

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

CWP No.9823 of 2015 (O&M)

Date of decision:11.08.2016

Vinod Kumar

... Petitioner

Vs.

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Abhinav Sood, Advocate for
Mr. Saurabh Sharma, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J.

Pleadings on record would indicate that the petitioner is presently working as Assistant Professor (Chemistry) in M.M. Engineering College, Mullana. Applications are stated to have invited for the post of Assistant Professor (Chemistry) vide advertisement dated 31.08.2014 by respondent No.3/College i.e. S.A. Jain College, Ambala City. Even though, the advertisement dated 31.08.2014 has not been placed on record, yet counsel would submit that an application was submitted for the post of Assistant Professor (Chemistry) and the petitioner was even called for an interview.

Grievance in a nutshell of the petitioner is that respondent/College has not selected the petitioner in terms of applying the criteria for selection contained in memo dated 25.06.2013 issued by the Director General, Higher Education, Haryana at Annexure P-3 which is on the subject of “**revised criteria for selection of Principals and Assistant Professors in the non-government aided colleges in the State of Haryana**”.

The primary submission raised by counsel is that the criteria

contained in memo dated 25.06.2013 at Annexure P-3 and applied for selection to the post of Assistant Professor (Chemistry) and for which the petitioner had applied is in derogation of the UGC REGULATIONS FOR APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES AND MEASURES FOR THE MAINTENANCE OF STANDARDS IN HIGHER EDUCATION, 2010 (hereinafter to be referred to as 'the UGC Regulations 2010'). In support of such contention, counsel has referred to Clause 4.4.0 governing the post of Assistant Professor as also Clause 4.4.1 which lays down the minimum eligibility condition for the post of Assistant Professor in various streams including that of Sciences. It is contended that in the criteria for selection for the post of Lecturer/Assistant Professor and as contained in memo dated 25.06.2013 issued by the Director General, Higher Education Haryana, 50% marks had been allocated for academic record. Such marks are to be allocated on the basis of percentage of marks possessed by a candidate at the matriculation level, 10+2 level, bachelor degree/graduation level, masters degree/post graduation level and for having been awarded a gold medal at post graduation level/UG level or being topper in the Board Examination at 10+2 level. As per counsel, under the UGC Regulations 2010 and particularly under Clause 4.4.1, good academic record had been defined to be possessing at least 55% marks at the masters degree level in the relevant subject and which the petitioner possesses in as much as he has qualified the M.Sc. degree with 60% marks. Contention raised is that the criteria applied for academic record and as contained in the memo dated 25.06.2013 at Annexure P-3 is in violation of the UGC Regulations and supersede the same.

The next submission raised by counsel is that the petitioner has also possessed a doctorate degree of Ph.D. but he has not been granted any weightage for the same as none is provided in the selection criteria adopted. The selection criteria on the whole is stated to be arbitrary and a deviation from the previous advertisement that had been issued by the Kurukshetra University for the same very post.

Having heard counsel for the petitioner at length, this Court is of the considered view that the instant petition is completely bereft of merits and deserves dismissal.

At the very outset, it may be observed that the selection process that had been initiated in the light of advertisement dated 31.08.2014 has already culminated. The solitary post of Assistant Professor (Chemistry) falling to the General Category has already been filled up. Such factual position is conceded by the counsel appearing for the petitioner. In spite of such position, the selected and appointed candidate has not been impleaded as a party respondent. Needless to observe that such candidate would not only be a proper party but would also be a necessary party to the instant writ petition. The writ petition is thus bad on account of non-joinder of necessary party.

On merits, it may be noticed that Clause 1.2 of the UGC Regulation 2010 defines the extent of application and reads as follows:

“1.3 They shall apply to every university established or incorporated by or under a Central Act, Provincial Act or a State Act, every institution including a constituent or an affiliated college recognized by the Commission, in consultation with the university concerned under Clause (f) of Section 2 of the University Grants Commission Act, 1956 and every institution deemed to be a university under Section 3 of

the said Act.”

Counsel has not been able to advert to any document for this Court to conclude that the UGC Regulations 2010 would apply to respondent No.3/College which is a non-government aided college even though affiliated to Kurukshetra University. Be that as it may, this Court is proceeding on the assumption that the UGC Regulations 2010 would hold the field even as regards selection and appointment to the post of Assistant Professor (Chemistry) in respondent No.3/College.

Clause 4.4.0 and Clause 4.4.1 of the UGC Regulations 2010 and on which heavy reliance was placed reads as follows:

“4.4.0 ASSISTANT PROFESSOR

4.4.1 Arts, Humanities, Sciences, Social Sciences, Commerce, Education, Languages, Law, Journalism and Mass Communication

- i. Good academic record as defined by the concerned university with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign university.*
- ii. Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET.*
- iii. Notwithstanding anything contained in sub-clauses (i) and (ii) to this Clause 4.4.1, candidates, who are, or have been awarded a Ph.D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 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 positions*

in Universities/Colleges/Institutions.

iv. NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not conducted.”

Perusal of the provision make it clear that a good academic record has been defined to mean a candidate to possess at least 55% marks or equivalent grade in a point scale wherever a grading system is followed at the masters degree level in the relevant subject from an institution/University or an equivalent degree from Accredited Foreign University. That apart, a candidate must have also cleared the National Eligibility Test (NET) conducted by the UGC or similar test i.e. SLET/SET.

Clause 4.4.1 makes it clear that these are the minimum qualifications that have been prescribed for the post of Assistant Professor in various streams including that of Sciences. Such Regulations have been framed by the UGC with the objective of maintenance of standard in higher education. The minimum qualifications/requirements envisaged under Regulation 4.4.1 reproduced hereinabove lay down the minimum benchmark and which the respondent/College would be obligated to adhere to. In the present case, vide memo dated 25.06.2013 issued by the Director General, Higher Education, Haryana at Annexure P-3 a criteria has been prescribed which is in addition to prescribing the minimum requirement for the post of Assistant Professor (Chemistry) as stipulated under the UGC Regulations. In the considered view of this Court, by doing so, there has been no violation insofar as the UGC Regulations are concerned. The Director General, Higher Education, Haryana has chosen to raise the Benchmark and has prescribed a criteria over and above the minimum requirement prescribed. It is not a case where a candidate who fulfills the

eligibility criteria stipulated in Regulation 4.4.1 under the UGC Regulations 2010 has been rendered ineligible. That is not even the case of the petitioner. His grievance is that in spite of being considered eligible, the criteria contained in memo dated 25.06.2013 at Annexure P-3, has worked to his detriment inasmuch certain weightage has been assigned towards academic record and which he does not fulfill.

It would be necessary for this Court to even advert to the precise criteria as per memo dated 25.06.2013 at Annexure P-3 for the post of Assistant Professor (Chemistry)/Lecturer and which read as follows:

“FOR SCIENCE AND PRACTICAL SUBJECTS:-
Criteria for the selection of Lecturers in the Govt. Aided Private Colleges in the State of Haryana.

Criteria Distribution		Marks Distribution
(A)	Academic Record	(50%)
(B)	Assessment of Domain Knowledge & Teaching Skills	(30%)
(C)	Interview Performance	(20%)

Total 100 Marks

(A) Academic Record (50 marks)

I Matriculation (Max.5 Marks)

75+ to 85%	85+ to 90%	Above 90%
(2 Marks)	(3 Marks)	(5 Marks)

II 10+2 (Max.5 Marks)

75+ to 85%	85+ to 90%	Above 90%
(3 Marks)	(4 Marks)	(5 Marks)

III Bachelor Degree (Max.10 Marks)

70+ to 80%	80+ to 90%	Above 90%
(4 Marks)	(6 Marks)	(10 Marks)

IV Master Degree (Max.20 Marks)

70+ to 75%	75+ to 80%	80+ to 85%	Above 85%
(5 Marks)	(10 Marks)	(15 Marks)	(20 Marks)

V Merits (Max. 10 Marks)

Gold Medal at PG Level stood 1 st in the University	Gold Medal at UG Level stood 1 st in the University	Topper in Board Examination at 10+2 Level
(5 Marks)	(5 Marks)	(5 Marks)

Counsel submits that the petitioner has secured 63% marks in matriculation, 53% in 10+2, 60.18% at the graduation level and 60% at the post graduation level. In terms of the criteria reproduced hereinabove, the petitioner has clearly lost out as he has not got the percentage stipulated to be awarded the weightage towards academic record. Merely on this count, the criteria cannot be held to be arbitrary and bad in law. So long as UGC Regulations 2010 and the minimum benchmark has been satisfied, it would be within the domain of experts/academicians to stipulate the selection criteria for a particular post. The same has been done vide memo dated 25.06.2013 at Annexure P-3. This Court lacks the expertise to go into such issues so as to take a different view on such subject. It is not the case of the petitioner that such criteria has been followed with a malafide intent and is tailor made to select any particular candidate or class of candidates. Judicial review in such matters would be permissible only if the criteria is shown to be patently illegal or irrational. That is not the case here.

Even the submission as regards action being arbitrary by referring to advertisement issued by the Kurukshetra University, Kurukshetra at Annexure P-5 is being noticed only to be rejected. Even as per criteria at Annexure P-5, the minimum benchmark as stipulated by the UGC Regulations 2010 had been duly followed. In that case, the University has chosen not to stipulate a criteria higher than the minimum. That however cannot be a ground to seek the issuance of a writ of mandamus or directing even the Director General, Higher Education, Haryana to adopt the same criteria.

Yet another aspect that has weighed with this Court to decline any relief to the petitioner is that the advertisement dated 31.08.2014 issued

by the respondent/College even though not appended along with the petition but was produced by the counsel during the course of hearing made it clear that the applications are being invited and the eligibility and qualifications for the post would be as per Government of Haryana Education Departments Norms. The eligibility and qualifications were laid down as per memo dated 25.06.2013 at Annexure P-3. On the date of submission of application, the petitioner was well aware of the criteria which had been stipulated in the memo dated 25.06.2013 at Annexure P-3. The petitioner has taken his chance and having remained unsuccessful cannot now be permitted to turn around to raise a challenge to the very criteria in response to which he had submitted his application and subjected himself to a process of selection. The challenge, if any, by the petitioner should have been raised at the very threshold i.e. at the stage of issuance of the advertisement. The petitioner chose not to do so.

For the reasons recorded above, prayer made in the present petition cannot be accepted and consequently, the writ petition is dismissed.

11.08.2016

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |