

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Case No LPA(SW) 57/ 2008

Date of decision 25-11-2008.

Shabana Ali

Vs

State and others

Coram:

HON'BLE MR. JUSTICE Y.P.NARGOTRA
HON'BLE MR. JUSTICE VINOD KUMAR GUPTA:

Appearing counsel :

For Petitioner(s)/appellants : Mr. Z A Moughal, Advocate

For the respondents. Mr. K S Johal, Adv for respondent No.4
Mrs. Seema Shekher, AAG for respondents
No.1&2
Mr. F A Natnoo, Adv for respondent No.3.

i) Whether to be reported in Press/Journal/Media:	YES/NO
ii) Whether to be reported in Digest/Journal:	YES/No

PER NARGOTRA, J

This Letters Patent Appeal arises out of the judgment dated 9-4-2008 passed in SWP No. 1783 of 2006 whereby the selection and appointment of the appellant as Lecturer in Business Administration made pursuant to selection process initiated by the Public Service Commission vide advertisement Notices No. 17-PSC of 2003 dated 31-12-2003 and No. 03-PSC of 2004 dated 17-2-2004, has been quashed by holding her ineligible for selection and appointment

on account of her not possessing the qualification of National Eligibility Test (NET) or State Level Eligibility Test (SLET).

The advertisement notice dated 17-2-2004 prescribed the following eligibility qualification for the post:-

iv) For Lecturers in Business Administration:

Masters Degree in Business Administration with at least 55% marks or its Equivalent grade of the seven point scale from an Indian University or an Equivalent Course/ Degree from an Indian/ Foreign University.

v) Only those candidates shall be eligible for the post of Lecturers as have also qualified NET/SLET conducted by the UGSC and CSIR/ Universities of J&K State with accreditation from UDC.

viii) For Lecturers in Computer application and business administration requirement of passing of NET/SLET shall be relaxable in case of candidates with post graduate degrees in Computer application and business administration.”

It is not in dispute that recruitment to the post of Lecturers is governed by the Jammu and Kashmir Education (Gazetted) College Service Recruitment Rules 2004 (hereinafter referred to as the Recruitment Rules) which came to be framed by issuance of Higher Education Department Notification SRO 115 dated 16th April, 2004. These rules in terms of Rule 1 are retrospective in nature and are to be deemed to have come in force with effect from 27-7-1998.

Rule 5 deals with the qualifications and Method of Recruitment.

It provides as follows:-

७. Qualification and Method of Recruitment:

- (1) No person shall be eligible for appointment or promotion to any post in any class, category or grade in the service unless he possesses the qualifications as laid down in the Schedule-II and fulfills other requirements of recruitment as provided in the rules and orders for the time being in force.
- (2) Appointment to the service shall be made on the recommendations of the Public Service Commission.
 - (a) by direct recruitment;
 - (b) by selection; and
 - (c) Partly by direct recruitment and partly by selection in the ratio and in the manner mentioned against each post in Schedule-II appended to these rules. ॐ

Minimum qualification for a person to be eligible for recruitment provided by Schedule-II appended to the rules is as follows:-

७iv) Vocational Subjects & Professional Courses.	Master ७ degree in professional/ vocational courses with at least 55% marks or its equivalent Grade of ७७ in the seven point scale from an Indian University or an equivalent course/ degree from an Indian/ Foreign University. Provided that for professional courses and vocational subjects, Master ७ degree like MCA (three year Course) MBA or Master ७ degree in more than one disciplines as may be required, shall be determined by Higher Education Department from time to time; and that ७७ Level Course of DOEACC Society, Govt of India shall be treated as equivalent to M C A (three year Course) which shall be the normal post graduate degree required for the post of a Lecturer in computer sciences.
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Provided further that the requirement of passing of NET/SLET shall be relaxable in the case of candidates with post graduate degrees in vocational subject Computer Application and Management for a period of five years.

And Note (8) appended to the Rules provides:-

(8)

Only such candidates for direct recruitment and In-service Category posts shall be eligible for appointment to the posts of Lecturers/Librarians PTI as have also qualified National Eligibility Test (NET) or State Level Eligibility Test (SLET) conducted by the U.G.C and CSIR/ Universities of J&K State with accreditation from U.G.C.

Provided, however, the candidates who have completed M. Phil degree by 31st December, 1993 or have submitted Ph.D thesis to any University in the concerned subject on or before 31st December, 2002 are exempted from qualifying NET/SLET. In case such candidates fail to obtain Ph.D degree, they shall have to pass NET/SLET and the clearance of their probationary periods (if already appointed) shall be subject to their passing of NET/SLET.

Rule 9 of the Recruitment Rules makes the provision for empowering the Government to relax any provision of the rules with respect to any Class, category or persons or posts. It reads:-

၇၉. Power to Relax

Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class, category of person or posts.

Provided that while exercising discretion, the Government would keep the following principle in view:

- (a) that the discretion is exercised bonafide;
- (b) that such an exercise specified subject test;
- (c) that it would satisfy any responsible man in place of the authority competent to relax;
- (d) that the power should be vested with the Chief Minister only; and
- (e) that the Public Service Commission concurs to the relaxable in respect of any posts.၇

Admittedly the appellant has not qualified NET/SLET whereas the respondent No.4, who was the writ petitioner possesses the said qualification and rather he was the only candidate who was possessing the said qualification. The merit obtained by the appellant being found higher in the selection process than that obtained by respondent No.4, the appellant was selected for appointment by the Commission and consequently has been appointed, whereas the respondent No.4 on remaining un-successful filed the writ petition for quashing the selection and appointment of the appellant on the ground of his ineligibility in view of his not having the requisite qualification of NET/SLET.

The learned Writ Court has quashed the selection and appointment of the appellant on finding her ineligible by holding that though the passing of the test (NET/SLET) was not necessary for being eligible being relaxable for a period of five years in terms of the rule, but that period of five years is to be deemed to have already

expired computed from w.e.f. 27th July, 1998 the date on which the recruitment rules are to be deemed to have come into force and even otherwise the requirement could only be relaxed by the competent Authority under rule 9 which has not relaxed the same, therefore, requirement of passing NET/SLET would be necessary for eligibility of a candidate and as such, the selection and appointment of the appellant who does not have such qualification is bad in law.

We have heard the learned counsel for the parties and perused the record of the case.

Recruitment to the post can be made 60% by direct recruitment and 40% by selection from amongst Lecturers of Higher Secondary Schools/ Head Masters/ ZEOs/ Additional ZEOs having teaching experience of five years at Higher Secondary Level in the subject concerned on the basis of open competition.

For being eligible for appointment/ promotion possession of qualification prescribed by Schedule-II and Note (8) by a candidate is necessary in terms of Rule 5 which means that passing of NET/SLET would be a necessary condition.

However, as per the 2nd proviso appended to clause (iv) of IInd Schedule the requirement of passing of NET/ SLET shall be relaxable in the case of candidates with post graduate degrees in Vocational Subject Computer Applications and Management for a period of five years.

Contention of Mr. Johal, learned counsel for the respondent-Writ petitioner is that the period of five years for the purpose of

relaxation has to run from 27th July, 1998 i.e. the date from which the Recruitment Rules are to be deemed to have come in force and as such there could be no question of relaxation of the requirement of passing NET/SLET in the selection process initiated in the year 2004, the said period of five years having already expired. According to him selection and appointment of the appellant by applying the rule of relaxation therefore, is de-hors the rules and as such, is only a back door entry so he should leave by the same door. In support he relies upon cases (i) Suraj Parkash Gupta and others Vs State of J&K and others (2000) 7 SCC 561; (ii) A. Umarani Vs Registrar, Cooperative Societies & Ors (2004) 7 SCC 112; and Punjab State Warehousing Corp, Chandigarh Vs Manmohan Singh and another, (2007) 9 SCC 337.

His above contention though has found favour with the learned Writ Court also but we are not in agreement with Mr. Johal.

Note (8) of the Recruitment Rules notified on 16-4-2004 makes passing of NET/SLET a necessary condition of eligibility for a candidate applying for the post of Lecturer but second proviso appended to clause (iv) of IInd Schedule makes the said requirement relaxable for a period of ~~to~~ five years ~~ya~~ From which date the period of five years is to be reckoned the rule is silent. If such period of five years is reckoned from the date of notification of the rules then the requirement of passing NET/SLET would be relaxable for future recruitments and in case it is reckoned from the date the recruitment rules in terms of Rule 1 (2) are to be deemed to have come in force

then it can apply only to the past recruitments made between 27-7-1998 to 28-7-2003, meaning thereby that in case of such lecturers the condition of passing NET/SLET would be relaxable but it shall not so in respect to the Lecturers appointed after 28-7-2003 to the date of Notification of the rules i.e. 16-4-2004. What would happen to those Lecturers who have come to be appointed/ promoted after 28-7-2003 is not contemplated by the rules. The absence of a provision for dealing with the cases of Lecturers appointed after 28-7-2003 in the Recruitment Rules and absence of Specification of the date in the relevant rule as to from which date the period of five years is to be reckoned it appears the rule making authority intended to allow relaxation of the requirement of Note (8) in respect of future recruitments alone and not for the past recruitments.

Now since requirement of passing NET/SLET has been found to be relaxable for future recruitments the next question would be as to whether such relaxation shall be automatic or the same would be grantable in terms of Rule-9 by the competent authority.

Learned writ Court has held that it would be relaxable only under Rule 9 by the Competent Authority.

Mr. Johal contends that it could only be granted by the competent authority in terms of Rule 9 and selection agency on its own could not have legally allowed such relaxation in favour of the candidates.

We are not in agreement with Mr. Johal. Rule 9 contemplates relaxation of the requirement of any of the ~~rules~~ in favour of any

class or category of persons or posts. Rule 9 would have no application in a case where relaxation of any particular rule is not involved. As present rules in 2nd proviso to clause (iv) of IInd Schedule itself provide that passing of NET/SLET in case of candidates with post graduate degrees in Computer Applications and Management shall be relaxable, the relaxation in terms of Rule 9 would not be necessary. Rule 9 cannot have any application to the relaxation contemplated by 2nd Proviso to clause (iv) of IInd Schedule for the same has been envisaged by the rules in itself. This being so the selection agency would have to deem the requirement of passing of NET/SLET relaxed in case of the candidates who have post graduate degrees in Computer Applications and Management, the relaxation being automatic in view of rule position.

We, therefore, find no force in the contention of Mr. Johal. The cases relied upon by him are distinguishable and in the facts and circumstances involved the same cannot have any application.

For the reasons stated above, We allow the appeal and set aside the judgment impugned. Consequently the writ petition of respondent No.4 shall stand dismissed. There shall be no order as to costs.

(VINOD KUMAR GUPTA) (Y.P. NARGOTRA)
JUDGE JUDGE

JAMMU
November 25, 2008.
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