

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-29977-2018
Reserved on 11.07.2019
Pronounced on 02.08.2019.

Sonia Ahuja ...Petitioner

vs.

State of Punjab & Ors ...Respondents

CWP-25231-2018

Pawandeep Kaur ...Petitioner

vs.

State of Punjab & Ors ...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R.K.Arora, Advocate, for the petitioner.

Ms. Anju Arora, Additional Advocate General, Punjab.

ARUN MONGA, J.

Both the above referred writ petitions are being disposed of by this common order as the factual and legal aspects in both the petitions are similar. The facts are being taken from CWP-29977-2018.

2. Succinctly, the factual background is that on 10.09.2017 (Annexure P-1), respondent No.3 issued advertisement for recruitment to 521 posts of Hindi Masters/Mistress. As per clause 2 of the advertisement, the following requisite educational were prescribed:

- i) Graduation with Hindi as a subject.
- ii) B.Ed with Teaching of Hindi subject

iii) Passing of Punjab State Teachers' Eligibility Test-II.

Per Clause 3 of the advertisement, the merit list was to be prepared on the basis of marks obtained in the written test.

4. Petitioner belongs to general category. She applied for her selection and appointment as Hindi Mistress and was assigned registration No. 1721119. She secured 107 marks out of 150 marks in the written test. In the provisional merit list (Annexure P-6), her name was placed at serial No. 148 . However, an objection was raised in the remarks column against her name that she passed B.Ed. in April, 2010 from Jamia Milia Islamia University with examination/study centre at Amritsar.

5. The petitioner personally appeared before Deputy Director, Education Recruitment Directorate on 24.09.2018 and submitted her representation alongwith documents that Jamia Milia Islamia University is a Central University and having national jurisdiction. She also submitted that a large number of candidates, who acquired B.Ed during Session 2006-2007 from the same University, were appointed as ETT Teachers in the department and they were also granted promotions as Masters/Mistrersses in the year 2017.

6. The petitioner took admission in the University directly after passing an entrance test conducted by the University. Her examination/study centre is an approved Programme Centre of the University for Distance Mode. She also pointed out that as per sub Section (xi) of Section 6 of the Jamia Milia Islaia Act, 1988, the University has been empowered to establish and maintain such centres.

7. The respondents issued final merit list in September, 2018, wherein, the name of the petitioner was withheld/not included despite her

higher merit on the ground that she passed B.Ed. from Jamia Milia Islamia University, Delhi and the same is not valid as per University Grants Commission Guidelines regarding jurisdiction.

8. The department issued another merit list on 03.10.2018 wherein candidates, who had obtained upto 102 marks, were called for choice of station on 12.11.2018.

9. All posts advertised were not filled. The department fixed 3rd counselling on 16.11.2018, wherein candidates upto merit marks 94 were called for scrutiny of documents. However, despite scoring 107 marks was not called for scrutiny of her documents.

10. Hence, the present petition challenging the action of the department in withholding her candidature for appointment despite her higher merit.

11. In the return filed by the respondents, in para 5, the stand taken to deny appointment to the petitioner is that as per decision of the department, only those candidates, who had obtained degrees from Universities situated in other states through distance education mode, will be considered whose degrees are valid as per guidelines issued by the UGC vide Public Notice dated 27.06.2013 (Annexure P-17) and letter dated 23.08.2013 (Annexure P-18). It is pointed out that degree obtained by the petitioner cannot be considered in view of the guidelines dated 27.06.2013 issued by the UGC.

12. In para 6 of the reply/affidavit, it is also mentioned that in order to get clarification whether the Jamia Milia Islamia University, New Delhi, had national jurisdiction, the office has sought clarification from the UGC, which is still awaited.

13. I have heard Mr. R.K.Arora, learned counsel for the petitioner and also Ms. Anju Arora, learned Additional Advocate General, Punjab.

14. Jamia Millia Islamia University was set up under Jamia Milia Islamia Act, 1988 as a Central University and is a Member of Association of Indian Universities. Under Section 6 of the Act, *ibid*, the University has powers, *inter alia*, to establish and maintain schools, Institutions and such centres as are necessary for furtherance of its objects. Relevant sub-Sections (xi) and (xxiv) of Section 6, *supra* are reproduced hereinbelow:-

Section 6 of Jamia Millia Islamia Act, 1988

“6 XXXX.....

(xi) to establish and maintain Schools, Institutions and such Centers, Specialized Laboratories or other units for research and instructions as are, in the opinion of the University, necessary for the furtherance of its object;

..... XXXX.....

(xxiv) to do all such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the University.”

15. The Centre for Distance and Open learning of the University offers two years B.Ed (distance mode) Programme. The said B.Ed Programme is approved by National Council for Teachers Education (NCTE). The University established the aforesaid Centres for Distance and Open learning under the provisions of Jamia Millia Islamia Act, 1988. The relevant provisions i.e. Section 23(a) and Section 24 (3) of the Act, *ibid* are reproduced hereinbelow:

Section 23(a)

“the constitution, powers and functions of the authorities and other bodies of the University, as may be constituted from time to time.”

Section 24 (3)

“ Every new Statute or addition to the Statutes or any amendment or repeal of a Statute shall require the assent of the Visitor who may assent thereto or withhold assent or remit to the Majlis-i-Muntazimah (Executive Council) for consideration.”

16. The Jamia Millia Islamia University has established following five Distance Mode Centres in the country for B.Ed. (Distance Mode) Programme:

- (i) Faculty of Education, MI, JSC No. 01.
- (ii) Kalka Educational Society, Kalkaji, JSC No. 02
- (iii) Khalsa College of Education, Amritsar, JSC No.03
- (iv) Rakshpal Bahadur Teachers Training Institute, Bareilly, JSC No.04.
- (v) GSRM Memorial Degree College, Lucknow, JSC No.05.

17. In Clause 1.2 of General Information of the prospectus/programme guide 2009-10, it was specifically mentioned that the University has a national jurisdiction and its aim is to provide education at the doorstep of the learner. It was also provided that the students are free to choose their programme centres/study centres according to their own place and convenience.

18. As per Clause 3(v) of the Prospectus, the conduct of practical work is provided for as under:

“3 (v) Conduct of Practical Work

To provide effective support to the practical work, your work place and the programme Centre will play every important role.

(i) Work Centre: it is the high/secondary higher/senior secondary school where the student-teacher carries out practice teaching and school-based activities.

(ii) Programme Centre: It is a Teachers Training College or a Department of Education where academic counselling and practical workshop and term-end Examinations will be conducted. The Programme In-charge will manage the Programme Centre and each Programme Centre will be handling about 100 students. We do not allow students to change their Programme Centres on any ground as admissions are conducted centre-wise.”

19. The University also provides for the Conduct of Term-End Examinations at respective programmes of the Study Centres. The following provision was made in the prospectus:-

“4. Term-End (Annual) Examination:-

The University conducts term-end examinations once a year. You should take the examination of B.Ed. Programme at the end of each academic year. The examination will be held at respective programme/Study Centre.”

20. The faculty of education, Guru Nanak Dev University, Amritsar is providing faculty to the Jamia Millia Islamia in the programme centre at Amritsar for different programmes such as Teachers Training, PCP etc. Even a certificate dated 29.11.2013 (Annexure P-13) was issued by Guru Nanak Dev University that Jamia Millia Islamia is a designated Central University, established by Act of Parliament. It is a UGC recognized

University since the year 1962. B.Ed. (Distant Mode) programme of this University is also recognized by National Council of Teacher Education (NCTE) & Council for Distance Education (DEC).

21. Similarly, the Khalsa College of Education which is 95% grant-in-aid college of the Punjab Government has also certified that the college is an approved programme centre for Distance Mode B.E.d. of Jamia Millia Islamia.

22. This Court, vide its judgment dated 06.06.2019 rendered in CWP-11049-2017 considered the validity of degrees obtained through Deemed Universities and State Universities by distance education mode. It has been held in the aforesaid judgment that all degrees obtained from the Deemed Universities with admission made prior to 29.03.2010 and in the case of State Universities with admission made prior to 01.11.2012 through the use of Study Centre/Off Campuses Centres, etc. will be valid. I am in respectful agreement with the ratio in aforesaid judgment wherein my learned brother Jaswant Singh, J., speaking for this Court, has held as below:

“Upon consideration of facts, developments and change in distance education policies over the time and the findings recorded under different heads from HEAD “A” To “G” following parameters/directions are issued:-

(i) In case of Deemed Universities and Private Institutions (other than Universities) the cut-off date with regard to territorial jurisdiction and study centre will be 29.3.2010, all admissions made prior to 29.3.2010 to obtain degrees awarded through use of study centres, off-campus centres of Deemed Universities and Private Institutions (other than Universities) will be valid, subject to the statutes/ MOA (Memorandum of Association) of University permitting opening up of

Centres in the territory from which it was operating or permits opening up of centres at any place where there are reasonable concentration of students (as permitted by UGC in 1985 Regulations, Annexure P-34).

(ii) In case of State Universities (both Government funded or Private funded) the cut-off date will be 1.11.2012 , therefore all admissions made prior to 1.11.2012 to obtain degrees awarded through use study centres/off campus centres of State Universities or Private Universities will be valid, subject to the statutes/ MOA of University permitting opening up of Centre in the territory from which it is operating or permits opening up of centres at any place where there are reasonable concentration of students (as permitted by UGC in 1985 Regulations, Annexure P-34).

(iii) The qualifications attained after the cut-off date mentioned above will stand de-recognised for all purposes. However as opening up of study centers was permitted after prior approval from UGC, it is clarified that even after the cut-off date if the qualification attained through distance education mode from Institutions (other than University) / Universities (Central University, State University, Deemed University or Private University) is in consonance with the regulations/ notifications/policies of DEC/ UGC with regard to territorial jurisdiction and study centres prevailing at the relevant time and the study centre is approved by the UGC, then the qualification will be recognised and valid. This observation has been made due to lack of complete Information before this Court, as no list of approved study centres has been brought before this Hon'ble Court.

(iv) With regard to First degrees awarded by Universities [including Central Universities, State Universities,

Private Universities, Deemed Universities] by way of Distance Education in the faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences are concerned, the same shall be valid in light of the 1985 regulations (Annexure P-34) permitting imparting education through distance mode via study centres, subject to being admitted in the University prior to the cut-off date mentioned above in para no. (i) & (ii) of parameters laid above, as the case may be.

XXXXX

(vii) The qualifications which have been held to be valid above be treated as at par with the degrees awarded by way of conventional mode/ regular mode of education.

XXXXX

*(xi) It is clarified for all purposes, that the candidates whose degree will stand invalidated in view of the parameters mentioned above, all benefits secured by such candidates/ employees shall stand withdrawn, however if any monetary benefit has been drawn such as salary etc. the same shall not be recovered. In such cases the employees /candidates will be at the liberty to take appropriate action, as available under law, so as to recover the amount paid towards tuition fees, expenditure incurred, damages etc. etc. from the University/Institution concerned. The above said direction is being given on the lines of directions, in similar situation issued by the Hon'ble Supreme Court of India in paragraph 53 (vii) of the judgment reported as **2017 (4) SCT 683: 2017 AIR (SC) 5179** titled as **Orissa Lift Irrigation Corp. Ltd V. Rabi Sankar Patro.**"*

23. In the present case, the petitioner obtained degree from Central University, which has national jurisdiction. She got direct admission with the University after passing the entrance test and not through any study

centre. In the programme centre at Amritsar, different programmes such as teachers training, PCP and examination were conducted. The petitioner acquired her degree much prior to the public notice dated 27.06.2013 (Annexure P-17) and letter dated 23.08.2013 (Annexure P-18) and also much prior to the cut off date fixed for deemed and private universities in CWP-11049-2017 decided on 06.06.2019.

24. The UGC vide its letter dated 23.02.2016 (Annexure P20) had clarified that the implementation date of UGC letter No.27/1/12 (CPP)-II is 27.06.2013.

25. In the reply/affidavit filed by respondent No.4, it has been admitted that the petitioner was *bona fide* student of Jamia Millia Islamia University with her B.Ed (Distance Mode) study centre at Khalsa College of Education at Amritsar. In Para No.4 of the reply, it is admitted that the petitioner took admission in the University directly after passing the entrance exam/test.

26. In view of the above, action of respondents in withholding the eligibility of the petitioner for the post of Hindi Mistress and proceeding to appoint persons with lower merit by ignoring the candidature of the petitioner on the ground that she has passed B.Ed. degree in the year April, 2010 from Jamia Millia Islamia, New Delhi (A Central University) through Distance Education Mode with Examination/Study Centre at Amristar is held to be patently wrong and arbitrary. Consequently, respondents are directed to treat the petitioner as eligible for being considered for appointment on the post of Hindi Mistress and accordingly pass appropriate orders as per her merit.

27. Let needful be done within period of 30 days for receipt of

certified copy of this order.

02.08.2019.
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No