



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.10968 of 2015

and

M.P. (MD) Nos.1 to 3 of 2015

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Justin Meshack Smile

...Petitioner

-Vs-

1. The Registrar,
Manonmaniam Sundaranar University,
Abhishekpatti, Tirunelveli District.

2. The Secretary,
Nazareth Margoshis College,
Pillaiyanmanai,
Tuticorin District.

..Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order dated 10.04.2014 in Ref.No.MSU/R/CD/QA/NMC/LIBRARIAN/2014 passed by the 1st respondent and quash the same as illegal.

For Petitioner	: Mr.Chamundi Bose, for Kara Associates
For Respondents	: Mr.D.M.Mahaboob Athiff (for R1) Mr.G.Prabhu Rajadurai (for R2)

ORDER

The prayer sought for in this writ petition is for a Writ of Certiorari to call for the records pertaining to the impugned order dated 10.04.2014 in Ref.No.MSU/R/CD/QA/NMC/LIBRARIAN/2014 passed by the 1st respondent and quash the same as illegal.

2.Heard Mr.Chamundi Bose, learned counsel for the petitioner and Mr.D.M.Mahaboob Athiff and Mr.G.Prabhu Rajadurai, learned counsel for the respondents 1 and 2.

3.The short facts which are required to be noticed for the disposal of this writ petition are as follows:-

(i)The petitioner was appointed as Library Assistant at the second respondent college on 20.09.1990. He was a M.A.Economics Graduate at that time. On 19.12.1996, he was promoted as Lab Assistant and further on 20.04.2007, he was promoted as Junior Assistant. The petitioner has already completed Bachelor Degree in Library Science (BLIS) in the year 1992. Thereafter, in May 1993,



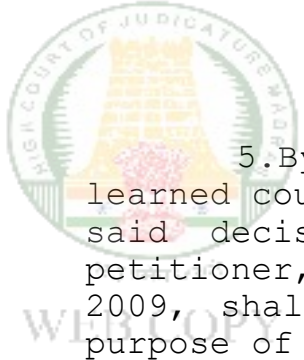
he has completed Master Degree in Library Science (MLIS) and thereafter, in the year 2007, he has completed M.Phil in Library Science. In the meanwhile, the petitioner has completed 25 years of service as non-teaching staff in the second respondent College.

(ii) While so, on 25.04.2010, the second respondent college invited applications from eligible candidates for the post of Librarian through paper publication. The petitioner has also applied for the same and after having interviewed and approving the qualification of the petitioner, the second respondent college Management, by proceedings dated 29.07.2010 appointed the petitioner by way of promotion from non-teaching staff to Librarian based on G.O.RC.No.43075/G3/95, dated 28.08.1995. The said appointment was with effect from 29.07.2010. Thereafter, the said appointment was sent for approval to the first respondent University. However, the first respondent University, by an order dated 10.04.2014 rejected the said appointment on the ground that the petitioner does not fulfil the required qualification prescribed by the University Grants Commission's regulations (UGC Regulations). Challenging the said order of the first respondent University, dated 10.04.2014, the petitioner is before this Court by way of this writ petition with the aforesaid prayer.

4. The learned counsel for the petitioner would submit that the only reason cited by the first respondent University for rejecting the appointment of the petitioner as librarian at the second respondent college is that, the petitioner is not having the necessary qualification as per the UGC norms. He would further submit that the said non-qualification, according to the University, as per UGC regulations, 2009, is that, the petitioner does not have the qualification of National Eligibility Test (NET) and therefore, without NET qualification, the petitioner's appointment was not approved and it was rejected. In this regard, the learned counsel appearing for the petitioner would rely upon the decision said to have been taken by the UGC in its 472nd meeting held on 27.09.2010 and in this regard, the learned counsel for the petitioner would rely upon the relevant portion of the minutes of the said 472nd meeting, which reads thus:-

"The following modification was suggested in the first paragraph at Page 10 relating to Item No.2.08.

"The Commission further resolved that since both the above mentioned Regulations are prospective and not retrospective in nature, therefore, all candidates having M.Phil. Degree on or before 10th July, 2009 shall remain exempted from the requirement of NET for the purpose of appointment as lecturer / Assistant Professor. Further, all candidates who have either obtained Ph.D., degree on or before 31st December, 2009 and candidates who had registered themselves for Ph.D. Degree, shall remain exempted from the requirement of NET for the purpose of appointment as Lecturer / Assistant Professor."



5. By heavily relying upon the above said minutes, the learned counsel for the petitioner would submit that, in view of the said decision taken by the University Grants Commission, the petitioner, since having obtained M.Phil Degree before 10th July 2009, shall remain exempted from the requirement of NET for the purpose of appointment as lecturer / Assistant Professor. Since the petitioner has been exempted under the said resolution of the minutes of the UGC from holding the qualification of NET provided, if he obtained the M.Phil Degree on or before 10th July 2009, the requirement of having the qualification of NET can no more required to be insisted upon by the first respondent University. Therefore, giving the said reason, since the approval of appointment of petitioner was rejected, the said rejection is bad in law and therefore, the said impugned order is liable to be quashed and necessary direction should be given to the University to approve the appointment of the petitioner.

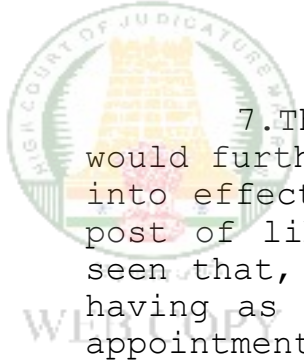
6. Per contra, the learned counsel for the first respondent University would submit that, admittedly, the petitioner was appointed as librarian on 28.07.2010. whereas, the UGC brought regulations on 30.06.2010, it is called as "UGC Regulations on minimum qualifications for appointment of Teachers and other academic staff in universities and colleges and measures for the maintenance of standards in higher education-2010". The learned standing counsel for the first respondent would rely upon the relevant portion of the said regulation under 4.5.3 headed as University Assistant Librarian / College Librarian, which reads thus:-

4.5.3 University Assistant Librarian / College Librarian

(i) A Master's Degree in Library Science / Information Science / Documentation Science or an equivalent professional degree with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) and a consistently good academic record with knowledge or computerization of library.

(ii) Qualifying in the national level test conducted for the purpose by the UGC or any other agency approved by the UGC.

(iii) However, candidates, who are, or have been awarded 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 University Assistants Director of Physical Education / College Director of Physical Education & Sports."

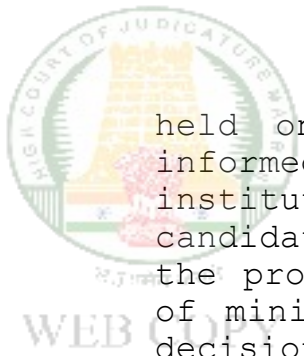


7. The learned standing counsel appearing for the university would further submit that in view of the said regulation having come into effect from 30.06.2010, it has been mandated that even in the post of librarian, one must have the qualification of NET. It is seen that, the said qualification was not admittedly the petitioner having as he was appointed only on 28.07.2010. Therefore the said appointment was not approved by the University and it was rightly rejected by way of the impugned order. Therefore, the same does not require any interference from this Court. In this regard, the learned counsel for the first respondent would also rely upon the decision of the Hon'ble Apex Court in the case of P.Suseela and others Vs. University Grants Commission and others reported in (2015) 8 SCC 129. The relevant paragraphs of the said decision read thus:-

"16. Similar is the case on the 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 the 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."

8. Supporting the said contentions, the learned counsel for the second respondent also would submit that, since the petitioner admittedly does not have the qualification of NET on the date of appointment i.e., on 28.03.2010 as on the said date, the UGC regulation was in force since it came into effect from 30.06.2010, the petitioner appointment cannot be approved. The learned counsel for the second respondent would also rely upon the public notice issued by the UGC dated 12 October 2012, wherein the following notification has been given:-

"It has come to the notice of UGC that in the recent past, some of the universities and institutions have advertised the post of Lecturers / Assistant Professors without any stipulation regarding mandatory requirement of NET/SLET/SET as required by UGC Regulations, notified on 11.07.2009 and 18.09.2010. It has also been noticed by UGC that universities / institutions are relying on the Resolutions of the Commission in the 471st and 472nd meeting of the UGC



held on 12.08.2010 & 17.09.2010. It is clarified and informed for the benefit of all concerned Universities / institutions and other stake holders including prospective candidates that the above resolutions are merely the part of the process of deliberation by the Commission on the issue of minimum qualification for appointment and not an final decision required to be implemented. In fact, the Central Government vide its D.O. Letter NO.G.8-7/2010-U-I(A) dated 3rd November, 2010 did not concur with the said resolutions dated 12.08.2010 and 17.09.2010 of the Commission.

Hence the extant provision is as under:

" Thus, as per the above Regulations notified on 11th July, 2009 and 18th September, 2010, NET/SLET/SET is the minimum eligibility condition for recruitment and appointment of Lecturer / Assistant Professor in Universities/ Colleges / Institutions and only those Ph.D. Degree holders are exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for appointment as Lecturer /Assistant Professor whose Ph.D. Degree has been awarded in accordance with the UGC (Minimum Standards and Procedure for awarding Ph.D.Degree) Regulations 2009. In addition NET/SLET/SET is not required for such Masters Degree Programme in disciplines for which NET / SLET/SET accredited test is not conducted."

9. Therefore, the learned counsel for the second respondent would submit that, the resolution/mandate relied upon by the petitioner can no more be valid in law as based on which, no exemption can be claimed by the petitioner, who does not have a minimum required qualification as prescribed in the UGC regulation. On the date of appointment, the said regulation came into effect and therefore, the impugned order is fully justifiable and sustainable.

10. I have considered the said rival submission made by the respective counsel of the parties.

11. It is not in controversy that the petitioner does not have the qualification of NET at the time of his appointment to the post of librarian at the second respondent college. The petitioner was appointed only on 28.07.2010 by way of promotion to the said post of librarian and before which the UGC regulation 2010 came into effect from 30.06.2010. What is stated in the said UGC regulations, apart from the Master degree in library science / information science, the incumbent must have the qualification of NET conducted for the purpose, by the UGC or other authority approved by the UGC. The mandatory requirement of the qualification was prescribed by the UGC, which is an apex body. The said qualification being issued by the UGC under Section 20 of the UGC Act it shall be a mandatory requirement, which cannot be diluted.

12. Insofar as the contention of the learned counsel for the petitioner that the very same UGC, which has prescribed the



qualification, by resolution dated 27th September 2010 in its 472nd meeting resolved that, those who have obtained M.Phil Degree on or before 10th July 2010 shall remain exempted for the purpose of appointment as lecturer / Assistant Professor is concerned, the straight answer is available as rightly pointed out by the learned counsel for the second respondent college in the communication of the UGC dated 10.04.2014 and the relevant portion of which has already been extracted herein above. According to the said clarification / communication, the UGC had made it clear that the resolution in 472nd meeting of the UGC is merely a part of the process of deliberations by the commission on the issue of minimum qualification and not a final decision required to be implemented. Therefore, it become abundantly clear that the resolution dated 27.09.2010 said to have been taken in the 472nd meeting of the UGC is concerned, it is not the law and it is only a deliberation on the commission's meeting and therefore, the said deliberation cannot be treated as final decision for the purpose of implementation. This resolution or deliberation process has been heavily relied upon by the learned counsel for the petitioner. Therefore on the strength of the said deliberation or resolution of the UGC, the petitioner cannot take any shelter to claim exemption from having NET qualification on the pretext that the petitioner has qualification of M.Phil degree in library science, in 2010.

13.This apart, this kind of controversy with regard to minimum qualification for appointment to the post of teaching and non teaching staffs including librarian etc., at the universities or college level educational institutions is concerned, the UGC regulation issued from time to time has been justified before the Court of law. In this regard in a recent judgment in the matter of State of Madhya Pradesh and others Vs. Manoj Sharma and others reported in (2018) 3 SCC 329 similar matter came up for consideration, wherein whether the 2009 regulations was prospective or retrospective and mandatory requirement of the qualification required to be fulfilled by the candidates to be considered for the appointment for teaching and non teaching staffs in the University and College, had been considered by the Hon'ble Apex Court. Among other things, the relevant issue has been decided by the Hon'ble Apex Court in the said judgment in Paragraph 19, which reads thus:-

"19.Thus, from the above judgment, it is clear that NET qualification is now minimum qualification for appointment of Lecturer and exemption granted to M.Phil degree-holders has been withdrawn and exemption is allowed only to those Ph. D. degree- holders who have obtained the PhD degree in accordance with 11.07.2009 Regulations, namely, the 2009 Regulations of UGC (Minimum Standards and Procedure). Although, this aspect has not been noticed by the High Court but since the learned Single Judge has directed the consideration of the case of the writ petitioner on the basis of M.Phil degree which was obtained by them by distance education mode prior to 2009, it is necessary that their eligibility for the post be examined taking into



consideration the 2009 Regulations of UGC (Minimum Qualifications for Appointment). The year 2012 when both the 2009 Regulations of UGC (Minimum Standards and Procedure) and the 2009 Regulations of UGC (Minimum Qualifications for Appointment) were applicable."

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14. From the reading of the said recent decision, it is obvious that, 2009 regulation, wherein exemption of NET qualification granted, has been withdrawn insofar as the M.Phil degree holders. The only exemption is for Ph.D. Degree holders. This aspect has been clearly and exclusively reiterated by the Hon'ble Apex Court in the said recent judgment.

15. After 2010, the UGC regulation came into effect on 30.06.2010 the question of exemption from having NET qualification on the basis of M.Phil Degree does not arise. In the present case, admittedly the petitioner was appointed only on 28.07.2010 as librarian. One of the minimum qualifications is that, the incumbent should have passed in NET. Since the petitioner not passed NET, he seeks exemption in the context of his qualification of M.Phil degree, which he claims to have obtained prior to 2010. Therefore, the said exemption sought for by the petitioner in the eye of law cannot be granted as the law is well settled in this regard in the aforementioned decision. In view of the settled legal position and in view of the fact that admittedly the petitioner does not fulfil the qualification of NET at the time of his appointment i.e., on 28.07.2010 as librarian at the second respondent college, the said appointment cannot be approved by the first respondent University. Therefore, the proposal for approval of the appointment has rightly been rejected by the impugned order.

16. Therefore, this Court has no hesitation to hold that the impugned order does not require any interference as it is fully justifiable and sustainable. In such view of the matter, this writ petition fails as the petitioner has not made out any case and therefore, the same is dismissed. The interim order of stay granted already is hereby vacated and the M.P.(MD)No.2 of 2015 is dismissed and the vacate stay petition filed by the second respondent is allowed. No costs. Consequently, M.P.(MD)No.1 of 2015 and W.M.P.(MD) No.6022/2016 are also closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar

+1CC to Mr.G.Prabhu Rajadurai, Advocate, SR.No.62936

W.P.(MD)No.10968 of 2015

23.04.2018

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