

IN THE HIGH COURT OF SIKKIM AT GANGTOK

Writ Petition (C) No. 46 of 2006

Shri Sanam Giri,
A Lecturer in the Sikkim
Government College at Namchi,
A resident of Namchi,
P.O. Namchi, South Sikkim.

... Petitioner

Versus

1. The Secretary,
Human Resource Development Department,
Government of Sikkim,
P.O. Gangtok, East Sikkim.
2. The Secretary,
Department of Personnel, Adm. Reforms
and Training, Government of Sikkim,
P.O. Gangtok, East Sikkim.
3. The Sikkim Public Service Commission
represented by and through its Chairman,
having its office at Old West Point School,
Below Public Bus Stand,
P.O. Gangtok, East Sikkim.
4. Shri Bhaskar Chakraborty,
Lecturer in Chemistry,
Sikkim Government College,
P.O. Tadong, Gangtok, East Sikkim.
5. Ms. Sudan Pradhan,
Lecturer in Botany,
Sikkim Government College,
P.O. Tadong, Gangtok, East Sikkim.
6. Mrs. Pramila Gurung @ Chhetri,
Lecturer in English,
Sikkim Government College,
P.O. Tadong, East Sikkim.

... Respondents

For the petitioner : Mr. A. Moulik, Sr. Advocate with Mr. N.G. Sherpa, Advocate.

For the respondents : Mr. J.B. Pradhan, Additional Advocate General with Mr. Karma Thinlay, Government Advocate and Mr. S.K. Chettri, Asstt. Government Advocate for the State respondents.

Date of Hearing : 21.04.2010

Date of Judgment : 03.05.2010

**Present: HON'BLE THE CHIEF JUSTICE
MR. JUSTICE BARIN GHOSH,**

JUDGMENT AND ORDER

Ghosh, CJ

In this second round of litigation, the writ petitioner is repeating his prayer for regularization on almost identical grounds, except one, to be discussed below.

2. The first round of litigation initiated pursuant to a writ petition filed in 2001 was decided by a Division Bench of this Court by a judgment and order dated 19.05.2004. As will be evident from the said judgment and order, the writ petitioner sought for a direction for regularization of his service as Lecturer in Sociology in the Government College of Sikkim, which is also the prayer in the second round of litigation initiated by presenting the present writ



petition in the year 2007. In the first writ petition it was contended that Sujata Basnet, S.S. Mahapatra, D. Purohit and J. Nayak were appointed as Lecturers on ad-hoc basis and similarly Bhaskar Chakraborty, Sudan Pradhan and Pramila Gurung were appointed as Lecturers on ad-hoc basis. It was contended that the petitioner too was appointed as Lecturer on ad-hoc basis. It was stated that all those seven persons were subsequently regularized, but the petitioner was not regularized for no just reason. The Division Bench found as a fact that neither the petitioner, nor any of those seven persons had NET qualification to their credit. The Division Bench also found as a fact that requirement of NET became necessary when the University Grants Commission Regulations, 1991 came into effect. The Division Bench found as a fact that Sujata Basnet, S.S. Mahapatra, D. Purohit and J. Nayak were appointed as ad-hoc Lecturers before the said Regulation came into effect. The Division Bench declared that at the time of appointment of those four persons as Lecturers on ad-hoc basis, qualification of NET was not a requirement and accordingly not having NET could not stand in the way of regularization of ad-hoc appointment of those four persons. The Division Bench also found as a fact that though in 1991 the said Regulation came into effect, but on 12.11.1993 the Government of Sikkim made the Sikkim Government College Lecturers Recruitment Rules, 1992 where it was provided that non-NET/SLET candidates shall be considered, but if selected, they should clear either NET or SLET within five

years of their appointment. The Division Bench further found as a fact that the Sikkim Public Service Commission issued an advertisement on 20th October, 1993, to which a corrigendum was added, which invited applications from aspirants to fill up posts of Lecturers with a condition that candidates without NET/SLET qualification shall also be considered, but if selected, they should be obliged to clear NET/SLET within five years of their appointment. The Division Bench found as a fact that Bhaskar Chakraborty, Sudan Pradhan and Pramila Gurung responded to the said advertisement and were selected. In view of such selection, those persons were appointed as Lecturers but with a condition that they would have to clear either NET or SLET within five years from the date of their appointment. The Division Bench further found as a fact that none of the said three persons could clear NET or SLET within five years of their appointment and accordingly the Government gave them two more years time to clear the same. The Division Bench found that none of the said three persons could clear either NET or SLET even within the extended period of time. It however, noticed that in terms of the said Regulation of 1991 as well as the subsequent Regulation of 2000, the University Grants Commission is alone competent to grant relaxation in the prescribed qualification and that an approach has been made to UGC for relaxation of NET/SLET qualification of Sudan Pradhan and that UGC is likely to take decision in relation thereto. The Division Bench also noted that Bhaskar Chakraborty

has resigned. The said judgment and order of the Division Bench does not speak a word as regards relaxation of NET/SLET qualification of Pramila Gurung. The Division Bench found that while Bhaskar Chakraborty, Sudan Pradhan and Pramila Gurung were selected through a selection process initiated by an advertisement, Sujata Basnet, S.S. Mahapatra, D. Purohit and J. Nayak, who were appointed on ad-hoc basis between the years 1988 and 1991, but prior to coming into force of the 1991 Regulations, were interviewed by a Board, as was constituted by the Sikkim Public Service Commission, consisting of high dignitaries for the purpose of ascertaining their suitability to continue to serve as Lecturers and only upon satisfaction of such suitability their appointments on ad-hoc basis were regularized; whereas at the time when the petitioner was appointed on ad-hoc basis and even subsequent thereto his suitability to serve as a Lecturer had not been assessed by any competent authority. The Division Bench, therefore, declared that the petitioner cannot seek regularization of his ad-hoc appointment as Lecturer on the touchstone of regularization of ad-hoc appointment of Sujata Basnet, S.S. Mahapatra, D. Purohit and J. Nayak. The Division Bench also declared that since appointment of Bhaskar Chakraborty, Sudan Pradhan and Pramila Gurung was the resultant effect of a selection process initiated pursuant to an advertisement based on Sikkim Government College Lecturers Recruitment Rules, 1992, the petitioner cannot equate himself with

Bhaskar Chakraborty, Sudan Pradhan and Pramila Gurung. In the said writ petition, as will be evident from the said judgment and order of the Division Bench, the petitioner had contended that if NET/SLET stands in the way of petitioner being regularized, Bhaskar Chakraborty, Sudan Pradhan and Pramila Gurung having not been able to acquire NET or SLET, their appointment should go. The Division Bench despite such contention declared that there is no infirmity or illegality in the appointment of Bhaskar Chakraborty, Sudan Pradhan and Pramila Gurung. However, taking note of the fact that University Grants Commission is competent to relax qualification of Lecturers, it directed consideration by the University Grants Commission, the case of relaxation of NET/SLET qualification of the petitioner.

3. The University Grants Commission considered the case of relaxation of NET/SLET of the petitioner through its Exemption Committee, but did not agree to give exemption.

4. The University Grants Commission is not a party to the present writ petition. The decision of the University Grants Commission not to give exemption to the petitioner for NET/SLET is not the subject matter of challenge in the writ petition.

5. In the present writ petition, the petitioner is seeking what he sought for in the previous writ petition on identical grounds. Those having been taken note of and decided in the previous writ petition,

cannot be gone in the present writ petition. They should be treated to be barred by res-judicata.

6. However, in the present writ petition it has been contended that according to the Regulations of 2000 made by the University Grants Commission and the Sikkim Government College Lecturers Recruitment (Amendment) Rules, 2001, a person having M Phil degree is exempted from appearing in the NET examination. For that purpose, the petitioner relies upon the following note: -

“NET shall remain the compulsory requirement even for the candidates having Ph.D. degree. However, the candidates who have completed M. Phil degree or have submitted Ph.D. thesis in the concerned subject upto 31st December, 1993, are exempted from appearing in the NET examination”.

Although this note was noted by the Division Bench, while rendering its judgment and order dated 19.05.2004 on the first writ petition, but the effect of the said note was not taken into account inasmuch as at or before the said judgment was rendered, the petitioner did not have the M Phil degree.

7. It is the contention of the petitioner that if a person has submitted Ph.D. thesis in the concerned subject upto 31st December, 1993, he is exempted from appearing in the NET examination, but for a person, who has completed M Phil degree, there being no date fixed for completion of such degree, it must be

deemed that such a person is exempted from appearing in NET examination.

8. The learned Senior Counsel appearing in support of the writ petition contended that the disjunctive word "or" and the words "upto 31st December, 1993" used in the second sentence of the note makes it clear that the note deals with separately candidates having M Phil degree and candidates, who have submitted Ph.D. thesis in the concerned subject, and whereas a time limit has been fixed for those who have submitted Ph.D. thesis, but no time limit has been fixed for those who have obtained M Phil degree and accordingly the note clarifies that candidates, who have M Phil degree, are exempted from appearing in NET examination.

9. True by using the disjunctive word "or" , candidates having M Phil degree and candidates having Ph.D. have been dealt with separately, but I think by using the words "completed" and "submitted", candidates having M Phil degree and candidates having Ph.D. degree have been equated while using the words "upto 31st December, 1993". In other words, those M Phil degree holders who completed the process of obtaining such Degree before 31st December, 1993 and also those Ph.D. degree holders who submitted their Ph.D. thesis in the concerned subject upto 31st December, 1993 are only exempted from appearing in NET examination. M Phil Degree holders who completed the process of obtaining such Degree beyond 31st December 1993 as well as Ph.D.




degree holders who submitted Ph.D. thesis in the concerned subject beyond 31st December, 1993, have not been exempted from appearing in NET examination by the said note.

10. It was also contended in the present writ petition that UGC was approached for relaxation of NET/SLET qualification of Bhaskar Chakraborty, Sudan Pradhan and Pramila Gurung and UGC has declined to do so. The counter affidavit of the official respondents is not specific to the point. Assuming what the petitioner contends to be correct, on the face of the fact that the Division Bench, despite knowledge of the fact that a request for relaxation of NET in respect of Sudan Pradhan is pending with UGC, having had declared there was no illegality in appointment of Bhaskar Chakraborty, Sudan Pradhan and Pramila Gurung, there is no scope of making any endeavour for the present as to what would be the effect thereof. Further, there is no prayer in the present writ petition also in relation thereto. At the best, it can be contended that Bhaskar Chakraborty, Sudan Pradhan and Pramila Gurung have been kept appointed despite they have no NET or SLET qualification and accordingly there would be no infirmity if appointment of the writ petitioner is regularized, despite he having not obtained NET/SLET qualification. When by a law governing the field it has been mandated that NET/SLET is an essential qualification, a judicial review court cannot direct appointment of a person not having NET/SLET qualification. An action contrary to

law cannot be a president, nor the same can be treated as the benchmark for determining alleged discrimination.

11. In the circumstances nothing further can be done in the present writ petition. The same is accordingly dismissed, however, without any order as to costs.



Chief Justice

jks/