order or direction the respondent may kindly be directed to amend the Act/Statutes of Jai Narain Vyas University Jodhpur Act 1962 if occasion so arises.

M. By appropriate writ, order or direction the Respondents University be directed to restrain from conducting the interview and may also be restrained from declaring the Result of the said Selection Process if the same is carried during the pendency of the Writ Petition.

N. Cost of litigation may kindly be awarded to the humble petitioner."

4. The petitioner applied for appointment on a post of Assistant Professor in Mathematics, in pursuance to the advertisement No. 74/2011-12 issued in the month of November, 2011, for which the selections started in December, 2012 and were concluded in January, 2013. The writ petition was filed on 18.12.2012 challenging the advertisement and the selections.

5. In *P. Suseela v. University Grants Commission (supra)*, the Supreme Court has upheld the Division Bench judgment of the Rajasthan High Court in *Ravindra Singh Shekhawat v. Union of India and Ors.* (D.B. Civil Writ Petition No. 8582/2011 and other connected writ petitions) decided on 13.9.2012 and has set aside the judgment of the Allahabad High Court, in which a different view was taken with regard to the qualifications. The Supreme Court, after considering the entire issue, has held that the qualifications recommended by the University Grants Commission under the Regulations of 2009 and 2010, are binding on all the Universities under section 26 of the University Grants Commission Act, 1956.

6. Vide order dated 14th November, 2014, the petitioner was required to implead the person, who was selected and appointed as Assistant Professor in Mathematics. An impleadment application was filed, which was allowed on 10.12.2014 and the notice was issued to the newly impleaded respondent No. 11. The office reports that the respondent No. 11-Ms.Firdous Ansari has been served, however, nobody has put in appearance on her behalf.

7. Mr. M.S. Singhvi, learned Senior Counsel appearing for the University has relied on the judgment of the Supreme Court in *University of Delhi Vs. Raj Singh*

and others, AIR 1995 SC 336 : (1994) 6 JT 1 : (1994) 4 SCALE 10 : (1994) 3 SCC 516 Supp : (1994) 3 SCR 217 Supp : (1994) 3 SLJ 116 : (1994) 2 UJ 753 , in which the recommendations of the University Grants Commission were held to be ordinarily binding upon the Universities.

8. Learned Senior Counsel appearing for the University submits that the writ petition is barred by non-impleadment of all the persons, who were selected, acquiescence and laches. He submits that the petitioner had full knowledge of the Regulations of 2009 and 2010 when she applied and appeared in the selections. She could not have thereafter turned around and challenged the selections after two years of making the application. The selected persons, who do not have requisite qualifications in accordance with the Regulations of 2009 and 2010, have not been impleaded. Out of 109 persons selected as Assistant Professors, only 31 did not have the NET qualification. They however, had Ph.D. degrees, on which they were selected in pursuance to the qualifications prescribed in the Ordinances notified by the University.

9. In *Ram Singh and Ors. v. Union of India* (Writ Petition (Civil) No. 274 of 2014 and connected writ petitions) by a judgment delivered by Hon'ble Supreme Court on March 17, 2015, in Jat reservation matter, it was held in paragraph-19 while interpreting the provisions of Section 9(2) of the National Commission for Backward Classes Act, 1993, which provides that "advice of the Commission shall ordinarily be binding upon the Central Government", that even in a situation contemplated by Section 11 of the Act, the views of the National Commission for Backward Classes would be equally compulsive and binding and should commend for acceptance of the Central Government except in situations where there are strong, compelling and overwhelming reasons not to do so.

10. We do not find that there are any such strong and compelling reasons in the present case, which may entitle the University not to accept the recommendations under Regulations of 2009 and 2010, and the directions of the Central Government in variance with the Ordinances of the University. The Supreme Court in *P. Suseela and Ors. v. University Grants Commission and Ors.* (supra) has clearly held that the directions issued by the Central Government in the matter of qualifications under the Regulations of 2009 and 2010 are binding on the Universities and that after the cut-off date in the Regulations, the NET/SLET qualifications would be essential eligibility for appointment on the post of Assistant Professor in the Universities recognized by the University Grants Commission.

11. The petitioner did not file the writ petition with any such unreasonable delay, on which she may be denied an opportunity of hearing, especially when the question of law was decided by the Rajasthan High Court and thereafter, the matter was pending in the Supreme Court and the judgment in *P. Suseela and Ors. v. University Grants Commission and Ors.* (supra) was rendered on March 16, 2015. She may not be entitled to the relief of cancelling advertisement and the appointments of all the Assistant Professors selected, but she is on the ratio

of the judgment in P. Suseela and ors. v. University Grants Commission and ors. (supra) entitled to the relief qua the post she having qualifications of NET, had applied and on which, the respondent No. 11 was selected without having qualifications of NET/SLET as prescribed in the Regulations of 2009.

12. The writ petition is accordingly partly allowed to the extent that the appointment of the respondent No. 11- Ms. Firdous Ansari is held to be bad in law and in violation of the recommendations made by the University Grants Commission in the Regulations of 2009, which are binding upon all the Universities, as held in P. Suseela and Ors. v. University Grants Commission and Ors. (supra) and for which, this Court had already decided the matter as long as back on 13.9.2012 in Ravindra Singh Shekhawat v. Union of India and ors. (supra), which has been affirmed by the Supreme Court. The appointment of respondent No. 11 is thus set aside and the Jai Narain Vyas University is directed to consider the petitioner for appointment as Assistant Professor in Mathematics, in the light of the judgment of the Supreme Court in P. Suseela and Ors. v. University Grants Commission and Ors. (supra) and to pass appropriate orders within a period of one month.