

**Sr. No.216
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.23766 of 2015 (O&M)

Date of Decision: 29.05.2019

Parveen Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. S.S.Pathania, Advocate,
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

ARUN MONGA, J.(ORAL)

Petitioner herein seeks quashing of order dated 18.11.2014 (Annexure P-7), whereby his claim for advance increments as per the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010, has been rejected.

2. Succinctly, the factual matrix of the case is that the petitioner was appointed as 'Librarian' with respondent No.4-S.A. Jain College, Ambala City (Haryana) vide appointment letter dated 19.08.2008 (Annexure P-1). At the time of appointment, the petitioner was exempted from having NET qualification. He had enrolled in Ph.D. which was granted to him in the year 2011 i.e. during his service. Vide a clarification dated 29.03.2012 (Annexure

P-4), Principals of all Private Government-Aided Colleges, were asked to send the cases for grant of benefit of incentives for Ph.D./M.Phil employees as per Regulations. Respondent No.4-College forwarded the case of the petitioner vide letter dated 18.09.2014 (Annexure P-6) which was rejected vide impugned order dated 18.11.2014 (Annexure P-7). Being aggrieved by the said rejection, the petitioner filed the present writ petition.

3. It is the case of the petitioner that the vide Notification dated 21.07.2011 (Annexure P-5), Government of Haryana adopted the revised UGC Regulations of 2010, *ibid*, in a piece-meal manner. The provisions were made applicable from 01.09.2009. It was clarified by order dated 29.03.2012 (Annexure P-4) that the cases prior to 01.09.2009 would be governed by old Notification dated 08.12.2000 and cases post 01.09.2009 would be governed by Notification dated 21.07.2011 (Annexure P-5).

4. It is averred that under UGC Notification on Revision of Pay Scales, Minimum Qualifications for Appointment of Teachers in Universities and Colleges and other Measures for the Maintenance of Standards Regulations, 1998 the incentives for Ph.D./M.Phil holders were as below:-

6. *"Incentives for Ph.D./M./Phil.*

6.1.0 Four and two advance increments will be admissible to those who hold Ph.D. and M. Phil degrees, respectively, at the time of recruitment as Lecturers. Candidate with D.Lit/D.Sc. Should be given benefit on par with Ph.D. And M.Lit on par with M. Phil.

6.2.0 One increment will be admissible to those teachers with M. Phil who acquire Ph.D. within two years

of recruitment.

6.3.0 A Lecturer with Ph.D. will be eligible for two advance increments when she/he moves into Selection Grade/Reader.

6.4.0 A teacher will be eligible for two advance increments as and when she/he acquires a Ph.D. Degree in his/her service career.”

5. The petitioner avers that having acquired his Ph.D. degree in the year 2011 i.e. post 01.09.2009, he would be governed by the UGC Regulations 2010. The 2010 Regulations revised the Scheme for increments as below:-

“7 Incentives for Ph.D./M.Phil and other higher qualifications:

x) Assistant Librarian/College Librarian and other Library personnel acquiring the degree of Ph.D. at any time in service, in the discipline of library science from university complying with the process prescribed by the UGC in respect of enrolment, course-work and evaluation shall be entitled to three non-compounded advance increments.”

6. The petitioner states that on a combined reading the Regulations and the Notification issued by the Government of Haryana, he is entitled to be given the benefit of three increments as per the 2010 Regulations.

7. In the return filed by the Government, it has been contended that the Government is not bound by the UGC Regulations. The Government is competent to decide which regulations are to be adopted and which are not to be adopted. It is stated that the Government, after careful consideration, adopted the Regulations which were applicable to their employees. It is

stated that the case of the petitioner, being appointee prior to 01.09.2009, would be covered by the Policy dated 08.12.2000, which envisages the following:-

“10. Incentive for M.Phil and Ph.D. Degree

i) Four and two advance increments will be admissible to those who hold Ph.D. and M. Phil degrees, respectively, at the time of recruitment as Lecturers. Candidate with D.Lit/D.Sc. Should be given benefit on par with Ph.D. And M.Lit on par with M. Phil.

ii) One increment will be admissible to those teachers with M. Phil who acquire Ph.D. within two years of recruitment.

iii) A Lecturer with Ph.D. will be eligible for two advance increments when she/he moves into Selection Grade/Reader.

iv) The benefit of two advance increments in lieu of Ph.D. Degree will be available to teachers who acquire Ph.D. Degree in the service career on or after 01.01.1996. However, the increments would be admissible from the date of award of the Ph.D. degree.”

8. It is thus stated that the petitioner would only be eligible for two advance increments when he/she moves into the Selection Grade as Reader. Petitioner had acquired Ph.D. degree only in 2011 i.e. after two years of recruitment.

9. It is further averred that the benefit of advance increments could only be given to the persons who had NET qualification at the time of joining service but the petitioner did not have the same when he was appointed.

10. Learned counsel for the petitioner stated that the case of

the petitioner has to be considered as per the 2010 Regulations. The respondent-State cannot adopt UGC Regulations in a piecemeal manner. He stated that the UGC Regulations being made by Central Government, have to be applied in a uniform manner and govern all Central and State Universities. Such regulations came into force with immediate effect and the State Government would be bound by the same.

11. He further controverted the stand taken by the State Government that as the petitioner did not possess the NET qualification at the time of recruitment, he is not entitled to the benefit as claimed. Referring to communications between Government and the Principals of various colleges, Annexures P-11 and P-12, he places reliance on the stand taken therein that the petitioner having already been enrolled in Ph.D. at the time of recruitment, was exempted from having the NET qualification. Further he submits that it is also made clear vide Annexure P-13, by the Government that the NET qualification at entry level would not be a bar to grant benefit of advance increments.

12. Learned counsel for the petitioner placed reliance on judgment rendered by Hon'ble the Apex Court in case titled as ***'University of Delhi Vs. Raj Singh and others' bearing Civil Appeal No. 1819 of 1994 decided on 08.09.1994*** which further relied on ***'Osmania University Teachers Association Vs. State of Andhra Pradesh and another' bearing Civil Appeal No. 1205-06 of 1987***. A conjoint reading of the two judgments shows that when the Central Government had enacted the UGC Act under Entry 66

of List 1 of Seventh Schedule of the Constitution, the State Government cannot overturn the regulations made by UGC.

13. Learned counsel for the petitioner further placed reliance on judgment rendered by a Coordinate Bench of this Court in '**Chandigarh Administration Vs. Dr. Anurag Sankhian and others**' bearing **CWP No. 19587-CAT of 2012**, wherein the petitioner was given the benefit of increments from the date he acquired his Ph.D. degree.

14. Learned counsel for the State reiterated the stand taken in the return filed by them. He stated that the petitioner could only have been given the benefit of advance increments on being promoted to Selection Grade as Reader. He stated that the petitioner having been appointed prior to the date of coming into force of the policy dated 21.07.2011 (Annexure P-5), would be governed by the earlier policy 08.12.2000.

15. I have heard the learned counsel for the parties and have gone through the pleadings with their able assistance.

16. In the return filed in answer to the writ petition, the reason assigned for denial of benefit of advance increment to the petitioner on having been awarded Ph.D. Degree is that he is covered by Notification dated 08.12.2000 and not as per Instructions dated 21.07.2011 as contended by the petitioner.

17. Accordingly, it has been stated in the affidavit that petitioner shall be entitled to two advance increments when he moves into Selection Grade as a Reader in terms of the Notification dated 08.12.2000, as he acquired the Ph.D. Degree during service

on 28.12.2011.

18. The said stand taken by the respondents-State flies in the face of letter/order dated 21.07.2011 (Annexure P-5) written by the Financial Commissioner and Principal Secretary, Higher Education Department to all the Educational Institutions/Universities in State of Haryana in respect of the adoption of the various recommendations of the UGC& MHRD.

19. The said recommendations were to be effective w.e.f. 01.09.2009. The relevant thereof is extracted hereinbelow:

“13 (vii) Assistant Librarian/College Librarian and other Library personal acquiring the degree of Ph.D, at any time while in service, in the discipline of library science from a university complying with the process prescribed by the UGC in respect of enrolment, course-work and evaluation shall be entitled to three non-compounded advance increments.”

XX XX XX XX

“Note: The provision for grant of incentives for Ph D and M Phil shall be effective from 01.09.2009. This is on the condition that NET would be essential qualification at entry level.”

20. Admittedly, the petitioner joined service as Librarian on 19.08.2008.

21. Learned counsel for the petitioner submits that since before his appointment on 19.08.2008, the consistent position throughout as per letter dated 15.03.2008 (Annexure P-10) as also letter dated 17.07.2009 (Annexure P-11) followed by letters dated 05.08.2014 (Annexure P-12) and 07.09.2017 (Annexure P-13), has

been that the State of Haryana had granted relaxation in NET for appointment of 'Librarians' in Colleges/Universities. He contends that therefore, the Note, *ibid* contained in the UGC recommendation is not applicable to the case of the petitioner.

22. Pet letter dated 05.08.2014 (Annexure P-12) issued by Director General Higher Education Haryana, it was conveyed to Principals of all the Government aided private colleges in State of Haryana that Government had decided to exempt the condition of NET as essential qualification for grant of increments in lieu of Ph.D. It was also stated in the letter that cases of those lecturers appointed before 01.09.2009 are to be considered under Government Instructions dated 08.12.2000 for grant of advance increments in lieu of Ph.D. However, it is not shown if the benefit of these Instructions was not to be given to the Librarians appointed before 01.09.2009, as in the case of the petitioner. Fair and logical conclusion upon perusal of the said letter is to assume that the benefit should be admissible to all such Librarians also.

23. Further more, letter dated 07.09.2017 (Annexure P-13) issued by University Grants Commission, New Delhi to the Government of Haryana clearly states that NET is not linked to incentives of Ph.D. at the entry level and/or otherwise. In view of this, a conjoint reading of letter dated 05.08.2014 (Annexure P-12) read with letter dated 07.09.2017 (Annexure P-13) leaves no ambiguity with respect to linking of NET for grant of incentives of Ph.D.

24. In the premise, I find merit in the contentions of learned

counsel for the petitioner that the aforesaid Note in the decision of the State Government as contained in the appendix to letter dated 21.07.2011 (Annexure P-5) saying that NET would be essential qualification at entry level cannot be made the basis of denying the benefit of advance increments to the petitioner on acquiring Ph.D., while in service.

25. In view of my discussion above and the reasoning contained therein, the petition is, accordingly, allowed. Respondents are directed to grant the benefit of three advance increments to the petitioner with effect from the date of his acquiring the degree of Ph.D., while in service with all consequential benefits. The financial benefits shall be paid to the petitioner within a period of 3 months from the date of receipt of a certified copy of this order along with interest @ 8% per annum from the date of accrual till its actual payment.

26. Petition is allowed in the aforesaid terms.

29.05.2019

vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No