

The State Of Madhya Pradesh And Ors. vs Manoj Sharma And Ors. on 25 January, 2018

Equivalent citations: AIR 2018 SUPREME COURT 1148, AIR 2018 SC (CIV) 1609, (2018) 4 MPLJ 325, (2018) 6 MAH LJ 31, (2018) 2 SCT 86, (2018) 2 SERVLR 187, (2018) 1 SCALE 465, (2018) 1 SERVLJ 196, (2018) 4 ALLMR 441 (SC), 2018 (3) SCC 329, (2018) 2 JCR 192 (SC), (2018) 1 ESC 94(2), 2018 (131) ALR SOC 53 (SC), 2018 (189) AIC (SOC) 4 (SC), 2018 (3) KCCR SN 295 (SC), 2018 (6) ADJ 11 NOC

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Bench: Ashok Bhushan, A.K. Sikri

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.871 OF 2018
arising out of SLP (C)No. 26528 of 2013

THE STATE OF MADHYA PRADESH & ORS. ...APPELLANT(S)

VERSUS

MANOJ SHARMA & ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO.872 OF 2018
arising out of SLP (C)No. 26529 of 2013

THE STATE OF MADHYA PRADESH & ORS. ...APPELLANT(S)

VERSUS

ALOK TRIPATHI & ORS. ...RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

Leave granted.

2. These two appeals have been filed against the identically worded judgments of High Court of Madhya Pradesh dated 05.12.2012 and 17.01.2013 respectively dismissing the writ appeal filed by the State of Madhya Pradesh. The facts and issue in both the appeals being common, it is sufficient to refer to the facts and pleadings in civil appeal arising out of SLP (C) No. 26528 of 2017 for deciding both the appeals. The parties shall be referred to as described in the writ petition.

3. The writ petitioners had passed M.Phil. from different universities under distance education (between the year 2007 to 2009) before 11.07.2009. Writ petitioners were engaged as guest lecturers in different Government/Semi Government Colleges since before the year 2009. Higher Education Department of the Government of Madhya Pradesh issued an order dated 22.02.2012 on the subject "Arrangement of Guest Lecturers in Government Colleges for the remaining period of Academic Session 2011-12 and upcoming sessions".

4. The Government order provided for criteria for selection under which various marks were allocated for Ph.D and NET/SET, M.Phil. and NET/SET. Regional Additional Director, Higher Education, Gwalior Madhya Pradesh issued an advertisement dated 21.04.2012 inviting application for the post of Guest Lecturer in different subjects. Writ Petitioners had applied for different posts of Guest Lecturers through online mode. Their applications were not accepted. On inquiry, they came to know that those candidates who had obtained M.Phil. degree through distance education programme are not qualified.

5. Writ Petition No. 3290 of 2012, Manoj Sharma and others v. State of Madhya Pradesh was filed wherein High Court passed an interim order on 14.05.2012 and directing the respondents to accept the application form of the candidates and the result of the candidates was to be kept in the seal cover.

6. Writ Petitioners on the strength of the interim order submitted their applications. Writ Petition No. 3290 of 2012, Manoj Sharma and others versus State of Madhya Pradesh was finally disposed off by learned Single Judge on 29.08.2012, holding that those candidates who have cleared M.Phil. qualification before the Regulations 2009, namely, University Grants Commission (Minimum Standards and Procedure for the award of M.Phil./Ph.D Degree) Regulations, 2009 (hereinafter shall be referred to as "Regulations 2009 of UGC (Minimum Standards and Procedure") are eligible and their result be declared. Learned Single Judge issued following directions:

"It is further reported that although petitioner's case was considered, but by way of interim order, it was directed that his result will not be declared. Now

final order is passed. Petitioner is found eligible, therefore, respondents shall consider the case of the petitioner as eligible on the basis of the aforesaid Master of Philosophy certificate and declare the result alongwith other candidates.”

7. The State of Madhya Pradesh filed a writ appeal against the judgments of learned Single Judge and Division Bench of the High Court vide its judgment dated 05.12.2012 dismissed the appeal. The State is in appeal against the judgment of the Division Bench.

8. Learned counsel for the appellant submits that in view of the regulations framed by the University Grants Commission, Regulations 2009 of UGC (Minimum Standards and Procedure), the M.Phil./Ph.D. Programmes conducted through distance education are not acceptable. He submits that since M.Phil. degree of the writ petitioners was by distance education mode, they do not fulfil the qualification for appointment as Guest Lecturer and the judgment of the learned Single Judge and Division Bench taking a contrary view is unsustainable.

9. No one has appeared on behalf of the respondent at the time of hearing. Although a counter affidavit on behalf of the Respondent No. 1, Manoj Sharma has been filed, supporting the view taken by the learned Single Judge and the Division Bench. We have considered the submission of the learned counsel for the appellant and perused the record.

10. The Regulations 2009 of UGC on Minimum Standards and Procedure were published in Gazette of India on 11.7.2009. Regulation 5 which is relevant, is to the following effect:

“Regulation 5. Notwithstanding anything contained in these Regulations or any other Rule or regulation, for the time being in force, no University, Institution, Deemed to be University and College/Institution of National Importance shall conduct M.Phil and Ph.D Programmes through distance education mode.”

11. Learned Single Judge and Division Bench took the view that according to Regulations 2009 of UGC on Minimum Standards and Procedure, it was only with effect from 11.7.2009 that any university, institution or deemed university were prohibited from conducting M.Phil./Ph.D. through distance education mode hence, degree obtained prior to enforcement of said regulation are not washed out. The High Court

has held that Regulations 2009 of UGC (Minimum Standards and Procedure) are prospective in nature and shall not operate retrospectively.

Learned Single Judge took the view that Regulations 2009 of UGC (Minimum Standards and Procedure) being not retrospective shall not wipe out the M.Phil. qualification already acquired by the writ petitioners prior to above said regulation.

12. Regulation 3 under Regulations 2009 of UGC (Minimum Standards and Procedure), clearly provides for enforcement for the regulation from the date of their publication in the Gazette of India. Regulation 3 is as follows:

“They shall come into force with effect from the date of their publication in the Gazette of India.”

13. Thus, it is clear that regulations are prospective in nature and may not affect the qualifications granted by an university or institution prior to the enforcement of the regulation. We thus do not find any error in the judgment of the High Court of Madhya Pradesh. Learned Single Judge had thus rightly directed the respondent to consider the case of the writ petitioners on the basis of M.Phil. degree and declare the result alongwith other candidates.

14. There is another issue which needs to be noticed at this juncture. On the same day when regulations pertaining to Minimum Standards and Procedure for the award of M.Phil./Ph.D Degree were published, another regulations were published in the Gazette on the same day i.e. on 11.7.2009, namely, UGC(Minimum Qualifications for Appointment and Career Advancement of Teachers in Affiliated Universities and Institutions) (3rd amendment) Regulations, 2009 (hereinafter shall be referred to as “Regulations 2009 of UGC(Minimum Qualifications for Appointment”).

15. University Grants Commission had issued regulations relating to minimum qualification for the post of lecturer in the year 2000 which regulations were amended in 2002 and 2006. According to Regulations 2000, Regulation 1.3.3 provides for qualification for Lecturer as follows:

“1.3.3 Lecturer Good academic record with at least 55% of the marks or, an equivalent grade of B in the 7 point scale with latter grades O, A, B, C, D, E and F at the Master's degree level, in the relevant subject from an Indian University, or, an equivalent degree from a foreign university.

Besides fulfilling the above qualifications, candidates should have cleared the eligibility test (NET) for lecturers conducted by the UGC, CSIR or similar test accredited by the UGC.

Note: NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidates who have completed M. Phil. Degree or have submitted Ph.D. thesis in the concerned subject up to 31st December, 1993, are exempted from appearing in the NET examination.”

16. As noted above, the above-mentioned regulations were amended and amendments dated 11.7.2009 were relevant whereas the note as contained in Regulation 1.3.3 was substituted by following:

“NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of Lecturers in Universities/Colleges/Institutions.

Provided, however, that candidates, who are or have been awarded Ph.D. Degree in compliance of the “University Grants Commission(minimum standards and procedure for award of Ph.D Degree), Regulation 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions.”

17. It has to be noticed that the amendment as made in the minimum qualification, now provides that the exemption from NET shall be given to the Ph.D. degree holders, only when Ph.D. degree has been awarded to them in compliance with the Regulations 2009 of UGC (Minimum Standards and Procedure). The above provision thus, made it mandatory that for lecturers NET qualification is necessary and exemption shall be granted to those Ph.D. degree holders who have obtained Ph.D. degree in accordance with the Regulations 2009 of UGC (Minimum Standards and Procedure). The purpose and object of the above amendments in both Regulations 2009 of UGC (Minimum Standards and Procedure) as well as Regulations 2009 of UGC (Minimum Qualifications for Appointment) is not far to seek. There has been challenge to amendments made in Regulations 2009 of UGC (Minimum Qualifications for Appointment) in so far as it denied the benefit to Ph.D degree holders who had obtained Ph.D prior to 11.7.2009. Writ Petitions were filed in different High Courts challenging the regulations on different grounds including that regulations are arbitrary and violative of Article 14 which discriminate the Ph.D. degree holders who have obtained Ph.D. degree prior to 11.7.2009 and those who obtained the degree after 11.7.2009 in accordance with Regulations 2009 of UGC on Minimum Standards and Procedure.

18. The challenge to regulations were repelled by different High Courts whereas Allahabad High Court vide its judgment

dated 6.4.2012 in Dr. Ramesh Kumar Yadav and Another versus University of Allahabad and Others has upheld the challenge. Appeals were filed against the judgment of the Rajasthan High Court, Delhi High Court and Madras High Court by the candidates whose writ petitions were dismissed as well as against the judgment of the Allahabad High Court dated 06.04.2012, upholding the contention of the candidates.

This Court decided all the appeals by its judgment reported in P. Susheela and Others versus University Grants Commission and Others, (2015) 8 SCC 129. This Court upheld the judgment of the High Courts of Rajasthan, Madras and Delhi and set aside the judgment of the Allahabad High Court dated 6.4.2012, upholding that the amendments made in Regulations 2009 of UGC (Minimum Qualifications for Appointment) were valid and there is a valid classification between the candidates who have obtained degree prior to Regulations 2009 of UGC (Minimum Standards and Procedure) and those who obtained the degree in accordance with the above said regulation.

19. Thus, rejecting the contention of the private respondent, following was laid down in paragraph Nos. 16, 17 and 18:

“16. Similar is the case on facts here. A vested right would arise only if any of the appellants before us had actually been appointed to the post of Lecturer/Assistant Professors. Till that date, there is no vested right in any of the appellants. At the highest, the appellants could only contend that they have a right to be considered for the post of Lecturer/Assistant Professor. This right is always subject to minimum eligibility conditions, and till such time as the appellants are appointed, different conditions may be laid down at different times. Merely because an additional eligibility condition in the form of a NET test is laid down, it does not mean that any vested right of the appellants is affected, nor does it mean that the regulation laying down such minimum eligibility condition would be retrospective in operation. Such condition would only be prospective as it would apply only at the stage of appointment. It is clear, therefore, that the contentions of the private appellants before us must fail.

17. One of the learned counsel for the petitioners argued, based on the language of the direction of the Central Government dated 12-11-2008 that all that the Government wanted UGC to do was to "generally" prescribe NET as a qualification. But this did not mean that UGC had to prescribe this qualification without providing for any exemption. We are unable to accede to this argument for the simple reason that the word "generally"

precedes the word "compulsory" and it is clear that the language of the direction has been followed both in letter and in spirit by the UGC regulations of 2009 and 2010.

18. The arguments based on Article 14 equally have to be rejected. It is clear that the object of the directions of the Central Government read with the UGC Regulations of 2009/2010 are to maintain excellence in standards of higher education. Keeping this object in mind, a minimum eligibility condition of passing the national eligibility test is laid down. True, there may have been exemptions laid down by UGC in the past, but the Central Government now as a matter of policy feels that any exemption would compromise the excellence of teaching standards in universities/ colleges/institutions governed by the UGC. Obviously, there is nothing arbitrary or discriminatory in this □ in fact it is a core function of UGC to see that such standards do not get diluted.”

20. Thus, from the above judgment, it is clear that NET qualification is now minimum qualification for appointment of Lecturer and exemption granted to M.Phil. degree holders have been withdrawn and exemption is allowed only to those Ph.D. degree holders who have obtained the Ph.D. degree in accordance with 11.7.2009 regulations, namely, Regulations 2009 of UGC (Minimum Standards and Procedure). Although, this aspect has not been noticed by the High Court but since the learned Single Judge has directed the consideration of the case of the writ petitioner on the basis of M.Phil. degree which was obtained by them by distance education mode prior to 2009, it is necessary that their eligibility for the post be examined taking into consideration the Regulations 2009 of UGC (Minimum Qualifications for Appointment). The advertisement and selection for Guest Lecturers having been conducted in the year 2012 when both the Regulations 2009 of UGC (Minimum Standards and Procedure) and Regulations 2009 of UGC (Minimum Qualifications for Appointment) were applicable.

21. There is nothing on the record as to whether after the judgment of the learned Single Judge, writ petitioners' result was declared and they were selected or appointed. This Court has also passed an interim order of 16.08.2013 staying the operation of the judgment of the High Court for the period of three months. No further orders have been passed extending the interim order.

22. We are thus of the view that judgment of the High Court needs no interference in this appeal, however, the appeals are to be disposed off with the direction to consider the eligibility of the writ petitioner taking also into consideration the Regulations 2009 of UGC (Minimum Qualifications for Appointment).

23. Both the appeals are disposed off accordingly.

.....J. (A.K. SIKRI)J. (ASHOK BHUSHAN) NEW DELHI,
January 25, 2018.