

(2007) 08 GAU CK 0091
In the Gauhati High Court
Case No : Writ Petition (C) No. 8660 of 2005

Pranjal Hazarika

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Citation : (2008) GLT 775 Supp

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : K.K. Mahanta and A. Somua, for the Appellant; T. Islam, Y.K. Phukan and D. Das, for the Respondent

Judgement

B.K. Sharma, J.—The Petitioner has invoked the writ jurisdiction of this Court seeking a direction to the Respondents, more particularly, the Respondent No. 2 i.e. the Director of Higher Education to accord necessary approval for appointment of the Petitioner as Lecturer in Political Science in the college called-Anandaram Dhekial Phukan College (in short ADP College) in the district of Nagaon for which the Petitioner has been selected by a duly constituted selection committee.

2. The Petitioner is a 1st Class Master Degree holder in Political Science consistently with a good academic records all throughout his academic career. He is also recipient of a number of awards and is also Bachelor of Music. He joined as Lecturer in Political Science in July, 2002 in another college namely, Batadrava Sri Sri Sankardev College in the district of Nagaon and after continuing in the said college, gathered teaching experience.

3. Pursuant to the advertisement dated 26.4.2003 published by the authority of the ADP College inviting applications from candidates for filling up/appointment in the regular vacant post of Lecturer in the department of Political Science, the Petitioner offered his candidature. Be it stated here that in the advertisement, it was stated that preference would be given to the candidates having Group "A" in

the Master Degree. Be it also stated here that the Petitioner is the Master Degree holder in Group "A" stream with 67.5%, marks. At the time of filing the writ petition, the Petitioner also appeared in the SLET Examination.

4. Although in the advertisement, it was indicated that NET/SLET would be considered as per the Circular issued by the Director of Higher Education i.e. the Respondent No.2, but according to the Petitioner, there was no candidate with NET/SLET qualification who had responded to the advertisement. Situated thus, the college authority had no other option than to adopt the resolution to appoint the candidate without the qualification of NET/SLET.

5. The interview for the post was held on 28.6.2003 and admittedly, the Petitioner was placed at the first position in the merit list. Thereafter, in acceptance of the recommendation of the selection committee, the Governing Body of the college by its resolution dated 28.6.2003 resolved to appoint the Petitioner. Consequently, as per the requirement of the relevant rules, the relevant papers were sent to the Director of Higher Education for according approval towards appointment of the Petitioner. In the meantime, by way of another resolution dated 22.7.2003, the Governing Body decided to appoint the Petitioner as Lecturer in Political Science on contractual basis. It is the grievance of the Petitioner that although he was selected against regular vacancy, the Respondents appointed him on contractual basis instead of appointing him on regular basis.

6. Although the college authority made the request to the Director of Higher Education for according approval towards appointment of the Petitioner, but no approval towards was accorded. In the meantime, the college authority by its letter dated 9.7.2004, appointed the Petitioner as Lecturer at a consolidated pay of Rs. 2,000/-. The Petitioner has been continuing in his service till date. By Annexure-7 communication dated 3.10.2005, the Director of Higher Education requested the college authority to furnish certain information to which the Principal of the college by his letter dated 29.10.2005 (Annexure-8 to the writ petition) duly replied.

7. When the matter rested thus and the appointment of the Petitioner was not materialized, the Petitioner filed the instant writ petition with the aforesaid prayer and also expressing apprehension that his service might be terminated.

8. The Respondent No.2 i.e. the director of Higher Education has filed the counter affidavit contending, inter alia, that since the Petitioner is neither PhD degree holder nor has cleared NET/SLET as per the UGC guidelines, no approval for his appointment can be granted. In this connection, the decision of this Court dated 6.5.2004 in W.P. (C) No.4862/2001 has also been referred to, to contend that apart from the requisite percentage of marks in the Master Degree level, a candidate must clear NET/SLET. However, paragraph-8 of the counter affidavit, the following statement has been made:

(8) That on the facts and circumstances stated above the deponent cannot

approve the proposal sent by the authorities of the ADP College, Nagaon for appointment of the Petitioner. However, 104 numbers of such cases including the name of the Petitioner have been forwarded to the Government for necessary orders.

9. The Petitioner has filed an affidavit-in-reply contending, inter alia, that the Respondents themselves have relaxed the qualification of the NET/SLET and thus, he is also entitled to similar relaxation. Be it stated here that in the meantime, the Petitioner has cleared NET which has been brought on record by filing affidavit on 26.7.2006. In this affidavit also, the Petitioner has referred to some appointments made in relaxation of qualification of NET. The Petitioner has also indicated that in the meantime, he has submitted his thesis relating to PhD degree.

10. I have heard Mr. K.K. Mahanta, learned senior counsel assisted by Mr. A. Somua, learned Counsel for the Petitioner as well as Mr. T. Islam, learned Standing Counsel, Education Department. I have also heard Dr. Y.K. Phukan, learned senior counsel assisted by Mr. D. Das, learned Counsel representing the college authority.

11. This Court noticing the fact that the Director of Higher Education, Assam has referred the case of the Petitioner to the Government for a decision in the matter and that in the meantime, since the Petitioner has also cleared NET, issued direction to the Government in the concerned department to take a decision in the matter. In response to the direction so issued, the department has filed an affidavit on 24.7.2007 through the Under Secretary. In the affidavit, it has been stated that as per the UGC norms, the requirements for appointment as Lecturer are 50% marks in Post Graduate degree coupled with NET/SLET/M.Phil/PhD. However, nothing has been stated as to whether the Government is prepared to take a decision in the matter in terms of the reference made by the Director of Higher Education.

12. During the course of hearing, Mr. Mahanta, learned Sr. counsel for the Petitioner has produced the copy of the letter dated 9.12.2004 issued by the UGC to the Gauhati University. The letter relates to general criteria for giving exemption from NET. In the letter, the consideration of the UGC relating to exemption in respect of the requirement of NET has been indicated. As per the said letter, the NET exemption may be granted under special circumstances such as, NET examination being not held and NET/SLET qualified candidates being not available when interviews were held following the due procedure. Placing reliance on this letter, Mr. Mahanta, learned Counsel for the Petitioner has submitted that since at the time of conducting the selection, there was no NET/SLET qualified candidates, but the selection was held following the due procedure, the authorities are bound to accept the recommendation of the selection committee and more so, when the Petitioner has in the meantime, cleared the said qualification.

13. The letter dated 30.11.2004 issued to the Government by the Director of Higher Education enclosing therewith the list of 64 candidates having NET/SLET or PhD degree and 104 candidates without NET/SLET qualification respectively is also on record. By the said letter, the Director of Higher Education, while forwarding both the lists, sought for necessary approval of the Government towards appointment of the incumbents. In the letter, it was indicated that the college authorities have selected the candidates against the valid sanctioned post. In the list of 104 candidates, the name of the Petitioner also appears. However, since there was no response to the same from the Government, this Court by the aforesaid order dated 5.6.2007 desired to know the decision of the Government. The direction was also issued to take a decision in the matter.

14. Pursuant to the aforesaid direction, the stand of the Government has been reflected in the affidavit filed on 5.6.2007, about which a mention has been made above. In this affidavit, except stating about the eligibility criteria as per the UGC norms, nothing has been stated as to whether the Government is prepared to grant necessary approval. However, in paragraph-5 of the said affidavit, it has been stated in reference to the Office Memorandum dated 17.7.2004 (copy not enclosed) that the appointments in sanctioned posts will be made only if the person concerned has the requisite norms i.e. 55% marks in Post Graduate degree and NET/SLET/M.Phil/PhD as per the UGC norms. Upon a reference to the said office memorandum dated 17.7.2004, it has also been stated that the regularization of services of Lecturers would be made effective from the date of actual appointment and joining in the sanctioned posts or acquisition of UGC norms, whichever is later.

15. From the materials on record, it appears that no clear-cut decision has been taken in the matter. The Respondents have also not attended to the fact that the Petitioner, in the meantime, has obtained NET qualification. Further, as per Annexure-1 to the affidavit-in-reply filed by the Petitioner to the affidavit-in-opposition of the Respondent No. 2, it appears that the Government of Assam in the Education (Higher) Department appointed as many as 97 Lecturers in various Government colleges with the condition that such appointments are subject to clearance of NET/SLET in due course as per the UGC norms. Placing this letter on record, the Petitioner has contended that similar benefits should also be extended to the Petitioner, more so, when he has already cleared the NET qualification. The Petitioner has also referred to Annexure-2 office memorandum dated 6.7.2005 annexed to the affidavit-in-reply by which the under-qualified Lecturers of the deficit colleges under grants-in-aid have been provided with the revised pay scale with effect from 1.1.1996 with the condition that the said Lecturers would be entitled to get the benefit of UGC pay scale with prospective effect subject to clearing PhD/M.Phil as per the UGC norms.

16. The Petitioner has also placed reliance on the Annexure-4 notification dated 20.4.2005 annexed to the rejoinder affidavit by which the Lecturers named therein have been appointed without insisting on NET/SLET. They have been

appointed with the stipulation that they would be required to obtain NET/SLET within two years from the date of notification. In this connection, the Petitioner has also referred to the similar orders annexed to the rejoinder affidavit.

17. From the aforesaid materials on record, it cannot be said that the Respondents have all along strictly adhered to the requirement of NET/SLET qualification. It appears that time to time relaxation has been extended to the candidates, who did not have NET/SLET. The decision on which the learned Standing Counsel, Education has placed reliance, may not be strictly applicable to the case in hand. In the said case, a challenge was made to the appointment of the private Respondent who admittedly ranked below the Petitioner in the merit list. However, it was contended that the Petitioner did not have the requisite qualification as per the UGC norms. The Petitioner and the candidates above the private Respondent did not have the qualification of NET. In such circumstances, the Governing Body of the college recommended the name of the private Respondent for appointment, he being the NET qualified candidate. It was in that context, this Court upheld the decision of the authority to appoint the private Respondent.

18. Unlike the above cases, in the instant case, there is no challenge to the recommendation made in favour of the Petitioner. It has also not been disputed that at the time of conducting the selection, none of the candidates had the qualification of NET/SLET. It is in this context, the learned Counsel for the Petitioner has placed reliance on the aforesaid letter dated 9.12.2004 issued by the U.G.C. to the Gauhati University indicating the permissible relaxation in respect of the NET/SLET. One such situation relating to permissible relaxation is when the NET/SLET qualified candidates are not available and the interview is held following the due procedure.

19. In view of the above, the Respondents will have to take a decision in the matter as was ordered by this Court on 5.6.2007. They will also bear in mind that the similarly situated candidates were appointed in the past granting relaxation with the stipulation of clearing NET/SLET in near future. It will also be born in mind that in the meantime, the Petitioner has obtained NET qualification.

20. The matter is sent back to the Government in the concerned department to take a decision in the matter in reference to the letter dated 30.1.2004 by which the Director of Higher Education, Assam forwarded the proposal for appointment of candidates without NET/SLET, to the Commissioner and Secretary to the Government of Assam in the Education (Higher) Department. The Government shall take a decision consistently with the observations made above. Entire exercise shall be carried out as expeditiously as possible, but at any rate, not later than 3 (three) months from today. Till such time, the Petitioner shall be allowed to continue in his service in the college.

21. With the above direction, the writ petition is disposed of without, however, any order as to costs.