

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.23 of 2021

In

Civil Writ Jurisdiction Case No.7905 of 2019

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1. The Bihar Public Service Commission through its Secretary, Patna.
 2. The Chairman, Bihar Public Service Commission, Patna.
 3. The Secretary, Bihar Public Service Commission, Patna.
 4. The Joint Secretary cum Examination Controller, Bihar Public Service Commission, Patna.

... .. Appellants

Versus

1. Nitu Kumari wife of Dilip Kumar, daughter of R. Bhagat at present resident of Flat No. 602, B- Block, Patliputra Rail Parisar, Digha, Police Station- Digha, District- Patna.
2. The State of Bihar through Principal Secretary, Education Department, Government of Bihar, Patna.
3. Ranchi University, Ranchi, Jharkhand through its Registrar,
4. The Registrar, Ranchi University, Ranchi, Jharkhand.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Lalit Kishore, Sr. Adv.
Mr. Satyabir Bharti, Adv.
For the Respondent/s : Mr. Sanjeev Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 18-01-2023

Heard Sri Lalit Kishore, learned Senior Advocate assisted by Mr. Satyabir Bharti, learned Advocate for the appellants/Bihar Public Service Commission and Mr. Sanjeev Kumar, learned Advocate for the respondent No.1/Nitu Kumari.



The challenge in this appeal is to the judgment dated 14.08.2020 passed by a learned Single Judge of this Court in CWJC No. 7905 of 2019, whereby the case of the respondent No.1 was allowed and the appellant/Commission has been directed to consider the name of the respondent No.1 for appointment on the post of Assistant Professor in Hindi subject under Advertisement No. 50/14 after considering her Ph.D. degree in Hindi subject to be as per the UGC (Minimum Standards & Procedures for Awards of M.Phil./Ph.D. Degree) Regulation 2009 (herein after called "the UGC Ph.D. Regulation 2009"), as also taking into account the fact that the respondent stood exempted from passing the NET/SET.

Some facts would be necessary to appreciate the contention of the appellant/Commission, which are as follows:

The appellant/Commission had issued an Advertisement No. 50/14, inviting applications for filling



up the vacancies of the post of Assistant Professors of different subjects; against which advertisement the respondent No.1 had applied for the post of Assistant Professor in Hindi subject.

In the advertisement, only such persons were declared to be qualified to apply who had good academic record with minimum of 55% marks in M.A. or equivalent grade, with relaxation of 5% marks for SC/ST candidate of the State. Differently abled persons from any part of the country were given relaxation of 5% marks at Masters. The candidates were, however, to elect between the two benefits admissible to them. The other eligibility requirement of eligibility in the advertisement was that the candidate ought to have passed NET/SET or any equivalent test accredited by UGC.

Any person having obtained Ph.D. degree on the basis of the UGC Ph.D. Regulation 2009 framed by UGC for M.Phil./Ph.D. degrees would but be exempted



from passing the NET. The requirement of NET/SET was also not a condition for such Masters Programme in disciplines for which NET/SET is not conducted.

The respondent No.1, a Ph.D. degree holder in Hindi literature from Ranchi University, awarded in the year 2012, had applied against the aforesaid advertisement. The Ranchi University had issued a certificate on 21.10.2014 that the Ph.D. degree awarded to the respondent No.1 was in accordance with the Ph.D. Regulation of Ranchi University which is in consonance with the the UGC Ph.D. Regulation 2009.

A list of 3393 candidates was published including that of the respondent No.1 but as against her status, it was declared that she had not passed NET but was a Ph.D. in Hindi with the UGC Ph.D. Regulation 2009. She was thus found eligible.

On 15.05.2018, the appellant/Commission had issued a communication/notice, making a departure from the conditions in Advertisement No. 50/2014, referred



to above, and required the eligible candidates claiming to have obtained Ph.D./M.Phil. under UGC Ph.D. Regulation 2009, to produce, at the time of interview, pre Ph.D. certificate and mark-sheet as also certificates declaring details of criteria on which the Ph.D./M.Phil. examination was passed by such candidate. If such certificates would not be produced, the Ph.D./M.Phil. qualification would not be considered as one obtained in terms of UGC Ph.D. Regulation 2009 and less marking would be done accordingly.

The respondent No.1 was called for interview on 20.06.2018. At the time of interview, the respondent No.1 had shown to the appellant/Commission a certificate of the Ranchi University dated 04.06.2018 declaring that her Ph.D. degree was in consonance with the UGC Ph.D. Regulation 2009. The mode of award of the degree was regular; the thesis was evaluated by two external examiners; there was open viva-voce; she had published two papers out of which one was in an



accredited journal and that she had presented two research papers based on her Ph.D. work in conferences/seminars.

However, the respondent No.1 was not considered for appointment on the ground that she did not have the basic qualification of Ph.D. under UGC Ph.D. Regulation 2009 and that she had also not passed the NET/SET.

Before the learned single Judge, it was urged by the respondent No.1 that UGC Regulations on Minimum Qualification for Appointment of Teachers and Other Academic Staff in Universities & Colleges & Measures for the Maintenance of Standards in Higher Education, (4th Amendment) Regulations, 2016 dated 11.07.2016, (hereinafter referred to as "UGCR - 2016") exempted even those candidates who had registered for Ph.D. Programme prior to July 11, 2009 from obtaining NET/SLET/SET but subject to the condition that the M.Phil./Ph.D. Programme registered prior to July 11,



2009 would be governed by the provisions of the then existing ordinances/by laws/regulations of the Institutions awarding the degree. This exemption was subject to further condition that Ph.D. degree should have been in regular mode and the Ph.D. thesis to have been evaluated by minimum of two external examiners. There had to be open viva and two research papers ought to have been published by the candidate from the Ph.D. work, out of which one must have been published in a referred journal and the candidate ought to have made at least two presentations in conferences/seminars based on the Ph.D. work. The Vice-Chancellors, Pro-Vice-Chancellors, Dean, Academic Affairs Dean etc had to certify that the Ph.D. Programme was in accord with the aforementioned conditions. The Ph.D. degree of the respondent was in complete consonance with such requirements and therefore her candidature could not have been rejected on any account and she should have been marked accordingly. It was argued that the UGCR -



4th Amendment (11.07.2016) created a homogeneous class of Ph.D. holders, pre and post 11.07.2009, all of whom would be entitled for exemption from NET/SLET/SET. Thus, the rejection of the candidature of the respondent was bad in the eyes of law.

The appellant/Commission however, countervailed the aforesaid submissions of the respondent. It was expostulated that the qualification criteria was provided by the Department of Education, Government of Bihar, in the requisition sent by it which contained specific condition that only such Ph.D. degree holders would be exempted from passing the NET/SET or any equivalent test accredited by UGC, which degree was awarded on the basis of UGC (Ph.D.) Regulation, 2009. Even though the respondent had not passed the NET examination but she was considered eligible because of the Ph.D. degree claimed to be in consonance with 2009 Regulation. She had also been called for interview. However, on finding that the respondent was



registered for the Ph.D. course only on 06.03.2009 which was prior to the enforcement of UGC (Ph.D.) Regulation, 2009 on 11.07.2009, she was not entitled to get any exemption from passing NET/SLET/SET etc. Her Ph.D. degree also was not considered for the same reason.

The contention of the appellant/Commission was based on the judgment rendered in LPA No. 1340/2017 (Shweta @ Shweta Raj Vs. Patna University and Anr.) and in LPA No. 991 of 2016 (Randhir Kumar Singh Vs. State of Bihar and Anr.) in which the Ph.D. degree of the candidates were not considered to be in accord with UGC Ph.D. Regulation 2009. In LPA No. 697/2018 (Dr. Digambar Jha Vs. State of Bihar and Anr.) in which the candidate was not found to be in terms of the UGC Ph.D. Regulation 2009 had come into effect in the State of Bihar on 06.11.2012. In Baba Saheb Bhimrao Ambedkar University, Muzaffarpur such resolution of the UGC was adopted on 17th of January,



2013 and therefore any Ph.D. completed would only be after 17.01.2015.

UGC minimum qualification required for the appointment and career advancement of teachers in Universities and Institutions affiliated to it was first introduced in March, 2000 which was amended a number of times. On 11.07.2009, the 3rd amendment was introduced in the UGCR by which, for the first time, the minimum stipulation for appointment of Lecturer was that he/she should have passed NET/SLET/SET. However, those candidates who had acquired their Ph.D. in compliance with UGC Ph.D. Regulation, 2009 introduced on 11.07.2009, were exempted from qualifying in NET. The UGCR (3rd amendment) 2009 clearly stipulated that :

"NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of lecturers in Universities/ Colleges/Institutions.

Provided, however, that candidates, who are or have been



awarded PHD degree in compliance of the UGC (PhD)R, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment of Assistant Professor or equivalent position in Universities/ Colleges/Institutions)."

For the sake of completeness in UGC (Ph.D.) Regulation, 2009, the following eleven criteria were introduced, which were never notified, which are as hereunder:

1. Admission by entrance test or interview or both.

2. Maximum number of students under the guidance of a supervisor for M.phil would be filed and Ph.D. would be added.

3. National/State Reservation Policy shall be followed at the time of granting admission in M.Phil./Ph.D. programmes.

4. Course were to be for a minimum period of one semester which shall include a course on research methodology which may include quantitative methods and computer applications as well as review of published research in relevant field

5. The Research Advisory Committee



shall review the progress of the course.

6. Methodology examination shall be conducted for part-I

7. Presentation of synopsis for Pre-Ph.D.

8. Publication of at least 1 paper before thesis submission.

9. Presentation of 2 papers in conference/seminar.

10. Evaluation of thesis by two experts other than supervisor; one of them shall be from out of the State and;

11. A soft copy of the thesis shall be submitted to the UGC within a time frame.

The UGC Regulation with respect to appointment was further amended on 30.06.2010 which shall be referred to in this judgment as UGCR-2010.

The relevant provision in UGCR- 2010 continued the NET exemption for those who had acquired their Ph.D. degree in accordance with the UGC Ph.D. Regulation, 2009.

On 04.05.2016, UGCR-2010 was further modified by UGCR – 2016. The amendment which was brought about, relevant for the purpose, are as



hereunder”

"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) for Lecturer/Assistant Professor 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 or the subsequent Regulations if notified by the UGC, 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 Universities /Colleges / Institutions.

Further, the award of degrees 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 Ordinances/ By laws/ Regulations of the Institution awarding the degrees and the 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: -

(a) Ph.D. degree of the candidate awarded in regular mode only;

(b) Evaluation of the Ph.D. thesis by at least two external examiners;

(c) Candidate had published two research papers out of which at least one in a refereed journal from out of his/her Ph.D. work;

(d) The candidate had presented two papers in seminars/conferences from out of his/her Ph.D. work;

(e) Open Ph.D. viva-voce of the candidate had been conducted.

(a) to (e) as above are to be certified by the Vice-Chancellor/ Pro-Vice-Chancellor/ Dean (Academic Affairs)/Dean (University Instructions)"

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

It would be relevant to note certain developments which had taken place in the meanwhile.

The constitutional validity of UGC (minimum qualifications required for appointment and career advancement of Teachers in Universities and Institutions affiliated to it) (3rd amendment) Regulation-2009 under which NET/SLET was to be the minimum eligibility condition for recruitment and appointment of lecturers in Universities/Colleges/Institutions, was questioned. Some



of the High Courts like Delhi, Madras and Rajasthan upheld the validity on the ground that the Regulation was not violative of Article 14 of the Constitution of India. It is prospective in as much as it applied only to appointments made after the date of the notification and did not affect appointments made prior to that date. However, the Allahabad High Court in ***Ramesh Kumar Yadav Vs. University of Allahabad, (2012 SCC Online All 667)*** found that the said Regulation was pursuant to direction of the Central Government which had been issued outside the powers conferred by the UGC Act and therefore the eligibility conditions laid down would not apply to M.Phil./Ph.D. degrees awarded prior to 31.12.2009. Allahabad High Court, again, later in ***Vinay Singh Vs. Union of India (2014, SCC OnLine All 175)*** upheld those regulations. The issue was brought before the Supreme Court by the Union of India, preferring appeal against the judgment of Allahabad High Court in ***Ramesh Kumar Yadav*** (supra)



whereas M.Phil. and Ph.D. degree holders, who had yet not been appointed as Assistant Professors, also challenged such Regulation.

The Supreme Court by a Two Judges Bench in ***P. Suseela and Ors. Vs. UGC and Ors, [(2015) 8 SCC 129]***, after examining Sections 20 and 26 of the UGC Act, 1956, upheld the constitutional validity of UGCR – 2009 with respect to the eligibility condition and exemption on the premise that Section 26 of the UGC Act, 1956 enabled the UGC to make Regulations only if they were consistent with the UGC Act, 1956 which necessarily meant that such Regulations had to conform to Section 20 of the Act which provided the Central Government the power to give directions on questions of policy relating to national purposes which would guide the Commission in the discharge of its functions under the Act. It was found by the Supreme Court that M.Phil. and Ph.D. degrees are granted by different Universities having different standards of excellence. It would be



quite possible to conceive of M.Phil./Ph.D. degrees being granted by several Universities which may not have stringent standards of excellence. Thus, as a matter of policy, in the appointment of lecturers/Assistant Professors in all Institutions governed by the UGC Act, 1956, there was a need for a national entrance test as a minimum eligibility condition being an additional qualification in order to level the disparities in grant of such degrees by various Universities. The Supreme Court thus found that the object sought to be achieved by those directions was to create a minimum Standard of excellence amongst the appointees.

The Supreme Court clarified that the exemptions would not be available to pre 11.07.2009 degree holders. The exemptions provided in the UGCR-2009 and 2010 had only to be read prospectively.

However, much later, in ***University of Kerala and Ors. Vs. Merlin J. No. and Anr. (2022) 9 SCC 389***, (Three Judges Bench), the respondent had



challenged the appointment of one Dr. M.S. Jayakumar as lecturer in Sociology by the Kerala University, which appointment was set aside by the Kerala High Court. Aforesaid Dr. M.S. Jayakumar and the Kerala University, both, challenged the common judgment of the Kerala High Court before the Supreme Court. In that case, Dr. M.S. Jayakumar had obtained his M.Phil. degree in the year 2000 and Ph.D. degree on 23.08.2006. In the UGCR-2000, NET was an essential condition for appointment of lecturer. Exemption but was granted to candidates who had acquired M.Phil. or submitted their Ph.D. thesis by 31.12.1993.

The UGCR-2000 had been amended in the year 2002, which gave exemptions to such degree holders who had acquired M.Phil. by 31.03.1993 or had submitted their Ph.D. thesis by 31.12.2002. Those regulations were further amended in the year 2006 (UGCR-2006).

Thereafter, further amendments were made in



the Regulation vide UGCR-2009/2010 and 2016 about which reference has been made in the preceding paragraphs.

In the case of Dr. M.S. Jayakumar, the applications were invited through an advertisement on 13.06.2011 with a mandatory eligibility requirement of NET and exemption for a Ph.D. in the subject from NET but for only those degree-holders who had passed their Masters prior to 19.09.1991. The respondent/Dr. Merlin J.N. who was placed second to Dr. Jayakumar challenged his appointment on several grounds; one being that Dr. Jayakumar had not obtained his Ph.D. in accordance with UGC Ph.D. Regulations 2009 and thus was not qualified to become a lecturer under UGC Regulation 2009/10. The issue was decided by a Single Judge of Kerala High Court, relying upon the judgment of the Supreme Court in ***P. Suseela*** (supra) as well as another judgment of Full Bench of Kerala High Court in ***Radhakrishnan Pillai Vs. Travancore Davaswom***



Board, (2016 SCC OnLine Ker 41257), holding that Dr. Jayakumar was not qualified to hold the post of the lecturer.

The Supreme Court, after noting the relevant Regulations dealing with eligibility and qualifications, for appointment in 1993, 2000, 2002 and 2006 and the 2009 Ph.D. Regulations found that a large group of Ph.D. holders prior to 11.07.2009, (UGC Ph.D. Regulation 2009) with respect to award of Ph.D. degree had become dis-entitled to claim exemption and had to perform appear and qualify in NET. This, according to the Supreme Court was noticed by the UGC, which difficulty was sought to be remedied by two resolutions dated 12.08.2010 and 27.09.2010 that notwithstanding such Regulations being prospective in nature, those candidates also who had registered themselves for the Ph.D. before that date would remain exempted from the requirement of NET for the purpose of appointment. As noted above in **P. Suseela** (supra), the question of



application of exemption from NET for candidates having obtained Ph.D. under the old regime (i.e. prior to coming into force of UGC Ph.D. Regulation 2009) was denied as the Regulations had to be construed prospectively and only those who had acquired their Ph.D. degree on or after 11.07.2009 in terms of UGC Ph.D. Regulation 2009 were entitled to the exemption. The Supreme Court thus was of the view that the intention of the UGC was to protect the pre 2009 Ph.D. holders. To make this intention even more clear, the UGCR 2018 published on 18.07.2018 bifurcated the pre and post 2009 Ph.D. holders into two groups and allowed exemption to both the groups from taking NET. The Supreme Court expatiated that these amendments in the Regulations were not available with the Supreme Court in **P. Suseela** (supra). Thus, it was conclusively held that to construe such amendments as applying only prospectively, would defeat the purpose for which such amendments were carried out.



A reference was made by the Supreme Court of the judgment in ***Rafiquennessa Vs. Lal Bahadur Chetri, AIR 1964 SC 1511*** which had declared that the retrospective operation of statutory provision could be inferred even in cases where such retrospectivity would be found to be implicit in the context where it occurred. A statutory provision could be held to be retroactive either when it was so declared by express terms or the intention to make it retroactive clearly followed from the relevant words and the context in which they occurred.

This line of thinking, the Supreme Court observed, continued without any departure and was reiterated in ***Darshan Sijngh Vs. Ram Pal Singh, 1992 Supp (1) SCC 191*** and ***Shyam Sunder Vs. Ram Kumar, (2001) 8 SCC 24.***

What is relevant to note is that the Supreme Court categorically cautioned that it would be the duty of the courts, whether trying original proceedings or



hearing an appeal, to take notice of the change in law affecting pending actions and to give effect to the same. If it is found that an amendment is couched in a language which explains the clear intendment regarding its application even in pending matters, it must be given effect to, even in appeal. The amendments in the UGCRs were held to be declaratory, curative and clarificatory and in such a situation, it ought to mean to operate from an antecedent date covering antecedent events (Refer to ***CIT Vs. Shelly Products; (2003) 5 SCC 461*** and in ***Zile Singh Vs. State of Haryana, (2004) 8 SCC 1***).

Thus holding that the exemptions were available to even the pre 2009 holders of Ph.D., the appointment of Dr. Jayakumar was validated.

Mr. Sanjeev Kumar, the learned Advocate for the respondent has urged that her Ph.D. was in consonance with UGC Ph.D. Regulation 2009 with respect to award of Ph.D. The Vice-Chancellor of the Ranchi University had issued a certificate on



04.06.2018, certifying that the respondent had obtained Ph.D. degree in accordance with 2009 Regulation. Even though the respondent was registered for Ph.D. course prior to 11.07.2009, (the date of enforcement of UGC Regulation 2009), she would be exempted from the requirement of NET for recruitment/appointment.

It was argued that the appellant/Commission thus was absolutely unjustified in not considering the case of the respondent.

The aforementioned arguments on behalf of the respondent was acceded to by the learned Single Judge and the appellant/Commission was directed to consider the case of the respondent for appointment.

Mr. Lalit Kishore representing the appellant/Commission vociferously argued that in ***University of Kerala Vs. Merlin J.N.*** (supra), the appointment had already taken place which had to be saved but such is not the case with respect to the respondent who has not been appointed and the



appointment process is over. Giving such exemption to the respondent, at this stage, would amount to opening up a already concluded recruitment process, which in the long run might stoke multiplicity of litigation.

While analyzing the developments through series of amendments in the UGCRs, we have noticed that the judgment of the learned Single Judge was delivered on 14.08.2020. The issue remained pending in appeal and as has been observed by the Supreme Court, the existing/extant law need be taken into account even at the stage of appeal.

It would be apposite at this stage to note the arguments of the respondent that UGCR-2016 (3rd Amendment) came before the date of the result declared (12.02.2019) and therefore the appellant/BPSC cannot take away the right of the respondent to be considered. It was further stated that neither in the advertisement for filling up the posts nor in the statutes for appointment of Teachers (Assistant Professor grade) for



the Universities of Bihar 2014, is there any requirement of furnishing the details of the method of evaluation of the Ph.D. degree, which was introduced for the first time when the interview programme for Hindi was published by the BPSC on 15.05.2018. Even with respect to the eleven point criteria which the appellant/Commission insists, it was argued that it was never notified by the UGC. It was in this context that it was recounted that the Allahabad High Court in ***Ramesh Kumar Yadav*** (supra) had referred the matter to an expert Committee under the Chairmanship of Professor **S.P. Thyagrajan** which had laid down that if six out of eleven criteria laid down by the Committee were satisfied when such University granted a Ph.D. degree, then such Ph.D. degree should be sufficient to qualify such person for appointment without further qualification of having to pass NET test. The Supreme Court in ***P. Sushila*** but found it to be surprising that when UGC itself had not accepted the recommendations of the said Committee,



the High Court ought not to have given effect to such recommendation. The other later judgment of the High Court in ***Vinay Singh*** (supra) was also not approved of in **P. Sushila** on the ground that a Division Bench judgment of the same High Court is binding on a subsequent Division Bench. The subsequent Division Bench could either follow it or refer such judgment to the Chief Justice to constitute a Full Bench if it differs with it. The manner in which the subsequent judgment (***Vinay Singh***, supra) was rendered even though the end result was correct was not appropriate.

In any view of the matter, it was urged that the UGCR-2016 (3rd Amendment) and further clarification in 2019 ought to have been taken note of by the BPSC and the respondent ought not to have been completely struck out from consideration. The respondent has also referred to a judgment of the learned Single Judge of this Court in CWJC No. 2404 of 2019 (judgment delivered on 18.05.2022) in which a



direction was sought against the BPSC to grant marks for M.Phil. with NET as per the Schedule 5 of the advertisement and revise the merit of the petitioner therein by giving him four marks instead of two, as was awarded to him by the BPSC. The learned Single Judge after referring to the advertisement and the UGC Ph.D. Regulation, 2009 concluded that the eleven point criteria is not for the purpose of assessing whether the Ph.D. is one acquired under the UGC/Ph.D. Regulation, 2009 or otherwise. Since the petitioner therein had acquired M.Phil. from the University of Delhi, which was declared to be as per the UGC Regulation 2009, he was required to be granted four marks out of two and that also when there was no case of the certificate having been obtained by fraud or forgery. The Bench further observed that there was no requirement of furnishing the details of criteria either in the statute of appointment of Teachers for Universities of Bihar, 2014 or in the advertisement. Thus, such a pre-condition of furnishing details of



criteria which the University had not provided to the petitioner therein, could not have been made available by the petitioner and on that account less marking ought not to have been awarded. A selecting body cannot go beyond the requirement in the advertisement and demand a certificate for the purposes of examining whether the UGC/Ph.D. Regulation-2009 have been followed while earning degree of M.Phil./Ph.D. The petitioner therein succeeded.

Mr. Lalit Kishore, however, has submitted that the whole issue ought to be examined from a perspective which balances all interests. Allowing the judgment of the learned Single Judge to continue and consequent fresh consideration of the respondent would be opening a floodgate of the failed candidates after so many years.

After having heard the counsel for the parties and referring to various amendments in the UGCRs, especially the 3rd Amendment which came prior to the



result declared and the judgment in ***University of Kerala*** (supra), we do not find any reason to interfere with the judgment of the learned Single Judge.

We stand reminded of the observations of the Supreme Court in ***Management of Narendra and Company Private Limited Vs. Workmen of Narendra and Company 2016 (3) SCC 340*** that in an intra-court appeal, on a finding of fact, unless the appellate Bench reaches a conclusion that the finding of the Single Judge is perverse it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the learned Single Judge unless both sides agree for a fairer approach on relief.

The argument of the appellant that endorsing the judgment of the learned Single Judge would result in many cases being filed by the failed candidates on a concluded process cannot be accepted for the reason



that the litigation of the respondent continued and appeal is only a continuation of the original proceeding and that there may not be any identical case. Even if it were, the life and rights of an individual cannot be sacrificed for no good reason.

However, taking a precautionary stand, we clarify that what we have said would not be a precedent for such failed candidates, on any of the grounds, if their cases were not pending till date.

The judgment and order and the directions passed by this Court are affirmed and ratified.

The appeal is dismissed.

No order as to costs.

(Ashutosh Kumar, J)

(Anjani Kumar Sharan, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.01.2023
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