

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.17340 of 2017(O&M)

Date of Decision:-03.02.2020

Divya.

.....Petitioner.

Versus

State of Haryana & Ors.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present:- Mr. Sajjan Singh, Advocate for the Petitioner.

Ms. Shruti Jain Goyal, Deputy Advocate General, Haryana.

Mr. Kanwal Goyal, Advocate for respondent no.3-HPSC.

Mr. Dheeraj Jain, Advocate for respondent no.4-UOI.

JASWANT SINGH, J.

1. Petitioner-Divya, who is an aspirant for the post of Assistant Professor (College Cadre) in the subject of Computer Science has preferred the instant writ petition, seeking quashing of notification dated 21.09.2006 (P-8), Advertisement No. 10 dated 16.02.2016 (P-3) and the rejection letter dated 12.07.2017 (P-7) to the extent that National eligibility Test or similar accredited tests have been mandated as essential qualification for the post of Assistant Professor(College Cadre) Computer Science, which is contrary to the qualifications/requirements mandated by UGC vide Regulations dated

FACTS:

2. Haryana Public Service Commission issued an advertisement No. 10 dated 16.02.2016 (P-3) inviting applications for recruitment to 1647 posts of Assistant Professor (College Cadre) in various subject, including 167 posts of Assistant Professor (Computer Science) in HIGHER EDUCATION DEPARTMENT, Haryana. For all subjects except Fine Arts and Mass Communication, following qualifications were prescribed:

“ Essential Qualifications:-

- (1) **ASSISTANT PROFESSORS (all subjects except Fine Arts and Mass Communication**
 - (a) Good academic record with atleast 55% of the marks or an equivalent grade of B in the 7 Point scale with letter grades O, A, B, C, D, E and F at the Master's Degree level in the relevant subject from an Indian University or an equivalent degree from a Foreign University.
 - (b) Knowledge of Hindi/Sanskrit upto Matric Standard.
 - (c) “ **National Eligibility Test (NET)** conducted by the University Grant Commissioner, Counsel of Scientific and Industrial Research or similar test accredited by the University Grants Commissioner like SLET/SET **shall remain the minimum eligibility condition for recruitment and appointment as Assistant Professor in colleges:**

Provided that the candidates, who are, or have been awarded a Ph.D. Degree in accordance with the University Grant Commissioner (minimum standards and procedure for award of Ph.D Degree) regulation, 2009 shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent position in colleges.

Provided further that NET/SLET/SET shall not be required for such Master's Programmes in disciplines for which NET/SLET/SET is not conducted ”.

Emphasis Supplied

3. The Petitioner who possesses B.Tech (Computer Science & Engineering) and Masters of Technology in Information and Technology,

applied for the post of Assistant Professor (Computer Science) under SC category. She participated in the written examination and thereafter, was called for scrutiny of documents on 08.06.2017. However, her candidature was rejected by respondent no 3-Haryana Public Service Commission, vide P-7 dated 12.07.2017 on the ground that she does not possess the required qualification i.e. NET.

4. After the rejection of her candidature she filed the present Writ Petition seeking quashing of notification dated 21.09.2006 (P-8) and the advertisement dated 16.02.2016.

ARGUMENTS:

5. Ld. Counsel for petitioner has raised the following arguments:

i) UGC is the competent authority to prescribe essential qualifications for the post of Assistant Professors/Associate Professor/Professor/Principal/equivalent cadres and other teaching staff in Universities and Colleges and the same has been prescribed vide **UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for Maintenance of Standards of Higher Education, 2010 issued on 30.06.2010 (P-1)**. It is submitted that as per **regulation 4.4.6.1**, which prescribes the minimum qualifications for appointment of teaching faculty in Universities and Colleges - Engineering and Technology Discipline, there is no requirement of NET, as sought by the respondents as an essential qualification.

ii) It is settled law that once UGC has prescribed the qualifications, the State Government/Universities are bound to follow the same. Therefore, the notification dated 21.09.2006 (P-8) vide which Haryana Education (College Cadre) Group B Service Rules, 1986 were further amended to insert National Eligibility Test, conducted by UGC or Council of Scientific and Industrial Research or similar test accredited by UGC, as a mandatory minimum qualification is liable to be set aside on the ground that it is in

contravention of Regulation 4.4.6.1 of UGC Regulations of 2010, as per which NET is not a mandatory minimum qualification for the post of Assistant Professor in Computer Science which falls under the Engineering & Technology Discipline. In support of the assertion that any norm regarding qualifications of teaching staff etc. which is in contravention of UGC regulations has to be struck down being untenable, reliance is placed on the Judgment of the coordinate bench in *CWP No. 24447 of 2012 titled as Anil Kumar & Anr Vs. State of Haryana & Ors., decided on 05.03.2013* and *CWP No. 2386 of 2014 titled as Rajeev and another Vs. State of Haryana decided on 19.02.2014*.

6. On the other hand, learned Counsel for the State has argued that there is no quarrel with the proposition that UGC Regulations, once adopted by the State Government are binding on all Universities and Colleges under the State Government to the extent of adoption. However, it is submitted that the UGC has prescribed different set of qualifications for different posts and different disciplines. The qualification for the post of Assistant Professor in Colleges of Engineering and Technology discipline (offering professional courses like BE, B.Tech, M.Tech, MBA, ME etc.) is different from the qualifications of Assistant Professor in the Colleges of Education (offering courses in Education like B.Ed., M.Ed etc.), for the which the advertisement in question has been notified. As per her, it is regulation no 4.4.0 which is applicable to the posts in question.

7. It is further argued that the decisions relied upon by petitioner to say that the essential qualification of NET as mentioned in the service rules/ advertisement have been quashed in Anil Kumar's case (supra) and Rajiv's case supra, is completely mis-conceived as in those cases, subsequent amendments made by the State Government in the statutory rules, which are completely unrelated to the issue involved, were quashed.

Thus, prayer has been made for dismissal of the writ petition.

8. Ld. Counsel for respondent no 3-HPSC has argued that petitioner was well aware about the essential qualifications required by an aspirant for the post in question, as the same was mentioned in the advertisement, which was issued on 16.02.2016. However, petitioner participated in the selection process by sitting in the written examination. When she cleared the said examination, but her candidature was rejected on account of non-possession of NET, she has filed the instant writ petition. As per him, petitioner in such circumstances is estopped by her own act and conduct. It is further submitted that the candidates selected are either NET qualified or fall under any of the exemptions mentioned in the advertisement/regulation 4.4.0 and therefore it is apparent that UGC conducts NET examination in Computer Science subject as well. Hence, it is submitted that the argument that NET cannot be an essential qualification for the post in question, is baseless.

9. We have heard Ld. Counsel for the parties at length and have scrutinized the paper book with their able assistance.

10. The short question posed before us is that whether UGC regulation 4.4.0 would be applicable to the posts in question or regulation 4.4.6.1 is to be applied. To our mind, the answer is not at all complicated, which is answered herein below.

11. Before dealing with the issue involved, it would be apposite to reproduce the relevant regulation no 4.4.0 and 4.4.6.1 of the UGC Regulations, 2010 (P-1):

“ 4.4.0 ASSISTANT PROFESSOR

**4.4.1. Arts, Humanities, Sciences, Social Sciences,
Commerce, Education, Languages, Law Journalism and**

Mass Communication

i. Good Academic record as defined by the concerned university with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign university.

(ii) Besides fulfilling the above qualifications, the **candidate must have cleared the National Eligibility Test (NET) conducted by the UGC**, CSIR or similar test accredited by the UGC like SLET/SET.

(iii) Notwithstanding anything contained in sub-clauses (i) and (ii) to this Clause 4.4.1, candidates, who are, or have been awarded a Ph.D Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D Degree) Regulations, 2009 shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in University/Colleges/Institutions.

(iv) NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not conducted.

4.4.6.1. MINIMUM QUALIFICATIONS FOR APPOINTMENT AS TEACHING FACULTY IN UNIVERSITIES AND COLLEGES-ENGINEERING AND TECHNOLOGY DISCIPLINE:

1. ASSISTANT PROFESSOR

I. Essential

First Class Master's Degree in the appropriate branch of Engineering (Engg.) and Technology (Tech.)

II. Without Prejudice to the above, the following conditions may be considered desirable:

1. Teaching, research industrial and/or professional experience in a reputed Organization;

2. Papers presented at Conferences and/or in referred journals. ”

down two different essential qualifications for two different posts/ fields. Regulation 4.4.0 pertains to Assistant Professors who have to teach non-technical courses in Degree Colleges (offering traditional courses such as BA, B.Com, B.Sc, BCA etc.) in Government Colleges/ Universities etc, whereas regulation 4.4.6.1 pertains to Assistant Professor teaching technical courses in engineering colleges etc.

12. It is settled position of law that any qualification/procedure for recruitment that is recommended by the UGC is binding only if it is adopted by the State Government and incorporated in the Statutory Rules. Once adopted, the qualifications/ procedure is binding on all Universities and Colleges under the State Government to the extent of adoption. Reference can be made to the Judgment of the Hon'ble Supreme Court in **Kalyani Mathivanan Vs. K.V. Jeyaraj and others**, (2015)6 SCC 363, wherein it was held as under:

“ 44. In view of the discussion as made above, we hold:

(i) To the extent the State Legislation is in conflict with Central Legislation including sub-ordinate legislation made by the Central Legislation under Entry 25 of the Concurrent List shall be repugnant to the Central Legislation and would be inoperative.

(ii) The UGC Regulations being passed by both the Houses of Parliament, though a sub-ordinate legislation has binding effect on the Universities to which it applies.

(iii) UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central Universities and Colleges thereunder and the Institutions deemed to be Universities whose maintenance expenditure is met by the

UGC.

(iv) UGC Regulations, 2010 is directory for the Universities, Colleges and other higher educational institutions under the purview of the State Legislation as the matter has been left to the State Government to adopt and implement the Scheme.

Thus, UGC Regulations, 2010 is partly mandatory and is partly directory.

(v) UGC Regulations, 2010 having not adopted by the State Tamil Nadu, the question of conflict between State Legislation and Statutes framed under Central Legislation does not arise. Once it is adopted by the State Government, the State Legislation to be amended appropriately. In such case also there shall be no conflict between the State Legislation and the Central Legislation. ”

13. In the instant matter, it is positive case set out by the respondent-State that the advertisement dated 16.02.2016 was issued by the Haryana Public Service Commission for recruitment to the post of Assistant Professors in Colleges of Higher Education for which the State Government is following the qualifications as prescribed by UGC vide its regulations issued from time to time. As observed earlier, the minimum qualification required for the post of Assistant Professor in Colleges of Higher Education i.e. Degree Colleges (offering traditional courses such as BA, B.Com, B.Sc, BCA etc.) is mentioned in clause 4.4.0 of the UGC regulations, as reproduced above.

14. The challenge to notification dated 21.09.2006 is misconceived as NET was inserted as one of the essential qualifications for the first time

Rules, 2002 which remained as such in subsequent amendments, carried out vide notification dated 21.09.2006 and 10.01.2013. Hence, if the service rules provide for a particular essential qualification, the courts would be slow in interfering with such requirements, as it is within the domain of the employer, who in turn has taken the opinion of the experts, to have even better standards than one which has been prescribed by UGC. In the present case, State Government is following the recommendation of UGC in its letter and spirit.

Reliance on *Anil Kumar's case (supra)* by the petitioner is misleading, as in the said case, Haryana Education (College Cadre) Group B Service (Amendment) Rules, 2013 were quashed only to the extent that they specify that Ph.D degree awarded by only those private Universities be considered which have been accredited as 'A' Grade Universities by the NAAC for relaxation in lieu of NET.

Similarly, in *Rajeev Kumar's case (supra)*, a subsequent amendment carried out vide the Haryana Education (College Cadre) Group B Service (Amendment) Rules, 2013 notified on 03.09.2013, was under challenge on the ground that the relaxation from NET in lieu of Ph.D, permitted by UGC, was omitted from the statutory rules vide impugned amendment. This Court held that the UGC has the power to relax the qualification as well and the Universities cannot ignore the relaxation given by UGC, consequently, the Writ Petitions were allowed with the direction to State to consider all those candidates for the post of Assistant Professor who had not passed the eligibility test but who had Ph.D degrees to their credit.

We are informed that in compliance of the aforesaid Judgments, the Haryana Education (College Cadre) Group B Service Rules, 1986 were

again amended vide Haryana Education (College Cadre) Group B Service (Amendment) Rules, 2016 as notified on 26.02.2016 and the condition, in case of Ph.D from private Universities, of accreditation of Grade 'A' University with NAAC was omitted and relaxation from NET in lieu of Ph.D was restored.

15. Further, it is nobody's case that UGC is not conducting NET Exam for the subject in question and infact, all the posts have been filled up amongst the candidates who have cleared NET examination, unless they fall in any of the exemption clauses mentioned in the Regulations. Not only this, we are of the opinion that essential qualifications for the post of Assistant Professor (Computer Science) as prescribed in the advertisement were well within the knowledge of the Petitioner when she applied for the said post, however she did not raise any objection till the time her candidature was rejected i.e after more than one year.

16. In view of the above, we have no hesitation to hold that posts in question i.e Assistant Professor (College Cadre), as advertised vide advertisement dated 16.02.2016 are imparting non-technical courses are governed by regulation 4.4.0 and not by regulation 4.4.6.1.

Dismissed.

**(JASWANT SINGH)
JUDGE**

**(SANT PARKASH)
JUDGE**

February 03, 2020
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>