

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.7196 of 2016

Date of decision: 22.04.2016

Somvir Singh

---Petitioner

Versus

State of Haryana and others

---Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr.Sumit Sangwan, Advocate
for the petitioner.

HARINDER SINGH SIDHU, J.

This writ petition has been filed praying for quashing the relaxation provision in Note II (a) in Column No.3, Appendix B of Haryana Education College Cadre (Group-B) Service Rules, 1986 introduced vide Haryana Education College Cadre (Group-B) Service (Amendment) Rules, 2006 notified on 21.09.2006, whereby for the post of Assistant Professor criterion of 'good academic record' has been relaxed for candidates possessing Ph.D degree in the relevant subject while retaining it for those who have qualified the National Eligibility Test (NET) conducted by the University Grants Commission.

Recruitment to the post of Assistant Professor in Haryana is regulated by the 'Haryana Education College Cadre (Group-B) Service Rules, 1986' (for short '1986 Rules')

Clause 7 of the Rules lay down the qualifications for the post as under:

"7. Qualification: No person shall be appointed to any post in the Service unless he is in possession of qualifications and

experience specified in column 3 of Appendix B to those rules in the case of direct recruitment and those specified in column 4 of the aforesaid Appendix in the case of appointment other than by direct recruitment.”

Relevant portion of Appendix-B is reproduced herein:-

Sr.No.	Designation of Post	Academic Qualifications and experience, if any, for direct recruitment.
1.	Assistant Director of Higher Education.	(a) Good academic record with at least 55% of the marks or, an equivalent grade of B in the 7 point scale with letter grades O, A, B, C, D, E and F at the Master's Degree level in the relevant subject from an Indian University, or an equivalent degree from a Foreign University.
2.	Assistant Professor in Humanities, Social Sciences, Sciences, Commerce, Education, Physical Education, Foreign Languages and Law	(b) Hindi/ Sanskrit upto Matric standard Or Higher Edu. (c) Besides fulfilling the above qualifications, candidates should have cleared the Eligibility test (National Eligibility Test) for lecturers conducted by the University Grants Commission, Council of Scientific and Industrial Research or similar test accredited by the University Grants Commission

A candidate apart from having a Master's degree in the relevant subject with at least 55% marks and having cleared the eligibility test National Eligibility Test for lecturers conducted by the University Grants Commission is required to have a 'good academic record'

Note II of Appendix B specifies the criteria for determining 'good academic record' as under:

“(a) For determining good academic record a candidate should either have average of 55% marks in two of the three examinations (not below matric or equivalent) prior to Master's degree or 50% marks in each of these two examinations separately.

(b) For determining good academic record, if total number of marks in two examinations are different, then the average of percentages is to be calculated by dividing the marks obtained

in two examinations by total number of marks in those two examinations.”

Vide Haryana Education College Cadre (Group-B) Service (Amendment) Rules, 2006 notified on 21.09.2006, the Haryana Education College Cadre (Group-B) Service Rules, 1986 were amended. Two aspects of this amendment are relevant.

First, by an amendment to Note I (c) candidates who had been awarded M.Phil degree in the relevant subject upto 31st December, 1993 or who had submitted Ph.D. thesis to the University in the concerned subject on or before 31.12.2002 were exempted from the National Eligibility Test. But they would not be considered for selection/appointment unless they had obtained Ph.D. degree upto the last date of receipt of application for the posts advertised on the basis of the thesis submitted by them before 31.12.2002.

Another amendment made was that the requirement of 'good academic record' was relaxed in respect of candidates possessing Ph.D. degree in relevant subject. This provision for relaxation was inserted in Appendix B after Note II(a) and reads as under:

“(I) Candidates having 55% or above marks in M.A. or M.Sc. in relevant subject and possessing Ph.D. degree in relevant subject the criterion of good academic record will not apply at all.

(ii) Candidates having 55% or above marks in M.A. or M.Sc. in relevant subject and possessing M.Phil degree in relevant subject should have 50% marks in one of the lower examinations i.e., B.A., Prep, Plus 2 or Matric.”

As per this amendment the criteria of 'good academic record' would not apply at all to candidates having 55% or more marks in M.A. or

M.Sc. in the relevant subject and possessing Ph.D. degree in that subject. Candidates having 55% or above marks in M.A. or M.Sc. in relevant subject and possessing M.Phil degree in that subject were required to have 50% marks in one of the lower examinations i.e., B.A., Prep, Plus 2 or Matric

Vide the Haryana Education (College Cadre) Group-B Service (Amendment) Rules, 2013, the 1986 Rules were further amended. In Appendix B under column 3 and 4 after Sr. No.9 in Note 1 (c), the following was substituted:

<i>(c) National Eligibility Test (NET) shall remain the minimum eligibility condition for recruitment and appointment as Assistant Professor in Colleges:</i> <i>Provided that the candidates possessing Ph.D. degree at the time of submission of application shall be exempted from the requirement of the minimum eligibility condition of NET for recruitment and appointment as Assistant Professor in all subjects:</i> <i>Provided further that Ph.D. degree awarded by State/Central Universities or only those Private/Deemed Universities which have been accredited as “A” grade universities by the National Assessment and Accreditation Council (NAAC) shall be considered for relaxation in lieu of NET:</i> <i>Provided further that NET shall not be required for such Master's programmes in disciplines for which there is no NET.”</i>	<i>(c) National Eligibility Test (NET) shall remain the minimum eligibility condition for recruitment and appointment as Assistant Professor in Colleges:</i> <i>Provided that the candidates possessing Ph.D. degree at the time of submission of application shall be exempted from the requirement of the minimum eligibility condition of NET for recruitment and appointment as Assistant Professor in all subjects:</i> <i>Provided further that Ph.D. degree awarded by State/Central Universities or only those Private/Deemed Universities which have been accredited as “A” grade universities by the National Assessment and Accreditation Council (NAAC) shall be considered for relaxation in lieu of NET:</i> <i>Provided further that NET shall not be required for such Master's programmes in disciplines for which there is no NET.”</i>
--	--

Vide this amendment, though the National Eligibility Test (NET) was retained as the minimum eligibility condition for recruitment and appointment as Assistant Professor in Colleges, but candidates possessing Ph.D. degree at the time of submission of application were exempted from the requirement of this minimum eligibility condition of NET for recruitment and appointment as Assistant Professor. It was further provided that only Ph.D. degree awarded by State/Central Universities or those Private/Deemed Universities which have been accredited as “A”

grade universities by the National Assessment and Accreditation Council (NAAC) would be considered for relaxation in lieu of NET.

The respondents have issued advertisement No.10, dated 16.02.2016 (Annexure P-2) inviting applications for the post of Assistant Professor.

Clause 5 of this advertisement specifies the essential qualifications for the post of Assistant Professor of the post as under:

“5. Essential Qualifications:-

(i) Assistant Professors (all subjects except Fine Arts and Mass Communication).

(a) Good academic record with at least 55% of the marks or an equivalent grade of B in the 7 point scale with letter grades O, A, B, C, D, E and F at the Master's Degree level in the relevant subject from an Indian University or an equivalent degree from a Foreign University.

(b) Knowledge of Hindu/ Sanskrit upto Matric standard.

(C) “National Eligibility Test (NET) conducted by the University Grant Commission, Counsel of Scientific and Industrial Research or similar test accredited by the University Grant Commission like SLET/ SET shall remain the minimum eligibility condition for recruitment and appointment as Assistant Professor in Colleges:

Provided that the candidates, who are or have been awarded a Ph.D. Degree in accordance with the University Grant Commission (minimum standards and procedure for award of Ph.D. Degree) regulation, 2009 shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent position in colleges.

Provided further that NET/SLET/SET shall not be required for such Master's Programmes in disciplines for which NET/SLET/SET is not conducted.”

Relaxation has been given in the following terms:

“Relaxation: *The following relaxation will however operate:-*

- (i) Candidates having 55% or above marks in M.A. or M.Sc. in relevant subject and possessing Ph.D. degree in relevant subject the criterion of good academic record will not apply at all.*
- (ii) Candidates having 55% or above marks in M.A. or M.Sc. in relevant subject and possessing M.Phil degree in relevant subject should have 50% marks in one of the lower examinations i.e. B.A. Prep or Plus 2, Matric.*
- (iii) Candidates obtaining first class first in the University in the relevant subject in M.A. or M.Sc. should have 50% marks in one of the lower examinations i.e. B.A., Prep or Plus 2, Matric.”*

In response to this advertisement, the petitioner applied for the post of Assistant Professor/College Cadre, HES-II in the subject of Geography. The petitioner has obtained 48.66% marks in Matriculation, 44.20% marks in 10+2, 44.33% marks in Graduation, 60% marks in B.Ed. and 58.50% marks in M.A. (Geography). The petitioner has also qualified the National Eligibility Test for Lectureship conducted by the University Grants Commission in December 2012 in the subject of Geography. He however is not eligible as he does not fulfil the requirement of good academic namely having at least 50% in two classes out of three namely 10th, 10+2 and Graduation.

The petitioner has filed this petition challenging the provision of the Rules and the advertisement whereby candidates possessing Ph.D in the relevant subject have been given relaxation from the condition of having good academic record.

Ld. Counsel has contended that this relaxation from the requirement of 'good academic record' is illegal as it discriminates between

two sets of eligible candidates. He argues that if the NET qualified candidates and those possessing Ph.D degree in the same subject are both eligible, then all other conditions ought to be equally applicable to them. All other eligibility conditions should apply to both sets of candidates equally. Also if there is any relaxation it should apply to both sets equally. He argues that in relation to the requirement of having a 'good academic record', there is no rationale for treating the NET qualified candidates differently from those who possess Ph.D degree in the subject.

We have given serious thought to the contention of the Ld. Counsel, but are not persuaded to agree with him.

In the first place, it is well settled that prescribing the source and mode of recruitment and qualifications and criteria of selection for various posts are matters which fall within the exclusive domain of the employer. Judicial review in such matters can be exercised only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by mala fides.

This position was explained by Hon'ble the Supreme Court in ***Official Liquidator v. Dayanand, (2008) 10 SCC 1***, as under:

“59. The creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source and mode of recruitment and qualifications and criteria of selection, etc. are matters which fall within the exclusive domain of the employer. Although the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and laying down the qualification, etc. is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by mala fides.”

Secondly, it equally well settled that while the State may not discriminate between equals but it may make a valid classification. The test in such cases is whether the characteristics of the class are such as to provide rational justification for the differentiation introduced. There would be no infringement of equal protection clause if the law deals alike with those of a certain class while applying a different rule to persons differently situated. Mere differentiation or inequality of treatment does not 'per se' amount to discrimination within the inhibition of equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary in that it does not rest on any rational basis having regard to the object in view. It has also been held that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the relevant time.

In the light of the aforementioned tests, it needs to be determined whether the insistence on good academic record i.e. either having an average of 55% marks in two out of three examinations (not below Matric or equivalent prior to Master's degree or 50% marks in each of these two examinations separately) for NET qualified candidates but relaxing the same for the Ph.D degree holders meets the test of reasonable classification.

It needs to be noticed that the relaxation regarding the requirement of good academic record as per the 2006 amendment is made in respect of two different categories.

- (i) the criteria of good academic record will not apply at all to candidates having 55% or above marks in M.A. or M.Sc. in

relevant subject and possessing Ph.D. degree in relevant subject.

(ii) Candidates having 55% or above marks in M.A. or M.Sc. in relevant subject and possessing M.Phil degree in relevant subject are required to have 50% marks in one of the lower examinations i.e., B.A., Prep, Plus 2 or Matric.

The requirement of qualifying the National Eligibility Test was introduced by the University Grants Commission by framing Regulations. Its basic objective is to determine eligibility for college & university level lectureship and for award of Junior Research Fellowship (JRF) for Indian nationals in order to ensure minimum standards for the entrants in the teaching profession and research.

The background to the framing of Regulations has been summarized by Hon'ble the Supreme Court in **P. Suseela v. University Grants Commission, (2015) 8 SCC 129**, as under:

“4. In exercise of the powers conferred by Section 26(1)(e) of the said Act, UGC framed regulations in 1982 prescribing the qualification for the teaching post of Lecturer in colleges as follows: “MPhil degree or a recognised degree beyond Master’s level”. In 1986, the Malhotra Committee was appointed by UGC to examine various features of university and college education. It recommended that there should be certain minimum qualifications laid down for the post of Lecturer. Pursuant to the said Committee report, UGC framed regulations on 19-9-1991 superseding the 1982 Regulations and providing apart from other qualifications, clearing of NET as a test for eligibility to become a Lecturer. Vide an amendment dated 21-6-1995, a proviso was added to the 1991 Regulations by which candidates who have submitted their PhD thesis or passed the MPhil examination on or before 31-12-1993 are exempted from the said eligibility test for appointment to the post of Lecturer. This continued till 2002, the only change made being that the exemption continued qua PhD thesis-holders for dates that were extended till 31-12-2002. This state of affairs continued until 2008 when the Mungekar Committee submitted its final report recommending that NET should be made a compulsory requirement for appointment of Lecturer in addition to the

candidate possessing MPhil or PhD degrees.”

Clearly, the objective of introducing this requirement was to maintain uniformity and excellence in standards of higher education. Exemptions from qualifying the NET have been made for Ph.D. degree holders at different times.

Doctorate of Philosophy is the highest level of an academic degree one can pursue in India and most other nations. It usually involves a minimum of three or four years of intense research and study. It is only after obtaining M.Phil. or Master's degree with a certain minimum percentage that a person can enrol for Ph.D. The Ph.D degree signifies that a person has attained the greatest level of competence in the field of study. The degree also signals and certifies that the holder has the requisite analytical skills to carry out rigorous research tasks, because doctoral studies usually include training in methodology and statistics. The doctorate degree extols a bunch of virtues in the scholar or the degree holder. First and foremost being mastery of the subject; this follows from the fact that in order to obtain the Ph.D degree, one needs to successfully complete a complex process of developing a research proposal, creating a research plan, carrying out research in the chosen field and presenting the results of that research to other experts in the field who have then evaluate the work and deem that it meets the highest standards of the academic world. That is why those who earn the degree are held in high esteem.

Moreover, it is not that a Ph.D. from any University is exempted from the requirement to qualify the NET to be eligible. As per the 2013 amendment, it is only the Ph.D. degree awarded by State/Central Universities or only those Private/Deemed Universities which have been

accredited as “A” grade universities by the National Assessment and Accreditation Council (NAAC) that would be considered for relaxation in lieu of NET. This ensures that the Ph.D degree in question is of the highest standard.

Thus, if the competent authority has relaxed the condition of 'good academic record' for a person with a Ph.D degree, while retaining it for NET qualified candidates, we find no basis to hold that the relaxation from the requirement of good academic record is arbitrary and discriminatory and hence unconstitutional.

This petition is hence dismissed.

It is clarified that the observations made in this case are only in context of the issue arising in this petition and have no bearing on any question regarding validity of the Rule with regard to granting exemption to a Ph.D. degree holder from qualifying NET, nor are they to be understood to in any manner imply that the National Eligibility Test prescribed by the UGC is not one of the highest standard to ensure that excellence in teaching standards is maintained in the Colleges and Universities.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

April 22, 2016
Atul

(Refer to Reporter)