

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

LPA-D-1740-DB-2016
Date of decision: 18.09.2017

Dr. Rajasri Bhattacharyya

.... Appellant

versus

State of Punjab & ors.

.... Respondents

**CORAM: HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI**

Present: Appellant in person.

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

Mahesh Grover, J.

This appeal is directed against the judgment dated 11.05.2016 passed by learned Single Judge. The appellant sought appointment to the post of Assistant Professor (System Biology & Bio Informatics) a post which was advertised on 02.07.2009 vide advertisement No.6/2009.

Two posts were advertised out of which one was intended for General category while other was for Scheduled Caste category. No person from the General Category succeeded in making the grade while one Ashok Kumar (respondent No.4) was appointed under Scheduled Caste category.

This post was again advertised vide advertisement No.13/2010. One Ms. Veena Puri was selected but she did not join.

Thereafter, two posts were again advertised vide advertisement No.11/2011 and subsequently through another advertisement No.15/2011

one post was intended only for Scheduled Caste category candidate. In the advertisement No.11/2011 where two posts were for General category, the appellant did not apply and two persons namely Dr. Veena Puri and Dr. Tamanna Shehrawat were selected. The subsequent advertisement No.15/2011 did not yield any success and was cancelled subsequently.

The appellant thus was a desirous candidate for advertisement No.6/2009 and 13/2010.

The eligibility conditions prescribed are as follows:

System Biology & Bioinformatics – 2 (SC-1, Gen-1)

Gen-1

Essential

*Good academic record with least 55% of the marks (50% in case of SC/ST Physically & Visually Handicapped candidates) or an equivalent grade of B in the 7 point scale with letter grades 0,A,B,C,D,E & F at the Master's Degree level in the relevant subject i.e. **M.Sc. in life Sciences*** from an Indian University, or an equivalent degree from a foreign University.*

NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of lecturers in University/College/Institutions.

Provided, however, that candidates, who are or have been awarded Ph.D degree in compliance of the 'University Grants Commission (minimum standards and procedure for award of Ph.D Degree), Regulation 2009, shall be exempt from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment of Assistant Professor or equivalent position in Universities/Colleges/Institutions.

** Preferably Biochemistry/Biotechnology/*

Genomics & proteomics/ Biophysics followed by Certificate/Diploma or other course in System Biology/ Bioinformatics/Computational Biology OR preferably Biochemistry/Biotechnology/Genomics & proteomics/ Biophysics who have taken at least two courses in Bioinformatics upto Masters levels.

Concededly, the appellant is not NET qualified and rather has passed the National Entrance Test – GATE which she contends to be equivalent to NET and thus prays that the appellant should have been considered eligible.

Learned Single Judge relied upon the judgment of Hon'ble Supreme Court in ***P.Suseela and others etc. vs. University Grants Commission and others etc., (2015) 8 SCC 129*** to decline interference in writ proceedings and aggrieved against the same, the present appeal has been filed where the primary challenge is to the action of the University in ousting the appellant from consideration for selection process on the ground of appellant's ineligibility.

We have heard parties at some length and are unable to agree with the contentions raised by the appellant for the following reasons:

Firstly, the appellant was an aspirant against advertisement No.6/2009 against General category post, which remained vacant leading to another advertisement No.13/2010 where though an incumbent was selected but did not join. As such there was no candidate from the General category, who filled up the post. The writ petition has been preferred against the University and Ashok Kumar, who was selected against the Scheduled Caste category and has no concern with the General category post. It is not

the case of the appellant that the challenge was mounted to selection of Dr. Veena Puri, who was indeed selected in the advertisement No.13/2010 but failed to join leaving the post vacant. There would thus be no relevance to the cause of the appellant in challenging the selection of Ashok Kumar. There is nothing on record placed by anyone to derive any inference of the Ashok Kumar's ineligibility or his selection being unfair.

In so far as the appellant is concerned, once it is conceded that she did not have the qualification of NET it would be a clear case where the eligibility conditions prescribed were not satisfied. Therefore, the ratio of *P.Suseela's case(supra)* has been correctly applied.

In *P.Suseela's case (supra)*, the Apex Court was of the opinion that the candidates, who had not passed the NET, in large public interest, being eligible, 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."

We are also of the opinion that the appeal deserve to fail on the other ground as well as the challenge was mounted after a delay of two years after the selection process was over pursuant to the advertisement No.13/2010. The challenge was mounted in the year 2011 when another selection process pursuant to advertisement No.11/2011 had been concluded resulting the selection of two candidates namely Dr. Veena Puri and Dr. Tamanna Shehrawat. The appellant concededly did not apply and participate in this process. Therefore, for the previous selection when no candidate from General category was appointed and in view of the subsequent selection of two candidates, it would be too late in the day for the appellant to even question her non-inclusion in the selection process for

advertisement of 2009 or 2010.

The appellant has relied upon the judgment of ***Dr. Amarjit Singh Naura vs. P.U. Chandigarh and another*** (CWP No.2974 of 2012) decided on ***12.11.2013***.

We find that the distinction has been drawn in those cases in the impugned judgment itself. There two persons were already appointed and thus vested rights had accrued in their favour. In the present case, consideration has been granted to the appellant but selection denied on the ground of eligibility.

Consequently, the appeal is dismissed.

(Mahesh Grover)
Judge

18.09.2017
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(Raj Shekhar Attri)
Judge

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| 1. Whether speaking/non-speaking? : | Yes/No |
| 2. Whether reportable? : | Yes/No |