

23rd February, 2022
(D/L No.18)
(SKB)

WPA 1056 of 2022
(Via Video Conference)

Anupam Sengupta
Vs.
The State of West Bengal & Ors.

Mr. Asimes Goswami,
Ms. Poulumi Banerjee
... for the petitioner.

Mr. Bhaskar Prasad Vaisya,
Mr. Arindam Chattopadhyay
...for the State.

The petitioner is a part-time teacher in the K. K. Das College and seeks to upgrade his category from Teacher Category (II) to Teacher Category (I). The petitioner has challenged the reasoned order of the Joint Director of Public Instructions dated 27th October, 2021 by which the petitioner's representation for upgradation from Teacher Category (II) to Teacher Category (I) was rejected. The basis of the rejection is that the petitioner does not come within the U.G.C. Regulation dated 18th July, 2018. The Director of Public Instruction was further of the view that the exemption given to candidates awarded M.Phil degree was discontinued by the said Regulation and hence, the petitioner could not claim any upgradation of the category.

Learned counsel appearing for the petitioner as well as the State respondents seek to construe the

relevant part of the U.G.C. Regulation dated 18th July, 2018.

Upon perusing the relevant part of the U.G.C. Regulation, it appears that Clause 3.3 of the said Regulation deals with minimum qualifications for appointment of teacher and other academic staff in Universities and Colleges. There is a clear discrepancy in the second proviso to the said clause. Clause 3.3(I) provides that National Eligibility Test (NET) or an accredited State Level Eligibility Test shall remain the minimum eligibility for appointment of Assistant Professor. The first proviso is to the effect that candidates who have been awarded Ph.D. degree in accordance with the U.G.C. Regulations, 2009 or has been awarded an M.Phil. or Ph.D. degree under the U.G.C. Regulation, 2016 read with the subsequent amendments, such candidates shall be exempted from the requirement of NET as a minimum eligibility condition for recruitment and appointment as Assistant Professor. The second proviso to Regulation 3.3 is the bone of contention in the present case. The second proviso is hence set out below for a better understanding :

“3.3(I)

Provided further that the award of degree to candidates registered for the M.Phil./Ph.D. programme prior to July 11, 2009, shall be governed by the provisions of the then existing Ordinance/Bye-laws/Regulations of the Institutions awarding the degree. All such Ph.D. candidates

shall be exempted from the requirement of NET/SLET/SET for recruitment and appointment of Assistant professor or equivalent positions in Universities/Colleges/Institutions subject to the fulfillment of the following conditions.

.....”

The second proviso indicates that if candidates have been registered for M.Phil/Ph.D. programmes and the degree has been awarded prior to 11th July, 2009, such candidates shall be governed by the Regulations as were existing on 11th July, 2009. The second line makes it clear that such candidates shall be exempted from the requirement of NET for appointment to their posts in colleges and universities. However, while the first line of the second proviso includes M.Phil students, the second line read with the conditions provided under the second proviso restrict the relaxation only to Ph.D. candidates. The “all such” in the third line adds to the conclusion by referring to first line of the second proviso. The petitioner was admittedly awarded his M.Phil degree on 3rd March, 1994 by the University of Kalyani and hence comes within the relaxation in the second proviso to Regulation 3.3. However, if the second line of the second proviso to Regulation 3.3 is considered in isolation, the petitioner is being deprived of such relaxation. It is clear that the impugned order did not take the first line of the second proviso of Regulation 3.3 into consideration and rejected the representation of the petitioner on that basis.

Having found clear discrepancy in the structure and language used in the second proviso to Regulation 3.3 of the U.G.C. Notification dated 18th July, 2018, this court is of the view that the impugned order cannot be sustained. The Director of Public Instruction, Government of West Bengal shall be at liberty of revisiting the relevant U.G.C. Notification and construing the same in the light of the clear discrepancy therein as stated above.

W.P.A. 1056 of 2022 is accordingly disposed of in terms of prayer (a). Needless to say, if the petitioner is found eligible in terms of the U.G.C. Notification dated 18th July, 2018, the corresponding benefits shall be given to the petitioner.

Since affidavits have not been called for, the allegations contained in the writ petition are deemed not to have been admitted.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Moushumi Bhattacharya, J.)