

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2019
CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.22396 of 2018
and W.M.P.No.26240 of 2018

S.Dhayalan

.. Petitioner

Vs.

1. The Registrar,
Bharathiyar University,
Coimbatore-641 046.

2. The Bharathiyar University,
rep. by its Controller of Examinations,
Coimbatore.

3. The Chairman,
University Grants Commissions (UGC),
Bahadur Shah Zafar Marg,
New Delhi-110 002. *

.. Respondents

* R3 impleaded vide order dated 27.11.2018
made in WMP No.35007/2018 in WP 22396/2018

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of Mandamus
directing the respondents to admit the petitioner in the Ph.D.
programme for the year October 2018/July 2019.

For Petitioner : Mr.B.Srikrishnan

For Respondents: Mr.L.P.Shanmugasundaram
Standing Counsel for RR 1 & 2

Mr.P.R.Gopinathan,
Senior Cental Govt. Standing Counsel
for R3

O R D E R

This writ petition is filed seeking a direction to the
respondents 1 and 2 to admit the petitioner in the Ph.D.
programme for the year October 2018/July 2019.

2. The petitioner is a post-graduate in English (M.A.), besides possessing an undergraduate degree in Education (B.Ed.). He had stated that he served as Guest Lecturer from 2013-2015. Pursuant to the notification issued by the first respondent, the petitioner applied for Ph.D. programme, he had submitted his application and wrote the Common Eligibility Test (CET) on 24.06.2018. In the results of the CET published on 23.07.2018, he secured 7.70 marks out of 35 marks. When the petitioner approached the first respondent for admission, he was informed that he could not seek admission, as the minimum of 10 marks is the qualifying marks for admission. Hence, the petitioner is before this Court.

3. The University/respondents 1 and 2 filed a counter-affidavit stating that the minimum of 10 marks has been prescribed based on the Regulations issued by the University Grants Commission (UGC) and since the petitioner failed to secure the minimum marks, he was not considered for admission. It is claimed that the said UGC Regulations stipulated 50% of the marks in the CET as eligible marks for admission. It is further stated that the petitioner was given the benefit of 5% relaxation of marks from 55% to 50% applicable for differently-abled persons and there cannot be any relaxation with respect to the minimum qualifying marks in CET. It is admitted in the counter affidavit that the decision to fix minimum qualifying marks was taken by the Research Board and Standing Committee on Academic Affairs on 04.06.2018 and the same was duly approved by the Syndicate of the University.

4. Learned counsel for the petitioner contended that the minimum qualifying marks was not stipulated in the instructions given to the candidates appearing for the CET Examination 2018. It is his contention that had the instructions contained such a condition, the petitioner would have prepared well for the entrance examination to secure the seat to make his dream come true. Learned counsel also contended that the respondent University failed to follow Section 32 of the Rights of Persons with Disabilities Act, 2016, which provides for reservation in higher educational institutions.

5. Heard learned Standing Counsel for the University and the UGC.

6. The learned counsel for the petitioner contended that in the instructions issued by the first respondent for the CET held on 24.06.2018, the minimum qualifying marks were not prescribed by the respondents and also in the instructions for the candidates given in the Hall Ticket for the CET also there is no mention about the minimum marks to be secured by the candidates.

Though it is the admitted fact that the petitioner secured 7.70 marks out of 35 marks in the CET, learned counsel submitted that had the petitioner been put to notice about such minimum qualifying marks, he would have prepared well and scored much marks to secure the Ph.D. seat. It is also to be stated that Clause 6(c) of the Prospectus issued by the University provides for minimum marks, which reads as follows :

"6. Procedure for Admission

..... (c) CET shall be of objective type with 50 multiple choice questions (MCQs) each with four options. Each question carries 0.7 marks. No negative marks for wrong answers. The maximum marks shall be 35 (50 & 0.7 = 35 marks). There shall be a passing minimum of 10 marks out of 35. The awarded marks in the common eligibility test shall be valid for one academic year and shall be used to register for the Ph.D., programme during October/July sessions every year."

However, the petitioner claimed that the prospectus was issued by the University only on 27.07.2018.

7. When this writ petition came up for hearing on 14.09.2018, this Court directed the respondents 1 and 2/University to keep one seat vacant for the petitioner. On 10.10.2018, when again this writ petition was taken up for hearing, this Court directed the petitioner to submit a representation to the University before 11.10.2018 and the University was directed to consider the same and report back to the Court.

8. In obedience to the order of this Court, the petitioner submitted a representation on 11.10.2018 in this regard, which was negated by the respondents 1 and 2/University vide communication dated 16.10.2018, wherein, inter alia, it is reiterated that the decision relating to minimum CET score of 10 out of 35 marks was taken by the Research Board and Standing Committee on Academic Affairs on 04.06.2018 and the same was duly approved by the Syndicate of the University. It is also stated that 50% of the marks in the CET shall be fixed for acquiring eligibility.

9. From the above, it is clear that the respondents 1 and 2/University consistently stated that the UGC Regulations stipulated 50% of the marks in the CET as eligible marks for admission. The Notification No.F.1-2/2009(EC/PS)V(I) Vol.II, dated 05.05.2016, issued by the UGC, Ministry of Human Resources Development, Government of India, was pressed into service to substantiate the said claim. By virtue of the said notification, the University Grants Commission (Minimum Standards and

Procedure for Award of M.Phil./Ph.D. Degree) Regulations, 2016 (in short, "2016 Regulations") was issued by the UGC. A perusal of Regulation 5 of the 2016 Regulations, which deals with procedure for admission, would go to show that under sub-clause 5.4. of the said Regulations, it is stated that the Higher Educational Institutions (HEIs) shall admit candidates by a two stage process, namely, (i) an entrance test with qualifying marks as 50% and (ii) by interview. When the 2016 Regulations mandates 50% marks for eligibility, the petitioner cannot claim ignorance with respect to minimum qualifying marks.

10. At this juncture, it is pertinent to state that the UGC issued Notification No.F.No.1-1/2002(PS)Exempt(Pt.Fl.III) Vol-II.-I, dated 27.08.2018, amending UGC (Minimum Standards and Procedure for Awards of M.Phil/Ph.D Degree) Regulations 2016 and the relevant part of the amendment notification reads as hereunder :

2. The following proviso shall be added to the clause 5.4.1 of the University Grants Commission (Minimum Standards and Procedure for award of M.Phil/Ph.D Degrees) Regulations, 2016

"provided that a relaxation of 5 % of marks (from 50% to 45%) shall be allowed for the candidates belonging to SC/ST/OBC (Non-Creamy layers)/ Differently-abled category in the entrance examination conducted by the Universities.

provided further that, if in spite of the above relaxation, the seats allotted for SC/ST/OBC (Non Creamy layer)/Differently-Abled categories remain unfilled, the concerned Universities shall launch a Special Admission Drive, for that particular category within one month from the date of closure of admissions of General Category. The concerned University will devise its own admission procedure, along with eligibility conditions to ensure that most of the seats under these categories are filled."

11. The above amendment makes it clear that a relaxation of 5% of marks, i.e., from 50% to 45% was allowed for the candidates belonging to SC/ST/OBC (Non-Creamy layers)/ Differently-abled category in the entrance examination conducted by the Universities for admission to M.Phil., and Ph.D. Courses. The intention of the UGC to ensure that the persons with disabilities secured a seat in the said courses is spelt out in the second proviso, which permits the concerned University to launch a Special Admission Drive, for that particular category within one month from the date of closure of admissions of General Category or to devise its own admission procedure, along with eligibility conditions to ensure that most of the seats under these categories are filled, if those are unfilled, even

after providing the above relaxation.

12. Be that as it may, it is quite common that every examination, whether it may be a competitive examination for securing a job or for an admission in a course, or a regular academic examination for securing an educational qualification, such as degree, diploma, certificate, etc., will prescribe minimum qualifying marks. When it comes to competitive examination for the purpose of job or a seat, the minimum qualifying marks may be there and the mark secured by the candidates will determine their rank which would eventually decide as to whether one will be in the race or not. In the instant case, the petitioner secured only 7.70 marks out of 35 marks, which disentitles him from securing the seat, as the minimum qualifying marks was fixed at 10.

13. Further, the object of conducting such examination is to assess the candidates suitability to take up the course. Without fixing minimum qualifying marks, the HEIs could not ensure quality of education in higher education. Even if there is no minimum marks prescribed, the petitioner ought to have proven his knowledge by securing good marks in the CET. Hence, the petitioner, who is a post graduate and served as a Lecturer cannot take shelter claiming ignorance of minimum qualifying marks.

14. As far as the next contention of the learned counsel for the petitioner that the respondents failed to follow Section 32 of the Rights of Persons with Disabilities Act, 2016, which provides for reservation in higher educational institutions, this Court is of the view that there is some force in the said contention. Section 32 of the said Act reads as follows :

"32. (1) All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent seats for persons with benchmark disabilities.

(2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.

15. What is benchmark disability has been defined in Section 2(r) of the aforesaid Act in the following manner :

(r) "person with benchmark disability" means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the

certifying authority;

16. Undisputably, the petitioner, being the person suffers from 100% of vision impairment, comes within the definition of Section 2(r) suffering benchmark disability. The respondents University, being the Government Institution of higher education, has statutory duty to reserve not less than five per cent of seats for persons with benchmark disabilities and the University has to give relaxation of five years in upper age limit for admission to the candidates with benchmark disabilities. But at the same time, the minimum qualification of securing 10 marks in the CET Examination cannot be given a go-by. Unless the petitioner secures minimum qualification prescribed by the respondents in terms of the UGC Regulations, he cannot seek reservation.

17. It is not out of place to mention here that if the petitioner secured the minimum qualifying marks, this Court could have invoked the power under Article 226 of the Constitution to issue mandamus, as sought for by the petitioner. As stated supra, since the petitioner failed to secure the minimum qualifying marks, even after applying all the allowances given to a Person with Disabilities, this Court cannot come to his rescue.

18. For the reasons alluded to above, there is no merit in this claim of the petitioner and this writ petition is liable to be dismissed. However, it is made clear that this Court hopes that this order will not dampen the spirit of the petitioner to write the CET and other examinations in future and come up with good marks to secure a seat and complete the Ph.D. course to come up with flying colours. The respondents are also directed also implement the provisions of the Rights of Persons with Disabilities Act, 2016 in their letter and spirit.

19. With the above directions, this writ petition is disposed of. No costs. Consequently, W.M.P.No.26240 of 2018 is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Registrar,
Bharathiyar University,
Coimbatore-641 046.
 2. The Bharathiyar University,
rep. by its Controller of Examinations,
Coimbatore.
 3. The Chairman,
University Grants Commissions (UGC),
Bahadur Shah Zafar Marg,
New Delhi-110 002.
- +1 CC to Spl. Govt. Pleader (CO OP) sr 43180.
+1 CC to Mr.B.Srikrishnan, Advocate sr 42401.
+1 CC to Mr.P.R.Gopinathan, Advocate sr 42275.

W.P.No.22396 of 2018

NA(CO)
SP(31/05/2019)



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