

(2010) 04 P&H CK 0095
In the Punjab And Haryana At Chandigarh

Suresh Singh

APPELLANT

Vs

The Vice Chancellor, Punjab University and Others

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Citation : (2010) 04 P&H CK 0095

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.

C.M. No. 5719 of 2010

Application is allowed as prayed for.

C.M. No. 5720 of 2010

Application is allowed.

Additional affidavit along with Annexures P-21 to P-29 is taken on record.

C.W.P. No. 10574 of 2006

1. The writ petition challenges the order issued on 04.05.2006 by the Panjab University declining approval for the appointment of the petitioner as a Librarian. It is an admitted case that pursuant to an advertisement issued in 2003, a Selection Committee consisting of nominees from the University, the Director of Public Education and the college undertook the selection process and had appointed the petitioner as a Librarian. It appears that when the sanction for appointment to the post was sought, the Government and the college had approved but the University had raised an objection on the ground that the petitioner was not NET (National Eligibility Test) qualified in the subject of Library Science. The advertisement, which was issued in Hindustan Times calling for applications required that the qualification shall be as approved by UGC/

University/DPI Colleges. The petitioner's plea was that he had NET qualification in the subject of Philosophy and since there was no specific requirement that the NET qualification shall also be in the very same subject for which he was considered, the objection of the University was not justified. It is also contended by the learned Senior Counsel appearing on behalf of the petitioner that even as a measure of equity, the petitioner ought not to be removed from the post which he was holding since the date of appointment in view of the fact that he has been carrying on with his duties as a Librarian at the college since 16.07.2004 and in the course of years, he had also passed M.Phil in Library Science which relieves the requirement of having to secure a NET qualification.

2. Learned Counsel appearing for the University contends that the NET qualification is for 40 subjects and it should only be understood that a person, who applies in a particular branch at the University shall also have the NET qualification in that branch for otherwise it would lead to strange consequence of persons having NET qualification in say History pleading for sufficiency of such qualification for consideration for a totally different post, say Philosophy. The learned Counsel also refers to a decision of the Hon'ble Supreme Court in *Pramod Kumar v. U.P. Secondary Education Services Commission and Ors.* 2008 (3) RSJ 78 that held that when the initial appointment of a person was wholly illegal and void by virtue of it being de hors the rules, then even a subsequent eligibility obtained could not be upheld.

3. Learned Senior Counsel appearing for the petitioner joins issue on the plea on behalf of the University of the lack of requisite qualification by referring to the fact that UGC's response to a specific query by the Registrar of the University itself was not very clear. He points out to the fact that the query to the UGC was whether "a candidate appointed as a college Librarian is required to have cleared UGC (NET) examination in the subject of Library and Information Science. The response by the UGC was merely to the following effect:

I am directed to inform you that passing of NET is mandatory for college Librarian.

A degree of certainty does not obtain in the communication made by UGC to the University but I do not mean to supply the words which the reply does not have in the manner sought for by the counsel for the University. The learned Counsel also refers to a judgment of the Hon'ble Supreme Court in *State of Punjab v. Suman Lata* 2000 (1) ACJ 63 that dealt with the situation of a Selection Committee selecting a candidate for a particular post of Arts and Crafts Teacher. The candidate was being interviewed along with other candidates and was selected to the post of Arts and Crafts Teacher and when he reported for duty, it was noticed that she did not have the requisite qualification to be appointed for the post of Arts and Crafts Teacher. The Hon'ble Supreme Court still upheld the selection on the ground that where a Selection Committee consisted of persons with sufficient experience in that field with the knowledge of job requirements and necessary qualifications in that regard, there ought not to be a justification

for a District Education Officer to cancel the appointment. He cites this judgment to support his plea that the petitioner was after all a Librarian which was not a teaching post. He had held a post-graduate degree in the Library Science and he had also subsequently obtained a M.Phil qualification. The lack of qualification as pleaded of the University must be seen in the context of how the Selection Committee had approved the selection and recommended him for appointment and it would be unprudent to support the objection raised by the University that he did not have the NET qualification in Library Science.

4. It is an admitted fact that NET qualification itself is unnecessary if a person has the M.Phil qualification. It is one thing to say that a person's appointment is in violation of the Rules and illegal but quite another to say that the appointment is required to be done on certain qualifications which qualification he certainly had but it was still open to doubt whether that qualification was sufficient, the same having not been in the subject which was immediately relevant to the post which he had taken. As I have already pointed out the petitioner had a NET qualification in Philosophy, while he was appointed to a post as Librarian. Some time expedience teaches what a formal degree course does not. The first of such a situation was dealt with by the Hon''ble Supreme Court in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, , when it was held "Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability." The Court was considering an issue of regularization where the employee did not have the prescribed educational qualification for confirmation to the post. In this case even apart from the fact that he had continued in employment, he had obtained the necessary qualification (M.Phil), which makes it only just that he could continue. I cannot see the appointment done on a recommendation by the Selection Committee to be illegal or against Rules to liken it to a situation as found by the Hon''ble Supreme Court in Pramod Kumar's case as referred to above.

5. The impugned proceedings are quashed and the appointment to the petitioner already made is confirmed. The writ petition is allowed.