

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5470-2019

Reserved on 21.08.2023

Pronounced on 05.12.2023

Manurita

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Ms. Monika Thakur, Advocate for the petitioner

Mr. Gaurav Jindal, Addl. AG Haryana

Mr. DS Rawat, Advocate for respondents No.2 & 3

Sandeep Moudgil, J.

(1). The petitioners have filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing of Advertisement No.1/2019 dated 30.01.2019 (Annexure P1) whereby the applications are invited from eligible candidates for the selection and appointment against 23 posts of Assistant Professors with respondent-University but in the said advertisement the educational qualification asked in the said advertisement are not asked as per UGC guidelines/regulations. Further a direction is sought to re-advertise the said vacancies as per UGC guidelines/regulations.

(2). An advertisement was issued for vacancies in different streams i.e. for 2 posts of Professor, 11 posts of Associate Professor and 23 posts of Assistant Professor. The respondent-University is affiliated to Indian Council of Agriculture Research but for the selection for the teaching post they follows UGC guidelines/regulations as the ICAR don't have framed the guidelines for the selection of the teaching faculty.

(3). Learned counsel submits that the advertisement dated 30.01.2019 (Annexure P1) to the post of Assistant Professor issued by the respondent is not as per UGC guidelines, as UGC regulations for selection to the post of Assistant Professor nowhere asked for the minimum pass percentage at graduation level. As per UGC guidelines, for the post of Assistant Professor, the qualification is Master's Degree with 55% marks and the candidate must be NET qualified or PHD. But in the impugned advertisement, the respondents have asked for the essential qualification as 60% marks at graduation level.

(4). It has been further argued that the petitioner, who is fully qualified for the post of Asstt. Professor (Dairy Microbiology, Dairy chemistry, Dairy Technology) as per UGC/Haryana.Govt/ICAR norms, is not able to apply for the post of Assistant Professor (Dairy Chemistry, Dairy Microbiology, Dairy Technology) as the respondents have not advertised the said posts as per the UGC guidelines and has asked for the essential qualifications as 60% marks at Graduation level. The UGC regulations asked for the minimum percentage at Masters Level and NET/ SET qualifying or Ph.D degree holder but due to arbitrary condition imposed by the respondent in the advertisement No.1/2019 dated 30.01.2019 (Annexure P1), the petitioner could not apply for the said posts.

(5). The submission of learned counsel for the petitioner is that the posts were not advertised as per UGC guidelines and had it been published as per UGC guidelines, the petitioner would have become eligible to apply for such post of Assistant Professor. He relied upon judgment of Delhi High

Court in a case of **Dr. Veena Gaur and others vs. University of Delhi and others, passed in WP (C) No. 5162/2013**, decided on 11.07.2014

(6). Notice of motion was issued on 28.02.2019 and pursuant thereto, the respondents have filed reply on 12.03.2020 by Dr. Harish Kumar Gulati Registrar, Lala Lajpat Rai University of Veterinary & Animal Sciences, Hisar.

(7). The contention of the petitioner have also been controverted by the respondents stating that bare name/nomenclature of the Regulations notified by the UGC for appointment to the post of Teachers and other Academic Staff in Universities and Colleges is "*UGC Regulations of minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010*", meaning thereby that the UGC in order to maintain at least minimum standard of higher education in all the Universities and Colleges has prescribed minimum educational qualifications for appointment to all the post of teachers and academic staff in Universities and Colleges.

(8). The UGC Regulations, 2010, nowhere bars a University or a College from prescribing a higher or some additional educational qualifications or some higher conditions for making appointment to all the posts of teachers and academic staff in Universities and Colleges and therefore argued that if in the impugned advertisement, the respondent No.2 University, in order to select best teachers for the maintenance of standard of higher education, has prescribed some higher minimum educational qualifications for appointment to the post of Assistant Professors, than the

one prescribed in the UGC Regulations, 2010, the same neither violates the UGC Regulations, 2010 nor its spirit.

(9). The next argument raised on behalf of respondent No.2 University is that it is always within the rights of respondent NO.2-University to prescribe some higher educational qualifications than the prescribed in UGC Regulations, 2010 for making appointment to the post of Assistant Professor.

(10). It is further asserted that as per "UGC Regulations of minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010", no University or College, while making appointment to the post of teacher can recruit a teacher having lesser educational qualifications than the one prescribed in the UGC Regulations, 2010. The UGC Regulations, 2010 only prescribe minimum educational qualifications for appointment to the post of teachers and other academic staff in Universities and Colleges.

(11). Learned counsel for the respondents have relied upon the judgment of this Court in **Dr. Jyoti Rani Vs. Board of Governors, Thapar Institute of Engineering & Technology, Patiala and others, 2019 (2) SCT 531**, to contend that any additional qualification or condition imposed by the University cannot be said to have encroached upon and infringed the provisions of UGC Regulations, 2010 as UGC Regulations, 2010 only prescribe the minimum eligibility conditions and the UGC only prescribed the minimum eligibility condition and qualifications and the conditions

higher than those prescribed by the Regulations can always be imposed by an employer.

(12). Further, he placed reliance upon the **Maharashtra Public Service Commission through its Secretary Vs. Sandeep Shriram Warade and others"**, **as reported in 2019 (3) SCT 18 (SC)**, to aver that that it is for the employer to decide essential qualifications for appointment and the Courts cannot lay down conditions for eligibility. And as such, the respondents are well within their rights to impose a condition of minimum 60% marks at Graduation level and minimum 70% marks at Master's Degree level for being eligible for appointment to the post of Assistant Professor.

(13). Heard learned counsel for the parties and gone through the record.

(14). The primary contention raised on behalf of the petitioner is that the educational qualifications prescribed for the 23 advertised posts of Assistant Professor is not in consonance with the UGC Regulations. The petitioner has claimed that as in UGC Regulations, to be eligible for appointment to the post of Assistant Professor through direct recruitment, minimum 55% marks are required at Master's level and no minimum percentage of marks have been prescribed at Graduation level, whereas the respondent No.2 University while advertising 23 posts of Assistant Professor, has fixed minimum 60% marks at Graduation level and minimum 70% marks at Master's Degree level to be eligible for appointment to the post of Assistant Professor and therefore the said educational qualifications as given in the impugned advertisement for appointment to the post of Assistant Professor are not in consonance with UGC Regulations.

(15). For determination of the above issue, it is necessary to notice the relevant provisions of University Commission Act, 1956 (hereinafter referred to as the, 'UGC Act, 1956'), UGC Regulations, 2010, the University Act, 1965 and the statutes framed thereunder.

(16). University Grants Commission Act, 1956 was enacted to make provisions for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission.

(17). Section 12 deals with the 'function of the Commission', relevant of which is quoted hereunder:

*"12. It shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions under this Act, the Commission may-inquire into the financial needs of Universities;
recommend to any University the measures necessary for the improvement of University education and advise the University upon the action to be taken for the purpose of implementing such recommendation;*

(i) XXXX XXXX

(ii) $\text{XXXX} \quad \text{XXXX}$

(j) perform such other functions as may be prescribed or as may be deemed necessary by the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above functions."

(18). Section 14 of the Act deals with 'consequences of failure of Universities to comply with recommendations of the Commission' which is as follows:-

14. If any University [grants affiliation in respect of any course of study to any college referred to in subsection (5) of section 12A in contravention of the provisions of that sub-section or] fails within a reasonable time to comply with any recommendation made by the Commission under section 12 or section 13, [or contravenes the provision of any rule made under clause (f) or clause (g) of sub-section (2) of section 25, or of any regulation made under clause(e) or clause (f) or clause (g) of section 26,] the Commission, after taking into consideration the cause, if any, shown by the University 3[for Such failure or contraventions may withhold from the University the grants proposed to be made out of the Fund of the Commission."

(19). From the aforesaid provisions, it is clear that the University Grants Commission has been established for the determination of standard of Universities, promotion and co-ordination of University education, for the determination and maintenance of standards of teaching, examination and research in Universities, for defining the qualifications regarding the teaching staff of the University, maintenance of standards etc. For the purpose of performing its functions under the UGC Act (see Section 12) like defining the qualifications and standard that should ordinarily be required of any person to be appointed in the Universities [see Section 26(1)(e)(g)] UGC is empowered to frame regulations. It is only when both the Houses of the Parliament approve the regulation, the same can be given effect. Thus, the UGC Regulations though a subordinate legislation has binding effect on the

Universities to which it applies; and consequence of failure of the University to comply with the recommendations of the Commission, the UGC may withhold the grants to the university made out of the Fund of the Commission. (see Section 14)

(20). This Court has no doubt in its mind to hold that when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to the standards or qualifications laid down by the University, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally.

(21). In the present case, in view of the letter No.1-32/2006-U.II/U.I(i), dated 31st December, 2008 issued by the Government of India and in exercise of the powers conferred under clause (e) and (g) of sub-section (1) of Section 26 of the UGC Act, 1956, UGC enacted *UGC Regulations of minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010* in supersession of the UGC Regulations, 2000. It was published in the Gazette of India on 28th June, 2010 and came into force with immediate effect. Its Clause 3.4 prescribed a minimum of 55% marks (or an equivalent grade in a point scale wherever grading system is followed) shall be required at the Master's level for direct recruitment of teachers and other equivalent cadres at any level." However, as regards for the post in question i.e. Assistant Professor, the minimum educational qualification as prescribed by the UGC guidelines was Master's Degree with 55% marks or an equivalent degree from an accredited

foreign University besides the candidate should have cleared NET conducted by UGC etc. Whereas, the respondent No.2-University vide advertisement dated 30.01.2019 (Annexure P1) invited applications for recruitment to the post of Assistant Professor from candidate having following essential qualifications:-

“Assistant Professor, Dairy Chemistry

Essential Qualifications

i) Graduation in Dairying/ Agriculture/ Veterinary/ Animal Science/ Chemistry/ Dairy Technology/ Food Technology/ Food Technology and Management/ Food Science/ Food Science & Technology/ Biotechnology from recognized institute with minimum 60% marks or equivalent grade in a point scale where grading system is followed.

ii) Master's degree in Dairying/ Science/ Dairy Dairy Chemistry/ Chemistry with specialization in Dairy Chemistry/ Applied Chemistry with specialization in Dairy Chemistry/ Food Science with specialization in Dairy Chemistry/ Food Technology with specialization in Dairy Chemistry/ Food Technology and Management with specialization in Dairy Chemistry/ Food Science and Technology with specialization in Dairy Chemistry with minimum 70% of marks or equivalent grade in a point scale...”

(22). From a comparative reading of the above qualification prescribed by UGC vis-à-vis those essential qualifications required by the respondent No.2, it can be seen that the UGC regulations for selection for the post of Assistant Professor etc. nowhere asked for minimum pass percentage at graduation level and the UGC Regulations, 2010 only prescribed obtaining of Master's Degree with 55% marks.

(23). In the present case, the respondent No.2 has fixed minimum 60% at graduation level and minimum 70% marks at Master's level for being eligible for appointment to the post of Assistant Professor.

(24). In *Annamalai University vs. Secretary to Government, Information and Tourism Department and others, (2009) 4 SCC 590*, the Supreme Court observed that UGC Act was enacted by Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas the Open University Act was enacted by Parliament in exercise of its power under Entry 25 of List III. It was held that in such circumstances the question of repugnancy between the provisions of the said two Acts, does not arise. The Apex Court while holding that the provisions of the UGC Act are binding on all the Universities held as follows:

"40. The UGC Act was enacted by Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas the Open University Act was enacted by Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the Statement of Objects and Reasons of the Open University Act shows that the formal system of education had not been able to provide an effective means to equalise educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.

42. The provisions of the UGC Act are binding on all universities whether conventional or open. Its powers are very broad. The Regulations framed by it in terms of clauses (e), (f),

(g) and (h) of sub-section (1) of Section 26 are of wide amplitude. They apply equally to open universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of UGC are all-pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12-A and clauses (a) and (c) of sub-section (2) thereof."

(25). The aforesaid judgment makes it clear that to the extent the State Legislation is in conflict with Central Legislation including subordinate legislation made by the Central Legislation under Entry 25 of the Concurrent List, shall be repugnant to the Central Legislation and would be inoperative.

(26). There is another reason as to why argument raised by learned counsel for respondent No.2-University cannot be accepted i.e. the respondent No.2-University stipulated the criteria requiring the petitioner to possess at least 60% marks at the graduation level, do not appear, to have put in the criteria having regard to the purported anomaly in the aforementioned Regulation.

(27). The question therefore, is: Could the respondent No.2-University stipulate a criteria contrary to the one, which had already been put

in place by the UGC? In my view, the answer has to be in the negative on account of the fact that if, the field for prescribing eligibility criteria is unoccupied then, that vacuum can be filled in by the respondent No.2-University. The University cannot put in an eligibility criteria for recruitment/shortlisting if, the criteria is already stipulated by the UGC. The said guidelines of recruitment as laid down through a policy decision were sacrosanct and were required to be followed for all practical purposes.

(28). The doctrine of "level playing field" is an important doctrine which is embodied in Article 19(1)(g) of the Constitution. This is because the said doctrine provides space within which equally- placed competitors are allowed to compete so as to subserve the larger public interest. Commitment to "rule of law" is the heart of parliamentary democracy. One of the important elements of the "rule of law" is legal certainty. Article 14 applies to government policies and if the policy or act of the government, even in contractual matters, fails to satisfy the test of "reasonableness", then such an act or decision would be unconstitutional.

(29). It is settled law that if eligibility conditions of recruitment have been prescribed by the UGC, then that method alone has to be followed and it is not open to University affiliated with UGC to stipulate any other conditions, even if the same are fair and objective. The subsequent decision of the University thereby changing qualifying norms by enhancing the minimum qualifying marks from 55% to 60% at graduation level is arbitrary and unjustified.

(30). Even the Supreme Court in case **B. Ramakichenin v. Union of India reported in (2008) 1 SCC 362** has held as under :-

“17. However, for valid shortlisting there have to be two requirements —

(i) it has to be on some rational and objective basis. For instance, if selection has to be done on some post for which the minimum essential requirement is a BSc degree, and if there are a large number of eligible applicants, the selection body can resort to shortlisting by prescribing certain minimum marks in BSc and only those who have got such marks may be called for the interview. This can be done even if the rule or advertisement does not mention that only those who have the aforementioned minimum marks, will be considered or appointed on the post. Thus the procedure of shortlisting is only a practical via media which has been followed by the courts in various decisions since otherwise there may be great difficulties for the selecting and appointing authorities as they may not be able to interview hundreds and thousands of eligible candidates;

(ii) if a prescribed method of shortlisting has been mentioned in the rule or advertisement then that method alone has to be followed.

(31). Consequently, in our opinion, in view of the eligibility conditions having already been stipulated in UGC Regulations, 2010, it was not open for the respondent No.2-University to stipulate any additional eligibility criteria which is too high in comparison to the minimum eligibility criteria prescribed as per above noted regulation.

(32). Consequently, this writ petition is allowed and the advertisement No.1/2019 dated 30.01.2019 (Annexure P1) as well as the selection made thereunder is hereby quashed. The respondents shall be at liberty to make recruitment against the posts in question by initiating afresh selection process which should adhere to the guidelines/regulations as are to be followed as per UGC regulations, 2019.

05.12.2023

V.Vishal

(Sandeep Moudgil)

Judge

1. Whether speaking/reasoned?

Yes/No

2. Whether reportable?

Yes/No