

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 8324 of 2013 (O&M)
Date of decision: January 11, 2016

Jalbir Singh

.. Petitioner

v.

YMCA University of Science and Technology and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Petitioner in person.

Mr. Deepender Singh, Advocate for respondent No. 1.

Mr. N. R. Dahia, Advocate for respondent No. 2.

Mr. Ashok Kumar Sharma, Advocate for
Mr. S. K. Sharma, Advocate for respondent No. 3.

Mr. O. P. Sharda and Mr. Vinod S. Bhardwaj, Advocates
for respondent No. 4.

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Rajesh Bindal J.

1. The petitioner, who is an unsuccessful candidate for admission to the course of Part-Time Ph.D. in MBA has filed the present petition challenging the admissions made and further seeking a direction for his admission.

2. The petitioner, who appeared in person, submitted that respondent No. 1-University issued advertisement for admission to Part-Time Ph.D. Course in MBA for the academic year 2012-13, on 21.5.2012. The petitioner, being eligible, applied for the same. As per the procedure

laid down in the prospectus in the process of admission, a written test followed by an interview was to be conducted. There were certain specified categories, to whom exemption from written test could be granted. University Grants Commission (for short, 'UGC') guidelines also provided for the same. There was no provision in UGC guidelines to provide exemption to any candidate merely because he was an employee of the institution concerned. Respondent No. 4-Himanshu was admitted in the course, who had not even appeared in the written test. He did not fall in any of the exempted categories, who were not required to appear in the written test. He was merely working in the establishment of the University and not in the teaching faculty. He further submitted that respondent No. 4 was not qualified, as he was not having full-time diploma in MBA, as the certificate produced by him itself suggested that the same was a part-time course. One of the eligibility conditions laid down for admission to Part- Time Ph.D. in MBA is that the candidate should be a teaching employee of an educational institution. The same was also lacking in the case of respondent No. 4, who was not on teaching assignment, rather, was working in the establishment as System Analyst. It was further submitted that in the interview, though respondent No. 4 was not having any teaching experience, but still was awarded the maximum marks, i.e., 18 out of 20 in interview, though for experience, he was awarded merely 0.33 marks, out of 10, (i.e., 2 marks for each completed year of experience). It was further submitted that respondent No. 4 was further not eligible as his basic qualification was not in related discipline. He had passed his GATE 2008 test in Information Technology, the validity of which even otherwise was upto 15.3.2010 and he was not eligible on the date of filing the application for admission for Part-Time Ph.D. course in MBA.

3. He further submitted that one seat for admission to Part-Time Ph.D. course was advertised by the University, but two candidates were admitted in the course.

4. As regards respondent No. 5-Monika, who was also granted admission in general category, the submission is that though she was

granted full 10 marks for having experience of more than 5 years, but the certificates produced on record were not showing that she had that much experience. There was only one certificate produced on record showing experience of one year and 7 months, for which 10 marks could not be granted. If those marks are reduced, she cannot make to the select list of the candidates. As a consequence, the petitioner, being the only general category candidate, deserves to be granted admission. He further submitted that even there is no strict restriction on the candidates, who can be admitted as there can be some minor variation by the University.

5. It was further submitted that though as per the schedule prescribed in the prospectus, the result for admission was to be declared immediately on the date of interview, however, in the case in hand, it was declared much thereafter and during the intervening period, respondent No. 4 was declared to be eligible as even the Interview Committee had raised a doubt about his eligibility.

6. On the other hand, learned counsel for the University submitted that there was no issue regarding eligibility of respondent No. 4 for being admitted to Part-Time Ph.D. course as he was GATE qualified. In terms of the Regulations framed by UGC and the conditions laid down in the prospectus, he was rightly granted exemption from appearing in written examination. The marks in the interview were awarded on the basis of performance. The comparative performance of the candidates at the time of interview cannot be considered by this court as it was for the Interview Committee on the basis of performance of the candidates. He further submitted that in terms of the resolution passed by the University, the internal candidates can be granted exemption from written test. As regards the qualification of respondent No. 4-Himanshu, it was submitted that no doubt, the certificate of diploma produced by him mentioned that the same was a part-time course, however, on the basis of a clarification given by the Institute, from where respondent No. 4 had passed his diploma, the matter was examined by High-Powered Committee in the University, the minutes of which were approved by the Vice-Chancellor, and it was found that the

course contents and the duration were same as that of regular course, hence, he was treated eligible.

7. Regarding eligibility of respondent No. 5- Monika, it was submitted that the certificates produced by her clearly established that she was having experience of more than five years and she was rightly awarded 10 marks for the same.

8. Learned counsel appearing for respondent No. 4 submitted that there are no malafides alleged either against the answering respondent or the University. Respondent No. 4 was rightly granted admission in terms of the conditions laid down in the prospectus. He was granted exemption from appearance in the written test as he was GATE qualified. He has already been admitted in the course for the last three years, which is nearing completion now. To disturb his admission at this stage will result in spoiling his three years' precious time. As regards he being not eligible on account of his qualification of GATE being not related discipline, it was submitted that experts had found him to be eligible. This Court cannot sit in appeal over that decision. Such an issue has to be left to the academicians. It was further submitted that the petitioner, in any case, will not fall in the merit list, even if the admission of any of the admitted candidate is set aside, as there are other candidates above the petitioner on merits.

9. Learned counsel appearing for UGC submitted that the Regulations framed by the UGC do not, in any way, provide for exemption to an employee of the University. It talks about grant of exemption only to the candidates, who had passed UGC/CSIR (JRF) Examination/ SLET/ GATE/ teacher fellowship holder or have passed M. Phil Programme for Ph. D. Entrance Test. The Universities are bound by the Regulations framed by the UGC. As regards the related discipline, it was submitted that this necessarily means the same subjects. Information Technology, in which respondent No. 4 had passed his GATE test, cannot be said to be related in any manner with Ph.D. in MBA. The equivalence or relation could be seen by the academicians only, if there is some issue regarding any subject in the total course contents and not when on the face of it the disciplines are poles

apart.

10. Heard learned counsel for the parties and perused the paper book.

11. Before the respective contentions raised by the petitioner and learned counsel for the respondents are considered, it would be appropriate to refer to the relevant Regulations framed by the University and the conditions laid down in the prospectus issued for admission.

12. UGC framed University Grants Commission (Minimum Standards and Procedure for award of M. Phil/Ph.D. Degree), Regulations, 2009 dated 1.6.2009. It provides for procedure for admission to Ph.D. and M. Phil courses. The relevant Regulation 9 (i) thereof is extracted below:

“PROCEDURE FOR ADMISSION

9. (i) All Universities, Institutions, Deemed to be Universities and Colleges/Institutions of National Importance shall admit M. Phil doctoral students through an Entrance Test conducted at the level of individual University, Institution, Deemed to be University, College/ Institution of National Importance. The University may decide separate terms and conditions for those students who qualify UGC/CSIR (JRF) Examination/ SLET/ GATE/ teacher fellowship holder or have passed M. Phil Programme for Ph.D. Entrance Test. Similar approach may be adopted in respect of Entrance Test for M. Phil Programme.

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13. The eligibility conditions laid down in the prospectus for Ph.D. Programme 2012-13, issued by the University, are extracted below:

1.9. Eligibility for Admission to Part-Time Ph. D. Courses

(i) A candidate for admission to the course of Ph.D. must have obtained 60% marks at the Master's Degree level or any other equivalent examinations in relevant field. The relevance of the subject will be decided by the Board of Studies. *For Ph.D. in MBA, full time MBA recognized by AICTE/UGC or PGDM

full time regular course equivalent to MBA recognized by AIV (attested copy of proof to be enclosed) Or MBA distance education recognized by Distance Education Council (attested copy of proof to be enclosed). For exemption from test, candidate must be NET qualified in MBA stream.

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3. The eligible applicants will have to qualify the prescribed Entrance Test by securing at least 40% marks in the entrance test. The applicants who have qualified and valid GATE/UGC/NET/CSIR (JRF)/SLET/ Passed regular M. Phil. Programme in the related discipline and the sponsored regular staff of this University (YMCAUST) and its constituent colleges are exempted from entrance test.

The successful applicants who will qualify the entrance Test or otherwise exempted shall be tested by the DRC through seminar/ presentation/interview.”

14. In the Ordinance issued by the University for Ph.D. Degree, applicable w.e.f. 2010-11, the relevant condition of eligibility and additional conditions of eligibility are extracted below:

“ 4. Eligibility

(i) A candidate for admission to the course of Ph. D. must have obtained 60% marks at the Master's Degree level or any other equivalent examinations in relevant field or a subject allied thereto. The relevance of the subject will be decided by the Board of Studies.

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5. Additional Eligibility Conditions for Part-Time Ph. D. Admission

(i) The applicant should be a teaching employee of an educational institute/org and must produce No Objection

Certificate from his employer on or before the interview.

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Regarding challenge to the admission of respondent No. 4

15. Respondent No. 4 is working as System Analyst in the Department of Computer Engineering in the University. As per the Regulations and conditions laid down in the prospectus for admission to Ph.D. course, a candidate is required to appear in an entrance test. As per the Regulations framed by UGC, admission to Ph.D. course can be through an entrance test conducted at the level of University, however, the institutions can decide separate terms and conditions of those candidates who qualified UGC/CSIR (JRF) Examination/ SLET/ GATE/ teacher fellowship holder or have passed M. Phil Programme for Ph.D. Entrance Test.

16. In the conditions laid down in the prospectus, the candidates, who had valid qualification of GATE/UGC/ NET/CSIR (JRF)/SLET/ Passed regular M. Phil. Programme in the related discipline and the sponsored regular staff of the University are exempted from entrance test. It could not be disputed that the Regulations framed by UGC providing for admission to Ph.D. courses are binding on the University. There is no such clause provided in the Regulations that a candidate can be granted exemption from appearance in the entrance test merely because he is a sponsored regular staff of the University, hence, exemption granted to respondent No. 4 from appearing in the entrance test was contrary to Rules.

17. In the case in hand, respondent No. 4 had passed his Post Graduate Diploma in Management (2009-12) from Fore School of Management, New Delhi. The certificate issued by the aforesaid school clearly mentioned that it was “Three Year Part Time Course”. As per the condition of eligibility laid down in the prospectus, one of the alternate qualification mentioned was Post Graduate Diploma in Management full-time regular course equivalent to MBA recognized by AIU. Once the certificate issued by the school, from which respondent No. 4 had passed his diploma, clearly mentioned that it was a part-time course, as approved by All India Council for Technical Education, the conduct of the University in

declaring the same to be equivalent to the full-time regular course would be overriding the permissions granted by All India Council for Technical Education, hence, there is no other option but to hold that respondent No. 4 did not have the requisite qualification of Post Graduate Degree/Diploma required for admission to Ph.D. course.

18. Further, the case set up by the University and respondent No. 4 is that he was granted exemption being GATE qualified. The conditions laid down in the prospectus provided that the applicants, who have qualified and who have valid GATE certificate in related discipline are exempted from appearance in the entrance test. The certificate of GATE produced by respondent No. 4 shows that it was GATE 2008, which had validity upto 15.3.2010 (Annexure R1/4). Meaning thereby, for admission in Ph.D. course for the year 2012-13, respondent No. 4 was not having a valid GATE certificate to seek exemption from appearance in the entrance test. Besides this, even otherwise, his GATE certificate was in Information Technology, whereas he had sought admission in Ph.D. in MBA. GATE in Information Technology, cannot be said to be a related discipline. Respondent No. 4 further does not fulfil one of the addition eligibility condition laid down in the Ordinance for admission to Part-Time Ph.D. course, namely, that he has to be a teaching employee in an educational institution. Undisputedly, he is not on a teaching assignment in the University, but is working as System Analyst in the establishment.

19. From the aforesaid material on record, it is established that respondent No. 4 was not eligible for admission to Ph.D. course in MBA.

Regarding challenge to the admission of respondent No. 5

20. The contention sought to be raised by the petitioner to dispute her eligibility was that she had been granted 10 marks for experience of five years. It was claimed that she was having merely 1 year and 7 months of teaching experience, hence, award of 10 marks (two marks for each completed year of experience) was totally illegal. However, from the certificates produced on record by respondent No. 5 with the University, as were shown in the court, she had total experience of more than 5 years. The

contention raised by the petitioner that the experience had to be in teaching only is misconceived as the condition in the prospectus merely provides for experience, total 10 marks (two marks for each completed year of experience). The experience of respondent No. 5, referred to by learned counsel for the University, is 7 months in Oxford Brookes University; 1 year and 8 months in Kmart Australia Ltd.; 1 year and 11 months in IILM Institute for Higher Education and 1 year and 9 months in Amity Business School. Hence, it is wrong to suggest that she has been wrongly awarded marks for experience. There is no other issue raised regarding her eligibility, hence, her admission cannot be said to be erroneous.

Regarding admission of the petitioner

21. Though the petitioner sought to argue that even if the admissions pertain to the year 2012-13, but still he can be granted admission now more than 3 years later in 2016, as there is no limit on the candidates as such. Initially also, against one seat advertised, the University had admitted two candidates in general category. Out of total 10 candidates, 8 appeared at the time of interview. The total marks secured by the petitioner were 50.4, as against 56.8 secured by respondent No. 4. Respondent No. 5 secured 55.826 marks. Thereafter, there are 4 candidates above the petitioner, who have secured marks more than him. None of them is party before this court. Merely because the petitioner is before this court and has secured lesser marks than the other candidates in the merit list, he only cannot be granted admission, as it had to be offered to the next candidate in the merit list. That too could be within some reasonable time after the course started. It cannot be after more than 3-1/2 years after the admissions were made. The petitioner, if was seriously interested in pursuing his studies, would not have waited the result of the writ petition and may have/should have tried for his admission in the next session. Further, nothing was pointed out by the petitioner at the time of hearing that he fulfils the conditions laid down in the Ordinance regarding he being a teaching employee of an educational institution to be eligible for admission in Part-Time Ph.D. Course. Hence, in my opinion, he does not deserve to be granted admission.

22. For the reasons mentioned above, the admission of respondent No. 4 to Ph.D. course is set aside, being ineligible. The admission of respondent No. 5 is upheld. The petitioner cannot be granted admission at this belated stage.

The writ petition stands disposed of.

(Rajesh Bindal)
Judge

January 11, 2016
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(Refer to Reporter)