

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS

FMA 439 of 2021
CAN 1 of 2022

Suprakash Pramanik
Vs.
State of West Bengal &Ors.

Appearance:

For the Appellant	: Mr. Subir Sanyal, Adv. Mr. Sagnik Roy Chowdhury, Adv. Mr. Trijit Mitra, Adv.
For the State	: Mr. Asish Kumar Guha, Adv. Mr. Benazir Ahmed, Adv. Ms. Srijani Mukherjee, Adv.
For the UGC	: Mr. Anil Kumar Gupta, Adv.
For the University	: Mr. Pourush Bandyopadhyay, Adv. Mr. Kausik De, Adv. Mr. Raghav Munshi, Adv. Ms. Mohini Majumder, Adv.
For the College Authority	: Mr. Md. Manwar Ali, Adv. Ms. Bratati Dutta, Adv.
Judgment On	: 27.02.2025

Harish Tandon, J.:

Pursuant to the advertisement published by the Bankura Christian College in the year 2012 to fill up the various posts including 2 posts reserved for Librarian on permanent basis, the petitioner applied for such post and was selected by the Selection Committee constituted as per the Rules of the said college. The petitioner was served with the Letter of Appointment dated 16.11.2015 to join the post of a Librarian on or before 30th November, 2015 and to remain on probation for a period of one year from the date of joining subject to the confirmation and/or approval by the Competent Authority. Admittedly, the writ petitioner/appellant joined the said post on 23rd November, 2015 and completed one year by rendering services. Undisputedly, the services rendered by the writ petitioner/appellant was found satisfactory by the college and the letter was communicated to the Competent Authority for granting approval of such services which was denied by the Director of Public Instruction, Education Directorate, Government of West Bengal, Kolkata as the writ petitioner/appellant did not qualify for the National Eligibility Test (NET) which is mandatory under the UGC norms and guidelines for the candidate having M.Phil Degree in Library Science. By causing such letter and being an admitted fact that the writ petitioner/appellant did not qualify NET, the College Authority requested the writ petitioner/appellant to resign from the said post on or before 22nd November, 2016. The petitioner challenged the said letter in the writ petition being WP 28804 (W) of 2016 primarily on the ground that the regulations and the guidelines/notification issued by the UGC from time to time exempt the M.Phil Degree holder in qualifying the

NET and, therefore, the stand of the Director of Public Instruction, Government of West Bengal is *per se* illegal. The reliance was placed upon several notifications spanning over the period from 2006-2016 issued by the University Grants Commission in support of the stand that the award of a degree to the candidate registered for M.Phil/PhD programme prior to July 11, 2009 shall be governed by the Provisions of the then existing bye-laws/regulations of the institutions awarding the degree and shall be exempted from the requirement of NET/SLET/SET for recruitment and appointment to the posts in the universities/colleges/institutions.

The Director of Public Instruction was arraigned as Respondent no. 2 in the writ petition as well as in the instant appeal and in Affidavit-in-Opposition filed before the Single Bench took a stand that the Gazette notification dated July 11, 2016 as relied upon by the writ petitioner/appellant is not applicable as the selection process was initiated in the year 2012 much prior to the issuance thereof. It is further averred that since the decision of the University Grants Commission taken in the 472nd Meeting was never circulated and/or communicated to the college and, therefore, the selection procedure cannot be guided by the minutes of the said meeting. The college relied upon the Gazette notification of the UGC dated 30th June, 2010 which supersedes the earlier regulation of UGC-2000 wherein no exemption for M.Phil degree holder was extended. Interestingly, a plea was taken that the M.Phil degree awarded by the Madurai Kamaraj University is doubtful as the website of the Distant Education Council does not reveal that the M.Phil courses was duly approved in favour of the Madurai Kamaraj University.

In response to the aforesaid stand, the writ petitioner/appellant relies upon the downloaded information from the Website of the Distance Education Council indicating that the Madurai Kamaraj University is a State University and is recognised to impart education and award M.Phil Degree in various fields including the Library Science. The Single Bench dismissed writ petition on the score that the communication dated September 22, 2004 by the Joint Secretary UGC granting exemption is one-time exercise. It is further held that such stand of the UGC cannot override the regulation issued by the UGC and, therefore, the requirement to have the NET qualification for M.Phil Degree holder is mandatory. Since the writ petitioner/appellant does not have obtained the NET qualified certificate at the relevant point of time when the recruitment process was initiated and the appointment was made, the stand of the authority in not approving the appointment cannot be faulted with. The Counsel for the appellant vociferously submits that the requirement for National Eligibility Test is the essential condition for appointment to the post of a Librarian in any university/college as prescribed under UGC (Minimum Qualification for Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) Regulations but exempted the candidates who obtained M.Phil Degree in a relevant subject by 31st December, 1993 from taking the NET. It is further submitted that subsequent amendments were brought from time to time which clearly provides an exemption from NET and, therefore, the existing law as it stands on the date of initiation of the recruitment process does not prescribe for NET qualified certificate for a candidate who obtained M.Phil Degree prior thereto.

Before we proceed further, it would be relevant to consider the Regulation of 2000 which was subsequently amended from time to time and replaced by any regulation by the UGC. As indicated above, UGC Regulation of 2000 on its promulgation brings the necessity of passing the NET as an essential condition for appointment for the universities/colleges and an exemption was given to a candidate who acquired M.Phil and/or PhD degree by 31st December, 1993. The first amendment seen in the month of July, 2002 exposit that the candidate who acquired M.Phil Degree by 31st March, 1993 or had submitted their PhD thesis by 31st December, 2002 shall also be exempted from taking the NET. The said regulation sees further amendment in the year 2006 and 2009, the 2009 Amendment incorporated the minimum stipulation for appointment of the Librarian to qualify in NET but the candidates who acquired the PhD degree in compliance with the 2009 Regulation i.e. UGC (Minimum Standards and Procedure for award of M.Phil/PhD Degree) Regulation, 2009, were exempted from qualifying in the NET. A further amendment was made on 30th June, 2018 in the said regulation wherein the NET/SLET/SET remained as a minimum eligibility condition for recruitment and appointment of Assistant Professor/Librarian in the universities/colleges/institution with the proviso that the candidates who are or have been awarded as M.Phil Degree in accordance with the aforesaid Regulation, 2009 shall be exempted from requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment to the post of an Assistant Professor or qualification to the post in universities/colleges/institution. There appears to be a further amendment in 2016 which was taken into consideration by the Single

Bench but was held to operate prospectively. It clearly provides that the award or degree to the candidates registered for M.Phil/PhD degree prior to July 11, 2009 shall be governed by the provision of the then existing ordinance/bye-laws/regulations of the institutions awarding the degree and the PhD candidate shall be exempted from the requirement of NET/SLET/SET for recruitment and appointment of Assistant Professor or qualified post in the Universities/colleges/institutions.

Such being the development of the applicable Rules/regulations framed by the UGC the point which is required before is whether the cumulative effect of such amendments makes the passing of the NET by the candidate having an M.Phil Degree obtained prior to 2009. Admittedly, the appellant herein persued the M.Phil Degree with Madurai Kamaraj University in the year 2006-07 and claims exemption from passing the NET examination which is a minimum essential condition for recruitment and appointment to the post of an Assistant Professor or qualification post in the universities/colleges/institutions. In an identical situation, the Three-Judge Bench of the Supreme Court was considering whether the candidate who obtained the M.Phil/PhD degree prior to the amendment having brought from time to time would still be disqualified as having not qualified NET Examination in ***University of Kerala & Ors. vs. Merlin J.N. & Anr. reported in (2022) 9 SCC 389***. The Apex Court after noticing the development having brought by way of several amendments and/or promulgation of the regulations by the UGC held that such exemption shall have the retrospective effect and negated the contention of the arguing Counsels that it must be prospective in nature. It is held that by virtue of

such regulations, the classification between the candidates who passed the M.phil/PhD examination prior to 2009 and the candidate who acquired such degree after 2009 is not permissible in the following:

“26. The logic pervading all the versions of the UGCR from 1993-2018 (as discussed above) to exempt MPhil/PhD holders from qualifying in the NET was perhaps premised on the understanding that such a doctorate in one’s chosen subject, involving years of study, would render a greater understanding of the subject compared to most other candidates taking the NET who have only obtained a Master’s degree. Such qualification (MPhil or PhD) is undoubtedly awarded for a proven proficiency of the candidate in the subject or discipline concerned. This is apparent from the minimum qualification requirements of different positions as well, for e.g. while a Master’s degree is sufficient for application to the post of Assistant Professor, a PhD is required for applying to the post of Associate Professor onwards. To interpret the 2018 UGCR prospectively would imply that a pre-2009 PhD holder’s appointment would be rendered illegal, and after having taught for several years, he/she would lose his/her seniority and all accrued benefits and would now have to take the NET in order to teach-which is clearly unwarranted. This Court therefore, holds that Dr. Jayakumar’s appointment is protected by the 2016 UGCR, which is applicable retrospectively.”

We would have no difficulty in relying on the decision of the Three-Judge Bench of the Supreme Court in *Merlin (supra)* as a judgment of the Trial Court runs counter to it but the difficulty which this Bench faced in deciding the other important point originated on addition of Madurai Kamaraj University who was not a party to the writ petition in the instant appeal by the predecessor. The necessity was considered by our predecessor

on a point raised by the University Grants Commission that the M.Phil Degree obtained by the writ petitioner/appellant from the study centre set up by the Madurai Kamaraj University at Kolkata is not proper. The aforesaid point was taken upon drawing an inspiration from the Constitution Bench decision of the Apex Court in case of ***Professor Yash Pal & Anr. Vs. State of Chattisgarh & Ors. reported in (2005) 5 SCC 420***. According to the UGC which is echoed by the Council representing it that the Constitution Bench of the Apex Court in the above-noted decision deprecated the setting up of the study centres beyond the territorial jurisdiction of the universities and, therefore, the degree which is obtained by the writ petitioner/appellant is invalid.

At the very outset, we must record that UGC was not impleaded as a party in the writ petition but was impleaded in the instant appeal by the earlier Bench and, therefore, the Writ Court did not have any occasion to go into the aforesaid aspect. In our opinion, it raises an important point which strikes at the root of the entitlement of the writ petitioner/appellant for the reason that if the M.Phil Degree obtained by the writ petitioner is found to be invalid, the question of exemption does not arise nor would be regarded as a point involved in the litigation. Furthermore, none of the parties to the writ petition took such plea but the approval to the appointment was denied by the Director of Public Instruction on the ground that the petitioner is not eligible having not qualified NET Examination. All the Counsels appearing for the parties tried to distinguish the judgment of the Constitution Bench of the Apex Court in ***Professor Yash Pal (supra)*** by relying different passages and the facts emanating therefrom. According to the writ

petitioner/appellant, the **Yash Pal** Judgment was relatable to an issue where on promulgating “Adhiniyam” by the State of Madhya Pradesh deemed universities were recognised and the study centres beyond the territorial operation of the said “Adhiniyam” was a seminal point decided by the said Constitution Bench. According to the learned Advocate for the writ petitioner/appellant the aforesaid judgment does not have any application in relation to a State Universities in establishing the said centres with other compliment of the faculty and infrastructures upon getting an approval under the Mahatma Gandhi Open University Act and by the Distance Education Council. On the other hand, the UGC relied upon the said Judgment by contending that it is manifest therefrom that the said centres cannot be set up beyond the territorial limits of the university irrespective of the fact whether it is a State or Deem university.

Such plea is a mixed question of fact and law as it depends upon the pleadings to be filed, several documents are to be taken into account. Such plea is raised for the first time before the Appellate Court more particularly, after the university is pleaded as party respondent. We, therefore, set aside the order impugned herein and remand the matter to the Single Bench to decide the said point after affording an opportunity of hearing to the respective parties. In pursuit of the same, the parties are at liberty to amend their respective pleadings, if necessary, disclosing all the relevant documents touching upon the said issue. We expect that the Single Bench would give preference to the instant matter and make endeavours to decide the same at the earliest.

The appeal and applications are disposed of.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with the requisites formalities.

(Harish Tandon, J.)

I agree.

(Prasenjit Biswas, J.)