

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP No.17530 of 2023 (O & M)
Date of Decision : 6.2.2024

Rinku Rani

..... Petitioner

versus

*Guru Jambheshwar University of Science and Technology, Hisar and
others*

..... Respondents

CWP No.9537 of 2023 (O & M)

2024:PHHC:016728

Ram Mehar and others

..... Petitioners

versus

The State of Haryana and others

..... Respondents

CWP No.9121 of 2023 (O & M)

2024:PHHC:016734

Sandeep Singh and others

..... Petitioners

versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Ms. Suman Jain, Advocate and
Mr. Manmohan, Advocate (in CWP No.17530 of 2023)
Mr. Surender Pal, Advocate (in CWP No.9121 of 2023)
Mr. Satbir Singh Gill, Advocate (in CWP No.9537 of 2023)
for the petitioners

Mr. Puneet Gupta, Advocate, for respondent no.1
(in CWP No.17530 of 2023)

Mr. R.K. Malik, Senior Advocate with
Mr. Jagbir Singh, Advocate, for respondent no.3
(in CWP No.9121 of 2023)
for respondent no.4 (in CWP No.9537 of 2023)

Mr. Sunil K. Nehra, Advocate, for the applicant
(in CMs No.21587, 21564 of 2023 in CWP No.17530 of 2023)

TRIBHUVAN DAHIYA J.:

Since the common issues on similar facts arise for adjudication in all these petitions, the same are being disposed of by this judgment. Facts are, however, taken from CWP No.17530 of 2023, which has been filed, *inter alia*, seeking a writ of *certiorari* quashing advertisement no.3 of 2023 dated 19.6.2023, Annexure P-1, and the notice calling candidates for interview dated 5.8.2023, Annexure P-10.

2. Facts of the case in brief are, respondent no.1/University issued advertisement, dated 19.6.2023, inviting applications online for different teaching and non-teaching posts, including the post of Assistant Professor-English. Closing date for submissions of applications was 3.7.2023. Apart from other essential qualifications, it was required that Ph.D. degree shall be a mandatory qualification for appointment to the post. The petitioner is aggrieved against this requirement. Although she fulfilled the other requisite qualifications, but on account of not possessing Ph.D. in English, she could not apply for the post.

3. It is claimed that prescribing Ph.D. as a mandatory qualification is contrary to the University Grants Commission (UGC) Regulations. In fact, the UGC never prescribed Ph.D. as an essential qualification for the post. A reference has been made to notification dated 18.7.2018, Annexure P-6, whereby 'UGC Regulations on Minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges and measures for the maintenance of standards in higher education, 2018,' have been notified (for short, 'the UGC Regulations, 2018'). Sub-regulation 3.10 thereof stipulates as under:

3.10. The Ph.D. degree shall be a mandatory qualification for

direct recruitment to the post of Assistant Professor in Universities with effect from 1.7.2021.

Later, the UGC issued another notification dated 11.10.2021, Annexure P-7, substituting sub-regulation 3.10 with the following sub-regulation:

3.10. The Ph.D. degree shall be a mandatory qualification for direct recruitment to the post of Assistant Professor in Departments of the Universities with effect from 1.7.2023.

Still further, another notification was issued by the UGC dated 30.6.2023, Annexure P-8, whereby the said sub-regulation was again substituted with the following sub-regulation:

3.10. NET/SET/SLET shall be the minimum criteria for the direct recruitment to the post of Assistant Professor for all Higher Education Institutions.

4. Relying upon these regulations, learned counsel for the petitioners have contended that Ph.D. degree was never a mandatory qualification for the post of Assistant Professor, because the UGC Regulations, 2018 prescribed it as a mandatory qualifications w.e.f. 1.7.2021 only. Later, vide notification dated 11.10.2021, the date was extended to 1.7.2023 and before it could be implemented, Ph.D. as a mandatory qualification was done away with vide notification dated 30.6.2023. Only National Eligibility Test (NET)/State Eligibility Test (SET)/State Level Eligibility Test (SLET) was notified as the minimum criteria for direct recruitment to the post of Assistant Professor for all higher education institutions. Therefore, there was no justification to prescribe it as a mandatory qualification in the impugned advertisement. The University is bound by the UGC Regulations, 2018, and the minimum qualifications prescribed therein. The impugned advertisement

issued in contravention thereof, is illegal and arbitrary.

5. *Per contra*, learned counsel for the respondents contend that the petition itself is not maintainable because the qualifications prescribed in the impugned advertisement are in compliance with the UGC Regulations, as notified with modifications by the State Government and adopted by the University. He has relied upon a memo dated 11.11.2022, Annexure R-1/1, issued by the State Government regarding acceptance of the UGC Regulations, 2018. Vide this memo, the government on reconsidering the Regulations, decided to issue a revised order incorporating minimum qualifications for appointment of teachers and other staff in universities and colleges, as incorporated in the Appendices enclosed therewith. Sub-regulation 3.10 of the Appendices reads as under:

3.10. The Ph.D. degree shall be a mandatory qualification for direct recruitment to the post of Assistant Professor in Universities with effect from the date of issue of this notification by the State Government.

Accordingly, Ph.D. was prescribed as a mandatory qualification for direct recruitment for the post in question with effect from the date of the notification, i.e., 11.11.2022. This notification was duly approved/adopted by the University, as is apparent from the minutes of 95th meeting of the Executive Council held on 25.4.2023, Annexure R-1/3. The impugned advertisement has been issued strictly in accordance there with, and there is no illegality or irregularity about it.

5.1. Secondly, it has been contended that the selection process began with the issuing of impugned advertisement on 19.6.2023, inviting applications for the post. Last date for submissions of the applications was 3.7.2023. Written test of the eligible candidates was held on 16.7.2023,

and the result was declared on the same date. Interviews for the post were conducted on 11/12.8.2023. The UGC notification dated 30.6.2023, relied upon by the petitioners, prescribing only NET as the minimum criteria for direct recruitment was, in fact, published in the Gazette of India-Extraordinary only on 4.7.2023. It came into effect from that date; whereas, closing date for applying for the post in question was 3.7.2023. Accordingly, the notification cannot have any application to the selection process in question which is already over, nor can the petitioners claim that the impugned advertisement should have been issued or amended in terms of the UGC notification dated 30.6.2023, since it was published after the closing date for submission of applications.

6. Heard.

7. The law regarding binding nature of the UGC Regulations has been settled by the Supreme Court in *Kalyani Mathivanan v. K.V. Jeyaraj and others*, 2015 (6) SCC 363, 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. Accordingly, the UGC Regulations, 2018 are directory for the respondent/State Government which is empowered to adopt the same with modifications, without lowering the minimum bench-mark of qualifications prescribed therein.

8. In the instant case, the State Government notification, dated 11.11.2022, is on record whereby the UGC Regulations, 2018 have been notified with modifications, and Ph.D. has been prescribed as a mandatory qualification for direct recruitment to the post of Assistant Professor in State universities and colleges. This has not lowered the bench-mark/minimum qualification for the post prescribed by the UGC, i.e., NET/SET qualification. The University has also duly adopted the said notification vide its Executive Council resolution dated 25.4.2023. Therefore, even if the UGC did not prescribe Ph.D. as an essential qualification, as is apparent from the Sub-regulation 3.10 notified on

18.7.2018 and modified vide subsequent notifications dated 11.10.2021 and 30.6.2023, the State Government was within its rights to prescribe such a qualification, and the same stood adopted by the University as well. In this undisputed factual background, there is no basis for the petitioners to rely upon Sub-regulation 3.10 as notified by the UGC prescribing only NET as an essential qualification for the post of Assistant Professor in universities and seek quashing of the impugned advertisement on that basis. The State Government and the University were entitled to notify a higher qualification/Ph.D as mandatory requirement, which was done vide notification dated 11.11.2022 and Executive Council resolution dated 25.4.2023, both are not under challenge.

9. Additionally, challenge to the advertisement on the basis of substituted Sub-regulation 3.10 is not sustainable since it was notified after the closing date for submission of applications, i.e., 3.7.2023. No doubt, the notification stipulates that it shall come into force with effect from 1.7.2023, nonetheless it is also a matter of record that it was published in the Gazette of India only on 4.7.2023, and could not have been given effect to by the government or the university prior thereto. Further, the selection process is to be carried out on the basis of qualification and criteria based upon which the impugned advertisement was issued. And eligibility of candidates is also required to be determined as on the last date for submission of application forms notified therein. Accordingly, no benefit in terms of the UGC notification, dated 30.6.2023, could have been extended to the petitioners, nor can the advertisement be termed illegal or arbitrary on that basis.

10. In view of the reasons recorded herein above, there is no merit in all these petitions, and the same, accordingly, stand dismissed.
11. Pending miscellaneous application(s), if any, stands disposed of accordingly.
12. Photocopy of this order be placed on the connected case files.

(TRIBHUVAN DAHIYA)
JUDGE

6.2.2024
Ashwani

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No