

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.423 of 2022

In
Civil Writ Jurisdiction Case No.24042 of 2019

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1. The Bihar Public Service Commission 15, Jawahar Lal Nehru Marg (Bailey Road), Patna-800001 through its Chairman.
 2. The Chairman, the Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg (Bailey Road), Patna-800001.
 3. The Secretary, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg (Bailey Road), Patna-800001.
 4. The Joint Secretary cum Controller of Examination, 15, Jawahar Lal Nehru Marg (Bailey Road), Patna-800001.

... .. Appellant/s

Versus

1. Vijay Kumar Gupta S/o Khushilal Gupta, R/o Village-House No. C6, Second Floor, Gali No. 2, Hardev Nagar, Jharoda Majraa, North Delhi Delhi-110084.
2. The State of Bihar through the Principal Secretary, Department of Higher Education, New Secretariat, Patna.
3. Pooja Gupta, Assistant Professor (Hindi), Hindi Department (PG), North Campus, B.N. Mandal University, Bihar.
4. Stuti Ray, Assistant Professor (Hindi) Hindi Department, Ramesh Jha Mahila College, Saharsa, B.N. Mandal University, Bihar.
5. Mayank Bhargav, Assistant Professor (Hindi), Hindi Department, M.L.T. College, Saharsa, B.N. Mandal University, Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. P.K. Shahi, AG Mr. Sanjay Pandey, Advocate Mr. Sanjiv Kumar, Advocate Mr. Nishant Kumar Jha, Advocate
For the State	:	Mrs. Shilpa Singh, GA-12 Mr. Apurva Kumar, Advocate
For respondent no.1	:	Mr. Navnit Kumar, Advocate
For respondent no.5	:	Mr. Abhinav Srivastava, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-08-2023



The appeal is filed by the Bihar Public Service Commission, (for brevity, BPSC) and the dispute arose between the 1st respondent and the 5th respondent, who were both applicants to the post of Assistant Professor, Hindi in the selection conducted by the appellant BPSC.

2. The 1st respondent-writ petitioner was not selected since the 5th respondent obtained higher marks. The contention is as to the marks that should be conceded to the candidates with an M.Phil qualification, which was obtained in accordance with the University Grants Commission (Minimum Standards and Procedure for Awards of M.Phil/PhD degree) Regulation, 2009 (hereinafter, UGC Regulations of 2009). The advertisement provided for four marks for M.Phil obtained in accordance with the UGC Regulations of 2009, while only two marks was awarded to the 1st respondent. If four marks were granted, then he would overstep the 5th respondent and get selected is the contention.

3. The learned Single Judge found two apparently conflicting judgments on the identical issue. One *Jainendra Kumar v. The State of Bihar and Ors.* dated 04.09.2021 in *C.W.J.C. No. 23258 of 2019* and the other, *Nitu Kumari v. The State of Bihar and Ors.* dated 14.08.2020 in *C.W.J.C. No. 7905*



of 2019. In *Jainendra Kumar* (supra) a learned Single Judge of this Court found that the petitioner, who had passed the M.Phil degree; was found to have obtained it without compliance of certain clauses of the UGC Regulations of 2009. But in *Nitu Kumari* (supra) it was found that the criteria for selection was changed midway, as has been done by the notification dated 15.05.2018, which change was held to be redundant, inapplicable and not necessary to be complied with *qua* the petitioner for the purposes of consideration of her case for appointment to the post of Assistant Professor in Hindi, pursuant to that very same advertisement, in which all concerned, including the respondents 1 & 5 in this appeal participated.

4. The learned Single Judge in *Nitu Kumari* (supra) relied on *P.K. Ramachandra Iyer v. Union of India*, reported in (1984) 2 SCC 141, *Umesh Chandra Shukla v. Union of India*, reported in (1985) 3 SCC 721, *Durgacharan Misra v. State of Orissa*, reported in (1987) 4 SCC 646, *K. Manjusree v. State of A.P.*, reported in (2008) 3 SCC 512; wherein it was declared and reiterated that the criteria for selection cannot be changed midway, after the selection had commenced with a proper notification and before it is concluded with an appointment.

5. The learned Single Judge in the instant case



noticed that the qualification of M.Phil was awarded by the University of Delhi and it is stated in the certificate issued by the University that the M.Phil qualification was as per UGC Regulations of 2009. There was no fraud or forgery alleged against the certificate produced and also there was also no requirement for furnishing the details of the criteria on which the M.Phil was obtained; either in the Statute of Appointment of Teachers for the Universities of Bihar, 2014 or in the advertisement. It was also found that the UGC Regulations of 2009 provides for an 11 point criteria with regard to awarding of PhD degree and there is no such criteria for M.Phil. The 11 point criteria which was relied on by the Allahabad High Court had been upset by the Hon'ble Supreme Court in ***P. Suseela and Ors. Vs. UGC and Ors.*** reported in ***(2015) 8 SCC 129***. It was found that the University of Delhi is a statutory university duly recognised by the UGC and the degrees awarded by it have to be treated as sacrosanct and not liable to be challenged by any other University. The writ petition was allowed and petitioner was directed to be granted four marks for the M.Phil degree obtained.

6. The learned Advocate General, who appeared for the appellants contended that the stipulation regarding proof of



compliance of UGC Regulations of 2009 was brought in to ensure that only persons, who were awarded M.Phil in accordance with that regulations are selected for appointment. In fact, this does not result in any change of criteria or the eligibility conditions, but only provides for a more stringent method of proof of the basic eligibility condition. When a different criterion was applied to those PhD/M.Phil obtained under the UGC Regulations of 2009 and otherwise; in the advertisement itself, it cannot be said that there was a change in the rule of the game midway.

7. Learned Advocate General would specifically refer to the advertisement, the guidelines issued and the call letter of the interview to assert that the 1st respondent failed to meet the standard to be granted four marks. It was argued, this was not a case in which there was a disqualification made but a lesser mark was awarded for the PhD obtained by the 1st respondent; which is in accordance with the advertisement. It was pointed out that when there were conflicting decisions of coordinate Benches, it would have been proper for the learned Single Judge to refer the matter to a Division Bench and not follow one of those judgments; which in effect was done despite holding both the judgments cited to be not relevant to the facts



of the case.

8. Sri Navnit Kumar, learned counsel for the 1st respondent would however assert that the 1st respondent is a person, who had obtained a qualification under the UGC Regulations of 2009, which was certified by the University of Delhi from which the M.Phil degree was obtained. It was also pointed out from the documents produced along with the writ petition that not only was the M.Phil certificate produced; to which course the appellant obtained admission in 2012 and qualified in the year 2015; a separate certificate was produced from the University of Delhi affirming the fact of the M.Phil degree having been obtained under the UGC Regulations of 2009. It is argued that *Nitu Kumari* (supra) was an identical case in which the petitioner had also applied for the very same post of Assistant Professor in Hindi under the very same advertisement. *Nitu Kumari's* case had in fact travelled to the Division Bench on an appeal filed by the BPSC which was dismissed in *L.P.A. No. 23 of 2021* reported in *2023 (2) PLJR 80*. The decision of the co-ordinate Bench binds this Bench in considering the instant appeal. The learned counsel also relied on the decision in *K. Manjusree* (supra) to again assert that the criterion provided later would result in the rule of the game



being changed midway.

9. Shri Abhinav Shrivastava, learned counsel for the respondent nos. 3 to 5 would specifically refer to the regulations and the criterion provided for evaluation by at least two experts, one of whom should be from outside the State, which has been, admittedly, not followed by the University of Delhi; in the award of the M.Phil degree to the petitioner; even as per the certificate produced.

10. We have given our anxious consideration to the matter before us and perused the documents which we refer from the writ petition filed. The advertisement is produced as Annexure-1, wherein at the inner page-9 under Schedule-V M.Phil as per the UGC Regulations of 2009 and with NET, is conceded four marks, while under the same schedule, M.Phil not as per UGC Regulations of 2009 and NET is conceded only two marks. The 1st respondent's certificate is at Annexure-2, issued in 2015, from the University of Delhi which shows the enrollment to be in the year 2012. The Hindi Department of the University of Delhi has issued a certificate dated 05.11.2014, '*to whomsoever it concerns*' that the 1st respondent had acquired M.Phil at the exam held in the year 2013 under the UGC Regulations of 2009.



11. The certificate is also enclosed with a certificate of compliance of M.Phil degree with UGC Regulations of 2009/2016 seen at page 28 of the writ petition. The very same advertisement is produced as Annexure-A in the counter affidavit of the State.

12. Annexures-B and C are the copies of the interview program and interview letter both issued to the candidates as per Annexure-D. It has been specifically provided that along with the degree, the degree awarding university/institution deemed to be a 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 the UGC Regulations of 2009.

13. It is also clarified that the certificate should indicate how many and whichever criteria of the UGC Regulations of 2009 were followed in awarding PhD/M.Phil. The mere indication of the number of criteria followed was indicated to be not permissible. The very same criteria were indicated in the interview letter at Annexure-C also. There is also no dispute that in the present case, 1st respondent has produced a certificate as required, but the same does not clearly



indicate that the course is in full compliance of the UGC Regulations of 2009; which we will examine later.

14. Before we examine the minute facts as pointed out by the parties, we would first look at the various judgments placed before us. We find that both the judgments referred to by the learned Single Judge was on the identical issue. In ***Jainendra Kumar*** (supra) the Court found that the certificate issued by the Jawaharlal Nehru University, New Delhi, with respect to the M.Phil degree obtained by the petitioner therein indicated compliance of regulations 5, 8 to 10, 12, 14, 17 and 18 Regulations Nos. 6, 7, 9(IV), 15 and 19 were not followed. The stipulation in the interview letter regarding the appearance being only provisional subject to further verification of the qualifications was specifically noticed. It was held that there was nothing wrong in the petitioner therein having been awarded with only two marks since it has been demonstrated that the M.Phil degree obtained was not in compliance of the UGC Regulations of 2009.

15. In ***Nitu Kumari*** (supra), the learned Single Judge having noticed the stipulation in the interview letter found that the further stipulation of a provisional certificate regarding compliance of UGC Regulations of 2009 has resulted in



changing the rule of the game midway, upon which reasoning, the petitioner therein was directed to be considered to the post of Assistant Professor in Hindi after awarding her four marks as indicated in the advertisement. **Nitu Kumari** (supra) as of now has been upheld by a Division Bench, which has been challenged by the BPSC before the Hon'ble Supreme Court in ***Special Leave to Appeal (C) No. 6251 of 2023***.

16. As of now, the Division Bench is binding on us, a coordinate Bench and we could either follow the Division Bench or refer the issue for reconsideration before a larger Bench. Before that, we looked at the Division Bench judgment to understand the reasoning. The petitioner therein was a PhD degree holder in Hindi literature from the Ranchi University, awarded in the year 2012. The Ranchi University has issued a certificate on 21.10.2014, that the PhD degree awarded to respondent no. 1 was in accordance with the PhD regulation of Ranchi University, which is in consonance with the UGC Regulations of 2009. The petitioner was declared to be eligible despite having no NET qualification since she was a PhD in Hindi under the UGC Regulations of 2009. The Division Bench also noticed the communication issued by the Commission on 15.05.2018 making a departure from the conditions in



advertisement No. 50 of 2014 requiring a further certificate of the details of criteria on which, the PhD/M.Phil degree was acquired.

17. The candidate had appeared for interview and had also produced a certificate of the Ranchi University dated 04.06.2018, declaring her PhD degree to be in consonance with the UGC Regulations of 2009. It was specifically indicated that the mode of award of the degree was regular, the thesis was evaluated by two external examiners, there was open viva-voce, she has published two papers out of which one published in an accredited journal and that she has presented two research papers based on PhD work in conferences/seminars. The candidate, however, was not considered for appointment for reason of the candidate having not qualified PhD under the UGC Regulations of 2009 and that she did not have the NET/SET qualification. Insofar the NET/SET qualification, the reliance placed by the BPSC on ***P. Suseela*** (supra) was found to have been altered by a larger Bench of three Judges. In ***University of Kerala and Ors. v. Merlin J. and Anr.*** reported in ***(2022) 9 SCC 389***, the Hon'ble Supreme Court found after examining a number of regulations prior to that in 2009 and held that by the introduction of the UGC Regulations of 2009



many, who obtained the PhD degree prior to that were required to appear and qualify in NET. The said requirement was sought to be remedied by two resolutions of 12.08.2010 and 27.09.2010 providing for exemption to those persons, who obtained PhD before the said date, from acquiring NET qualification. In *University of Kerala* (supra), it was held that the UGC Regulations of 2009, would only act prospectively and the decision validated the appointment of one Dr. M.S. Jayakumar, who did not have a NET qualification but had acquired PhD prior to UGC Regulations of 2009.

18. We are of the opinion that neither *P.Suseela* (supra) nor *University of Kerala* (supra) can be applied to the instant case. Both the said decisions were concerned as to whether NET qualification was mandatory or not; which the Central Government had ordained but the UGC had exempted, in the case of those, who had acquired the UGC qualification prior to 2009. In the instant case the party respondents have NET qualification.

19. In the case of *Nitu Kumari* (supra), the said decisions were valid but insofar as the 1st respondent is concerned, he admittedly has a NET qualification. The only question is as to whether 1st respondent had obtained the M.Phil



qualification in accordance with UGC Regulations of 2009. **Nitu Kumari** (supra) also examined the question of the PhD qualification being under the UGC Regulations of 2009 based on a certificate issued by the Ranchi University, from which the candidate was found to have acquired the PhD qualification in accordance with the UGC Regulations of 2009. The Division Bench considering her case had noticed the essentials of the certificate which were: the mode of award of degree being regular, the thesis being examined by two external examiners, there having been an open viva-voce and two papers having been published out of which one was in an accredited journal and presentation of two research papers based on her PhD work in conferences/seminars.

20. As far as the 1st respondent is concerned, the certificate indicates the following :

“Certificate for Compliance of M.Phil. Degree with UGC Regulation 2009/2016

It is verified that Mr. Vijay Kumar Gupta, who was an M.Phil. student in the Department/Faculty of Hindi, University of Delhi has been awarded M.Phil Degree and has complied with UGC Regulations 2009/2016 as per the following criteria:

- 1. Candidate has completed Coursework including Research Methodology paper*
- 2. M.Phil Degree of the candidate awarded in regular mode only*
- 3. Evaluation of M.Phil. Dissertation by one external examiner*



4. *Open M.Phil. Viva voce of the candidate has been conducted*
5. *Candidate has made one presentation in seminar, based on his M.Phil. Work.”*

21. At the outset it has to be noticed that the same is in a printed form referring to both UGC Regulations of 2009 and 2016; the latter not struck off. We can safely assume that the reference is to the UGC Regulations of 2009, since the M.Phil certificate produced as Annexure-2 was issued in the year 2015. The specific criteria as indicated from the certificate is evaluation of M.Phil dissertation by one external examiner. The requirement as per UGC Regulations of 2009 as seen from Clause-17 is that the thesis produced by M.Phil/PhD student shall be evaluated by at least two experts, out of which one shall be from outside the State. Hence, even as per the certificate issued by the University, which awarded the M.Phil degree, the same was not in accordance with the UGC Regulations of 2009.

22. It cannot at all be disputed that the degree awarded by a statutory university cannot be ignored or brushed aside, however, the stipulation in the present case is not with respect to ineligibility but, however, lesser marks being conceded to a candidate having an M.Phil. degree not in accordance with the UGC Regulations of 2009, as against a



higher mark conceded to one who has an M.Phil./PhD under the UGC Regulations of 2009. The appointing authority having considered the PhD awarded under the UGC Regulations of 2009, to be of a better standard requiring an edge conceded to such candidates; it cannot be faulted, especially the power so to do being within the exclusive domain of the appointing authority.

23. It is trite law that even the degrees awarded by the institutions, who do not follow the UGC regulations are not by that alone declared invalid. The non-compliance of UGC Regulations of 2009 would only result in withholding of the grant and it is for the respective States to adopt the UGC Regulations, as held in *Kalyani Mathivannan v. K.V. Jeyaraj* reported in **(2015) 6 SCC 363**. The stipulation hence cannot be found to be bad and definitely there could be different marks awarded for the PhD/M.Phil degrees obtained in compliance with the UGC Regulations of 2009 or otherwise.

24. Now, we come to the question of whether there is a change of rule midway after the selection procedure had commenced. In *K. Manjusree* (supra) it was held that the prescription of minimum marks for the interview after the interview itself was over, would result in changing the game



midway; thus, making it invalid. In *Tej Prakash Pathak v. Rajasthan High Court*, reported in (2013) 4 SCC 540, a doubt was raised as to the absolute prohibition of the change of rule midway, to a selection, especially considering the aspect of retrospective law making power; and the issue was referred to a larger Bench. But we need not tarry much on this aspect, especially since changing the rule of the game refers to altering the criterion of selection. We cannot but emphatically observe that, herein, the advertisement itself treated PhD/M.Phil under the UGC Regulations of 2009, to be of a higher standard than the M.Phil/PhD acquired otherwise. Different marks were stipulated for M.Phil/PhD degree obtained in compliance with the UGC Regulations of 2009 and otherwise. There was no change in the criterion but the additional stipulation only aided the implementation of the criterion, in a fool proof manner.

25. As we noticed there can be no presumption that merely because an educational institution is affiliated with the UGC that it follows scrupulously the regulations brought out by the UGC. It was hence the appointing authority specifically stipulated that the claim of M.Phil/PhD under the UGC Regulations of 2009 should be supported by a certificate issued by the awarding University of full compliance of the UGC



Regulations of 2009. This is not a change of criteria or rule after the game has commenced. The criterion remains the same but the proof of acceptance has been made stringent in the interview guidelines and the call letter issued directly to the candidates. The candidates also do not have a contention that they did not have sufficient time to provide that proof. We have seen that **Nitu Kumari**, **Jainendra Kumar** and even the 1st respondent herein, have produced such certificates from the University from which they obtained the degree. In **Jainendra Kumar** (supra) there was found non-compliance of certain regulations and the candidature was held to be bad. In **Nitu Kumari** (supra) the compliance was found to be scrupulous and the candidature was upheld. In the case of the 1st respondent, we have found the candidature to be not permissible especially on the certificate produced, itself demonstrating the non-compliance of the UGC Regulations of 2009.

26. We are of the opinion that the judgment in **Nitu Kumari** (supra) by a co-ordinate Bench of this Court is on different and distinct facts and does not have the sheen of a binding precedent to the facts of the instant case nor do we require to refer the same to a larger Bench.

27. We rest our finding on the candidate herein, the



1st respondent, who was the petitioner in the writ petition, not entitled to be granted four marks, since demonstrably, from the certificate issued by the University which awarded the M.Phil degree; it was not an award in compliance to the UGC Regulations of 2009.

28. We set aside the judgment of the learned Single Judge and allow the appeal, as a consequence rejecting the writ petition.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

aditya/-

AFR/NAFR	
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