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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9255-2018

Date of decision : 27.08.2019

Dr.Jyoti Deswal

..... Petitioner

versus

University Grants Commission
and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Dr.Anmol Rattan Sidhu, Sr. Advocate with
Mr.Nilesh Bhardwaj, Advocate for the petitioner.

Mr.Salil Sabhlok, Advocate
for respondent No.1.

Mr.Sardavinder Goyal, Advocate
for respondents No. 2, 3 and 4.

Mr.Anurag Goyal, Advocate
for respondents No.6, 10 and 11.

Mr.Manoj Kaushik, Advocate
for respondent No.7.

Mr.Amit Khatkar, Advocate
for respondent No.14.

Mr.Sajjan Singh Malik, Advocate
for respondent No.15.

Mr.Nitin Kant Setia, Advocate
for respondent No.16.

AMIT RAWAL, J. (ORAL)

The grievance of the petitioner in the present writ petition is
twofold. (i) the Committee of the College in response to the process of

selection for the post of Assistant Professor in English did not award marks under one of the columns of criteria; (ii) the amendment in the University Grants Commission (hereinafter referred to as 'the UGC' for short) Regulations 2009 in 2016 muchless the letter of the UGC dated 04.09.2015(Annexure P-5) would be prospective, in other words will not have a retrospective effect. To answer the aforementioned questions, it would be necessary to refer to the facts in brief emanating from the pleadings: respondent No.2 caused an advertisement for filling up the post of Assistant Professor in the subject of English out of which three posts for general category and one for reserved category were kept. The petitioner belongs to general category. The advertisement was dated 29.10.2017. The petitioner being an aspirant submitted an application annexing all the documents i.e. Ph.D degree and various other ones including bio-data contemplating him to be selected being eligible. On noticing the documents, respondent No.2-College sent an interview letter dated 05.02.2018 (Annexure P-4) to appear before the Selection Committee on 12.03.2018. Petitioner registered herself for obtaining a Ph.D degree in the month of October, 2009 and was issued a Provisional Certificate dated 19.03.2012(Annexure P-12).

Mr.Sidhu, learned senior counsel assisted by Mr.Nilesh Bhardwaj submits that UGC regulations of 2009 contemplates the following conditions for obtaining the Ph.D Degree. In this regard the attention of the Court was drawn to clause 7 and 20 of the Regulations which are as follows:-

“Clause 7. All Universities, Institutions, Deemed to be Universities and Colleges/Institutions of National Importance

shall lay down and decide on annual basis a predetermined and manageable number of M.Phil and doctoral students depending on the number of the available eligible Faculty Supervisors. A Supervisor shall not have, at any given point of time, more than Eight Ph.D Scholars and Five M.Phil, Scholars.

20. Alongwith the Degree,the awarding University, Institution Deemed to be University, College/Institution of National Importance, as the case may be, shall issue a Provisional Certificate certifying to the effect that the Degree has been awarded in accordance with the provisions to these Regulations of the UGC.”

Clause 7 deals with eligibility criteria for M.Phil/Ph.D. Supervisors.

Clause 20 deals with the issuance of a provisional certificate. At the time of registration the petitioner was assigned two supervisors, one Dr.Gulab Singh and the other Dr.N.G.Meshram. Though Dr.Gulab Singh was outside the faculty but the other one was from the faculty. On acquiring the result, the petitioner was astounded to notice that she was awarded zero marks against the column of JRF/Ph.D. Attention of this Court is also drawn to result of the petitioner as shown at serial number 31 in the attendance sheet annexed with Annexure P-18. Similar controversy arose for consideration before the Hon'ble High Court of Bombay wherein, in judgment dated 26.07.2017(Annexure P-19) in para 16 it was held that non-assignment of a supervisor outside the faculty would create an anomalous situation. The amendment in the Regulations, from the plain and simple language, do not convey applicability with retrospective effect. If at all the intention was there, there would have been a clarification or a specific implication. During the course of the hearing he showed to the Court degree obtained and as well

as the certificate issued by the Registrar of Shri Jagdishprasad Jhabarmal Tibrewala University Vidyanagar, District Jhunjhunu, Rajasthan certifying the Principal All India Jat Heroes Memorial College, Rohtak. While concluding his arguments he submitted that in case the candidature of the petitioner after awarding of 10 marks for holding a Ph.D. degree is considered, respondent No.16 shall be ousted by applying the principle of last come first go.

Mr. Salil Sabhlok, learned counsel appearing on behalf of respondent No.1-UGC submitted that the degree awarded to the petitioner has not questioned so far but the Regulations 2009 cannot be read in isolation in view of clause 12 which clearly stipulates that allocation of supervisor for a selected student shall be in the domain of the department depending upon the number of students per faculty member and as well as is the interest of the students. Thus, for all intents and purposes allotment/allocation of the supervisor cannot be left to the discretion of the individual student or teacher.

Mr. Sardavinder Goyal, learned counsel appearing on behalf of respondents No. 2 to 4-College submits that the amendment in 2016 and the letter dated 04.09.2015 (Annexure P-5) issued by UGC to all the Universities imposes a restriction upon a student undertaking the Ph.D course for having a supervisor from faculty and not the adjunct faculty. Even now during the course of the hearing, as per the stand taken in para 4 of the written statement, a doubt has been created with regard to the Provisional Certificate. Attention of the Court has also been drawn to Provisional Certificate (Annexure R-2/5) where the date of registration of the petitioner has been shown as 06.10.2009 but as per Provisional

Registration Letter (Annexure P-8), the date of registration of the petitioner is 23.10.2009. Rule 6.2 of the Amended Regulations would have a direct and pervasive role and by considering the aforementioned provisions the petitioner was awarded zero marks.

Mr.Nitin Kant Setia, learned counsel representing respondent No.16 with lot of eloquence and vehemence laid an emphasis on the thesis submitted by the petitioner to be an act of plagiarism of highest magnitude. Already a complaint in this regard has been submitted to the UGC but no action has been taken so far. It is not a fit case where the candidature of his client should be under doldrums by applying the principle of “last come first go.” The wisdom of the Selection Committee cannot be questioned as it is outside the domain of this Court being not expert.

I have heard learned counsel for the parties, appraised the paper book and of the view that it is a fit case where the petition deserves to be allowed and the reasons are as follows:-

- (i) The conceded position as on today is that the degree awarded to the petitioner has not been challenged or set aside.

On going through clauses 7 and 20 referred to by Mr.Sidhu and clause 12 by Mr. Sabhlok and as well as rule 6.2 referred to by Mr. Goyal caused in the notification dated 05.05.2016 an amendment in the Regulations of 2009 was made. On conjoint reading of the aforementioned provisions, it is axiomatic that the supervisors attached to the petitioner at that relevant time of 2009 Regulations were in vogue. There is no whisper in the notification leaving a doubt in the mind of the Court having a retrospective effect. This Court called upon Mr.Sabhlok to apprise about the status of the judgment of the Bombay High Court, he submitted that it would not have a binding effect

but does not dispute to its ratio. For facilitation I would be referring to para 16 of the decision of Bombay High Court in **Writ Petition No. 6978 of 2015** titled **Dr.Sanjay Tejbahadur Singh vs. The Registrar, Savitribai Phule Pune University and others** which reads as follows:

“16. Apart from that, we find that if the contention of the Respondent Pune University is accepted, it will lead to anomalous situation. There are hundreds of universities/deemed universities or the institutions or the colleges/institutions of national importance to whom said Regulations are applicable. If one of the universities which is recognised under UGC is permitted to inquire into correctness or otherwise of the degree granted by another university which is also recognised by the UGC, it will amount to opening the Pandora's box, and there will be no sanctity to the degree awarded by a university which is duly recognised by the UGC. We find that if there is grievance that some of the universities are not awarding degree in appropriate manner, it is for the UGC or competent legislature either to enact legislation or frame regulations and to deal with such a situation. In our considered view, the Respondent Pune University cannot be permitted to enter into such an exercise in the absence of any specific power, empowering it to do so.”

It is otherwise also a matter of common prudence, a right which has been given to a person under clause cannot be taken away with one stroke causing an amendment.

The legislature in its wisdom in the year 1988 repealed the Benami Transaction Act having a retrospective effect. The aforementioned legislation was challenged in the Supreme Court and in a judgment titled as **Mithlesh Kumari and another vs. Prem Bihari Khare (1989) 2 SCC 95**

the Hon'ble Supreme Court held to have a retrospective effect but in one of

the other matters, on consideration of the matter the controversy having a retrospective effect was referred to a larger bench. In the case of **R. Rajagopal Reddy (dead) by LRs and Ors. vs Padmini Chandrasekharan (dead) by LRs**, 1996 AIR (SC) 238, the Hon'ble Supreme Court after consideration of the matter and the language used in the notification held to having a prospective effect, that is the transactions which were effected after the promulgation of 1988 Act. Para 14 and 15 of the judgment reads as under:-

"14. xx xx xx xx xx xx xx xx xx xx

Perhaps no rule of construction is more firmly established than this that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective, only." The rule has, in fact, two aspects, for it, "involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary."

15. *In the case of Garikapati v. N. Sibbiah Choudhary (A.I.R. 1957 SC 540, P.553) in para 25 of the report Chief Justice S.R. Das speaking for this Court has made the following pertinent observations in this connection "The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed."*

It is not one example. There may be other catena of cases where retrospective effect cannot be inferred through implication, it has to be **express**.

Having considered the matter and in view of the findings rendered herein above I am of the view that the action of the selection

committee in not awarding 10 marks to the petitioner holding a Ph.D. degree is fallacious and not sustainable and accordingly set aside. I dispose of the writ petition with a direction to the College to reconsider the case of the petitioner subject to the verification of the provisional certificates, Annexures P-12 and R-2/5 and other documents which the petitioner or the College intends to rely upon, after affording an opportunity to the petitioner. This Court is sanguine of the fact that this exercise may be taken within a period of one month from the date of receipt of certified copy of this of this order. Finding all the documents correct, it shall strike a balance by taking into consideration the marks. It shall again re-allocate the marks to the petitioner and on re-allocation would follow the principle of last come first go.

At this stage Mr.Nitin Kant Setia submits that one post is still lying vacant which has not been denied by Mr.Sidhu as one professor expired. In such circumstances the College may not be precluded in taking into consideration this aspect of the mater by protecting the interest of respondent No.16.

The writ petition is disposed of in the above terms.

(AMIT RAWAL)
JUDGE

27.08.2019
sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No