

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 1161 of 2012 (O&M)

Date of Decision : May 11, 2016

Dr. Rajarshi Bhattacharyya Petitioner
vs.
State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Petitioner in person.

Mr. Ranbir Pathania, DAG, Punjab.

Mr. Bhavnik Mehta, Advocate
for respondent no. 2.

Mr. Ashok Kumar Sharma, Advocate
for respondent no. 3.

Mr. Rajiv Godara, Advocate
for respondent no. 4.

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DEEPAK SIBAL, J. :

C. M. Nos. 5637 of 2016 :

Through this application, certain additional facts are sought to
be placed on record.

Allowed as prayed for. CM stands disposed of.

Main Case :

Through the present petition, the petitioner seeks appointment to the post of Assistant Professor (System Biology and Bio Informatics) – a post which was advertised through advertisements dated 02.07.2009 and 18.08.2010.

The petition has been filed on several grounds, but counsel for the respondent University raises a preliminary issue questioning the petitioner's eligibility. It is submitted that since the petitioner is not eligible for appointment to the post of Assistant Professor (System Biology and Bio Informatics), the petition deserves to be dismissed on this score alone.

On the issue of the petitioner's eligibility, I have heard the petitioner, who appeared in person, as also learned counsel for the respondents.

As per advertisement dated 02.07.2009, for appointment to the post of Assistant Professor (System Biology and Bio Informatics), passing of NET/SLET was the minimum eligibility condition. However, as per the “University Grants Commission (minimum standards and procedure for award of Ph.D. Degree) Regulations, 2009 (hereinafter referred to as – the 2009 Regulations), candidates who had been awarded Ph.D. Degrees, were exempted from the requirement of having passed the NET/SLET. Admittedly, the petitioner has not passed the NET/SLET, but since she has been awarded Ph.D. Degree in the year 2005, while claiming exemption from the requirement of passing of NET/SLET, she sought consideration of her candidature for appointment as Assistant Professor (System Biology

and Bio Informatics).

The validity of the afore-referred 2009 Regulations, which grant exemption from passing of NET to holders of a Ph.D. Degree, came up for consideration before the Apex Court in **P. Suseela and others etc. etc. vs. University Grants Commission and others etc. etc. - (2015) 8 SCC 129.**

In **P. Suseela's** case (*supra*), one set of candidates before the Apex Court were those, who had not passed NET, but seeking shelter of the 2009 Regulations, sought consideration of their candidature for appointment as Assistant Professors/Lecturers as they were in possession of Ph.D. Degrees. There were another set of candidates before the Apex Court in **P. Suseela's** case (*supra*), who were holders of a Ph.D. Degree, had been selected, but not offered appointment on the ground that they had not passed the NET. The entire matter was considered by the Apex Court and it was held that the Central Government, under Section 20 of the University Grants Commission Act, 1956 (hereinafter referred to as – the UGC Act), had issued directions that only those candidates, who had passed the NET irrespective of the fact that they possessed Ph.D. Degrees, should be considered eligible for appointment as Assistant Professors/Lecturers. Giving primacy to the afore-referred directions by the Government of India, the Apex Court held that notwithstanding the 2009 Regulations by the UGC, only those candidates, who were NET qualified, should be considered and appointed as Assistant Professors/Lecturers.

While considering the cases of those candidates, who had been

selected, but not offered appointment, since they had not passed the NET, the Apex Court was of the opinion that such candidates, in larger public interest, being ineligible, did not deserve to be offered appointment, by holding as under :-

“15. Similar is the case on facts here. A vested right would arise only if any of the appellants before us had actually been appointed to the post of Lecturer/Assistant Professors. Till that date, there is no vested right in any of the appellants. At the highest, the appellants could only contend that they have a right to be considered for the post of Lecturer/Assistant Professor. This right is always subject to minimum eligibility conditions, and till such time as the appellants are appointed, different conditions may be laid down at different times. Merely because an additional eligibility condition in the form of a NET test is laid down, it does not mean that any vested right of the appellants is affected, nor does it mean that the regulation laying down such minimum eligibility condition would be retrospective in operation. Such condition would only be prospective as it would apply only at the stage of appointment. It is clear, therefore, that the contentions of the private appellants before us must fail.

16. One of the learned counsel for the petitioners argued, based on the language of the direction of the Central Government dated 12th November, 2008 that all that the Government wanted the UGC to do was to "generally" prescribe

NET as a qualification. But this did not mean that UGC had to prescribe this qualification without providing for any exemption. We are unable to accede to this argument for the simple reason that the word "generally" precedes the word "compulsory" and it is clear that the language of the direction has been followed both in letter and in spirit by the UGC regulations of 2009 and 2010."

In view of the law laid down by the Apex Court in **P. Suseela's** case (*supra*), the petitioner, having not passed the NET, would not be eligible for appointment as Assistant Professor (System Biology and Bio Informatics). In the afore-quoted observations by the Apex Court in **P. Suseela's** case (*supra*), it can clearly be seen that even those candidates, who had been selected, were held not entitled to appointment by the Apex Court on the ground that they had not passed the NET. The case of the petitioner is on a worse footing as she was not even selected and had merely been short-listed.

When confronted with the above, the petitioner, who appeared in person, invoked the doctrine of prospective over-ruling to urge that the decision of the Apex Court in **P. Suseela's** case (*supra*), having been rendered on 16.03.2015, should apply prospectively and not to the selections made in the years 2009 and 2010, which are the subject matter of the present petition.

I do not agree with the petitioner as I do not find any such observation by the Apex Court in **P. Suseela's** case (*supra*) directing that the law laid down therein would apply prospectively. Once, while

considering the 2009 Regulations, which grant exemption to Ph.D. Degree awardees from passing of NET for appointment to the post of Assistant Professor, it has been held by the Apex Court that passing of NET would be an essential qualification, the petitioner having not passed NET, as per the law declared by the Apex Court in **P. Suseela's** case (*supra*), is to be declared ineligible, especially in view of the observations of the Apex Court reproduced earlier, wherein even candidates, who had been selected, but not appointed, were denied appointment by holding them to be ineligible.

In **B. A. Linga Reddy Etc. Etc. vs. Karnataka State Transport Authority and others** - (2015) 4 SCC 515, the Apex Court has clearly held that all decisions of the Apex Court would have retrospective operation and that the interpretation of the provision, on which the judgment is pronounced, becomes effective from the date of enactment of the provision, by holding as under :-

*“36. The view of the High Court in Ashrafulla (supra) has been reversed by this Court. The decision is of retrospective operation, as it has not been laid down that it would operate prospectively; more so, in the case of reversal of the judgment. This Court in **P.V.George & Ors. v. State of Kerala & Ors.** [2007 (3) SCC 557] held that the law declared by a court will have a retrospective effect if not declared so specifically.*

*Referring to **Golak Nath v. State of Punjab** [AIR*

1967 SC 1643] it had also been observed that the power of prospective overruling is vested only in the Supreme Court and that too in constitutional matters. It was observed :

“19. It may be true that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. The doctrine of prospective overruling although is applied to overcome such a situation, but then it must be stated expressly. The power must be exercised in the clearest possible term. The decisions of this Court are clear pointer thereto.

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29. Moreover, the judgment of the Full Bench has attained finality. The special leave petition has been dismissed. The subsequent Division Bench, therefore, could not have said as to whether the law declared by the Full Bench would have a prospective operation or not. The law declared by a court will have a retrospective effect if not otherwise stated to be so specifically. The Full Bench having not said so, the subsequent Division Bench did not have the jurisdiction in that behalf.”

37. In Ravi S.Naik v. Union of India & Ors. [1994 Supp (2) SCC 641], it has been laid down that there is retrospective operation of the

*decision of this Court. The interpretation of the provision becomes effective from the date of enactment of the provision. In **M.A. Murthy v. State of Karnataka & Ors. [2003 (7) SCC 517]**, it was held that the law declared by the Supreme Court is normally assumed to be the law from inception. Prospective operation is only exception to this normal rule. It was held thus :*

*“8. The learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in **L.C. Golak Nath v. State of Punjab [AIR 1967 SC 1643]**. In **Managing Director, ECIL v. B. Karunakar [1993 (4) SCC 727]**, the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device*

*innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See **Ashok Kumar Gupta v. State of U.P. [1997 (5) SCC 201]** and **Baburam v. C.C. Jacob [1999 (3) SCC 362]**). It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in **Ashok Kumar Sharma case No. II [1997 (4) SCC 18]**. All the more so when the subsequent judgment is by way of review*

of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside.”

In support of her case, the petitioner has cited a judgment of a learned Single Judge of this Court in **C. W. P. No. 2974 of 2012 – Dr. Amarjit Singh Naura vs. P. U. Chandigarh and another**, decided on 12.11.2013. I have gone through the judgment, but find that the same is not applicable to the facts of the case in hand. In that case, no discussion is found on the 2009 Regulations. **P. Suseela's** case (*supra*) has also not been considered in **Amarjit Singh Naura's** case (*supra*) as the judgment in **P. Suseela's** case (*supra*) was delivered on 16.03.2015 i.e. on a later date than the judgment in **Amarjit Singh Naura's** case (*supra*), rendered on 12.11.2013.

In view of the above, the petitioner being ineligible has no right to the post in question. Resultantly, finding no merit in the present writ petition, the same is hereby ordered to be dismissed.

No costs.

(DEEPAK SIBAL)
JUDGE

May 11, 2016
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