

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP(C) No.6047/2013

% **20th April, 2015**

SMT. RITA KUMAR Petitioner

Through: Ms.Rashi Bansal, proxy for Mr.Rituraj
Biswas, Advocate.

versus

MINISTRY OF HUMAN RESOURCE DEVELOPMENT & ORS.

..... Respondents

Through: Ms.Monika Arora, CGSC with
Mr.Ankur Sharma, Advocate for UOI.
Mr.Anil Soni, Advocate for R-2/UGC.
Mr.Santosh Kumar, Advocate for R-3..

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner who was appointed with the respondent no.4/Indraprashta College for Women as a lecturer in Industrial Relations and Personnel Management on 01.12.1999, seeks directions that her employment be continued with the respondent no.4/College and the order passed by UGC on 23.2.2010 allowing National Eligibility Test (NET) exemption be upheld and the subsequent order of the UGC dated 30.3.2010 withdrawing its decision dated 23.2.2010 be quashed alongwith the consequential order dated 03.6.2010 refusing to

grant exemption from NET qualification. In substance the petitioner claims exemption from qualifying in the NET qualification as is mandated by the UGC Regulations dated 30.3.2010.

2. Admittedly, as per the UGC Regulations, which were applicable when the petitioner was appointed as a lecturer with the respondent no.4/College, the same did require the petitioner to have NET qualification as the petitioner did not have Ph.D or M. Phil qualification. The UGC with respect to the lecturers who have not cleared NET qualification gave four opportunities to clear NET qualification, but petitioner in spite of the same did not seek NET qualification by using the four opportunities. The petitioner, however, now claims exemption from having NET qualification.

3. A reading of paras 3(j) & (k) of the writ petition of the petitioner herself and the counter-affidavit of the respondent no. 1/Ministry of Human Resource Development shows that the petitioner's request for exemption from NET qualification was turned down not once but twice by the UGC way back in the years 2002 and 2003. This writ petition is filed in the year 2013 allegedly on the ground that NET exemption was again sought on 23.6.2009. Once, exemption from NET qualification has been rejected twice way back in the years 2002 and 2003, merely by submitting subsequent representations, it cannot be said that the fresh cause of action has accrued and a fresh period of

limitation has started because the case for seeking NET exemption is not a continuous cause of action once the facts and Regulation of UGC as regards the petitioner remain the same. As per the recent judgment of the Supreme Court in the case of *State of Orissa & Anr. Vs. Mamata Mohanty*, (2011) 3 SCC 436, and specifically as per paras 52 to 54 of this judgment, the present writ petition is clearly barred by the doctrine of delay and *laches*. Para nos. 52 to 54 of the judgment in the case of *Mamata Mohantry (supra)* read as under:

“Delay/Laches

52. In the very first appeal, the respondent filed Writ Petition on 11-11-2005 claiming relief under the Notification dated 6-10-1989 w.e.f. 1-1-1986 without furnishing any explanation for such inordinate delay and on laches on her part. Section 3 of the Limitation Act, 1963, makes it obligatory on the part of the court to dismiss the Suit or appeal if made after the prescribed period even though the limitation is not set up as a defence and there is no plea to raise the issue of limitation even at appellate stage because in some of the cases it may go to the root of the matter. (See *Lachhmi Sewak Sahu v. Ram Rup Sahu*: AIR 1994 PC 24 and *Kamlesh Babu v. Lajpat Rai Sharma*: (2008) 12 SCC 577.)

53. Needless to say that Limitation Act, 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the Respondent claimed the relief from 1-1-1986 by filing a petition on 11-11-2005 but the High Court for some unexplained reason granted the relief w.e.f. 1-6-1984,

though even the Notification dated 6-10-1989 makes it applicable w.e.f. 1-1-1986.

54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time. (See *Rup Diamonds v. Union of India*: (1989) 2 SCC 356, *State of Karnataka v. S.M. Kotrayya*: (1996) 6 SCC 267 and *Jagdish Lal v. State of Haryana*: (1997) 6 SCC 538.)”

(underlining added)

4. In fact in view of the ratio of the recent judgment of the Supreme Court in the case of ***P. Suseela & Ors. etc. etc. Vs. University Grants Commission and Ors. Etc. etc.***, in Civil Appeal Nos. 2891-2900 of 2015 decided on 16.3.2015 there no longer can be granted NET exemption much less in individual cases.

5. The only ground which is urged by the counsel for the petitioner before this Court is that the UGC has granted exemption from NET qualification to various persons from the State of Maharashtra, and with respect to which the petitioner has made the following averments in the lists of dates:

“ 08.07.2011: The petitioner came to now that the UGC in it’s meeting held on 8th July, 2011 considered the various representations received in the UGC from the State of Maharashtra seeking approval for exemption from NET for appointments to the post of lecturer during the period w.e.f. 19.09.1991 till 03.04.2000 and the Commission after deliberating on the issue decided as under:-

“ The Commission deliberated on the issue regarding appointment of various teachers in the State of Maharashtra from September 19, 1991 untill April, 3, 2000 and resolved that all such appointments made un regular basis by various universities in the State of Maharashtra where the University has granted exemption to teachers from the requirement of NET in terms of the UGC Regulations, 1991 and subsequent Notification dated 24th December, 1998 and where the representation has been forwarded to the Commission seeking further approval in relation to such regular appointments made during the said period w.e.f. September, 19,1991 until April,3,2000, is approved.”

That it is respectfully submitted that the aforesaid decision of the Commission, approving the exemption granted by the Universities concerned to the candidates appointed on regular basis during the period w.e.f. September, 19, 1991 until April,3,2000, shall be effective w.e.f. the date of exemption granted by the University top the candidates appointed on “regular basis”. ”

6. When the counsel for the petitioner was put to the question that, where is the document being the Minutes of Meeting of UGC dated 08.7.2011, counsel for the petitioner states that this document has not been filed. I may however note that unless the Court is made to know as to how facts as per the Minutes of Meeting of the UGC dated 08.7.2011 with respect to grant of exemption from NET qualification to the appointment to the posts of lecturers during the period from 1991-2000 in the State of Maharashtra are identical to the facts of the present case, the petitioner cannot claim any parity with the UGC decision dated 08.7.2011, much less without filing the subject

documents as also the necessary facts with respect to the decision of the UGC dated 08.7.2011.

7. Also, the Supreme Court recently in the judgment in the case of *P.Suseela (supra)* has held that the directions of the UGC with respect to NET qualification are mandatory, and they have to be complied with by the lecturers etc who seek appointment to the posts in the universities and that as already stated above there cannot be granted exemption from NET qualification in individual cases in view of the letter dated 30.3.2000 of the Ministry of Human Resource Development which is dealt with in detail in *P. Suseela's case (supra)*. Paras 6,11, 12 & 13 of this judgment read as under:-

“6. This was followed by another directive dated 30th March, 2010 by the Ministry under Section 20 of the Act directing the UGC as follows:-

“The Ministry of Human Resource Development issued another order dated 30.3.2010 under Section 20 of the University Grants Commission Act, 1956 directing the UGC as follows:

(i) That the UGC shall not take up specific cases for exemption from the application of the NET Regulations of 2009 after the said Regulations have come into force, for either specific persons or for a specific university/institution/college from the application of the UGC (Minimum Qualifications for appointment and career

advancement of teachers in universities and colleges) 3rd Amendment Regulations, 2009 for appointment as Lecturer in universities/colleges/institutions;

(ii) That appropriate amendment to the second proviso to clause 2 of the UGC Regulations 2000 shall be made by UGC to give full effect to the policy directions issued by the Central Government dated 12th November, 2008, within 30 days from the date of issue of this direction; and

(iii) That the decision taken by the UGC in its 468th meeting held on 23rd February, 2010 vide agenda item no. 6.04 and 6.05 to grant specific exemptions from the applicability of NET shall not be implemented as being contrary to national policy.

The above said directions shall be implemented by the UGC forthwith."

11. On the other hand, learned counsel for the Union of India and the UGC stressed the fact that under Section 26 regulations have to be made consistently with the Act and Section 20 is very much part of the Act. Therefore, if directions on questions of policy are made by the Central Government, regulations must necessarily be subordinate to such directions. It was also pointed out that if a question arises as to whether a subject matter is a question of policy relating to national purposes, the decision of the Central Government shall be final. They then relied upon **Udai Singh Dagar v. Union of India** (2007) 10 SCC 306, for the proposition that a person will have the right to enter a profession only if he holds the requisite qualification and the holding of such qualification would be prospective if it is a qualification which is laid down any time before his entry into a profession.

12. It is clear that Section 26 enables the Commission to make regulations only if they are consistent with the UGC Act. This necessarily means that such regulations must conform to Section 20 of the Act and under Section 20 of the Act the Central Government is given the power to give directions on questions of policy relating to national purposes which shall guide the Commission in the discharge of its functions under the Act. It is clear, therefore, that both the directions of 12th November, 2008 and 30th March, 2010 are directions made pertaining to questions of policy relating to national purposes inasmuch as, being based on the Mungekar Committee Report, the Central Government felt that a common uniform nationwide test should be a minimum eligibility condition for recruitment for the appointment of Lecturer/Assistant Professors in Universities/Colleges/Institutions. This is for the obvious reason that M. Phil. degrees or Ph.D. degrees are granted by different Universities/Institutions having differing standards of excellence. It is quite possible to conceive of M.Phil/ Ph.D. degrees being granted by several Universities which did not have stringent standards of excellence. Considering as a matter of policy that the appointment of Lecturers/Assistant Professors in all institutions governed by the UGC Act (which are institutions all over the country), the need was felt to have in addition a national entrance test as a minimum eligibility condition being an additional qualification which has become necessary in view of wide disparities in the granting of M. Phil./Ph.D. degrees by various Universities/ Institutions. The object sought to be achieved by these directions is clear: that all Lecturers in Universities/Colleges/Institutions governed by the UGC Act should have a certain minimum standard of excellence before they are appointed as such. These directions are not only made in exercise of powers under Section 20 of the Act but are made to provide for coordination and determination of standards which lies at the very core of the UGC Act. It is clear, therefore,

that any regulation made under Section 26 must conform to directions issued by the Central Government under Section 20 of the Act.

13. It was argued that since the previous approval of the Central Government was not necessary for regulations which define the qualifications required of persons to be appointed to the teaching staff of a University, the Government has no role to play in such matters and cannot dictate to the Commission. This argument does not hold water for the simple reason that it ignores the opening lines of Section 26(1) which states that the Commission can only make regulations consistent with the Act, which brings in the Central Government's power under Section 20 of the Act, a power that is independent of sub-section (2) of Section 26. A regulation may not require the previous approval of the Central Government and may yet have to be in conformity with a direction issued under Section 20 of the Act. In fact, even where a regulation can only be made with the previous approval of the Central Government, the Central Government would have a role to play both before and after the regulation is made. In the first case, it would accord its previous approval to the regulation. Once the regulation becomes law, it may issue directions under Section 20 pursuant to which the very same regulation may have to be modified or done away with to conform to such direction. It is clear, therefore, that Section 26(2) would not stand in the way of the directions issued in the present case by the Central Government to the Commission.”

8. I may also note that, in fact, this writ petition is already infructuous because the petitioner has already been removed from services of the respondent no.4/College, and though counsel for the petitioner during the course of arguments was put to a suggestion if the petitioner would like to file

a fresh writ petition to challenge the decision of her termination, counsel for the petitioner states that she has been asked to argue the case on merits and invite a judgment.

9. No other issue is urged before this Court.

10. In view of the above, there is no merit in the writ petition and the same is therefore dismissed.

APRIL 20, 2015
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VALMIKI J. MEHTA, J