

HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

HON. SHRI JUSTICE SUJOY PAUL.

Writ petition No. 41/2013

Susheel Kumar & Others

Versus

Union of India and another

Writ petition No. 500/2013

Ms.Shipra Agrawal & Others

Versus

Union of India & another

Writ Petition No.7864/2012

N.Rohen Metie & Others

Versus

Union of India & another

Shri A.K.Shrivastava, Advocate for the petitioners in W.P.No.41/13 and W.P.No.500/13.

Shri Kanoongo, Advocate for the respondents.

Shri Sanjay Sharma, Advocate for the petitioners in W.P.No.7864/12.

Shri Kanoongo, Advocate for the respondents.

ORDER

(30/04/2013)

As common question of facts and law are involved in these petitions, with the consent of parties, matters are analogously heard and decided by this common order.

Facts are taken from W.P.No. 41/2013.

2. The petitioners preferred applications for a test conducted by the respondent No.2 (U.G.C.). The test is known as National Eligibility Test (NET). The NET examination was scheduled to be held in the month of June, 2012. The scheme was published by

the UGC and as per the scheme, the candidates of general category (UR) had to secure 40% marks in paper I & II and 50% marks in paper III. For other category candidates, it was 35% in paper I & II and 40% in paper III. The scheme which shows the formula aforesaid is Annexure P-2. Petitioner No.1 belongs to the OBC category whereas other petitioners from the UR category. All the petitioners secured the minimum marks for consideration of final preparation of result. A note was appended by respondent No.2 in Annexure P-3 for final qualifying criteria for Junior Research Fellowship and Eligibility for Lectureship which shall be decided by the UGC before declaration of the result.

3. The result of NET was declared on 18.9.2012 on Internet and copy of the mark sheets so published on the NET are Annexure P-5. On the basis of these mark sheets, it is the case of the petitioners that they have secured minimum marks as per the criteria fixed by the respondents at the time of declaration of the scheme and date of examination.

4. The petitioners submit that till 18.9.2012 the criteria for preparation of final list was not published but suddenly on 20.9.2012 the respondents published a press release which shows that the minimum qualifying criteria fixed by them was sought to be changed and modified. The learned counsel for the petitioners submit that this is totally improper and against the same action a batch of petitions are filed before various High Courts and Kerala High Court and other High Courts have disapproved the said action of the UGC.

5. The learned counsel for the petitioners relied on a judgment of the High Court delivered in a batch of petitions decided by the High Court on 17.12.2012 by a common order passed by Justice T.R. Ramachandran Nair, which includes W.P.(C) No.2218/12 and other matters. In the said judgment the High Court opined as under:-

“Herein, the Regulations do not confer any

such power to fix a higher criteria and eligibility at the final stage of the examination itself. Therefore, the said principles may not help to advance the contentions of the learned Standing Counsel. One of the contentions raised by Shri Krishnamoorthy is that many of the candidates in different parts of the country have fairly accepted the condition and the petitioners in these writ petitions alone have approached for an adjudication by filing writ petitions. But that cannot be a yardstick in assessing the legality of the act when a direct challenge is made on the basis of the settled legal principles.

53. Therefore, the fixing of the higher aggregate marks as 65%, 60% and 55% for there categories, that too just before the announcement of the result, cannot be justified as the same is not supportable in law in the light of the principles already discussed. What was absent in the regulation cannot be introduced at the fag end of the examination, just before the announcement of the result, whatever may be the justification for the same.

54. In the light of the above, the writ petitions are allowed. The proceedings fixing the category-wise qualifying criteria for Lectureship eligibility impugned in the writ petitions, is quashed. It is declared that all the petitioners who have obtained the separate minimum prescribed in the notification for papers I, II and III, have cleared the NET and appropriate follow up actions will be taken to issue certificates to them within one month from the date of receipt of a certified copy of this judgment. No costs."

6. Learned counsel for the petitioners further submits that during the pendency of this petition the same view is taken by Kolkatta High Court and J&K High Court.

7. Shri Kanoongo, learned counsel for the respondents vehemently opposed the relief claimed by the petitioners and submits that the UGC intends to approach the Apex Court against the orders passed by the High Courts.

8. I have heard the learned counsel for the parties and perused the record.

9. I am in complete agreement with the reasoning given by Nair (J) reproduced above. The said findings are in accord with

the legal position. The other High Courts, as reported, have followed the same view. Although, the learned counsel for the other side opposed the relief claimed by the petitioners, he was unable to establish as to why the view already taken by other High Courts should not be followed. No arguments could be advanced by the other side to show that the view taken by different High Courts is erroneous or improper. At the cost of repetition, I am in agreement with the view expressed by the Kerala High Court aforesaid. I do not propose to repeat the same findings in the present judgments in extenso.

10. Accordingly, following the view aforesaid, the petitions are allowed. The action of the respondents in changing the eligibility criteria of UGC NET Examination, 2012 is disapproved and quashed. It is declared that all the petitioners who have obtained the separate minimum prescribed marks for papers I, II & III have cleared the NET and appropriate follow up actions will be taken to issue certificates to them within one month from the date of receipt of certified copy of this order. No cost.

(Sujoy Paul)
Judge
/04/2013