
(2013) 09 MAD CK 0277

In the Madras High Court

Case No : Writ Petition No's. 5223, 6146, 6611, 9451 to 9454 of 2013

S. Bharathi

APPELLANT

Vs

Bharathiyar University

RESPONDENT

Date of Decision : 23-09-2013

Acts Referred:

Citation : (2013) 7 MLJ 131

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : S.M. Subramaniam, for the Appellant; S.T.S. Murthi and P.R. Gopinathan, for the Respondent

Judgement

K.K. Sasidharan, J.

Introductory:-

1. These writ petitions at the instance of aspiring teachers, challenges the result of State Eligibility Test conducted by Bharathiyar University and the National Eligibility Test conducted by the University Grants Commission (hereinafter referred to as "UGC") during the year 2012, primarily on the ground that the eligibility criteria was changed after conducting the qualifying examination for determining the eligibility for recruitment of lecturers in Universities and Colleges in the State of Tamil Nadu and Union Territory of Puducherry. There are two sets of writ petitions. The first batch relates to the examination conducted by the UGC. The second batch relates to the examination conducted by Bharathiyar University.

2. Since the writ petitioners are aggrieved by the change in the qualifying criteria after conducting the test, I consider it not necessary to narrate the facts of individual writ petitions and the marks secured by the candidates in the qualifying test.

Factual matrix:-

3. The UGC issued a notification in April 2012, calling for applications from eligible candidates for determining the eligibility of Indian Nationals for awarding Junior Research Fellowship and Eligibility for Lectureship in Indian Universities and Colleges. The UGC notified that the test would consist of three papers. All the three papers will be of objective type. Paper I shall be of general nature, intended to assess the teaching/research aptitude of the candidates. Paper II shall consist of 50 objective type compulsory questions based on the subject selected by the candidates. Paper HI will consist of 75 objective type compulsory questions from the subject selected by the candidate. Candidates are required to obtain minimum marks separately in Paper I, Paper II and Paper HI. The notification contains details of the minimum marks in Paper I, Paper II and Paper III. The UGC notified that only such candidates who secured the minimum required marks separately will be considered for final preparation of results. However, it was indicated that the final qualifying criteria for Junior Research Fellowship and Eligibility for Lectureship would be decided by UGC before declaration of results.

4. The Bharathiyar University, Coimbatore, issued a similar notification for conducting State Eligibility Test for Lectureship. The notification was issued on 10 August 2012. The University announced that the test would be conducted on 7 October 2012 for determining the eligibility of Indian Nationals for requirement as lecturers in the Universities and Colleges in Tamil Nadu and Union Territory of Puducherry. The Bharathiyar University adopted the very same scheme formulated by UGC. The notification issued by UGC with regard to the three papers and the minimum marks and the condition that only such candidates who obtain minimum marks in each paper separately would be considered for final preparation of result and that final qualifying criteria for Eligibility for Lectureship would be decided by Moderation Committee before declaration of results, were also included in the said notification.

5. The challenge is primarily against the unilateral decision taken by UGC to change the eligibility criteria.

6. The University Grants Commission conducted the eligibility test on 24 June 2012. The Bharathiyar University conducted test on 7 October 2012. UGC published the results on 18 September 2012. Similarly, Bharathiyar University declared results on 9 February 2013. Name of the petitioners were not found in the list published by UGC and Bharathiyar University. UGC after publishing results on 18 September 2012, released a press note on 19 September 2012 that in addition to the minimum marks which the candidates were supposed to obtain individually in three papers, candidates were required to obtain aggregate marks of 65% for General Category, 60% for OBC (Non Creamy layer) and 55% for SC/ST/persons with disabilities. It was only from the press note issued by UGC, the petitioners came to know of the reasons for their failure in the eligibility test. This made the petitioners to challenge the change of eligibility criteria after holding examination. The petitioners now wanted UGC and Bharathiyar University

to declare that the candidates who had secured the minimum aggregate marks have passed in the eligibility test.

7. The University Grants Commission filed a counter affidavit in some of these writ petitions. UGC contended that there was a specific statement in the notification that only those candidates who obtain minimum marks would be considered for final preparation of results. The notification very clearly stated that final qualifying criteria for Junior Research Fellowship and Eligibility for Lectureship shall be decided before declaration of results. UGC contended that the petitioners submitted applications with clear knowledge and having appeared for the examination on the basis of the notification were not entitled to question the declaration of results and that too, by challenging the relevant clause giving authority to the UGC to fix the final qualifying criteria.

8. The Controller of Examinations cum Secretary, State Eligibility Test, Bharathiyar University, filed a detailed counter affidavit in the respective writ petitions challenging the action taken by the University to change the eligibility criteria, after conducting the test. The University contended that in accordance with the guidelines issued by UGC, Moderation Committee was constituted. The Moderation Committee conducted a meeting on 4 February 2013, under the Chairmanship of Vice Chancellor. The committee meeting was attended by the Member Secretary of UGC, U-CAT Nominee and Vice Chancellor Nominee, besides the Controller of Examinations. The Committee unanimously adopted the changes prescribed by UGC for declaring results of State Eligibility Test, 2012. According to the University, altogether 59190 candidates have applied through online for examination, out of which, approximately, 52000 candidates appeared for the examination. The University found that only 5495 candidates qualified in the selection process. The University further contended that UGC is entitled to fix the norms to select the best candidates to the teaching profession. It was contended that the petitioners failed to secure the cut off marks and as such, the writ petitions challenging the eligibility criteria after such declaration is clearly not maintainable.

Submissions:-

9. The learned counsel appearing on behalf of the respective petitioners contended that UGC and Bharathiyar University conducted only the eligibility test. It was not an examination for selecting personnel for teaching profession. Petitioners were made to believe that in case they obtain minimum marks, their results would be declared. The examining body was not correct in changing the eligibility criteria after holding the written test.

10. The learned counsel for UGC submitted that there was a clear statement in the notification issued by UGC that final eligibility criteria would be fixed after conducting the examination. The petitioners were in the know of things and as such, there is no merit in the contentions now raised by them.

11. The learned counsel for Bharathiyar University submitted that the University

in its notification made it very clear that final qualifying criteria for Eligibility for Lectureship would be decided by SET 2012 Moderation Committee before declaration of results. There was no promise given by the University to the students that in case they secure minimum required marks, they would be declared as passed in the test. The University made it very clear that only those candidates who obtain minimum required marks in each paper separately would be considered for final preparation of results, meaning thereby, final results would be subject to the eligibility criteria to be prescribed by the Moderation Committee subsequent to the examination and before declaration of results.

Object of conducting qualifying examination:-

12. Before considering the question now raised by the petitioners in the respective writ petitions, it is necessary to consider the object in prescribing national eligibility test and State Eligibility Test.

13. The University Grants Commission wanted to prescribe uniform standard for lecturers to be appointed throughout the country. UGC found that there were disparities in the process of valuation while awarding degrees by various universities. UGC therefore wanted to ensure that the candidates who applied for lectureship across the country must possess certain minimum qualification to be assessed on the basis of their performance either in the National Eligibility Test or in the State Eligibility Test.

14. The action taken by UGC to prescribe the National Eligibility Test in order to secure uniformity in the standard of teaching across the country was the subject matter of a writ petition before the High Court of Delhi. Delhi High Court held that provisions of UGC (Qualifications required of a person to be appointed to the Teaching Staff of a University and Institutions Affiliated to it) Regulations, 1991, notified on 19 September 1991 were valid and mandatory. The High Court directed the Delhi University to select lecturers for appointment in University and affiliated colleges strictly in accordance with the UGC regulation. The matter was taken up before the Supreme Court in *University of Delhi Vs. Raj Singh and others*, .

15. The Supreme Court in *University of Delhi v. Raj Singh* (cited supra), observed that the genesis of the regulations were found in the recommendations made by the expert body of educationists from time to time. The recommendations given by various committees of eminent men in the field of education to examine the structure of emoluments and conditions of service of University and college teachers and to make recommendations in this behalf "having regard to the necessity of attracting and retaining talented persons in the teaching profession and providing advancement and opportunities to teachers of Universities and colleges", were placed before the conference of Vice Chancellors held under the auspices of University Grants Commission in 1989. The Vice Chancellors conference recommended implementation of qualifying test for recruitment of lecturers. The Committee made it clear that National level Test must be

conducted to determine the eligibility of lecturers. Similarly, in case the State Government conducts such test, it should be conducted in regional languages also. UGC on the basis of the report submitted by the experts and the decision taken in the conference of Vice Chancellors, framed regulations prescribing NET as a qualifying test for recruitment of lecturers across the country.

16. The Supreme Court in *University of Delhi v. Raj Singh* (supra), after considering the background facts relating to the regulations in respect of National Eligibility Test, observed that the regulation do not imbibe upon the power of the University to select its teachers. It is open to the University to select its teachers by written test or interview or either. Successful candidates at the basic eligibility test prescribed by the Regulations are awarded no marks or ranks and, therefore, all who have cleared it stand at the same level. The Supreme Court made it clear that there is no element of selection in the process by holding NET.

Discussion:-

17. The UGC at the National level and Bharathiyar University at the State level conducted eligibility test. The notification contains the minimum marks to be secured by the candidates separately in Paper I, Paper II and Paper III, as under:-

18. The notification contains the following statement with respect to the minimum required marks, the preparation of ratio, final qualifying criteria etc., after holding the test. It reads thus:-

Only such candidates who obtain the minimum required marks in each paper, separately, as mentioned above, will be considered for final preparation of result. However, the final qualifying criteria for Junior Research Fellowship (JRF) and Eligibility for Lectureship shall be decided by UGC before declaration of result.

19. The petitioners appeared for the examination with a clear understanding that the final qualifying criteria and eligibility for lectureship would be decided by UGC and Bharathiyar University.

20. The petitioners in all these writ petitions have secured more than the minimum marks separately in Paper I, Paper II and Paper III. However, they were not declared qualified on account of the decision taken by UGC and Bharathiyar University to prescribe cut off marks indicating it as the final qualifying criteria.

21. The core question is whether the UGC and Bharathiyar University were correct in changing the eligibility criteria after the commencement of examination process.

22. The legality of the selection process initiated by UGC came up for consideration before the High Court of Kerala in W.P. (C) No. 22187 of 2012(W) and related batch of cases. The High Court passed an order dated 17 December 2012, quashing the category wise qualifying criteria prescribed after holding the

examination. The Kerala High Court declared that all the petitioners who have obtained separate minimum marks prescribed in the notification for papers I, II and III, have cleared the NET and a direction was issued to the UGC to issue certificates to all such candidates.

23. The eligibility criteria prescribed by UGC came up for consideration before a Division Bench of Nagpur Bench of Bombay High Court in W.P. No. 4996 of 2012 batch. The Division Bench concurred with the views taken by the Kerala High Court and declared that the notification laying down different eligibility criteria after holding NET examination is illegal.

24. The very same issue came up for consideration before this Court earlier and three learned Judges have concurred with the views expressed by the Kerala High Court and allowed the writ petitions. The learned counsel for the Bharathiyar University submitted that the University has already filed appeals against the orders and the appeals are now pending before the Madurai Bench of this Court.

25. The learned counsel for Bharathiyar University placed reliance on the judgment of a learned Single Judge of Allahabad High Court in W.P. No. 67762/2012 (dated 21 December 2012) and 59015/2012 (dated 8 November 2012) and 3310 of 2013 (dated 21 January 2013) in support of his contention that writ petition at the instance of a candidate who took part in the examination process knowing very well the terms and conditions is not maintainable.

26. The Judgment in W.P. No. 4996 of 2012 on the file of the Nagpur Bench of Bombay High Court was challenged in SLP (Civil) No. 24879 of 2013. While hearing this batch of writ petitions, the connected appeals in C.A. Nos. 8356 and 8357 of 2013 were pending before the Supreme Court. Since the Supreme Court was seized of the matter and Kerala Judgment was the lead case, I have reserved the writ petitions for orders. The Supreme Court delivered judgment on 19 September 2013.

27. The issue raised herein is no more res integra in view of the judgment of the Supreme Court in University Grants Commission and another v. Neha Anil Bobde (Judgment dated 19 September 2013) in Civil appeal No. 8355, 8356 of 2013 and 8357 of 2013.

28. The Supreme Court in University Grants Commission and another v. Neha Anil Bobde (supra), allowed the appeals preferred by the University Grants Commission and observed that prescribing final qualifying criteria after the examination does not amount to a change in the rule of Examination, as it was already pre-meditated in the notification. The observation reads thus:

27. We are of the considered opinion that all the steps taken by the UGC were strictly in accordance with clause 7 of the Notification for the NET Examination, 2012. Prescribing the qualifying criteria as per clause 7, in our view, does not amount to a change in the rule of the game as it was already pre-meditated in

the notification. We are not inclined to say that the UGC has acted arbitrarily or whimsically against the candidates. The UGC in exercise of its statutory powers and the laid down criteria in the notification for NET June, 2012, has constituted a Moderation Committee consisting of experts for finalising the qualifying criteria for lectureship eligibility and JRF. UGC acted on the basis of the recommendations made by the Expert Committee. The recommendations made by them have already been explained in the earlier part of the judgment. Reason for making such recommendations has also been highlighted in the Report.

28. We are of the considered view that the candidates were not misled in any manner. Much emphasis has been made on the words "clearing the National Eligibility Test". "Clearing" means clearing the final results, not merely passing in Paper I, Paper II and Paper HI, which is only the initial step, not final. To clear the NET Examination, as already indicated, the candidate should satisfy the final qualifying criteria laid down by the UGC before declaration of the results.

29... 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 lectureship 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.

29. The State Eligibility Test conducted by Bharathiyar University was in accordance with the norms prescribed by UGC. Bharathiyar University followed the criteria adopted by UGC for conducting National Eligibility Test. The State Eligibility Test was conducted in the very same line suggested by UGC. While issuing notification, Bharathiyar University by following the UGC norms, indicated that the final qualifying criteria would be fixed after declaring the results. Before the Bombay High Court, petitioners contended that UGC has attempted to fix the aggregate criteria after holding the examination and as such, it was beyond the scope of the notification. The said contention was accepted by Nagpur Bench of Bombay High Court. The Supreme Court while setting aside the said judgment observed that prescribing the final eligibility criteria has already been notified and as such, it would not amount to a change in the rule of the game.

30. The Judgment in University Grants Commission and another v. Neha Anil Bobde (supra), would cover both National Eligibility Test and State Eligibility Test. The view taken by this Court earlier that the UGC and Bharathiyar University have no right to prescribe final eligibility criteria after declaration of results no longer holds good in view of the law laid down by the Supreme Court in

University Grants Commission and another v. Neha Anil Bobde (supra).

31. Since the legality and correctness of the qualifying examination conducted by UGC, reserving the right to fix the final eligibility criteria after declaring the results, has already been decided by the Supreme Court in University Grants Commission and another v. Neha Anil Bobde (supra), and in view of the finding that there was no illegality in prescribing such condition, the present writ petitions challenging the very same procedure adopted for determining the eligibility by UGC and Bharathiyar University are liable to be dismissed. In the upshot, I dismiss the writ petitions. No costs. Consequently, connected miscellaneous petitions are also dismissed.