

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extra Ordinary Jurisdiction)

S.B: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (C) No.13 of 2018

1. Ms. Dechen Ongmu Bhutia,
D/o Lakpa Tshering Bhutia,
R/o Development Area, Opp. Rhenock House,
East Sikkim-737101.

2. Ms. Bindhya Chettri,
D/o Naina Singh Chettri,
R/o Dambu Dara, Namchi,
South Sikkim 736126. Petitioners

Versus

1. Sikkim Public Service Commission (SPSC),
Through the Secretary,
Government of Sikkim,
Old West Point School,
Gangtok, East Sikkim.

2. State of Sikkim
Through the Secretary,
Human Resources Development Department,
Government of Sikkim,
Tashiling, Gangtok, East Sikkim.Respondents

**Application under Article 226/227 of the Constitution
of India.**

Appearance:

Mr. A. K. Upadhyaya, Senior Advocate with Ms.
Rachhitta Rai, Advocate for the petitioners.

Mr. Bhusan Nepal, Advocate for the Sikkim
Public Service Commission (SPSC) for
Respondent No. 1

Dr. Doma T. Bhutia, Additional Advocate
General.

Mr. S. K. Chettri, Government Advocate for
Respondent No. 2.

J U D G M E N T (O R A L)

Dated: 01.09.2021

Bhaskar Raj Pradhan, J.

1. Heard Mr. A.K. Upadhyaya, learned Senior Advocate assisted by Ms. Rachhitta Rai, learned counsel for the petitioners. Also heard Dr. Doma T. Bhutia, learned Additional Advocate General along with Mr. S.K. Chettri, learned Government Advocate for the respondent no.2 and Mr. Bhusan Nepal, learned counsel for the respondent no.1 (SPSC). Perused the writ petition, the counter-affidavit as well as the rejoinder.

2. The issue in the writ petition lies in a narrow compass. The petitioner is aggrieved by the corrigendum dated 09.11.2017 issued by the SPSC seeking to amend the advertisement dated 13.10.2017 inviting applications from eligible candidates for filling up 100 posts of Assistant Professors under the respondent no.2 through direct recruitment. The advertisement provided the minimum qualification required for each of the post advertised. The minimum educational qualification for the post of Assistant Professor was Masters Degree in respective subject with 55% marks, relaxable by 5% for Scheduled Caste/Scheduled Tribes/Differently-abled persons (physically and visually) with NE (SLET)/NET/SET or Ph.D

as per UGC Regulation, 2009. The advertisement also provided:

“The candidates who have been awarded a M.Phil/P.hD Degree prior to July 11th 2009 in accordance with the UGC Regulation 2009, are exempted from the requirement of NET/SLET/SET subject to the fulfilment of the following conditions:

<i>a) Ph.D Degree of the candidate awarded in regular mode only;</i>
<i>b) Evaluation of the Ph.D thesis by at least 02(two) external examiners;</i>
<i>c) Open Ph.D Viva-voce of the candidate had been conducted.</i>
<i>d) Candidate had published two research papers from his/her PhD work, out of which at least one must be in a referred journal.</i>
<i>e) Candidate has made at least two presentations in Conference/Seminars, based on his/her Ph.D work.</i>
<i>Note.: (a) to (e) as above are to be certified by the Vice-Chancellor/Pro-Vice Chancellor/Dean (Academic Affairs)/Dean (University Institution).”</i>

.....”

3. The corrigendum issued about a month later on 09.11.2017 removed the word ‘M.Phil’ appearing in the above quoted paragraph in the advertisement.

4. The petitioners who have M.Phil Degrees are aggrieved by this corrigendum which is challenged in the present writ petition. The petitioners have sought for a direction upon the respondent to withdraw the corrigendum dated 09.11.2017; to consider the M.Phil Degree of the petitioners

and to allow them to sit in the interview for the post of Assistant Professor. The petitioners submit that they are duly qualified for the said posts.

5. The advertisement dated 13.10.2017 reflected the minimum educational qualification as per the Sikkim Government College Lecturers' Recruitment Rules, 1992 (The service rules) as amended by the Sikkim Government College Lecturers' Recruitment (Amendment) Rules 2011 whereby item 8 in the schedule was substituted with the following:

"8. Educational and other Qualification required for Direct Recruitment:-

(i) The minimum requirements of a good academic record, 55% marks (or and equivalent grade in a point scale wherever grading system is followed) at the Master's level and qualifying in the National Eligibility Test (NET), or an accredited test (State Level Eligibility Test-SLET/SET), shall remain the minimum requirement for the appointment of Assistant Professors:

Provided however, that candidates, who are or have been 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 Professors or equivalent positions in Colleges.

(ii) A relaxation of 5% may be provided at the graduate and master's level for the Scheduled Caste/Scheduled Tribe/Differently-abled (physically and

visually differently-abled) categories for the purpose of eligibility and for assessing good academic record during direct recruitment to teaching positions. The eligibility marks of 55% (or an equivalent grade on a point scale wherever grading system is followed) and the relaxation of 5% to the categories mentioned above are permissible, based on only the qualifying marks without including any grace marks procedures.

- (iii) *A relaxation of 5% may be provided from 55% to 50% of marks to the Ph.d. Degree holders, who have obtained their Master's Degree prior to 19th September, 1991.*
- (iv) *Appointment of Assistant Professors is meant for all Government Colleges and for local candidates only. All vacancies shall be filled up with proper application of 100 point roster system."*

.....”

6. Mr. Bhusan Nepal submits that this amendment vide notification dated 02.09.2011 was pursuant to the University Grant Commission (UGC) amending the University Grants Commission (Minimum Qualifications required for the Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) Regulations 2000 which was amended by UGC (Minimum Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to it) (3rd Amendment), Regulation 2009.

7. The said amendment now provided:

“NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of Lectures 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.”

8. Mr. A.K. Upadhyaya relied upon the judgment of this court in ***Sourav Kafley vs. Sikkim Public Service Commission***¹ dated 23.07.2014. The said judgment of this court pertains to a challenge made by the petitioner therein that he could not be penalised for non-compliance of the University Grants Commission (Minimum Standards and Procedure for Awards of Ph.D. Degree), Regulation 2009, which was not amended at the relevant time. The issue is quite different in the present matter.

9. Dr. Doma T. Bhutia submits that it was for the respondent no.2 to decide what ought to be the minimum educational and other qualifications and the courts cannot interfere in such academic matters.

10. The advertisement sought for the minimum qualification as required by the service rules. It is for the employer to determine the qualification that may be

¹ S.B.WP(C) No.19 of 2013

required for a particular post. The petitioners as candidates applying to the post of Assistant Professor cannot dictate to the employer from whom they seek employment as to what the qualification should be for their employment. The petitioners have neither challenged the service rules nor the advertisement. The only challenge as stated before was to the corrigendum seeking to remove the word '*M.Phil*' from the advertisement. A perusal of the advertisement makes it clear that the word '*M.Phil*' was incorrectly inserted in the advertisement and if it remained there it would be in conflict with the minimum educational qualification as required by the service rules. In such a situation it was incumbent upon the SPSC to have issued the corrigendum to cast out the mistake it had made in the advertisement and correct it which had misled the petitioners to approach this court.

11. Mr. A.K. Upadhyaya submitted that the respondents could not have changed the "rule of the game" once they had started it. This court is afraid that the submission may not be correct since the corrigendum did not change the rule of the game. The service rules which the petitioners as well as the respondents are bound by provided for the minimum qualification required of the candidates. The advertisement could not have gone against the service

rules. As the word '*M.Phil*' appearing in the advertisement went against the grain of the service rules it was incumbent upon the SPSC to have issued the corrigendum. Merely because it did so, it cannot be said that they sought to change the rule of the game.

12. As per the pleadings in the writ petition the petitioner no.1 has a B.A. Degree, Master's Degree (M.A.) in education and M.Phil Degree. The petitioner no.2 has B.A. Degree, Masters (M.A.) Degree in history and M.Phil Degree as well. They do not plead that they have either qualified in the National Eligibility Test or any accredited State Level Test (SLET/SET) which is the minimum requirement for the appointment of Assistant Professors. The petitioners instead argue that since they were working on adhoc basis for a fairly long time it was not fair upon the respondents to seek from them their qualification in the NET/SLET/SET. They also admit that they do not have a Ph.D. Degree in compliance of the University Grants Commission (Minimum Standards and Procedure for Awards of PH.D. Degree), Regulation 2009. The petitioners did not have the necessary qualification as required.

13. Thus, this court is of the considered view, that there is no merit in the present writ petition which is accordingly dismissed. With the dismissal of the writ petition the application for stay is rendered infructuous and dismissed accordingly.

14. No order as to costs.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting: yes.
Internet: yes.

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