

(2022) 11 SHI CK 0049

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No. 195 Of 2015

State Of H.P. And Others

APPELLANT

Vs

Pooja And Another

RESPONDENT

Date of Decision : 25-11-2022

Acts Referred:

Citation : (2022) 11 SHI CK 0049

Hon'ble Judges : A.A. Sayed, CJ;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : R.P. Singh, K.D. Shreedhar, Sneha Bhimta

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Writ petitioner was a left out Lecturer (College Cadre) in a private college, whose service was not taken over by the State. The State contended that the writ petitioner did not satisfy educational criteria required for taking over her services. Learned Single Bench allowed the writ petition and directed the State to take over petitioner's services from due date (09.11.2005) alongwith seniority, but without back wages. The judgment was not interfered by the Division Bench in the appeal filed by the State. However, review petition filed by the State was allowed on the ground that whether the writ petitioner possessed requisite educational qualification or not was an aspect to be determined by the Appellate Court. The appeal, restored to its original number, has been taken up for hearing.

2. Facts:-

2(i). Writ petitioner was appointed as Lecturer (Commerce) (College Cadre) in Maharaja Sansar Chand Memorial (MSCM) College Thural, District Kangra. Vide notification issued on 09.11.2005, the college was taken over by the State Government. Services of its teaching and non-teaching staff were also taken over under a separate notification issued on 18.10.2006. Writ petitioner's services

were not taken over.

2(ii). Aggrieved against non-taking over of her services, the writ petitioner filed Original Application No.149/2007 in the erstwhile H.P. Administrative Tribunal. This original application was disposed of on 21.05.2010 as CWP(T) No.14639 of 2008 with a direction to the respondents to decide petitioner's representation in light of certain notifications/office communications, whereby similarly situated persons were given relaxation in educational qualifications while taking over their services as Lecturer (College Cadre).

2(iii). The State Government vide order dated 31.07.2010, rejected writ petitioner's case. Feeling aggrieved, the writ petitioner filed CWP No.7951 of 2010, praying for quashing of order dated 31.07.2010 and for directing the respondents to take over her services as Lecturer (College Cadre) from the due date.

2(iv). Learned Single Judge allowed the writ petition on 23.07.2014. The respondents were directed to take over writ petitioner's services w.e.f. 09.11.2005, i.e. the date of taking over of the college in accordance with law alongwith continuity of service and seniority, but without any back wages.

2(v). The judgment passed by the learned Single Judge on 23.07.2014 was challenged by the State Government in LPA No.195 of 2015. This letters patent appeal was initially disposed of by a Division Bench of this Court on 30.10.2018 alongwith eleven other connected appeals. The findings of the learned Single Judge were upheld with some modifications regarding payment of arrears to the writ petitioners in some of the connected appeals. It is an admitted position that the judgment dated 30.10.2018 has attained finality vis-à-vis eight connected letters patent appeals involving similar questions and stands implemented qua the writ petitioners therein. Regarding the present writ petitioner, the State filed Review Petition No.99 of 2019 on the ground that the writ petitioner lacked qualifications required for the post of Lecturer (School Cadre). The review petition was allowed on 20.08.2021. It was observed that whether the writ petitioner was qualified or not is a matter to be decided by the Appellate Court. The appeal was accordingly restored to its original number.

3. Contentions:-

3(i). Learned Deputy Advocate General contended that the writ petitioner did not possess the qualifications required for the post of Lecturer (College Cadre). The writ petitioner had not qualified NET/SET examinations. The writ petitioner also did not possess minimum 55% marks in her Post Graduation/M.Phil degree. It was submitted that the writ petitioner was required to satisfy the above two conditions in terms of the Recruitment & Promotion Rules, 2004 for the post of Lecturer (College Cadre). Appointment of writ petitioner was also not approved by the H.P. University. The prayer was accordingly made for allowing the appeal and dismissing the writ petition.

3(ii). Learned Senior Counsel for the writ petitioner submitted that the writ petitioner had obtained M.Phil degree in Commerce in the year 2004. Drawing attention to Annexure P-1/D, it was highlighted that the writ petitioner had secured 187/300 marks in the M.Phil examination, which are much more than the required 55% marks in the said examination. Further, it was submitted that as per the University Grants Commission (UGC) notification of 14.06.2006, the writ petitioner was exempted from qualifying NET examination for Undergraduate level teaching. It was also submitted that in several cases, the State Government had taken over the services of Lecturers working in the private colleges, who did not satisfy the qualifications required under the Recruitment & Promotion Rules. Two such notifications issued by the State for taking over services of Lecturers in National College Amb, District Una, Pt. Amarnath Samarak Mahavidalaya, Jogindernagar, District Mandi and DAV College Sujampur Tihra, District Hamirpur were highlighted. Reference was also made to a decision of Division Bench of this Court in LPA No.686 of 2011 (State of HP and another Versus Balbir Singh Kalsaik), wherein services of a similarly situated Lecturer (College Cadre) working in a Private College, i.e. G.G.D.S.D. College Nerwa, who according to the State, did not possess the requisite qualifications under the R&P Rules, were directed to be taken over. It was submitted that the writ petitioner satisfied the educational criteria and her appointment was also approved in accordance with law.

4. Observations:-

Having heard learned counsel on both sides, we are of the considered view that for the reasons stated hereinafter, the appeal deserves to be dismissed:-

4(i). Recruitment & Promotion Rules 2004 for the post of Lecturer (College Cadre) prescribe following essential educational qualifications (translation of page 101 of the writ record):-

(i) Post Graduation with minimum 55% marks with good academic record or equivalent to 55% from any University recognized by the Govt. of India or Post Graduation from any Foreign University where grading system is followed.

(ii) For Lecturer in Fine Arts which include Commerce, Arts, Visual Arts & Sculpture, minimum 55% marks in post-graduation with good academic record or where grading system is followed.

(iii) to (v) xxx xxx xxx

(vi) Candidates in addition to above qualifications must have passed eligibility test for Lecturer (NET) as conducted by the UGC, CSIR or State Public Service Commission.

(vii) NET will be an essential qualification for appointment as Lecturer even for Ph.D. candidates, but candidates who have obtained their M.Phil degree or have submitted their Ph.D. thesis upto 31.12.1993 will be exempted from NET Examination.

According to the respondents, "as per R&P Rules the essential educational qualification for the appointment of Lecturer College is Post Graduation with 55% marks with NET/SET..... Petitioner acquired M.Phil degree from H.P. University under Roll No.2503 in the year 2004 securing marks 150/300, i.e. 50%, which is less than minimum requirement of 55% marks as per R&P Rules." Hence, she does not meet the criteria of Recruitment & Promotion Rules.

4(ii). Writ petitioner obtained M.Phil Degree on 05.05.2004. She secured 187/300 marks and not 150/300 marks as is contended by the State in her M.Phil Degree. It is thus evident that the petitioner secured 62.33% marks, which is more than the minimum required 55% marks. This position was admitted by the appellant during hearing of the case.

4(iii). UGC issued a notification on 14.06.2006 exempting the candidates having M.Phil Degree from possessing NET qualification for Undergraduate level teaching. It will be appropriate to extract the relevant portion of the notification:-

"NET shall remain compulsory requirement for appointment as Lecturer for those with Postgraduate Degree. However, the candidates having Ph.D. Degree in the concerned subject are exempted from NET for Post Graduation Level and Under Graduate Level teaching. The candidates having M. Phil Degree in the concerned subject are exempted from NET for Under Graduate level teaching only."

4(iv). Many private colleges were taken over by the State in terms of the notification dated 25.08.1994. Pursuant to this notification, the college in question was taken over w.e.f. 09.11.2005. Services of its teaching and non-teaching staff were taken over vide a separate notification issued on 18.10.2006. This taking over was 'as per UGC guidelines, Recruitment & Promotion Rules and terms and conditions of taking over of staff of private Colleges notified vide Notification dated 25.08.1994' (Annexure P-4). The UGC notification dated 14.06.2006 issued prior to taking over of services of staff of the college in question, was applicable to the case of the writ petitioner. In terms of the UGC notification, the writ petitioner having M.Phil Degree with the requisite percentage of marks, was exempted from qualifying NET examination. It is not in dispute that by now the writ petitioner has qualified NET/SET and has also completed her Ph.D.

4(v). It is not in dispute that services of 'left out' teaching and non-teaching staff appointed in privately managed National College Amb, District Una and Pt. Amarnath Samarak Mahavidalaya, Jogindernagar, District Mandi, were taken over by the State in relaxation of the required educational qualifications and also in relaxation of the terms & conditions of the notification dated 25.08.1994. Notification in this regard was issued on 30.03.1999. Similarly, the services of teaching and non-teaching staff employed in DAV College Sujampur Tihra, District Hamirpur, were taken over by the State vide notification dated 28.08.2001. One of the terms & conditions for taking over their services was that such lecturers would be required to acquire NET qualification as prescribed under the Rules

within a period of three years, failing which their increments were to be withheld. The condition is extracted hereinafter:-

"2. The Lecturers, whose services have been taken over as Lecturer (College Cadre) (as per Annexure-"A") will be required to clear N.E.T. Examination as prescribed in Recruitment & Promotion Rules within a period of three years failing which, their increments will be withheld."

Once the State Government takes over the services of Lecturers employed in various private colleges, who did not possess the requisite qualifications in terms of the R&P Rules, then, similar treatment is to be meted out to the writ petitioner as well. The writ petitioner cannot be discriminated vis-à-vis other lecturers, who did not satisfy the required qualifications in terms of the R&P Rules, yet their services were taken over. Services of such lecturers, who did not possess the requisite qualifications in National College Amb, District Una and Pt. Amarnath Samarak Mahavidalaya, Jogindernagar, District Mandi, were taken over in relaxation of requirement of possessing requisite educational qualifications. Similarly, services of lecturers not possessing the required qualifications prescribed in the R&P Rules were taken over in DAV College Sujampur Tihra, District Hamirpur. They were granted a period of three years for upgrading their educational qualifications in terms of the rules, failing which the increments were to be withheld.

4(vi). In LPA No.686 of 2011, titled State of HP and another Versus Balbir Singh Kalsaik, decided on 26th June, 2012, the Court was considering a case where the services of the petitioner (therein), a Lecturer (College Cadre) employed in a private college, i.e. G.G.D.S.D. College Nerwa, were not taken over on the ground of his being unqualified for the post. The Court passed the following order in the appeal on 11.04.2012:-

"There will be a direction to the Director of Higher Education to file an affidavit as to whether the Lecturers in College cadre have been appointed as such while taking over of the college by the Government with the condition that they should pass NET/SET examination within three years. It shall also be clarified in the affidavit as to what is the consequential action taken in the case of those teachers who have not passed NET/SET examination within the stipulated period of three years. It will also be open to the respondent to point out such instances before the Director of Higher Education within 10 days from today so as to enable him to have proper verification. The affidavit, as above, shall be filed by the Director of Higher Education within three weeks from today. Post on 3.5.2012.

Authenticated copy."

In the affidavit filed pursuant to the above order, the State admitted that 22 unqualified lecturers were appointed as Lecturer (College Cadre), out of which 20 were appointed in DAV College, Sujampur Tihra and 2 in National College Amb. It was also stated that out of 22 lecturers, 5 had not qualified NET, however, they had done Ph.D/M.Phil and on that basis, their cases were recommended for

exemption. The affidavit also stated that as per the notification issued in the year 2007, the candidates having M.Phil in the concerned subject are exempted from NET for Undergraduate level teaching. The gist of affidavit filed by the State in LPA No.686 of 2011 pursuant to the above extracted direction of the Court has been taken note of by the Division Bench in its judgment dated 26.06.2012 (State of H.P. Versus Balbir Singh Kalsaik) as under:-

"3. In the affidavit filed pursuant to our order dated 11th April, 2012, it is admitted that 22 unqualified lecturers have been appointed as Lecturer (College Cadre), 20 in D.A.V College, Sujampur Tihra and 2 lecturers in National College, Amb. Out of these 22, five Lecturers have not qualified the NET, however, they have done Ph.d/M.Phil and on the basis thereof their cases have been recommended for exemption. As per Notification issued in 1994 and as per subsequent Notification in 2007, the candidates having Ph.D. degree in the concerned subject are exempted from NET for PG level. The candidates having M.Phil. in the concerned subject are exempted from NET for UG level teaching. It is the condition in the Regulation that in the case of those candidates who do not possess NET within the stipulated period, they will not get any increment, after that period."

On the basis of above affidavit, the Letters Patent Appeal (LPA No.686 of 2011) was disposed of with a direction that the writ petitioner (therein) shall be deemed to have been appointed as Lecturer (College Cadre) alongwith other incumbents from the date of taking over of the College. Since the writ petitioner therein had not qualified NET/SET and had also not qualified Ph.D or M.Phil, he was held not entitled to any increment on the post after three increments. The operative part of the judgment dated 26.06.2012 passed in Balbir Singh Kalsaik's case is as follows:-

"4. We find in the judgment that learned Single Judge had issued a direction to consider taking over the services of the writ petitioner as Lecturer (College Cadre) with effect from the date of taking over of the college and continue him as such with the regular increments on condition that he would pass the NET latest by December, 2013. We do not find any justification in granting the time to the writ petitioner up to 2013, since nothing prevented the writ petitioner from acquiring the qualification otherwise within the stipulated period of three years. Therefore, the judgment under appeal is modified to the extent that the writ petitioner shall be deemed to have been appointed as Lecturer (College Cadre) along with other incumbents, as pointed out in the affidavit with effect from the date of taking over of the college. He shall be continued as such with increments for a period of three years. Since admittedly he has not qualified NET or SET or has not qualified the Ph.D or M.Phil, he shall not be entitled to any increment on the post after three increments. Appropriate orders in that regard shall be passed within three months from the date of production of a copy of this judgment by the writ petitioner before the 1st respondent. The consequential benefits shall be worked out and disbursed within another one month."

Special Leave to Appeal against the judgment dated 26.06.2012 was dismissed by the Apex Court on 08.07.2013.

4(vii). The upshot of above discussion is that the college in question was taken over by the State on 09.11.2005. Services of its teaching & non-teaching staff were taken over on 18.10.2006 as per UGC guidelines, R&P Rules and terms & conditions of taking over of staff of private colleges notified on 25.08.1994. The R&P Rules 2004 for the post of Lecturer (College Cadre) prescribed the eligibility criteria of possessing Post-Graduation Degree with minimum 55% marks alongwith NET/SET qualification. The writ petitioner had obtained M.Phil Degree in the year 2004 with 62.33% marks. In terms of the UGC notification dated 14.06.2006, she being in possession of M.Phil degree, was exempted from possessing NET for Undergraduate level teaching. The writ petitioner, therefore, satisfied the criteria for taking over of her services as Lecturer (College Cadre). Even otherwise, the State had granted relaxation from possessing the required educational qualifications while taking over the services of unqualified lecturers employed in National College Amb, District Una and Pt. Amarnath Samarak Mahavidalaya, Jogindernagar, District Mandi. The services of unqualified lecturers working in DAV College Sujampur Tihra, District Hamirpur, were taken over by the State on the condition that they will have to acquire NET qualification as prescribed in the R&P Rules within a period of three years, failing which their increments were to be withheld. We have already held that the writ petitioner was qualified in terms of the applicable R&P Rules read with UGC guidelines. Even otherwise, writ petitioner cannot be discriminated vis-à-vis unqualified lecturers of National College Amb, District Una, Pt. Amarnath Samarak Mahavidalaya, Jogindernagar, District Mandi, DAV College Sujampur Tihra, District Hamirpur and G.G.D.S.D. College Nerwa, whose services were taken over in relaxation of required educational qualifications or who after taking over of services, were granted time to meet the educational qualification criteria. The documents placed on record of the writ petition, more specifically alongwith rejoinder, are pointer to the fact that appointment of the writ petitioner in the college was approved. There is no rebuttal to the rejoinder. The appellant has not demonstrated that appointment of writ petitioner was not approved.

5. For all the aforesaid reasons, we do not find any infirmity in the impugned judgment dated 23.07.2014 passed by the learned Single Judge. The present appeal, being devoid of any merit, is accordingly dismissed. Pending miscellaneous application(s), if any, also stand disposed of.