

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (C) No. 920 of 2017

Shri Sapam Jaswonta Singh, aged about 42 years, S/o (L) S. Basanta Singh of Sagolband Tera Sayang Road near Kebol High School, P.O. Imphal and P.S. Lamphel, Imphal West District, Manipur.

... Petitioner

-Versus-

1. The State of Manipur represented by the Commissioner (Hr. & Technical Edn.), Gvovernment of Manipur.
2. The Manipur University through its Registrar, Manipur University, Canchipur, Imphal West District, Manipur.
3. The Vice Chancellor, Manipur University, Canchipur, Imphal West District, Manipur.
4. The Manipur Public Service Commission (MPSC) through its Secretary.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the Petitioner :: Shri M. Devananda, Advocate.

For the Respondents :: Shri B.P. Sahu, Sr. Advocate & Shri I. Denning, Advocate.

Date of Hearing :: **14-09-2018**

Date of Judgment & Order :: **26-09-2018**

JUDGMENT & ORDER

[1] Shri M. Devananda, learned Advocate appearing for the petitioner; Shri B.P. Sahu, learned Senior Advocate appearing for the Manipur University; Shri I. Denning, learned Advocate appearing for the

MPSC and Shri Y. Ashang, learned Government Advocate appearing for the State respondents.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of Certiorari or any other appropriate writ to quash and set aside the Notification dated 21-01-2016 in respect of the petitioner and the letter dated 04-11-2017 issued by the MPSC and also to issue a writ of mandamus or any other appropriate writ to direct the Manipur University to issue a Ph.D. Compliance Certificate in favour of the petitioner.

[3.1] Facts and circumstances as narrated in the writ petition, are that the petitioner is a physically handicapped person suffering from “Chorio Retinal Dystrophy” on both eyes with a vision of PL on both eyes having 100% degree/ severity of disability for which the Social Welfare Department, Government of Manipur has issued a Certificate dated 22-04-2002.

[3.2] The petitioner applied for Ph.D. programme and was allowed a provisional registration for Ph.D. programme in the year 2005. In the year 2012, the petitioner was awarded a degree of Doctor of Philosophy in the subject of History for which a certificate dated 03-01-2013 was issued by the Manipur University.

[3.3] A Notification dated 15-11-2014 came to be issued by the Manipur Public Service Commission (hereinafter referred to as the “MPSC”) inviting applications from amongst the eligible candidates for

appointment to the post of Assistant Professor in 27 (twenty seven) disciplines including the subject of History. The petitioner being eligible applied for appointment to the post of Assistant Professor in History. In the screening test held on 27-10-2015, the petitioner was qualified for personality test, the result of which was declared on 06-11-2017 and in the meanwhile, the petitioner submitted an application dated 27-01-2016 praying for his exemption from the requirement of being NET/SLET/SET holder. To his utter shock and surprise, the MPSC issued a Notification dated 21-01-2016 whereby 14 candidates including the petitioner, were invited to submit certain documents failing which their candidature would be rejected. In order to enable him to submit the said documents, the petitioner submitted an application dated 24-01-2016 to the Registrar, Manipur University for issuing a Ph.D. Compliance Certificate. On the basis of an endorsement given by the Registrar, Manipur University, on his application, the petitioner approached the MPSC on 27-01-2016 for grant of exemption and in reply thereto, the MPSC vide its letter dated 04-11-2017 informed that it had no authority to exempt him from the requirement of submitting a compliance certificate in view of the UGC Regulations, 2009. Being aggrieved by the letter dated 04-11-2017 of the MPSC, the instant writ petition has been filed by the petitioner.

[4] An affidavit-in-opposition has been filed on behalf of the MPSC wherein it has been stated that the petitioner does not have locus standi to claim for recommending him as the Notification dated 21-01-2016 has already acted upon by the MPSC. The minimum qualifications as required

for appointment to the post of Assistant Professor, have been specially notified in the advertisement and in terms thereof, the petitioner was required to prove that he did his Ph.D. as per the UGC Regulations, 2009 and accordingly, the petitioner was informed to submit a Ph.D Compliance Certificate from the concerned University, which he failed to do so, which is mandatory. While conducting the recruitment process, the MPSC has followed the policy of reservation as proposed by the State Government. The stand of the Manipur University as reflected in its affidavit-in-opposition is that the case of Ms. Promila Oinam is different from that of the petitioner because at the time of submission of her application, Ms. Promila Oinam ticked 'Yes' in all the columns provided in para 9 of the application form while the petitioner failed to do that. The petitioner does not fulfil the essential qualifications as provided in the advertisement and moreover, the exemption clause is applicable to the candidates who are or have been awarded Ph.D. degree in accordance with the UGC Regulations, 2009.

[5] It has been vehemently submitted by Shri M. Devananda, the learned counsel appearing for the petitioner that there was no need of demanding a Ph.D. Compliance Certificate from the petitioner as he had applied for Ph.D. programme in the year 2005 and was awarded degree of Doctor of Philosophy in History in the year 2012. The provisions of UGC Regulations, 2009 would not apply to the case of the petitioner as he became eligible in terms of the UGC Regulations, 2006. The issue involved herein has been decided by the Hon'ble Gauhati High Court in

Lalrokima Chenkual (Dr.) & ors. Vs. Mizoram University & ors., 2014

(4) **GLT 1024** holding that the petitioners having obtained their Ph.D degree or having their registration for Ph.D programme before 11-07-2009, they cannot be made subject to the rigour of the 2009 Regulation, which is prospective. On the other hand, Shri I. danning, the learned counsel appearing for the MPSC has submitted that there is nothing wrong in the advertisement notifying the essential qualifications, more particularly, the condition that candidates who are or have been awarded a Ph.D. degree in accordance with the UGC (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulation, 2009 (in short “***the UGC Regulations, 2009***”) shall be exempted from the requirement of the eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor. Only the candidates who fulfil the minimum eligibility conditions, can be considered for appointment to the post of Assistant Professor and the minimum eligibility conditions have been prescribed in terms of the UGC Regulations, 2009. It has further been submitted that the decision rendered by the Hon’ble Gauhati High Court in Lalrokima Chankual case cannot be said to be a good law, as the same has been disagreed to by the Hon’ble Calcutta High Court in ***Dr. Gaurav Kumar Vs. Vice Chancellor, FMA No.1585 of 2013 decided on 01-04-2014*** and moreover, a petition for special leave to appeal has been preferred before the Hon’ble Supreme Court against the decision of the Hon’ble Gauhati High Court and after the leave being granted by the Hon’ble Supreme Court, the civil appeal is said to be still pending.

[6] Admittedly, the subject matter in issue relates to the appointment of Assistant professor in Government colleges in respect of various disciplines for which the MPSC issued the advertisement dated 15-11-2014 inviting applications from amongst the eligible candidates and the essential qualifications have been mentioned therein. The controversy centres round the essential qualifications and in particular, essential qualification (ii) which reads as under:

“(ii) NET/SLET/SET shall remain the minimum eligibility condition. However, candidates, who are or have awarded a Ph.D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009 shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor.”

The grievance of the petitioner is with respect to the proviso incorporated therein as regards the exemption from the requirement of the minimum eligibility condition that a candidate must possess a certificate of having passed the NET/SLET/SET examination. The learned counsel appearing for the MPSC is right when he submitted that the essential qualifications are those which have been prescribed in the UGC (Minimum Standards and Procedure For Awards of M.Phil./ Ph.D. Degree) Regulations, 2009. The said regulations have been framed by the UGC in exercise of power conferred upon it under the provisions of UGC Act, 1956. All concerned authorities including the Universities, Institutions, are

bound by these regulations, the relevant portions of which, relating to essential qualifications for appointment of Assistant professor, have been incorporated in the advertisement. The validity and correctness of the advertisement have not been questioned by the candidates including the petitioner.

[7] It is true that the issue similar to the one involved herein, has been decided by some of the High Courts in the country but there are two different and contradictory views-one, the view taken by the Allahabad High Court as well as the Gauhati High Court and two, the view taken by the Calcutta High Court. This court is not bound by any decision rendered by any of the High Courts in the country except a persuasive value. The decision rendered by the Gauhati High Court in ***Lalrokima Chenkual (Dr.) case*** has been relied upon by the learned counsel appearing for the petitioner wherein the petitioners obtained their Ph.D. degree after coming into force of the Regulations, 2009, although they got themselves registered for Ph.D. programme prior to 2009. When they applied for appointment to the post of Assistant professor, they were not considered on the ground that they did not fulfil the minimum qualifications prescribed for it and in other words, their names were excluded from the list of eligible candidates. The action of the Mizoram University was questioned by them by way of a writ petition which was allowed by the learned Single Judge holding that it was in agreement with the views expressed by the Allahabad High Court. What has been held by the Allahabad High Court is that the 2009 Regulations are prospective in nature and therefore, the

persons who are registered or have completed Ph.D. Degree prior to 11-07-2009, the date of coming into force of the 2009 regulations, cannot be declared in-eligible. A contrary view has been taken by the Calcutta High Court and that too, after considering the views of both the Allahabad High Court and the Gauhati High Court. Facts of the said **Dr. Gaurav Kumar case** are almost similar and therefore, the details thereof are referred to herein. The bone of contention as indicated in the writ petition, was that the petitioners therein who were awarded Ph.D. Degree in terms of Regulation, 2006, were discriminated unreasonably as they were not exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment of Assistant professor or equivalent though such exemption was granted to the candidates who were or have been awarded Ph.D. Degree as the UGC Regulations, 2009. The learned Single Judge found no merit and dismissed the writ petition and the appeal preferred against the judgment and order of the learned Single Judge was dismissed by the Division Bench. After considering the reasons which prompted the UGC to frame the Regulations, 2009 and the objects sought to be achieved thereby, the Hon'ble Calcutta High Court held that the Regulations, 2009 was framed for maintenance of uniform standard in higher education in the college affiliated to the universities throughout the country. The Regulation for awarding Ph.D. Degree had to be framed in 2009 as the concerned authority after taking note of the expert body's opinion, found that Ph.D. Degree awarded by most of the universities were not upto the mark. It has further been held as under:

“.... It is well settled that the employer has exclusive domain over the eligibility criteria to be fixed for the aspiring candidates for recruitment in any particular post. The aspiring candidates have no say on the decision of the employer regarding laying down the eligibility criteria for the aspiring candidates. As such, when the concerned authority fixed the eligibility criteria by framing its regulation for maintenance of uniform standard of teaching in higher educational institutions through out the country and further when the said regulation is applied uniformly through out the country for selecting the eligible candidates for the concerned posts, the petitioners who cannot satisfy the said eligibility criteria for getting such exemption, cannot complain of the discriminatory treatment given to them.”

[8] After having perused carefully the views expressed by some of the High Court, this court is of the view that the view expressed by the Calcutta High Court appears to be the correct one and therefore, this court endorses its view. It may be noted at this juncture that Article 16 of the Constitution of India provides for equal opportunity in matters relating to public employment for which the issuance of advertisement is one of the requirements of fulfilling the constitutional mandate. The decision rendered by the Hon'ble Supreme Court in ***Union Public Service Commission Vs. Girish Jayantilal Vaghela & ors., (2006) 2 SCC 482*** is a clear indication in this regard wherein the Hon'ble Supreme Court held:

“12. Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right

to equality of opportunity and employment in public offices. The words “employment or appointment” cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation, etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution. (See B.S. Minhas v. Indian Statistical Institute.”

The details of the recruitment process including the essential qualifications are to be notified in the advertisement for general public and as has been held by the Calcutta High Court, it is primarily the employer which has to prescribe the essential qualifications in the recruitment rules. In matters relating to appointment of Assistant professor, the essential qualifications have been specifically prescribed in the regulations of the

UGC and in particular, the UGC Regulations, 2009. The universities/ Institutions for which the appointments are to be made, have no choice but to follow the Regulations. In the present case, the essential qualifications prescribed in the UGC Regulations, 2009 have been notified in the advertisement. It may be noted that the petitioner has not challenged the advertisement nor has he challenged the UGC Regulations, 2009. In fact, the constitutional validity of 2009 Regulation came to be challenged before the Hon'ble High Court of Delhi in **All India Researchers' Coordination Committee & ors Vs. Union of India** on the ground that the power to frame regulation under the UGC Act, 1956 is exclusively conferred upon the UGC and the Union of India could not have interfered with the said power. But the validity thereof was upheld by the Hon'ble High Court of Delhi. The wordings of the essential qualifications, as prescribed in the UGC Regulations, 2009, being unambiguous, plain, simple, require no interpretation and without the same being challenged by the petitioner, this court cannot go into the validity and correctness of it and nothing can be read into it. If the petitioner is eligible as per the essential qualifications notified in the advertisement, it is all right and if not, there is no reason as to why this court ought to interfere with the recruitment process. Moreover, as has been stated hereinabove that a Civil Appeal preferred against the decision of the Hon'ble Gauhati High Court is pending before the Hon'ble Supreme Court for consideration and so far as the decision of the Hon'ble Calcutta High Court is concerned, there is no material on record to show that any appeal has been preferred against it.

In any case, whatever the decision rendered by the Hon'ble Supreme Court in the said appeal pending before it, will be the law of the land which will be binding on all concerned.

[9] In view of the above and for the reasons stated hereinabove, the instant writ petition fails and is, accordingly, dismissed with no order as to costs.

JUDGE

Devananda