

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3871 OF 2018

Dagadu S/o. Dashrath Pardhe .. **Petitioner**
Versus
The State of Maharashtra and others .. **Respondents**

Mr. H. U. Dhage, Advocate for Petitioner.
Mrs. V. N. Patil Jadhav, A.G.P. for Respondent No. 1.
Mr. P. L. Shahane, Advocate for Respondents No. 2 & 3.
Mr. S. B. Deshpande, A.S.G. for Respondent No. 4.
Mr. B. B. Kulkarni, Standing Counsel for Respondent No. 5.
Mr. R. R. Karpe, Advocate for Respondent No. 6.

WITH

WRIT PETITION NO. 2818 OF 2018

WITH

CIVIL APPLICATION NO. 15038 OF 2018

Jaysingrao S/o. Manjabapu Waghmare .. **Petitioner**
Versus
The State of Maharashtra and others .. **Respondents**

Mr. H. U. Dhage, Advocate for Petitioner.
Mrs. V. N. Patil Jadhav, A.G.P. for Respondent No. 1.
Mr. P. L. Shahane, Advocate for Respondents No. 2 & 3.
Mr. S. B. Deshpande, A.S.G. for Respondent No. 4.
Mr. B. B. Kulkarni, Standing Counsel for Respondent No. 5.

WITH

WRIT PETITION NO. 10599 OF 2018

Kiran S/o. Annasaheb More

.. **Petitioner****Versus**The State of Maharashtra and others .. **Respondents**

Mr. Sandip R. Sapkal, Advocate for Petitioner.

Mrs. V. N. Patil Jadhav, A.G.P. for Respondent No. 1.

Mr. P. L. Shahane, Advocate for Respondents No. 2 & 3.

Mr. S. B. Deshpande, A.S.G. for Respondents No. 4 and 5.

**CORAM: S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.****RESERVED FOR ORDERS ON: 18.04.2019****ORDER PRONOUNCED ON: 03.05.2019****ORDER (Per S. V. Gangapurwala, J.):**

1. The petitioners assail the selection process conducted by the respondent / University for the post of 'Assistant Professor' as per advertisement dated 06.10.2017. The petitioner in Writ Petition No. 2818 of 2018 had applied for the post of Assistant Professor in Soil Science and Agriculture Chemistry and the petitioner in Writ Petition No. 3871 of 2018 had applied for the post of Soil and Water Conservation Engineering

discipline. The petitioner in Writ Petition No. 10599 of 2018 had not applied for any post pursuant to the advertisement.

2. According to the learned Advocate for the petitioners, the petitioners were the only eligible candidates possessing NET / SET qualification. However, respondents herein selected respondent no. 6 in Writ Petition No. 3871 of 2018 and the intervenors though not possessing NET / SET qualification. The petitioners aggrieved thereby have filed the present writ petitions.

3. Mr. H. U. Dhage, learned Advocate for the petitioners strenuously contends that NET / SET is mandatory qualification for a person to be appointed to the post of Assistant Professor. The learned Advocate placed reliance on the 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 (*hereinafter referred to 'UGC Regulations, 2010*). According to the learned Advocate, the UGC Regulations, 2010 prescribes the necessary qualification for the post of Assistant Professor. The respondent / University is bound by the same. They cannot deviate from the qualification prescribed therein. The learned Advocate relies on the letter dated 09.03.2017, issued by the Assistant Director General, Indian Council of Agricultural Research (Agricultural Education Division) stating that if the Ph.D. is prior to July 11, 2009 then only that person is exempted from NET qualification. The advertisement in question is dated 06.10.2017 i.e. after the said letter dated 09.03.2017. The respondents have selected the persons who do not possess NET / SET qualification. The petitioners possess NET / SET qualification. The respondents could not have selected persons not possessing NET / SET qualification. The appointment orders should have

been issued to the petitioners. The learned Advocate submits that UGC Regulations is a central enactment and the same would prevail. Reliance is placed by the learned Advocate on the judgment of the Apex Court in a case of State of Tamilnadu and another Vs. Adhiyaman Educational and Research Institute and others reported in 1995 ALL M. R. ONLINE 403 (S.C.), so also, the judgment of the Apex Court in a case of Union of India Vs. Shah Goverdhan L. Kabra Teachers College reported in 2003 (1) ALL M. R. 384 (S.C.). The learned Advocate also relies on the judgment of the Apex Court in a case of The State of Madhya Pradesh and others Vs. Manoj Sharma and others reported in 2018 (4) ALL M. R. 441 (S.C.) and submits that the Apex Court also held that the NET qualification is now the minimum qualification for appointment of Lecturer and that exemption granted to M.Phil. Degree holders has been withdrawn and exemption is allowed only to those Ph.D. degree holders who have obtained Ph.D. degree prior to 11.07.2009 in

accordance with Regulations. The legality of the manner of selection always has to be considered by the Court and for that purpose the learned Advocate relies on the judgment of the Apex Court in a case of Veerendra Kr. Gautam and others Vs. Karuna Nidhan Upadhyay and others reported in 2016 ALL SCR 1519. The learned Advocate submits that the rules prevailing at the time of the issuance of advertisement will have to be considered. The UGC Regulations were in force. The qualification required as per UGC Regulations will have to be followed. The learned Advocate relies on the judgment of Apex Court in a case of Richa Mishra Vs. State of Chhattisgarh and others reported in 2016 ALL SCR 747. The learned Advocate submits that it is for the UGC to provide for the qualification and the State has no power to encroach upon the legislative power of the Parliament. The learned Advocate relies on the judgment of the Apex Court in a case of State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra

Mahavidyalaya and others reported in **2006 (3) ALL M. R. (S.C.) 94**. The Government of Maharashtra has accepted the UGC Regulations as per Resolution dated 18.03.2010. Once the same is done, it is binding on the Agricultural Universities. The learned Advocate to buttress his submission relies on the judgment of the Division Bench of this Court in a case of **Pravin Uddhavrao Ghatge and others Vs. The Vasantrao Naik Marathwada Krishi Vidyapeeth, Parbhani and another** reported in **2016(5) ALL M. R. 594**. The learned Advocate submits that plea raised by the respondents about non-joinder of selected candidates is not fatal to the petitioner for that purpose relies on the judgment of Division Bench of this Court in a case of **Sonali Promod Dhawde and others Vs. Central Bank of India and another** reported in **2013(4) ALL M. R. 357**. The learned Advocate submits that regulations defining qualification required for persons to be appointed to the teaching staff of the University does not require previous approval

of Central Government and the regulations must confirm with directions issued under Section 20 of the University Grants Commission Act, 1956. The learned Advocate relies on the judgment of the Apex Court in a case of P. Suseela and others Vs. University Grants Commission and others reported in 2015(3) ALL M. R. 981 (S.C.). According to the learned Advocate, the State Government having accepted the University Grant Commission's Regulations are bound to adhere with the same. The University Grants Commission Regulations provides that for the post of Assistant Lecturer the person should possess NET / SET qualification.

Mr. Dhage, learned Advocate further submits that the persons selected but not possessing the NET / SET qualification cannot be considered for appointment. The petitioners possess the necessary qualification, as such, are required to be given appointment orders. The qualification prescribed in the advertisement is not in consonance with the UGC Regulations.

4. Mr. Shahane, learned Advocate for the respondents / University submits that the petitioners in Writ Petition No. 3871 of 2018 and Writ Petition No. 2818 of 2018 had participated in the selection process. After having failed to get selected in the selection process the petitioners now are estopped from challenging the advertisement. The learned Advocate submits that the selection process has been conducted as per the statute and the Act. The learned Advocate submits that Section 37 of the Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983 enumerates the matters that the statute may provide. Clause (g) enables the statute to provide the designations, qualifications, method of recruitment and other conditions of service for the post of Professors, Associate Professors and Assistant Professors. The powers are given under Section 38 to amend the statutes.

5. On 15.03.2014, the Maharashtra Agricultural Universities (Krishi Vidyapeeths) Statutes, 1990

are amended. Appendix III to the statute prescribes for the qualifications to the post of Assistant Professor. The selection process has been conducted as per the qualification provided in the Appendix III to the statute, the same is legal and valid. The acceptance of the UGC Regulations is discretionary. It is not compulsory for the State to accept the UGC Regulations in toto. The learned Advocate relies on the judgment of the Apex Court in a case of Jagdish Prasad Sharma etc Vs. State of Bihar and others dated July 17, 2013. The UGC Regulations, 2010 are directory for the Universities, Colleges and other higher educational institutions under purview of the State legislature as the matter has been left to the State Government to adopt and implement the scheme. Reliance is placed on the judgment of Kalyani Mathivanan Vs. K. V. Jeyaraj and others reported in AIR 2015 SC 1875. The learned Advocate submits that after the UGC Regulations, 2010 prescribing minimum qualifications for appointment

on the academic staff, the University has amended the statutes and the selection process is conducted as per the amended statutes. The learned Advocate relies on the judgment of the Division Bench of this Court in a case of Arjun Ganpatrao Mahajan Vs. The Punjabrao Krishi Vidyapeeth and another reported in 1996 (2) Bom.C.R. 120 and submits that all conditions of service of teachers in Universities and the non Government colleges affiliated to them are not regulated by the terms and conditions by the UGC and that the said UGC Regulations are not applicable *pro prio vigore*. The learned Advocate also has placed reliance on the judgment of the Division Bench of this Court in a case of Pravin Uddhavrao Ghatge and others Vs. Vasantrao Naik Marathwada Krishi Vidyapeeth, Parbhani and another reported in 2016(5) ALL MR 594 and submits that the Division Bench of this Court in the said case has observed that the academic council with the Maharashtra Council of Agricultural Education and Research, Pune (MCAER)

who is controlling authority of all the four agricultural universities in the State of Maharashtra issued letter dated 23.09.2011 to the agricultural universities intimating that council has decided in it's meeting held on 25.07.2011 vide Resolution No. 49/89/11 to make applicable all the provisions of Government Resolution dated 18.03.2011 to all the agricultural universities in the State with regard to the educational qualifications, eligibility and other aspects at the time of appointment. The meeting was scheduled to consider the issue with regard to the educational qualifications for appointment of the academic staff was also discussed and it was decided to amend statute nos. 41, 52 and 73 of the Statutes of 1990, in view of Government Resolution dated 18.03.2010. Thereafter, the Vice Chancellors Co-ordination Committee (VCCC) came to be constituted for proposed amendments in the Statutes of 1990. The academic council decided to grant approval for the change in statute nos. 41,

52 and 73 in view of the statutes of the UGC and Indian Council Agriculture Research (ICAR) with regard to the educational qualifications and the issue came to be recommended to the Executive Council. Thereafter the matter was referred to the Chief Secretary of the Agricultural Department, Mumbai. The Executive Council under its decision dated 15.09.2012 decided to grant approval for amendment in statute nos. 41 ,52 and 73 of the Statue of 1990 and the matter was referred to MCAER, Pune. Subsequently, State also granted sanction to it and the amendments are published. The selection process has been conducted in accordance with amended statutes.

6. Mr. Sapkal, learned Advocate appearing for the petitioner in Writ Petition No. 10599 of 2018 and submits that though the petitioner has not participated in the selection process the petitioner still can assail the advertisement and the selection. The petitioner is interested one and submits that UGC Regulations are mandatory and

the qualifications required for a person to be appointed to the teaching staff of the University has to comply with the qualifications provided under UGC Regulations. The learned Advocate relies on the judgment of the full bench of the *Kerala High Court dated 23.02.2016 in Writ Petition No. 29253 of 2012 with connected writ petitions.*

7. We have also heard the learned Assistant Solicitor General, the learned A.G.P. and the learned Advocate for the respondents and the intervenors.

8. The petitioners in both these writ petitions have applied for the post of Assistant Professor in the stream of Soil and Water Conservation Engineering and Soil Science and Agriculture Chemistry.

9. The advertisement prescribes following qualification for the post of 'Assistant Professor' -

"QUALIFICATIONS AND EXPERIENCE"

1. Ph.D. in relevant discipline;

OR

Master's degree in relevant discipline from an accredited University along with National Eligibility Test (NET) conducted by Indian Council of Agriculture Research (ICAR) / University Grants Commission (UGC) / Council of Scientific and Industrial Research (CSIR) or similar test accredited by the University Grants Commission (UGC) like State Level Eligibility Test (SLET) / State Eligibility Test (SET).

2. National Eligibility Test (NET) / State Level Eligibility Test (SLET) / State Eligibility Test (SET) shall also not be required for such masters programme in disciplines for which National Eligibility Test (NET) / State Level Eligibility Test (SLET) / State Eligibility Test (SET) is not conducted.

Note

1. **For the post of Sr. No.A (1) (Agronomy) & A (2) (Soil Science and Agril. Chemistry):-** The candidates who have specialization in Irrigation and Water Management will also be eligible.

2. **For the post at Sr. No. A (11) (Veterinary Science):-** The candidate having academic qualification and experience in Gynecology will be preferred.

3. **For the posts at Sr. No. B (1 to 6) (Agril. Engineering):-** The candidates having additional qualification and experience in computer science and computer applications will be preferred."

10. The respondent is an agricultural University constituted under the Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983

(hereinafter referred to 'Act-1983'). Section 38 of the Act-1983, mandates the Executive Council of each university to prepare the statutes in conformity with the provisions of the Act and submit them to the Chancellor for his assent. Under Sub-Section 2 of Section 38 of the Act-1983 the Executive Council is empowered to make statutes, amend or repeal the statutes from time to time. The statutes framed by the Executive Council shall come into force after assented to by the Chancellor. Under Sub-Section 6 of Section 38 the State Government is empowered to make an amendment in the statutes or make the new statutes with the concurrence of the Chancellor and notify it in the official Gazette.

11. Section 28 of the Act-1983, prescribes that the conditions of service of the University employees viz. Designations, qualifications, method of recruitment, pay, allowances and other conditions of service shall be determined by the statutes and the regulations. Section 37 of the

Act-1983 is also relevant. Section 37(c) specifies that the statutes may provide for the designations, qualifications, pay, allowances and other conditions of service of various categories of employees of the University, so also, the designations, qualifications, method of recruitment, pay, allowances and other conditions of service of Professors, Associate Professors, Assistant Professors, Lecturers, Demonstrators and other categories of employees of the affiliated colleges and recognised institutions and their powers and duties.

12. Section 54 of the Act-1983 provides that the State Government shall have over all control over the financial matters of the university. As per Section 138 of the Maharashtra Agricultural Universities (Krishi Vidyapeeths) Statutes, 1990, the provisions of the Maharashtra Civil Services Rules are made applicable to the employees of the university affiliated colleges and recognised institutions. The Maharashtra Agricultural

Universities (Krishi Vidyapeeths) Statutes, 1990 are applicable to all the agricultural universities in the State of Maharashtra. Statute 73 prescribes the qualification for academic staff members, the same is as under -

"Statute 73 Qualifications of Academic Staff Members -

(a) for being appointed to any post in the University service mentioned in column 2 of the Appendix III, a person shall possess the minimum qualifications mentioned against each such post in column 3 of the Appendix III,

(b) If the selection Committee is satisfied that candidates with prescribed qualifications of experience or both are not available for the Selection and makes a report to the State Government to that effect, the State Government may relax a higher basic qualification or experience or both in making the appointments as may be necessary."

13. The State of Maharashtra under its Government notification published in the official Gazette on 25.03.2014 carried out the first amendment in the Statutes of 1990 prescribing the revised educational qualifications for teaching categories. The second amendment was carried out on 11.11.2014 with regard to the selection

committee for teaching categories. The Appendix III of the amended statutes prescribes the qualification for the Assistant Professor. The same reads thus -

"2. Assistant Professor:

(1) Ph. D. in relevant discipline:

OR

(2) Masters degree in relevant discipline from an accredited University along with National Eligibility Test (NET) conducted by Indian Council of Agriculture Research (ICAR) / University Grants Commission (UGC) / Council of Scientific and Industrial Research (CSIR) or similar test accredited by the University Grants Commission (UGC) like State Level Eligibility Test (SLET) / State Eligibility Test (SET)."

14. The candidates selected by the university and their selection being subject matter of present petitions possess the Ph.D. qualification. The first amendment dealing with qualification to the Statutes of 1990 were effectuated pursuant to the notification issued on 25.03.2014. The Notification clearly reads that the University Grants Commission and Indian Council of Agricultural Research, New Delhi have prescribed the qualifications and method of appointments and evaluation of academic officers,

Head of Departments and other equivalent posts and qualifications of Academic Staff Members of the University and whereas the State Government finds it necessary to amend the said statutes with the concurrence of the Chancellor so that to make the qualifications in consonance with the University Grants Commission and Indian Council of Agricultural Research, New Delhi. The State Government in view thereof amended the statute prescribing the qualifications and amended the Appendix III to the statute 73.

15. It would thus appear that the statutes have been amended. The University would be governed by the Act, Statutes and Regulations framed. The relevant provisions of the Statutes, Act and Regulations are not subject matter of challenge before this Court. The qualification prescribed by the UGC Regulations, 2010 for the post of 'Assistant Professor' is as under -

"4.4.0 ASSISTANT PROFESSOR

4.4.1. Arts, Humanities, Sciences, Social Sciences, Commerce, Education, Languages,

Law, Journalism and Mass Communication

(i) Good academic record as defined by the concerned university with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign university.

(ii) Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET.

(iii) Notwithstanding anything contained in sub-clauses (i) and (ii) to this Clause 4.4.1, 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.

(iv) NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not conducted."

"4.4.6.1 MINIMUM QUALIFICATIONS FOR APPOINTMENT OF TEACHING FACULTY IN UNIVERSITIES AND COLLEGES-ENGINEERING AND TECHNOLOGY DISCIPLINE:

1. Assistant Professor:

(i) Essential

First Class Master's Degree in the appropriate branch of Engineering (Engg.) & Technology (Tech.)

(ii) Without prejudice to the above, the following conditions may be considered

desirable:

(1) Teaching, research industrial and / or professional experience in a reputed organization;

(2) Papers presented at Conferences and / or in referred journals."

16. The Apex Court in a case of **Kalyani Mathivanan Vs. K. V. Jeyaraj and others** (*supra*) has held that UGC Regulations, 2010 is directory for the Universities, Colleges and other higher educational institutions under the purview of the State Legislature as the matter has been left to the State Government to adopt and implement the scheme. Pursuant to the UGC Regulations, 2010, the State Government has amended the statutes for all the agricultural universities in the State of Maharashtra prescribing the qualifications. It appears that it has accepted it in some modified form. The UGC under Section 26 has the power to define the qualification that should ordinarily be required to any person to be appointed to the teaching staff of the University having regard to the branch of education in which he is expected to give instructions. The UGC Regulations, 2010

prescribes for the minimum qualification for appointment and other service conditions of the University and College teachers and other academic staff.

17. It needs to be appreciated that education is covered under Entry 25 of List III of the Constitution of India and so also Entry 66 of List I. The UGC Act is enacted by the Parliament in exercise of its power under Entry 66 of List I of the seventh schedule to the Constitution of India. The Apex Court in the case of **Kalyani Mathivanan Vs. K. V. Jeyaraj and others** (*supra*) has clearly held that UGC Regulations, 2010 is not applicable to the Universities, Colleges and other higher educational institutions coming under the purview of State Legislature, unless the State Government accepts to adopt and implement the scheme subject to the terms and conditions therein. After the UGC Regulations, 2010 came into force the State Government amended the Statute 73 Appendix III and provided for the minimum

qualifications. It would thus be seen that the State Government accepted the UGC Regulations with regard to the minimum qualifications for the post of Assistant Professor of Agricultural Universities in the State of Maharashtra with certain modifications. In a case of **Jagdish Prasad Sharma etc Vs. State of Bihar and others** (*supra*) the three judges bench of the Apex Court held that there is no doubt that the Regulations framed by the UGC relate to Entry 66 List I of the Constitution in the Seventh Schedule to the Constitution, but it does not empower the Commission to alter any of the terms and conditions of the enactments by the States under Article 309 of the Constitution. Under Entry 25 of List III, the State is entitled to enact its own laws with regard to the service conditions of the teachers and other staff of the universities and colleges within the State and the same will have effect unless they are repugnant to any central legislation. However, in the instant case, the

said questions do not arise, inasmuch as, as observed hereinabove, the acceptance of the scheme in its composite form was made discretionary and, therefore, there was no compulsion on the State and its authorities to adopt the scheme.

18. The judgment of the Apex Court in a case of **The State of Madhya Pradesh and others Vs. Manoj Sharma and others** (*supra*) referred by the learned Advocate for the petitioners would not be of any assistance to the petitioners as the subject matter was completely different. In the said case, the Apex Court was required to consider as to whether the M.Phil./Ph.D. programme conducted through distance education is acceptable or not. In case of **P. Suseela and others Vs. University Grants Commission and others** (*supra*) the Apex Court observed that UGC is an expert body constituted with specialist in laying down standards and for promotion and coordination of university education. The recommendations made by it in the matters of qualification and limited

exemptions of such qualifications for appointment of teachers in universities taken after constituting the expert committees and considering the recommendations is not subject to supervision and control by the Central Government. However, in the said case the Apex Court was not required to consider the provisions of the statutes, ordinances and regulations under the Universities Act framed by the State Government and the qualifications prescribed under the said statutes. The same was a subject matter of consideration in a case of **Jagdish Prasad Sharma etc Vs. State of Bihar and others**, (*supra*) decided by the three judges bench of the Apex Court and subsequently followed. The Apex Court in a case of **Kalyani Mathivanan Vs. K. V. Jeyaraj and others** (*supra*) has also held that the UGC Regulations, 2010 is directory for the universities, colleges and other higher educational institutions under the purview of the State legislature, as the matter has been left to the State Government to adopt and

implement the scheme viz. UGC Regulations, 2010.

19. The petitioners in Writ Petition No. 2818 of 2018 and Writ Petition No. 3871 of 2018 had participated in the selection process and could not be selected and thereafter have challenged the selection.

20. In the light of above, we hold that the minimum qualification for the post of Assistant Professor in the advertisement is in consonance with the statutes framed by the State Government under the Act-1983.

21. Writ Petitions, as such, stand dismissed. No costs.

22. In view of dismissal of the writ petition, the civil application also stands disposed of.

[A. M. DHAVAL, J.] [S. V. GANGAPURWALA, J.]

23. At this stage, Mr. Dhage, learned Advocate for the petitioners seeks stay of the present order.

24. We have considered the position of law.

25. In view of that, the request for stay is rejected.

[A. M. DHAVALÉ, J.] [S. V. GANGAPURWALA, J.]

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