

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.697 of 2018

In

Civil Writ Jurisdiction Case No.12273 of 2016

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1. Dr. Digambar Jha, Son of Sri Shivnandan Jha, R/O Malpur Singhara, P.S- Mahua, District- Vaishali.
 2. Dr. Lalji Prasad Yadaw, Son of Sri Narsingh Prasad Yadaw, R/o Village- Hassanpur, P.S- Nayagaon, District- Saran at Chapra.
 3. Dr. Shahnaj Ara, Daughter of Md. Nasiruddin, Resident of Mathia Zirat, Motihari, District- East Champaran.
 4. Dr. Bipin Kumar Singh, Son of Sri Ram Das Singh, Resident of Village, P.O & P.S.- Jaynagar, District-Madhubani,
 5. Dr. Anand Prakash, Son of late Baleshwar Prasad, Resident of Village & P.O. Rajwaria, P.S. Rajwaria, District- Muzaffarpur.
 6. Dr. Deepak Kumar, Son of Late Hari Nandan Thakur, Resident of T.H. No. 2C-36 B.R.A. Bihar University Campus, District- Muzaffarpur.
 7. Dr. Reena Kumari, Daughter of Krishchandra Prasad, Resident of Rahul Nagar, Road No. 1, P.O. M.I.T., P.S.- Brahmapura, District- Muzaffarpur.

... .. Appellant/s

Versus

1. The State Of Bihar.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Higher Education, Govt. Bihar, Patna.
4. The Bihar Public Service Commission, Bailey Road, Patna through its Secretary.
5. The Chairman, Bihar Public Service Commission, Bailey Road, Patna.
6. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.
7. Union of India through University Grants Commission, Bahadur Sah Jaffar Marg, New Delhi through its Secretary
8. The Chairman, University Grants Commission, Bahadur Sah Jaffar Marg, New Delhi.

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Subodh Kumar Jha, Advocate
For the State	:	Mr. Ashutosh Ranjan Pandey, AAG-15
For the BPSC	:	Mr. P.K. Shahi, Sr. Advocate with Mr. Sanjay Pandey, Advocate
For the U.G.C.	:	Mr. Dipak Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-01-2019

The appellants are aggrieved by the judgment of



the learned single Judge dated 27.03.2018 passed in CWJC No.12273 of 2016, whereby the claim made by the appellants was dismissed.

2. At the very outset, we may clarify that the appellant Nos.6 and 7 were not the writ petitioners and have come up in appeal along with five of the writ petitioners whose writ petition was dismissed. In the given circumstances, they have sought leave to appeal and have joined in this appeal along with the other writ petitioners.

3. We have allowed the learned counsel to advance submissions on their behalf as well and consequently, I.A. No.7318 of 2018 seeking leave to appeal stands disposed of accordingly.

4. After having heard the learned counsel on the previous occasion, we had passed the following order on 21.12.2018:

“Heard Shri Subodh Kumar Jha, learned counsel for the appellant, who has urged that keeping in view the ratio of Division Bench Judgement of this Court in L.P.A. No. 354 of 2016, decided on 16th January, 2017, the claim of the appellant seeking exemption is clearly covered and, therefore, the non-consideration of their candidature by the respondents is unsustainable in law.

On the other hand, it has



been urged on behalf of the respondents that Clause 3 of the advertisement categorically provides that candidates who have obtained Ph.D. on the basis of Minimum Standard Regulations, 2009 framed by the U.G.C. shall be exempted from passing the National Eligibility Test, but, at the same time, on the facts of the present case, it is also contended that the certificates relied on by the appellants to justify the procurement of their Ph.D. degree is based on a stated modification of the earlier Regulation of the University Grants Commission which has been negatived by the U.G.C. as well as by the Central Government and is contained in the public notice dated 12th October, 2012, a copy whereof has been placed before us and also finds reference in the judgement of the Apex Court in the case of P Susheela & Ors. Vs. U.G.C. 2015(3) PLJR 278 (SC) it is contended that in the above background the appellants are not eligible and, consequently, the judgement of the learned Single Judge does not require any interference.

It has also been stated that the Regulations, insofar as the Bihar State Universities are concerned, are now governed by the adoption of the Regulations framed by the Chancellor on 6th of November, 2012. It would be appropriate that the State Regulations as well as the public notice dated 12th October, 2012 of U.G.C. are both brought on record for a proper appreciation of the controversy.

Let the same be filed by the next date fixed.

Matter may come up on 11th of January, 2019.

Supplementary affidavit



filed today is taken on record.”

5. In compliance thereof, Bihar State University (Amendment) Act, 2013 [Bihar Act 17 of 2013] has been brought on record, coupled with the Notification dated 11th September, 2016 enforcing the statutes for appointment of Teachers (Assistant Professor Grade) for the Universities of Bihar, 2014.

6. Apart from the said provisions, the public notice dated 12th October, 2012 has also been placed before the Court, which is extracted herein under:

“ F.9-3/2010(PS)
12th October, 2012

UNIVERSITY GRANTS COMMISSION
PUBLIC NOTICE

As per the UGC Act, 1956, UGC is empowered to define the qualifications required of any person to be appointed to the teaching staff of the University/Institutions. As per UGC (Minimum Qualification required for the appointment of Career Advancement of Teachers in universities and institutions affiliated to it) (3rd Amendment) Regulation 2009 notified in the Gazette of India on 11th July, 2009, the following minimum qualification was required for appointment as Lecturer/Assistant Professor.

‘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/Colleges/Institutions.”

As per the subsequent UGC Regulations namely UGC (Minimum Qualification for appointment of teachers and other Academic staff in universities and colleges and other measure for the maintenance of the standards in Higher Education) Regulation 2010, notified in the Gazette of India on 18.9.2010, the following minimum eligibility condition is required to be fulfilled for recruitment and appointment of Assistant Professor in universities/colleges/institutions.

3.3.1 NET/SLET/SET shall remain the minimum eligibility condition for recruitment and appointment of Assistant Professors in Universities/Colleges/Institutions.

Provided however, that 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.

3.3.2 NET/SLET/SET shall not be required for such Masters Degree Programmes in disciplines for which NET/SLET/SET accredited test is not conducted.

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.

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 Professor without any stipulation regarding mandatory requirement of NET/SLET/SET as required by UGC Regulations, notified on 11.7.2009 and 18.9.2010. 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 12.8.2010 & 27.9.2010. 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 a final decision required to be implemented. In fact, the Central Government vide its D.O. letter No.F.8-7/2010-U-I(A) dated 3rd November, 2010 did not concur with the said resolutions dated 12.08.2010 and 27.9.10 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.”



7. The Government order dated 30th June, 2015 with regard to the status of certificates has also been brought on record through the counter affidavit of the Bihar Public Service Commission dated 10th of January, 2019, sworn by Md. Ghyasuddin Ansari, the Officer On Special Duty in the Bihar Public Service Commission.

8. We have heard the learned counsel for the appellants Shri Subodh Kumar Jha at length and Shri P.K. Shahi, Senior Advocate, assisted by Shri Sanjay Pandey, Advocate for the Bihar Public Service Commission as well as the learned Additional Advocate General for the State of Bihar.

9. The main plank of the argument of the learned counsel is that the Ph.D. awarded to the appellants has been certified to be available as per the certificate of the University given them exemption from NET/SLET for recruitment and appointment of Assistant Professor.

10. Learned counsel for the appellants has invited the attention of the Court to the supplementary affidavit filed on behalf of the appellants containing the certificates pertaining to the appellants as also the judgment of the Division Bench in L.P.A. No.354 of 2016 (Dr. Ram Pravesh Singh & Ors. Vs. the State of Bihar and Ors.) decided on 16.01.2017.



11. Having considered the submissions raised, we find that the appellants claimed themselves to be the applicants against Advertisement No.46 of 2014 and Advertisement No.53 of 2014 for the post of Assistant Professors in respective subjects. They were found to be ineligible by the Commission as they had admittedly not passed the UGC NET examination and, further, that they had been awarded their Ph.D. degree not as per the UGC Regulations, 2009. The UGC Regulations, 2009 came into effect on 06.11.2012 in the State of Bihar but, at the same time, the UGC, vide its Regulations dated 11th July, 2009 and 18th September, 2010, as intimated through the letter of 10.10.2010, clarified that only those Ph.D. degree-holders are exempted who have been awarded Ph.D. in accordance with the 2009 Regulations.

12. The UGC further clarified that the resolutions in the 471st and 472nd meetings are merely part of the process of deliberations and not a final decision for implementation. The Central Government also did not concur with the same and it is for this reason that the Department of Education, Government of Bihar has instructed all the Registrars of the Universities through the letter dated 30th June, 2015 to withdraw such certificates, which have been wrongly



issued by the Universities. It is further to be noted that the Bhim Rao Ambedkar Bihar University, Muzaffarpur adopted the UGC Regulations, 2009 on 17th January, 2013. Any Ph.D. completed thereafter would be after 17th January, 2015. Accordingly, that date is consequent to the last date of submission of application forms which is 05th January, 2015. In the said background, the Ph.D. degree of the appellants is not in accordance with the 2009 Regulations.

13. For all the reasons aforesaid, we find that neither the certificates issued to the appellants come to their aid nor do they in any way confer a right on them to claim such exemption. The judgment in the case of **Dr. Ram Pravesh Singh** (supra), therefore, does not come to the aid of the appellants.

14. There is no merit in the appeal, which is, accordingly, dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.01.2019
Transmission Date	NA

