

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

CWP-20405-2005 (O&M)
Date of Decision: 16.11.2023

Satish Kumar Garg

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Anurag Goyal, Advocate with Mr. Nikhil Lather, Advocate
for the petitioner

Ms. Tanushree Gupta, DAG, Haryana

Mr.Kanwal Goyal, Advocate and Mr. Govind Tanwar, Advocate
for respondent No.2-HPSC

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed seeking a writ of *certiorari* quashing the entire selection process initiated and completed by the respondent authorities for the post of Lecturers in the subject of Physics pursuant to advertisement No.2 of 2003, dated 06.06.2003, Annexure P-1, and quashing the appointment of respondents No.7, 8 & 9 being illegal and contrary to guidelines laid down by the University Grants Commission (hereinafter referred to as 'UGC') and the State of Haryana. Further, a direction has been sought to the respondents to initiate the entire selection process afresh as per norms laid down by the UGC.

2. Facts of the case in brief are, the second respondent-Haryana Public Service Commission (hereinafter referred to as 'the Commission'), issued advertisement No.2 of 2003, dated 06.06.2003 inviting applications for recruitment on 264 temporary posts of Lecturers (College Cadre) in various subjects in Haryana Education Service (Group-B); six posts were advertised for Lecturers in Physics, out of which three were for General category candidates, and one each for the reserved categories of Scheduled Caste, Backward Class and Physically Handicapped.

2.1. The petitioner being eligible as a General category candidate in the subject of Physics, applied for the post before the closing date for submission of applications, i.e., 07.07.2003. He was interviewed on 14.08.2003.

2.2. It has been averred that the selection process was not carried out by the Commission as per norms laid down by the UGC notification- 'Revision of Pay Scales, Minimum Qualifications for appointment of Teachers in Universities and Colleges And other measures for the maintenance of Standards, 1988', Annexure P-11 (hereinafter referred to as the 'UGC notification'). The notification recommends constitution of the Selection Committees for Lecturers in Government College as follows:

For Government College, the State public Service Commissions must invite three subject experts for which the State PSC will involve the University in the Selection. The Principal and Head of the Department should be necessarily included in the Selection Committee.

The quorum for the meeting should be five of which at least two must be from out of three subject-experts.

The Commission did not invite three subject-experts in consultation with the University, as was the requirement; nor were the Principal and Head of the Department included in the Selection Committee.

2.3. The petitioner earlier approached this Court by filing a petition, CWP No.16392 of 2003, challenging the selection process. It was, however, dismissed as withdrawn being premature, granting liberty to file a fresh one subsequently, vide order dated 13.01.2004, Annexure P-2.

2.4. The selection result was declared by the Commission on 06.06.2004, and respondents No.7, 8 & 9 were appointed as Lecturers in Physics against the General category posts. Thereupon, the petitioner submitted representation to the respondents for providing copies of the appointment letters issued to the private respondents, but to no avail.

2.5. He, therefore, filed another writ petition, CWP No.3723 of 2005, challenging the selection process by impleading the selected candidates by way of their roll numbers. During pendency of the petition, the respondents were directed to furnish particulars of the selected candidates, and the petition was disposed of vide order dated 30.09.2005, granting liberty to file a fresh one after impleading the necessary parties.

2.6. Subsequently, the petitioner was furnished particulars of the selected candidates vide letter dated 31.10.2005, and the instant petition was filed by him.

2.7. By way of written statement filed by the Commission, *inter alia*, it has been stated that norms laid down by the UGC for making selection on

the post of Lecturers are directory in nature, and not mandatory. The

Commission is within its rights to adopt a criteria to make selection in consonance with service Rules notified by the Department of Education. The selection was carried out as per the criteria settled by the Commission for the advertised posts, and there is no illegality about the same. Further, it has been stated that the Commission constituted Selection Committee consisting of three of its members and one subject-expert. In the requisition received from the Government for the advertised posts, it was communicated that the list of subject-experts would be sent when the interviews would be scheduled by the Commission. Accordingly, the Government was requested, vide letter dated 21.07.2003, to send names of the subject-experts on the appointed dates and time of the interviews for different posts. The subject-experts recommended by the Department of Higher Education were associated at the time of interviews by the Commission. The petitioner's candidature was also duly considered, but his name did not come within the selection zone.

3. Learned counsel for the petitioner has contended that concededly the UGC norms, as prescribed by its notification aforementioned, were not followed by the Commission in carrying out the selection process. The Selection Committee was not constituted in terms of the norms, which are not directory, but mandatory for the respondents to follow. Violation of the same has vitiated the entire selection process which is liable to be set aside accordingly. In support of his submissions, learned counsel has placed reliance upon the Supreme Court judgment in *Gambhirdan K. Gadhvi v. State of Gujarat and Others*, 2022 (5) SCC 179.

4. Learned counsel for the Commission, on the contrary, contends that the UGC Regulations are directory insofar as the State Government as well as the Commission are concerned, and the latter is competent to adopt a

selection criteria at variance with the UGC norms. Therefore, the constitution of the Selection Committee cannot be termed illegal or irregular. In support of the contentions, he has relied upon a judgment of the Supreme Court in *Kalyani Mathivanan v. K.V. Jeyaraj and Others*, 2015 (6) SCC 363. Further, he has contended that the Commission was competent to adopt its own selection criteria, not recommended by the UGC.

5. Heard.

6. The facts are not in dispute between the parties, that the selection process pursuant to advertisement No.2 of 2003 for the posts in question was not carried out as per the UGC notification. The Commission constituted a Selection Committee consisting of three of its members and a subject-expert provided by the Government which is not as per the UGC notification. Therefore, the issue to be decided by this Court is, whether the Commission was required to carry out selection process for the advertised posts only by constituting the Selection Committee as recommended by the UGC notification, and not following the same has vitiated the entire selection in the subject of Physics.

7. The law regarding binding nature of the UGC Regulations has been settled by *Kalyani Mathivanan* case (*supra*), holding as under:

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

62.1. To the extent the State legislation is in conflict with the 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.

62.2. The UGC Regulations being passed by both the Houses of Parliament, though a subordinate legislation has binding effect on the universities to which it applies.

62.3. The 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 UGC.

62.4. The UGC Regulations, 2010 are 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, the UGC Regulations, 2010 are partly mandatory and is partly directory.

62.5. The UGC Regulations, 2010 having not been adopted by the State of Tamil Nadu, the question of conflict between the State legislation and the Statutes framed under the Central legislation does not arise. Once they are 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.

As per the law laid down, UGC Regulations have been held directory for the Universities, colleges and other higher educational institutions under the purview of State Legislation, as the State Government has liberty to adopt and implement the same. Only for teachers and academic staff of the Central Universities, Colleges thereunder and the Institutions deemed to be Universities maintained by the UGC, the Regulations have been held to be mandatory.

8. The issue arising in the instant case is on different footings, as it has not been established on record that the UGC notification in question has been adopted by the respondent-State. It is also not on record that the said

notification was published in the Gazette of India, nor that the same was issued by the UGC in exercise of powers under Section 26(1)(e) and 26(1)(g) of the UGC Act, 1956, and laid before the Parliament in compliance thereof. Rather, the notification itself records that 'these will be notified as Regulations shortly'. There is nothing on record to establish that it was notified as Regulations following the procedure laid down, and adopted by the State government. The notification also records 'the University Grants Commission *expects* that the entire scheme of revision of pay scales, together with all the conditions attached to it, would be implemented by the State Governments as a composite scheme without any modifications'. This also shows the notification is directory in nature, as stipulated by the UGC itself. In this factual background it cannot be said the UGC notification was binding on the respondents at the time selection process was carried out, nor that the same was vitiated being at variance thereof.

9. The judgment relied upon by learned counsel for the petitioner passed in *Gambhirdan* case (*supra*) pertains to setting aside the appointment of Vice-Chancellor in a State University in violation of the qualifications prescribed by the UGC Regulations, 2018. As per admitted facts of that case, the UGC Regulations were duly enacted under the Act of 1956, and adopted as well as implemented by the State Government. The concerned State University was getting financial assistance to the extent of eighty per cent of its maintenance expenditure thereunder. Accordingly, it was held that Regulations were mandatory to be followed by the State as well as the University under it, and it was incumbent upon them to amend the University Act regarding appointment of Vice-Chancellor in consonance with the Regulations, which had not been done. The judgment has no application to the

facts of the instant case, since the UGC notification in question was neither notified as Regulation nor adopted by the State government, as discussed hereinabove.

10. Further, the petition is not maintainable because all the affected parties have not been impleaded as party respondents to the petition. The petitioner has impugned the entire selection process for appointment of Lecturers in the subject of Physics pursuant to the advertisement. It is apparent on record that six posts of Physics were advertised for different categories, and appointment was made against all of them. However, the petitioner has impleaded only three of the selected/appointed candidates of General category as respondents. In case it is to be held that constitution of the selection committee for the subject of Physics was illegal, all the appointed candidates get affected. Since all of them have not been impleaded, no effective relief can be granted to the petitioner.

11. In view of the above discussion, this Court is of the considered opinion that present petition is bereft of merit and stands dismissed, accordingly.

12. Pending miscellaneous application(s), if any, stand(s) disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

16.11.2023
Payal

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