

(2014) 02 TP CK 0045

In the Tripura High Court

Case No : Writ Petition (C) No. 04 of 2013

Ms. Mery Rupini, Ms. Bina Rani Tripura, Ms. Himabati Reang and Ms. Rojina Debbarma Vs The University Grants Commission and The Union of India

Date of Decision : 28-02-2014

Acts Referred:

Citation : (2014) 02 TP CK 0045

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : A. Paul, for the Appellant; P.K. Biswas, Sr. ASG., for the Respondent

Final Decision : Allowed

Judgement

S.C. Das, J.—University Grants Commission (for short, UGC), the respondent No. 1, declared Notification for National Eligibility Test (for short, NET) June-2012 for Junior Research Fellowship and for Lectureship. The petitioners being eligible candidates with a view to acquire the eligibility for Lectureship applied for appearing in the National Eligibility Test for Junior Research Fellowship and Eligibility for Lectureship, June-2012 conducted by the UGC. The result of the said examination was published on 18.09.2012. According to the Notification (Annexure-P/6 to the writ petition) the petitioners were supposed to appear in the examination in three papers. All papers consist of only objective type questions and the examination was held on 24.06.2012 in two separate sessions--Paper-I, Teaching and Research Aptitude (General paper for all candidates), Paper-II, Subject Paper, Paper-III, Subject paper. As per the Notification, a candidate belonging to particular category supposed to secure mark as follows:

1.1. All the petitioners are belonging to Schedule Tribe (ST) category.

1.2. Petitioner No. 1 secured 54.00% marks in Paper-I, 50.00% marks in Paper-II and 41.33% marks in Paper-III and in aggregate 47.43% marks in the UGC-NET Examination, June-2012.

1.3. Petitioner No. 2 secured 68.00% marks in Paper-I, 44.00% marks in Paper-II and 41.33% marks in Paper-III and in aggregate 49.71% marks in the UGC-NET Examination, June-2012.

1.4. Petitioner No. 3 secured 54.00% marks in Paper-I, 36.00% marks in Paper-II and 49.33% marks in Paper-III and in aggregate 46.86% marks in the UGC-NET Examination, June-2012.

1.5. Petitioner No. 4 secured 62.00% marks in Paper-I, 42.00% marks in Paper-II and 45.33% marks in Paper-III and in aggregate 49.14% marks in the UGC-NET Examination, June-2012.

1.6. According to the criteria prescribed in the Notification(Annexure-P/6 to the writ petition) all the petitioners being Scheduled Tribe candidates were eligible for lectureship but in the result declared on 18.09.2012, to their utter surprise and dismay, they found their roll numbers were not reflected in the results-sheet though they all successfully qualified for the NET Examination.

1.7. It is contended by the petitioners that after the examination was held, another criteria was prescribed by UGC contending that over and above the marks secured in particular subject, a candidate should secure an aggregate percentage of mark. A copy of that Notification is annexed as Annexure-P/8 to the writ petition, which reads as follows:

1.8. The petitioners, therefore, prayed that the change in the criteria in the middle of the process, after the test was conducted, was illegal and unjustified, and therefore, not sustainable in law and fact. It is also contended that UGC was not empowered to change the criteria after the whole exercise was over just before the pronouncement of the result. The petitioner, therefore, prayed for declaring them as NET qualified from the date of publication of the result of the NET Examination held in June, 2012.

2. Respondents have chosen not to contest the petition by filing affidavit-in-opposition.

3. Heard learned counsel, Mr. A. Paul for the petitioners and learned Sr. ASG, Mr. P.K. Biswas for the respondents.

4. Learned counsel, Mr. Paul has submitted that all the petitioners secured qualifying marks in the NET June, 2012 Examination so far their marks sheet reflects issued by the respondents. The marks sheet of petitioner No. 1, petitioner No. 2, petitioner No. 3 and petitioner No. 4 are annexed as Annexure-P/2, P/3, P/4 and P/5 respectively. Those marks sheets clearly reflect that in all three papers they secured qualifying marks as prescribed in the Notification for NET June, 2012 Examination. UGC was, therefore, bound to hold the petitioners as qualified. Notification dated 24.06.2012 (Annexure-P/8) cannot be applied in the present case of the petitioners since it was issued after the examination was held. The petitioners cannot be made victim of that Notification and the petitioners are entitled to get the certificate of NET cleared. Learned counsel, Mr.

Paul has further submitted that the petitioners on query of the results sheet found at least three candidates, who also secured similar marks like that of the petitioners but did not secure the aggregate marks as prescribed in Annexure-P/8 to the writ petition, whereas they have been shown as qualified in the results sheet. The marks sheet of those three candidates have been reflected in para 13 of the writ petition as follows:

It is, therefore, submitted by Mr. Paul, learned counsel that the results declared by the UGC was incorrect and wrong and the petitioners have been deprived of their right.

5. Learned Sr. ASG, Mr. Biswas has submitted that the respondents did not come out with any counter affidavit, and hence he has hardly anything to submit on the merit of the petition.

6. In course of argument, learned counsel, Mr. Paul has referred the case of Hemani Malhotra Vs. High Court of Delhi, and also referred a judgment of Kerala High Court in WP (C) No. 22187 of 2012 (Roopkala Prasad v. The University Grants Commission & Ors.) and other writ petitions (paras. 4, 5, 6, 7, 45, 46 and 53).

7. The petitioners were all eligible for appearing in the NET Examination. Their admit cards have been annexed as Annexure-P/1 series. They appeared in the examination and marks sheet were issued by the UGC. The marks sheet so issued clearly stipulate that they secured qualifying marks as prescribed in paragraph 7 of the Notification issued by UGC (Annexure-P/6). While they secured the qualifying marks in the eligibility test as per the Notification of the UGC, which was in force at the time of holding the examination, the UGC was not supposed to enforce/prescribe a different criterion for the eligibility after the examination was over. A game has to be played according to the rules applicable at the time the game was played. Any rule made subsequently cannot be enforced for the game already played. The Supreme Court in the case of Hemani Malhotra (supra) in para 15 of the judgment has held:

15. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and vive voce, but if minimum marks are not prescribed for vive voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at vive voce, test was illegal.

8. Several writ petitions were filed before Kerala High Court raising the same issue in WP (C) No. 22187 of 2012 & Ors., which is referred by learned counsel, Mr. Paul and I find that the High Court allowed the writ petitions. In the present case, since Annexure-P/8 cannot be applied to the case of petitioners, being a Notification issued subsequent to the examination was held, the respondents-

UGC was/is bound to declare the result of the petitioners holding them eligible in NET Examination. Accordingly, the writ petition is allowed. The petitioners since secured qualifying marks for the lectureship in the NET June, 2012 Examination, the respondents are directed to publish the results of the petitioners as qualified in National Eligibility Test for Lectureship of June, 2012 within one month from today. No cost.