



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.264

CWP No.816 of 2024

Pronounced on: 07.06.2024

Nisha

..... Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Rajat Mor, Advocate, for the petitioner

Mr. Parveen Mehta, DAG, Haryana

Mr. Shreenath A. Khemka, Advocate, for respondent no.2

Mr. Heman Aggarwal, Advocate, for respondent no.3.

TRIBHUVAN DAHIYA J.

The petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the list of candidates for the post of Assistant Professor, dated 4.1.2024, Annexure P-7, whereby the petitioner has not been given marks for teaching experience as per the criteria for selection; and a writ of *mandamus* directing the respondents to revise the aforesaid list by awarding ten marks for experience, and consider her for appointment.

2. Briefly, the facts relevant to adjudicate the matter are, the second respondent/University invited applications for the posts of Assistant Professor in various Departments, including one unreserved post of Assistant Professor-Economics, vide advertisement no.CBLU/Estt./T

1/02/2023, Annexure P-1. The closing date for submissions of



applications was 30.4.2023, which was extended to 18.9.2023 vide corrigendum, Annexure P-1A. The petitioner being eligible applied for the same by submitting application form for the post of Assistant Professor Economics dated 14.4.2023, Annexure P-2. The form as well as the documents attached therewith were verified, and the University vide notice dated 14.11.2023, Annexure P-3, released a list of candidates who were required to submit proof in support of the marks claimed under the criteria up to 19.11.2023. The petitioner was required to submit proof of; (i) Ph.D. awarded as per clause 19 of the recruitment notice, (ii) the experience claimed. In that regard it was observed, *‘experience claimed is not in accordance with clause 10 of the instructions issued by Haryana State Govt. dated 11.11.2022. Proof/evidence of total gross emoluments in the form of ITR/Bank statement/Pass Book/Form 16 is required for the period of the experience claimed.’* In response thereto, the petitioner submitted the requisite documents, including experience certificate dated 10.8.2023, certifying that she had worked as Assistant Professor Economics in Shri Agrasen Kanya Mahavidyalaya, Korba, Chhattisgarh, (for short ‘the College’) from 5.11.2013 to 30.8.2015, and was later regularly appointed as such by the Governing Body vide appointment letter dated 28.7.2015, Annexure P-6. Accordingly, she is entitled to ten marks for more than five years experience as per the criteria, which makes her total marks to be eighty-eight. This is more than those of the last candidate called for interview, who has secured eighty marks. There is no dispute regarding the petitioner’s Ph.D. degree, but the University did not agree to count her experience for award of marks since it did not fulfill the



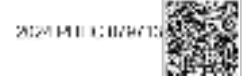
requirement of Clause 10(f) (iii) of the instructions/memo dated 11.11.2022, Annexure R-1.

3. Learned counsel for the petitioner has argued that in declining the marks for experience, the University has relied upon Clause 10 (f) (iii) of the instructions, which has no application to the case as held by a Division Bench of the Allahabad High Court in WRIT-A No.580 of 2023 titled *Geetanjali Tiwari (Pandey) v. Union of India and others*. The judgment squarely decides the issue in petitioner's favour.

4. Learned counsel for the University, on the contrary, contends that the petitioner has rightly not been assigned any marks for experience, as the University is bound by the instructions/memo dated 11.11.2022, wherein Clause 10 (f) (iii) provides that for counting past service for direct recruitment and promotion under Career Advancement Scheme (CAS), the incumbent must be drawing total gross emoluments not less than the monthly gross salary of a regularly appointed Assistant Professor, whereas the petitioner undisputedly was drawing salary of ₹10,000 per month, later increased to ₹18,000, which was less than minimum of pay scale of Assistant Professor, i.e., ₹57,700 per month. Accordingly, no exception can be taken to the University's decision in not awarding marks for experience.

5. Heard.

6. Undisputedly, the only ground for not assigning marks for experience to the petitioner is Clause 10 (f) (iii) of the instructions/memo dated 11.11.2022. In fact, this clause is a part of the 'Revised minimum qualifications for appointment of teachers and other academic staff



including Librarians and Directors of Physical Education and Sports in Universities and Colleges and measures for the maintenance of standards in higher Education, 2022 based on University Grants Commission Regulations, 2018’, (for short, ‘the Revised minimum qualifications’) issued by the third respondent/UGC, and has been incorporated in the government memo, dated 11.11.2022, as it is. Clause 10 (f) (iii) is in the following terms:

10.0 Counting of Past Service for Direct Recruitment and Promotion under CAS

[illegible]

(f) The previous Ad-hoc or Temporary or contractual service (by whatever nomenclature it may be called) shall be counted for direct recruitment and for promotion, provided that:

(i) & (ii) xxx xxx xxx

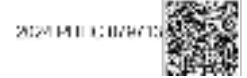
(iii) the incumbent was drawing total gross emoluments not less than the monthly gross salary of a regularly appointed Assistant Professor, Associate Professor and Professor, as the case may be...

(g) XXX XXX XXX

The criteria for short-listing of candidates for interview for the post, incorporated in the advertisement, is as follows:

7. Teaching/Post-Doctoral Experience
(2 marks for one year each) = 10 marks

7. The issue at hand, i.e., applicability of Clause 10 (f) (iii) of the Revised minimum qualifications for counting teaching/post-doctoral experience of candidates for direct recruitment to the post of Assistant Professor, has already been considered in *Geetanjali Tiwari* case (*supra*), holding that it has no application for the direct recruitment. The relevant



paragraphs of the judgment, wherein Clause 10 (f) (iii) has been referred to as Regulation 10, read as under:

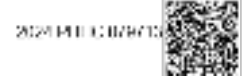
17. The short question raised in this bunch of petitions is as to whether regulation 10(f)(iii) would be applicable while awarding marks for the teaching/post-doctoral experience, in terms of clause 7 of table 3A for short-listing of candidates, to be called for interview for the post of Assistant Professors in universities? As a sequel, it has to be seen as to whether regulation 10(f)(iii) is ultra vires Article 14 of the Constitution of India.

18. It is undisputed between the parties that qualification and criteria for direct recruitment to a university, duly established as per law, would be determined by the UGC regulations. It is otherwise settled in law that UGC regulations would prevail in the matter of recruitment of teaching staff in a recognized university. (see Gambhirdan K. Gadhvi vs. State of Gujarat and others, (2022) 5 SCC 179.

19. Regulation 4 provides the qualification for appointment to the post of Assistant Professor. Since the appointment of Assistant Professor is an entry level appointment as such no past/previous experience on such posts is required towards eligibility under the regulations. A candidate having requisite academic qualification as per the regulation can thus be appointed as Assistant Professor even if he/she has no previous teaching experience.

20. For appointment to the post of Associate Professor or Professor the regulations require specified length of requisite previous teaching experience on the post of Assistant Professor in case of Associate Professor and Associate Professor in case of appointment to the post of Professor. This requirement is specified in regulation 4.0 (II) & (III) of the regulations.

21. Regulation 10 specifies the nature of past services to be counted for direct recruitment and also for promotion under



the Career Advancement Scheme. Clause (e) & (f) of regulation 10 are already extracted above which provide that teaching experience as a guest lecturer or previous working where the total gross emoluments was less than the gross monthly salary of the Assistant Professor would not be counted towards past services for direct recruitment to the post of Assistant Professor.

22. A combined reading of clause (e) & (f) of regulation 10 undisputedly reveal that past services to be counted for direct recruitment or promotion must not be as guest lecturer for any duration; the essential qualifications of the post held was not lower than the qualification prescribed by UGC for Assistant Professor, Associate Professor and Professor, as the case may be; appointment was on the recommendation of a duly constituted selection committee as per applicable rules of the university; the incumbent drew total gross emoluments not less than the monthly gross salary of a regularly appointed Assistant Professor, Associate Professor and Professor, as the case may be.

23. The counting of past services under regulation 10, however, would be relevant and directly co-related to the post on which direct appointment or promotion under CAS itself is sought. Since, past services are required for appointment to the post of Associate Professor and Professor only in the regulations, the relevance of regulation 10 would be restricted to these posts alone.

24. No previous teaching experience (including Assistant Professor) since is required as eligibility condition for appointment to the post of Assistant Professor, as such regulation 10 would have no direct applicability/relevance for appointment to the post of Assistant Professor.

25. Eligibility for appointment to the post of Assistant Professor is distinct from the criteria to be followed for short-listing of candidates to be called for interview for the post of



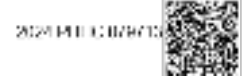
Assistant Professor.

26. Table 3A appended to the regulations lays down the criteria for short-listing of candidates to be called for interview for the post of Assistant Professors. Clause 7 of table 3A talks of teaching/post-doctoral experience and for each such year a candidate is entitled to two marks.

27. From the stand taken by the respondent-university/colleges it transpires that teaching/post-doctoral experience for award of two marks for each such year the respondents have applied regulation 10 of the regulations. Two marks towards teaching/post-doctoral experience for each year has been allowed to a candidate only if such teaching is consistent with regulation 10. Even where a candidate has taught for a year in a recognized institution yet he would not be entitled to two marks unless the incumbent drew total gross emoluments not below the monthly gross salary of a regularly appointed Assistant Professor.

28. Teaching/post-doctoral experience occurring in clause 7 of table 3A has not been defined. It is for this reason that the respondents have referred to and read the provisions of regulation 10 of the regulations into it. This interpretation of the respondents is the bone of contention in the present bunch of petitions.

29. Regulation 10 specifically deals with a defined exigency i.e. counting of past services for direct recruitment and promotion under CAS. This exigency is not attracted in the present set of cases. Regulation 10 has a direct nexus with the object sought to be achieved i.e. direct recruitment and promotion under CAS. Since past services are mandatorily required for appointment to the post of Associate Professor and Professor only, therefore, regulation 10 would have relevance only for appointment and promotion to such posts.

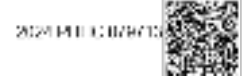


30. Reference of past services on the post of Assistant Professor for appointment to the post of Assistant Professor appears to be a surplusage since the eligibility for the post of Assistant Professor does not require any teaching experience. Counting of past services as Assistant Professor for appointment to the post of Assistant Professor serves no purpose in the scheme contained in the regulations. Regulation 10 of the regulations, therefore, has no applicability in the case of direct appointment to the post of Assistant Professor.

31. We are persuaded to take such a view as reference to *teaching experience* in table 3A has to be read in conjunction with *post-doctoral* experience as they constitute a composite class in itself. In the event regulation 10 conditions *teaching experience*, as is suggested by the respondents, the term *post-doctoral experience* would also have to be necessarily conditioned by regulation 10. This, however, does not appear to be the intent of the scheme contained in the regulations.

32. Limiting *teaching experience* to the experience of teaching as an Assistant Professor, by drawing emoluments not less than the monthly gross salary of a regularly appointed Assistant Professor would clearly be reading something more than what is specified in the regulations itself. Counting of past services for direct recruitment or promotion under CAS to the post of Assistant Professor otherwise is not contemplated. Such a construction would also be unworkable once a condition of the kind is attached to the *post-doctoral experiences* also.

33. *Post-doctoral experiences* can be of different kinds, including research activity, teaching activity etc. If the provisions of regulation 10 are applied while awarding marks in clause 7 of table 3A then an anomalous situation may arise, inasmuch as teaching experience gathered by a post- doctoral candidate would entitle him to two marks if teaching by him is



considered as *post-doctoral experience* but such marks would be denied if it is treated as teaching experience only. It is for this reason that table 3A of the regulations does not refer to or rely upon regulation 10. The interpretation drawn by the respondents to read regulation 10 in table 3A, which specifically lays down the criteria for short-listing of candidates for interview for the post of Assistant Professors, therefore, cannot be approved.

34. In our opinion, regulation 10 of the regulations would be attracted only where past services are required to be counted for direct recruitment and promotion under CAS. It cannot be transposed to be made applicable in criteria for short-listing of candidates to be called for interview, to the post of Assistant Professor, by any recognized process of interpretation. Such construction otherwise is not culled out from the scheme contained in the regulations nor it helps in short-listing of candidates to be called for interview.

35. Table 3A specifies the marks to be awarded to a candidate on different parameters specified therein. Apart from awarding marks for graduation; post-graduation; M.Phil.; NET with JRF or NET; SLET/SET the table provides for teaching/post-doctoral experience of two marks for each year. Since the term teaching/post-doctoral experience is not defined in the regulations the ordinary/commonsensical meaning would have to be assigned to it.

36. Teaching experience as a full time teacher in a recognized university or its affiliated or constituent colleges with requisite qualification as per regulations for the post of Assistant Professor would sufficiently entitle a candidate to award of two marks for each year of teaching experience in clause 7 of table 3A. Nature of appointment i.e. substantive/adhoc/guest lecturer etc. or the amount of salary paid having not been specified in clause 7 of table 3A are not



relevant for the purposes of award of marks in clause 7 of table 3A for short-listing of candidates. Regulation 10 would otherwise not be applicable for the reasons recorded above. This construction would obviate the need to examine the challenge laid to the regulation 10(f)(iii) and the general instructions appended to the advertisement in that regard. It would also effectuate the cause of calling best candidates for interview, inasmuch as teaching experience of a candidate would be counted towards his merit for short-listing.

8. This Court is in respectful agreement with the view taken by the Allahabad High Court in *Geetanjali Tiwari* case (*supra*) that Clause 10 (f) (iii) of the Revised minimum qualifications has no application for direct recruitment to the post of Assistant Professor. Accordingly, the respondents could not have excluded the petitioner from the zone of consideration by refusing to assign marks of experience to her on the basis of Clause 10 (f) (iii).

9. In view thereof, the impugned notice, dated 04.01.2024, is set aside *qua* the petitioner, and the University is directed to assign marks of experience in the light of law laid down, and consider her for selection and appointment to the post in question on that basis, within a period of four weeks of receiving a certified copy of the order.

10. The petition stands allowed in the aforesaid terms.

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

(TRIBHUVAN DAHIYA)
JUDGE

07.06.2024

Maninder

Whether speaking/reasoned : Yes
Whether reportable : Yes