



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving Judgment 06.12.2017	Date of Pronouncing Judgment 12.02.2018
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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD).No.4990 of 2011
and
M.P(MD).No.2 of 2011

R.Rajkumar

... Petitioner

Vs.

1. The Tamilnadu Public Service Commission (TNPSC)

Rep. by its Secretary
Commercial Tax Annexe Building
No.1, Greams Road,
Chennai - 600 006.

2. The Tamilnadu Physical Education and Sports University

Rep. by its Registrar,
8th Floor, EVK Sampath Malligai
College Road, Chennai - 600 006.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Notification/Advertisement issued by the first respondent in Advertisement No.210 dated Nil and quash the same as illegal in so far as it relates to Clause-4(B)(iv) of the said notification prescribing the educational qualification for UG Level Teaching and consequentially to direct the respondents to call the petitioner for interview and consider for appointment to the post of Director of Physical Education.

For Petitioner : Mr.Md.Imran for
M/s.Ajmal Associates

For Respondents : Mr.K.K.Senthil
For R1

Mr.VR.Shanmuganathan
For R2

ORDER

This Writ petition has been filed to call for the records relating to the impugned Notification/Advertisement issued by the first respondent in Advertisement No.210 dated 29.07.2009 and quash the same as illegal in so far as it relates to clause-4(B)(iv) of



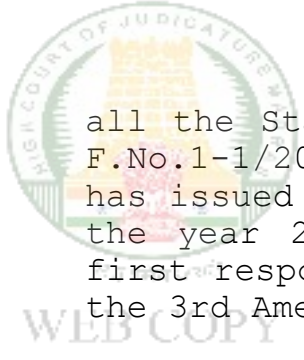
the said notification prescribing the educational qualification for UG Level Teaching and consequentially to direct the respondents to call the petitioner for interview and consider for appointment to the post of Director of Physical Education.

2. The brief facts of the case is that the petitioner herein is a Post Graduate and has also completed M.Phil in the year 2007. Further he has teaching experience for more than 10 years. The first respondent has issued a impugned notification calling for the applications for eligible qualified persons for direct recruitment to the post of Director of Physical Education under Tamilnadu Collegiate Educational Services for the year 2007-2009 and a total number of 43 vacancies were sought to be filled up in the said post. The petitioner also applied for the same since he possess the necessary qualifications and eligible to be considered for the post of Director of Physical Education, and participated in the written examination which was held on 25.10.2009. Though he was successful in the written examination, the second respondent did not issue a call letter to the petitioner for Physical fitness test. However, the petitioner alleges that he found his name in the list of candidates eligible for Physical fitness test from the respondents' official website and he also appeared for the same on 24.04.2010, and was found physically fit. While he was waiting eagerly for the call letter he did not receive any information and when he enquired the same, the petitioner alleges to have found that persons with lesser qualification who are not eligible as per the norms prescribed under UGC (Minimum Qualification Required for the Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to it) Regulation, 2009 were being called for the interview.

3. The petitioner would submit that the impugned Notification/Advertisement with regard to Clause B(iv) does not meet out the educational qualification prescribed by the UGC and contravenes the guidelines of the UGC. Thus, the petitioner seeks to quash the same.

4. The first respondent has filed a counter submitting that the Apex Court in P.Mohanan Pillai Vs State of Kerala and Ors held that ordinarily rules which were prevailing at the time, when the vacancies arose would be adhered to and the qualification must be fixed at that time. The eligibility criteria has also to be filed as the same as was prevailing on the date of vacancy should ordinarily be followed and thus, the notification issued on 29.07.2009 which was advertised wherein the rules prescribed by the UGC has not taken effect and thus the notification issued by the respondent/TNPSC cannot be faulted with.

5. The first respondent further submits in the counter affidavit filed by him, that the publication of the UGC 3rd Amendment Regulation, 2009 was officially communicated by Joint Secretary, UGC for necessary action to the Education Secretaries of



all the States and Union Territories only on August 2009 by letter F.No.1-1/2002(PS)Pt file-III. In the meanwhile, the first respondent has issued the impugned notification pertaining to the vacancies for the year 2007 to 2009. Therefore, the notification issued by the first respondent/TNPSC dated 29.07.2009 before the communication of the 3rd Amendment Regulation, 2009 is in accordance with law.

6. Heard the learned counsel on both sides and perused the materials available on record.

7. After hearing the rival submissions made by the parties and after perusing the materials available on record, it is seen that the respondent by Advertisement No.210 on 29.07.2009 invited applications for the post of Director of Physical Education under Tamilnadu Collegiate Educational Services. In the said notification, educational qualification is prescribed at Clause-4(B) which is as follows:

"(B) Educational Qualification:- Candidates should possess the following or its equivalent qualification on the date of this Notification viz 29-07-2009.

(i) Master's Degree in Physical Education (two years course) or Master's Degree in sports or an equivalent degree with at least 55 percent of the marks or its equivalent grade of B in the University Grants Commission 7 (Seven) points scale plus a consistently good academic records;

(ii) Record of having represented the University/College at the inter University inter-collegiate competitions or the State in National Championships;

(iii) Passed the Physical fitness Test:-

(iv) NET or SLET or an accredited Test shall remain the compulsory requirement for appointment as Director of Physical Education for those with Post Graduate Degree. However, the candidates having Ph.D., Degree in the concerned subject are exempted from NET, SLET or an accredited Test for PG Level and UG level teaching. The candidates having M.Phil degree in the concerned subject are exempted from NET or SLET or an accredited Test for UG Level teaching only."

8. The grievance of the petitioner is that when the respondent published the impugned notification dated 29.07.2009 prescribing educational qualification, 18 days prior to that the UGC has prescribed Minimum Qualification Required for the Appointment on 11.07.2009. As per the UGC notification dated 11.07.2009, the UGC has notified new set of regulations which were called (Minimum



Qualification Required for the Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to it) Regulation, 2009. These amendment came into force with effect from 11.07.2009. As per the amendment to the regulations, UGC has prescribed the following qualifications:

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"NET shall remain compulsory requirement for appointment as Lecturer even for candidates having Ph.D Degree. However, the candidates who have completed M.Phil Degree by 31st December, 1993 or have submitted Ph.D. thesis to the University in the concerned subject on or before 31st December, 2002 are exempted from appearing in the NET examination. In case such candidates fail to obtain Ph.D. Degree, they shall have to pass the NET examination."

Further the above provision brought in to effect by the University Grants Commission (Minimum Qualification Required for the Appointment and Career Advancement of teachers in Universities and Institutions Affiliated to it) (1st Amendment), Regulation 2002, was further substituted by the following provision of the University Grants Commission (Minimum Qualifications Required for the Appointment and Career Advancement of teachers in Universities and Institutions Affiliated to it) (2nd Amendment) Regulation 2006:

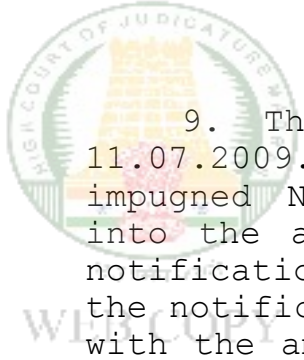
"NET shall be remain compulsory requirement for appointment as Lecturer even for those with Post Graduate Degree. However, the candidates having Ph.D Degree in the concerned subject are exempted from NET for PG and UG level teaching.

The candidates having M.Phil Degree in the concerned subject are exempted from NET for UG level teaching only."

Now, the above provision shall be substituted by the following paragraph:

"NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of Lecturers in Universities/Colleges/Institutions.

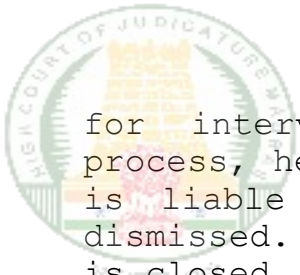
Provided, however, that candidates, who are or have been awarded Ph.D Degree in compliance of the "University Grants Commission (minimum standards and procedure for award of Ph.D Degree), Regulation 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment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



9. The above amendment came into force with effect from 11.07.2009. However, the first respondent herein while issuing the impugned Notification/Advertisement on 29.07.2009, has not taken into the amendment issued by the UGC which is much prior to the notification impugned herein in this Writ petition. No doubt that the notification issued by the first respondent is not in consonance with the amendment issued by the UGC. The Writ petitioner who have applied to participate in the written examination pursuant to the notification dated 29.07.2009, appeared for the written test and claims that he was found successful in the written examination, despite, the second respondent has not issued the call letter for Physical fitness test. However, he has stated that his name was found in the official website and also appeared for the Physical fitness test conducted on 24.04.2010. Afterwards, when he was awaiting for the call letter for the interview, he did not receive any information and on verification, he came to know that the persons with lesser qualification who are not eligible were being called for interview. Therefore, this Writ Petition was filed on 26.04.2011.

10. This Court on 28.04.2011 while ordering notice, had ordered that any appointment made is subject to the result of this Writ petition. On the factum of the issue that the Writ petitioner had been called for the interview and if had not been successful in the interview, he would have certainly filed the Writ petition on the same ground that the notification published by the respondents are not in consonance with the UGC Regulations, 2009 or in other way the petitioner would be unmindful of the contradiction of the respondents' notification with the UGC amendment 2009 had been selected or called for the interview and thereafter, being selected since he was not called for the interview and his name was not placed in the interview list, he has approached this Court by way of filing this Writ petition. In the above circumstances, on the principles laid down by this Court and the Hon'ble Supreme Court in various similar issues wherein the Writ petition had been dismissed on the ground that the petitioner had come up with the Writ petition after participating in the selection proceedings. The petitioner ought to have challenged the notification prior to the participation in the proceedings or prior to taking part in the written examination. He should have challenged the notification as soon as he found the contradiction. He came before this Court only after his name was not found in the interview list and after he completed the written examination and the physical fitness test. The petitioner approached this Court at a belated stage and he has not challenged the notification at the earliest point of time.

11. Under these circumstances, this Court is of the view that the petitioner has not chosen to challenge the said notification at the earliest point of time before or immediately after making such application. Therefore, he cannot be permitted to seek for Writ of Certiorari or Mandamus to quash the entire notification issued by the respondents and to direct the respondents to call the petitioner



for interview. Further, having participated in the selection process, he cannot now challenge the same. Hence, the Writ Petition is liable to be dismissed. Accordingly, the writ petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The Secretary
Tamilnadu Public Service Commission (TNPSC)
Commercial Tax Annexe Building
No.1, Greams Road,
Chennai - 600 006.
2. The Registrar
Tamilnadu Physical Education and Sports University
8th Floor, EVK Sampath Malligai
College Road, Chennai - 600 006.

+1CC TO M/S.AJMAL ASSOCIATES, ADVOCATE, SR NO.48031

Order in
W.P(MD).No.4990 of 2011
and
M.P(MD).No.2 of 2011
12.02.2018

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