

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

CWP No. 3450 of 2012 (O&M)
Date of decision: May 8, 2017

Dr. Neelam Sharma

...Petitioner

Versus

Guru Nank Dev University and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Charanjeet Bakshi, Advocate,
for the petitioner.

Mr. Amrit Paul, Advocate,
for respondent No.1.

Mr. Rahul Sharma-I, Advocate,
for respondent No.2.

JAISHREE THAKUR, J.

1. The petitioner herein seeks issuance of a writ in the nature of mandamus directing respondent University to issue an appointment letter to her for the post of Assistant Professor with respondent no 2 College.

2. The petitioner registered as a Ph.D. candidate on 24.12.2003 with the respondent University and the subject was approved in the meeting dated 8.2.2005. On completion of the cases she was awarded the degree of Doctor of Philosophy by the respondent University by degree dated 18.05.2010. The petitioner had been working as ad hoc lecturer since 1997. Applications were invited by an advertisement for the post of Assistant Professor in Ramgaria College of Education Phagwara. The petitioner was

not considered eligible on account of the fact she had not cleared the

National Eligibility Test (NET). Aggrieved the instant writ petition has been filed.

3. Mr. Charanjit Singh Bakshi, learned counsel appearing on behalf of the petitioner, contends that the petitioner is entitled to be appointed on the post of Assistant Professor, she being fully eligible. It is contended that Section 26 of the University Grants Commission, (**'the Commission'** for short), cloaks the Commission with the authority to prescribe for qualification and minimum standards of instructions of the teaching staff of the University. The Commission in a meeting held on 12.8. 2010 had resolved that all candidates having Ph.D. degree on or before 10.7.2009 shall remain exempted from the requirement of NET for the purpose of appointment as Lecturer/Assistant Professor with the further stipulation that candidates who had registered themselves for Ph.D. degree on or before July 2009 and are subsequently awarded Ph.D. degree shall remain exempted from the requirement of NET for the purposes of appointment as Lecturer/Assistant Professor in Colleges/Institutions. It is argued that the candidature of the petitioner was rejected by relying upon Regulation 2009 which only allowed exemption to those candidates from NET/SLET who have been awarded a Ph.D. degree in accordance with the University Grants Commission (Minimum Standards and Procedure for awards of M. Phil./ Ph.D. Degree) Regulations 2009. It is argued that once a decision had been taken by the Commission in its meeting held on 12.8.2010, that candidates having registered themselves for Ph.D. degree on or before 10.7.2009 and are subsequently awarded Ph.D. degree shall remain exempted from requirement of NET, she would not be required to have NET qualification

for appointment.

4. Per contra, Mr. Amrit Paul and Mr. Rahul Sharma-I, learned counsel appearing on behalf of the University and the College respectively, submit that the petitioner is not having the NET qualification in terms of the statutory regulations of the UGC and, therefore, cannot be offered appointment. Resolution dated 27.09.2010, relied upon by the petitioner, the petitioner would not override the Statutory Regulations of 2009 which specify that only those candidates who have been awarded a Ph.D. degree in accordance with the University Grants Commission (Minimum Standards and Procedure for award of M.Phil/Ph.D. Degree) Regulations 2009 shall be exempted from the appointment of the minimum eligibility conditions of NET/SLET for recruitment and appointment of Assistant Professors or equivalent positions in Universities/Colleges/Institutions. It is argued that Regulation 2009 provided for a more stringent method of admitting a candidate for a doctorate degree with a provision that such Ph.D. student shall be required to undertake coursework for a minimum period of one semester. The essential qualification for appointment on the post of Assistant Professor included clearing of NET which was not available with the petitioner, hence could not be considered.

5. I have heard the counsel for the parties and with their assistance have perused the record of the case.

6. The question that arises for consideration is, whether the petitioner having a Ph.D. degree issued to her on 18.05.2010 would be eligible for appointment as Assistant Professor with respondent No. 2, while ignoring the qualifications as prescribed under Regulations of 2009?

7. The petitioner herein registered as a Ph.D. student on 24.12.2003 and was awarded the degree in May 2010. In the meantime, Regulation 2009 had come into effect under which prescribed the minimum eligibility condition for recruitment and appointment of lecturers in universities/colleges/institutions. As per the Regulations of 2009, apart from the education qualification, a candidate was required to have passed the NET/SLET examination. These regulations were challenged before the High Courts in Delhi, Rajasthan and Madras on the ground that they should not be made applicable to those who had already obtained their M. Phil/Ph.D. degrees. The argument raised was rejected holding that these Regulations were prospective in nature and would apply to all appointments made after the date of notification. Since there was a divergent view taken by the Allahabad High Court, several appeals were filed before the Supreme Court.

8. **In P Suseelavs. University Grants Commission (2015)8SCC 129**, it was argued that a regulation is to be prospective and can not be prejudicial to affect the interests of any person who had already obtained their M.Phil and Ph.D. degrees prior to the regulation of 2009. It was argued that the said regulation should not be construed as to impose a burden of an examination and requirement of passing the NET examination. It was also argued that those persons who had obtained their M. Phil and Ph.D. degree prior to 2009 had a legitimate expectation in the matter of appointment had been done away with. Reliance was also placed upon the resolution dated 12.08.2010 and 27.09.2010 wherein the UGC had opined that since the regulations were prospective in nature all candidates having M.Phil degree

on or before 10th of July 2009 and all persons who had obtained the Ph.D. degree on or before the 31.12.2009 and had registered themselves for the Ph.D. before the date, but are awarded such degree subsequently, shall remain exempted from the requirement of NET for the purposes of appointment. The argument as raised was negated by the Supreme Court while upholding the Regulation of 2009.

“16. 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.”

“18. The arguments based on Article 14 equally have to be rejected. It is clear that the object of the directions of the

Central Government read with the UGC Regulations of 2009.2010 are to maintain excellence in standards of higher education. Keeping this object in mind, a minimum eligibility condition of passing the national eligibility test is laid down. True, there may have been exemptions laid down by UGC in the past, but the Central Government now as a matter of policy feels that any exemption would compromise the excellence of teaching standards in universities/colleges/institutions governed by the UGC. Obviously, there is nothing arbitrary or discriminatory in this — in fact it is a core function of UGC to see that such standards do not get diluted.”

19. The doctrine of legitimate expectation has been dealt with in two judgments of this Court as follows: in Union of India v. International Trading Co. [(2003) 5 SCC 437] , it was held: (SCC p. 447, para 23)

“23. Reasonableness of restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly. In determining whether there is any unfairness involved; the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the

disproportion of the imposition, the prevailing condition at the relevant time, enter into judicial verdict. The reasonableness of the legitimate expectation has to be determined with respect to the circumstances relating to the trade or business in question. Canalisation of a particular business in favour of even a specified individual is reasonable where the interests of the country are concerned or where the business affects the economy of the country. (See Parbhani Transport Coop. Society Ltd. v. RTA [AIR 1960 SC 801 : (1960) 62 BOM LR 521] , Shree Meenakshi Mills Ltd. v. Union of India [(1974) 1 SCC 468] , Hari Chand Sarda v. Mizo District Council [AIR 1967 SC 829] and Krishnan Kakkanth v. State of Kerala [(1997) 9 SCC 495] .)”

9. In the case in hand, the petitioner only got her Ph.D. degree in the May 2010, by which time the Regulations of 2009 had come into effect, which clearly mandated that a person would be eligible for appointment if he/she had passed NET/SLET examination. The argument raised that the Commission itself had decided that the Regulations of 2009 were prospective in nature and thus she would not be entitled to clearing the NET examination would not be sustainable. This issue has already been dealt with in the judgment of **P.Suseela (supra)**, where it has been held that the candidates do not get a vested right and the qualifications have to be seen as on the date the post are to be filled up. Moreover, the resolution dated 12.8.2010, as relied upon by the petitioner, was noticed and dealt with by the aforesaid judgment. The resolutions were not agreed upon by the Central

Government as noticed in the judgment referred to. The Central Government by its letter dated 3.11.2010 informed UGC that they were unable to agree with the decision of the Commission and stated that consequently a candidate seeking appointment to the post of Lecturer/Assistant Professor must fulfill the minimum qualifications prescribed by UGC including the minimum eligibility condition of having passed NET test.

10. Therefore, in view of the above, the issue involved in the instant writ petition being no longer res integra, is dismissed in view of the judgment rendered in **P.Suseela's case (supra)**.

May 8, 2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No