

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3107 OF 1996

- 1. Mrs.Manisha Pranajpe**
R/at 8/23, Anamay,
Ideal Colony, Kothrud, Pune-411029
- 2. Shri.Atul Govind Bagul**
R/at F-6, Samarth Park,
Vadgaon Budruk, Sinhgad Road,
Secretary of Petitioner
- 3. NET/SET Scholars Association,**
An Association of Candidates,
who have passed NET/SET
examination as laid down by
the University Grants Commission,
having its Office at C/o.Jayat Gadgil,
No.4/274, Maharashtra Housing
Board Colony, Laxminagar,
Parvati, Pune-411 009

...Petitioners

V/s.

- 1. State of Maharashtra**
through the Secretary,
Mantralaya, Bombay-400 032
- 2. University Grants Commission**
through the Secretary,
Registered Office at Ganeshkhind
Road, University Campus, Pune-411007
- 3. University of Pune**
through the Registrar,
Ganeshkhind Road, Pune-411007
- 4. Yashwantrao Chavan Institute**
of Social Sciences Studies and

Research, Paud Road,
Pune-411038

5. **Mr.V.L. Koli**
6. **Mr.Vijay Kulkarni**
Address of both Respondent
Nos.5 and 6 C/o. Yashwantrao
Chavan Institute of Social Sciences
Studies and Research Paud Road,
Pune-411038

...Respondents

Mr.Sanjay Kshirsagar for the Petitioners.

Mr.A.I. Patel, Additional Government Pleader for Respondent Nos.1 to 3.

Mr.Prathamesh Bhargude i/b Mr.S.B. Deshmukh for Respondent Nos.4 to 6.

**CORAM : S.C. DHARMADHIKARI &
SMT.BHARATI H. DANGRE, JJ.**

RESERVED ON :28th NOVEMBER 2018

PRONOUNCED ON : 18th APRIL 2019

JUDGMENT : (Per Smt.Bharati H. Dangre,J)

1. The present Writ Petition seeks a Writ in the nature of Mandamus to appoint the petitioners as lecturer in social work with retrospective effect as and it also prays for cancellation of appointment of respondent Nos.5 and 6. Relief is also sought for quashing and setting aside of Clause 7(c) of Circular dated 22.12.1995 issued by the State Government which contains a stipulation for continuation in eligible candidates till they acquire

necessary qualification prescribed by University Grants Commission (for short 'UGC').

2. The said Writ Petition came to be instituted in this Court on 03.04.1996 and on 06.11.1996 this Court was pleased to pass the following order :-

“Rule.

Leave to amend forthwith.

Interim relief refused. Expedite.”

Since then, the petition is pending for adjudication before this Court. On one occasion and to be precise on 14.02.2008 the petition came to be dismissed in default for non-prosecution and the petitioner approached the Hon'ble Apex Court, being aggrieved by the said order and on SLP being allowed, the petition was restored to its file. The petitioner made several attempts for expeditious disposal of the petition. However, in view of the pendency of several other Writ Petitions, this Court refused the request to take the matter out of turn. The matter came to be listed before us on 26.11.2018 and we heard Shri.Sanjay Kshirsagar, learned counsel for the petitioners, Mr.A.I. Patel, Additional Government Pleader, for Respondent Nos.1 to 3 and Mr.Prathamesh

Bhargude for Respondent Nos.4 to 6.

3. The present Writ Petition is filed by petitioner Nos.1 and 2 who are the individual claimants for the post of lecturer in the respondent No.4-Institution imparting education in Social Sciences. The petitioner No.3 is a NET/SET Scholars Association of the Candidates who have passed NET/SET examination conducted by the UGC. The case of the petitioner is that the UGC which is established under the University Grants Commission Act, 1956 is a statutory body entrusted with the function of co-ordination and determination of standards in Universities. Under the statute, it is empowered to make regulations prescribing the qualifications for the staff to be appointed in any University, defining minimum standard of instructions for grant of any degree etc. According to the petitioner, the UGC had laid down the qualifications of passing of National Eligibility Test (NET) or State Eligibility Test (SET) with effect from 01.01.1986. The grievance of the petitioner Nos.1 and 2 is that they have passed the NET Examination in the year 1995 and 1989 respectively but they were not considered for appointment. It is case of the petitioner No.1 that she has been teaching in the course of M.S.W. in Bharati Vidyapeeth from August 1993. A statement is made in the affidavit that she was working as a guest

lecturer and in the subsequent year, her appointment as guest lecturer was continued and some additional subjects were allotted to her for teaching. It is case of the petitioner No.1 though her appointment was termed as 'temporary arrangement' she was working as full time lecturer but paid on hourly basis.

4. An advertisement was published in June 1995 by the respondent No.4, namely, Yashwantrao Chavan Institute of Social Sciences Studies and Research, Pune which is affiliated to the University of Pune for three Open posts of lecturers in Social Work. The advertisement stipulated that the candidate should have cleared NET/SET examination or similar test accredited by the UGC. It is case of the petitioners that petitioner No.1 was called for interview along with 70 other candidates and was assured an appointment. The petitioner in the meantime, continued to work with the respondent No.4 and it was on 21st September 1995 she was informed that she has not been selected for the post of lecturer and on the contrary, respondent Nos.5 and 6 have been selected for the said post. The grievance of the petitioner, as raised in the petition, is that she was far superior in qualification, experience than those respondents and she had also passed the NET, which was an essential qualification in terms of the advertisement and also in

terms of the UGC Norms. She preferred representations to the respondent authorities but no cognizance was taken and her grievance was not redressed. She has placed on record a copy of the representation. The core grievance of the petitioner is that in utter violation of the UGC Guidelines, the respondent Nos.5 and 6 who are not eligible, have been appointed. The petitioner has further placed reliance on the directions issued by the State Government in the form of Resolution dated 22.11.1995 and a grievance is made that in terms of Clause 7(a) of the said Government Resolution, a candidate who is appointed and who do not possess the qualification of NET/SET examination should be continued on ad-hoc basis, and his services should not be terminated and an opportunity should be afforded to such a candidate to pass the NET/SET examination.

5. The learned counsel Shri.Kshirsagar submits that by clause (c) of the said Government Resolution, the appointments of the persons who do not possess requisite qualification of passing NET/SET examination continue to remain as ad-hoc employees and he submits that such ineligible persons can continue to hold the post which is meant to be filled in accordance with the UGC Norms. Shri.Kshirsagar further submits that the State Government has no

power to regularize appointments which are made in contravention of the provisions of the University Grant Commission Act and Regulations thereunder. He would also make a submission that the provisions of the University Grant Commission Act would override the provisions of the Maharashtra University Act 1994 and where there is a conflict, they must yield to the Central Enactment. In these circumstances, the petitioners have prayed for a relief of quashing of Clause No.7(c) of the Government Resolution dated 22.12.1995. An interim relief came to be sought by amending the petition seeking direction to the effect that respondent No.4 be restrained from re-advertising of the post held by the respondent Nos.5 and 6.

6. The Writ Petition is opposed by the State by placing on record an affidavit-in-reply which is sworn by the Under Secretary in the Higher and Technical Education Department of the State of Maharashtra. The Clause No.7(c) of the Government Resolution dated 22.12.1995 is sought to be justified on the ground that it was required to be issued with an intention that the teaching should not be interrupted because of non-availability of fully qualified teachers in all parts of Maharashtra.

Reliance is also placed on further resolution issued by

the State Government on 20.02.1996 thereby issuing direction to the effect that where NET/SET candidates are available along with fully unqualified candidates, then the fully qualified and eligible candidates must be considered for appointment and if even these candidates are not available, then the candidates who have secured at least 55% of marks in the Post-Graduate degree but who have not passed either NET or SET examination are permitted to be appointed on ad-hoc basis to avoid any interruption in the teaching program.

It is further stated in the affidavit that the Government has not permitted any indiscriminate appointment of the candidates without adhering to the qualification. Where such candidates are not available, the Universities or Colleges are permitted to appoint candidates without passing NET/SET examination on Ad-hoc basis but such candidates are not allowed to draw annual increments till they acquire NET/SET qualification and such Ad-hoc services are not counted for seniority or placement in the Senior Scale.

7. Relief sought in the petition is opposed by the learned AGP as well as the learned counsel Shri.Bhargude appearing for respondent Nos.4 and 6. It is also submitted that at this stage there is no question of recruiting the petitioner No.1 in service as at the

relevant time when she has filed petition she was aged 45 years and by this time, the petitioner has acrossed the age of superannuation and there is no question of appointing the petitioner.

8. With the assistance of the learned counsel for the respective parties, we have heard and perused the Writ Petition and carefully considered the submissions advanced on behalf of the respective counsel. It is not in dispute that the University Grant Commission Act, 1956 was enacted by taking recourse to Entry 66 of List 1 of seventh Schedule of the Constitution and the said Act makes provision for coordination and determination of standards in Universities and it provides for establishment of University Grants Commission. Section 12 sets out the functions of the Commission and it is the duty of the Commission to take necessary steps for promotion and coordination of University Education and for the determination and maintenance of standards of teaching, examination and research in Universities and for these purposes it is empowered to frame regulation.”

Section 26 empowers the Commission to frame regulation which would extend to defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University and also frame regulations for

maintenance of standards of work or facilities in the University. Accordingly, Commission framed the UGC (Qualification required of a person to be appointed of teaching staff of a University and Institutions affiliated to it) Regulations 1991 in exercise of powers conferred by Section 26(i)(e) read with 14 of the UGC Act. They were notified on 19.09.1991 and they were made applicable to every University established or incorporated by or under the Central Act or the State Act. The said regulations prescribe the qualification for the post of lecturer as good academic record with atleast 55% marks or equivalent grade at Masters Degree level in the relevant subject from an Indian University or a equivalent degree from a Foreign University. It also introduced the qualification of eligibility test for lecturers conducted by UGC, CSIR or similar test accredited by UGC.

The 1991 Regulations were adopted by the Government of Maharashtra by issuing Resolution and it prescribed the following qualification for appointment of University Lecturer.

- (a) A doctorate degree or research of an equally high standard.
- (b) Good academic record with at least second class i.e. in seven point scale.
- (c) Masters degree in relevant subject from a Indian

University or an equivalent degree from a Foreign University for College lecturers. It prescribe M.Phil degree or recognized degree along with research work as essential qualification.

9. By issuing a circular on 10.02.1993, the Commission itself granted exemption from appearing in the eligibility test to the following categories:-

(a) Candidates who have passed UGC/CSIR/JRF examination or candidates who were awarded Ph.D. degree.

(b) Candidates who have passed UGC/CSIR/JRF examination or candidates who were awarded M.Phil degree.

(c) All candidates who would submit their Ph.D thesis upto 31.12.1993.

By a further circular dated 15.06.1993 the exemption was further extended to the candidates who were awarded M.Phil Degree upto 31.12.1992. By a further notification issued by UGC on 21.06.1995, the 1995 Resolution came to be amended and exemption was granted to those candidates who have submitted Ph.D thesis or passed examination in the M.Phil by 31.12.1993.

Accordingly, the Government of Maharashtra issued a Government Resolution on 12.12.1995 and adopted the amended qualifications. By Resolution of 22.12.1995 the Government of Maharashtra extended the date of acquiring NET/SET qualification upto 31.03.1996 and prescribed that those lecturers who were appointed on or after 19.09.1999 without passing NET/SET examination or M.Phil examination till date came to be governed by qualifications as prescribed by the Commission as amended in 1995, namely, passing NET/SET examination. These appointees holding the posts of lecturer on account of the non-availability of the candidates were directed to be treated as ad-hoc and were granted protection from removal from service on account of not qualifying NET/SET examination. Subject however, to the stipulation that the increment of such person will be withheld.

10. Further development in the series of events is that the supercession of Resolution of 1995 along with Regulation of 1991 by Regulations framed in the year 2000, and known as the University Grants Commission (Minimum Qualifications required for the Appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) Regulation 2000. These Regulation have been adopted by the State Government by issuing

the Resolution on 13.06.2000 and the qualification clause prescribe that no person can be appointed in an institution unless he fulfills the requirements prescribed by UGC. The State Government thus granted some concession/protection by issuing resolutions from time to time for the period of 19.09.1991 to 11.12.1999 in conformity with UGC Regulations. The said relaxation was subject matter of several Writ Petitions even before this Court and the said relaxations has been upheld. The minimum qualifications which were prescribed by the UGC from time to time have been implemented by the State Government by issuing Resolution.

Reliance placed by the petitioner on the judgment of the Hon'ble Apex Court in case of University of Delhi V/s. Raj Singh and Others is perused by us. The Supreme Court on analyzing the provisions of the Delhi University Act, UGC Act of the Entry No.63 and 66 of List 1 of Schedule VII of the Constitution, has held that the Regulation provided for consequences of failure of the University to comply with recommendations made by it in the same term as set out in Section 14 of the UGC Act. The Hon'ble Apex Court also held that the University is not bound by the Regulation and it may select its lecturers and the University autonomy is not entrenched upon by the said Regulations. The said issue has been considered in number of judgments delivered by this Hon'ble Court

and in case of *Vishwaprakash Laxman Shirsat V/s. State of Maharashtra*¹. The challenge to the Government Resolution dated 18.10.2001 and particularly the relaxation Clause 2(E) has been entertained and in paragraph No.28 and 29 the following observations came to be made:-

28. We have also noted that the title of the 1991 Regulations framed by the Commission is different from the title of the 2000 Regulations. The earlier Regulations were titled as "the University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of the University and institutions affiliated to it) Regulations, 1991, whereas the later Regulations were titled as "the University Grants Commission (minimum qualifications required for the appointment and Career Advancement of teachers in Universities and institutions affiliated to it) Regulations, 2000". The emphasis, while framing the later Regulations, was for prescribing minimum qualifications required for appointment and for the career advancement of teachers in the universities and institutions affiliated to it. There was no emphasis in this regard in the 1991 Regulations. This deliberate change in the title of the Regulations also speaks about the intentions of the Commission to lay down a minimum qualifications for appointment and insisted that the teachers with these minimum qualifications are only appointed, subject, however, to the provision of relaxation in specific cases. In the impugned Resolution dated 18th of October, 2001 the State Government has, in clause 3, called upon the Universities and affiliated colleges to implement the 2000 Regulations framed by the Commission and not to appoint lecturers who do not meet the qualifications set out in these Regulations. If appointments are made of ineligible candidates the State Government will not approve such appointments and grants will not be released in respect of them. The State Government is, therefore, mindful of the legal position that the affiliated colleges and

1 2003-3-Mh.LJ 176

the universities are bound by the Regulations framed by the Commission so long as they desire to be governed by the provisions of the U.G.C. Act and receive grants from the State Government.

29. It is well established by a catena of judicial enunciations that the academic standards as prescribed by the respective nodal agencies created by an Act of Parliament/ Legislature are to be followed and judicial interference in such areas is uncalled for. The Commission is a body created by the U.G.C. Act and in exercise of its statutory powers has prescribed the minimum qualifications for appointment to the post of lecturers as well as other faculty members. It is not safe for this Court to sit in appeal over the decision of the Commission in such matters. The academic standards, prescribed by the Commission, including the minimum qualifications prescribed for appointment of teaching staff, cannot be a subject matter of judicial review and this Court would not venture to grant any relaxation in such qualifications, more so when the Commission itself has retained powers of relaxations in the given cases and for a specific period. The State Government, by the impugned Resolution, has only announced its determination to implement the 2000 Regulations meticulously and also ensured that all the colleges/ institutions receiving grants, follow the same, failing which the approvals to such appointments would not be granted and they would forfeit the grants available from the Government. It is for these reasons we do not agree with the view taken by the learned Single Judge of the Calcutta High Court in the case of "Amiyakumar Ghosh" (supra).

11. The petitioner questions the relaxation sought to be conferred by Government Resolution dated 22.05.1995, which in our opinion do not survive in light of the subsequent Government Resolutions passed by the State pursuant to Regulations framed by

the UGC and we are not inclined to go into the veracity of the said challenge as it is stale and do not survive in light of the subsequent developments. This Court did not grant any interim relief in favour of the petitioner and the petitioner by now has attained the age of superannuation. Even the respondent Nos.5 and 6 to the Writ Petition, who according to the petitioners, were not qualified must have also completed their service tenure and retired. This is one more reason we do not intend to entertain the grievance of the petitioner. The Writ Petition being without any merit and substance deserves to be dismissed and accordingly it is dismissed.

(SMT.BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI,J.)