

Delhi High Court

Akhilesh Kumar vs University Grants Commisison & ... on 3 March, 2014

Author: Rajiv Shakdher

* THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 21.01.2014
Judgment delivered on: 03.03.2014

+ WP(C) 5865/2011

AKHILESH KUMAR

....Petitioner

VERSUS

UNIVERSITY GRANTS COMMISSION & ORS.Respondents

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner : Mr. Pankaj Sinha and Ms. Nupur Grover, Advocates For the Respondents : Mr. Amitesh Kumar and Mr. M.F. Khan, Advocates for R-1 Mr. S.S. Ahluwalia, Advocate for R-2 Mr. Mohinder J.S. Rupal, Advocate for R-3 CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER RAJIV SHAKDHER, J WP(C) 5865/2011 and CM Nos.11913/2011 and 11914/2011

1. The petitioner, who is visually impaired, seeks quashing of the decision taken by respondent no.1 i.e., the University Grants Commission (hereinafter referred to as UGC) whereby, the exemption granted in his favour from taking the National Eligibility Test (in short NET), was withdrawn. A consequential direction is also sought for re-instatement to the post of Lecturer (English) on a permanent basis, with the necessary benefits.

1.1 It would be pertinent to note that this is a case where the UGC, adopting perhaps the principle of reasonable accommodation, gave the petitioner, who is a visually handicapped person, time to acquire the necessary qualifications, on WP(C) 5865/2011 Page 1 of 21 his applying and, thereafter, qualifying the interview conducted by the Selection Committee of respondent no.2 College. As per the extant regime, the applicants to the post of Lecturer, at the under graduate level, were required to acquire apart from other qualifications, either a degree in M. Phil or qualify the NET. Thus, a person possessing a M.Phil degree was exempted from qualifying the NET.

1.2 It is for this purpose, that is, to obtain a M.Phil degree, accommodation was sought by respondent no.2 College on behalf of the petitioner, which was granted by the UGC, in the first instance and, thereafter, withdrawn.

1.3 Admittedly, though the petitioner obtained the M.Phil degree much prior to the two years accorded to him to acquire the degree, the UGC withdrew the approval, albeit after he had acquired

the degree.

1.4 It is this decision of the UGC, by which, the petitioner is aggrieved, as it resulted in him not being absorbed in the post of Lecturer (English), in which, he was working, albeit on an ad hoc basis, pending acquisition of a degree in M.Phil.

1.5 The validity of this decision of the UGC, is at the heart of the matter.

2. The brief events, in the background of which, the impugned decision was taken by the UGC, are set out hereinafter :-

2.1 Respondent no.3 i.e., the University of Delhi had taken out an advertisement in some of the major Dailies, on 28.10.2008, for filling up the vacancy, in the post of Lecturer (English), on a permanent basis. Two posts were advertised, both of which fell in the reserved category. One post was reserved for visually handicapped while the other was reserved for a Scheduled Caste candidate.

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2.2 On 10.11.2008, the petitioner applied for the post reserved for a visually handicapped candidate.

2.3 On 27.01.2009, the petitioner appeared before the Selection Committee for an interview. Consequent thereto, on 29.01.2009 the petitioner was selected as a Lecturer.

2.4 Resultantly, on 07.02.2009 the petitioner was employed by respondent no.2 College on an ad hoc basis, as he had neither cleared the NET nor acquired at the relevant time, a M.Phil degree.

2.5 Respondent no.2 College on 13/14.02.2009 applied to the UGC for grant of relaxation in favour of the petitioner for a period of two years since he was the only candidate who had appeared for an interview for the post reserved for a visually impaired candidate and had been otherwise, duly selected by the Selection Committee.

2.6 This accommodation, apparently, was sought by respondent no.2 College in view of the statutory obligations cast on it under Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short the PWD Act).

2.7 I must note here that one of the arguments of the petitioner is that the entire exercise undertaken by respondent no.2 College to issue an advertisement and seek recruitment of handicapped persons in 2008, arose in the background of a writ petition filed in this court being: WP(C) 16258/2006, titled: Sambhavana Vs. Delhi University and Ors. According to the petitioner, this court had stayed, generally, the recruitment/ appointment of teaching staff by respondent no.1 i.e., University of Delhi and the colleges affiliated to it, in view of their failure to carry out the mandate of the PWD Act, which required them to reserve posts and appoint disabled candidates in terms of Section 33 of the said WP(C) 5865/2011 Page 3 of 21 Act. In this behalf, reliance was placed on order dated 04.04.2007, passed by the Division Bench of this court. In so far as the respondent

no.2 College is concerned, it was submitted that stay was vacated only on the assurance that appointment against post reserved for handicapped persons would be filled up.

2.8 Pending the approval of the UGC and respondent no.3, the petitioner completed his M.Phil from University of Delhi.

2.9 Vide communication dated 16.03.2000, the UGC conveyed its approval to respondent no.3, i.e., the University of Delhi, for exemption from NET, in terms of its own regulation bearing No.1991/2000, in respect of the petitioner, as a NET qualified candidate was not available. Importantly, the decision in this behalf was taken at the meeting convened by the UGC on 23.02.2010. The date of appointment of the petitioner as indicated in the said letter was 27.01.2009, which is, when, the petitioner was selected for appointment as a lecturer by the Selection Committee. A copy of this communication was also sent to the respondent no.2 College.

2.10 Evidently, this communication was received by respondent no.2 College on 25.03.2010. Consequently, on receipt of communication of the UGC dated 16.03.2010, the respondent no.2 College enrolled the petitioner as a Lecturer on a permanent basis. An identity card was also issued in favour of the petitioner; which indicated the petitioner's date of appointment as 26.03.2010.

2.11 The UGC did an about-turn, so to say, when, by its letter dated 03.06.2010, it conveyed to respondent no.3 i.e., the University of Delhi that its approval qua the petitioner granted vide letter dated 16.03.2010 stood withdrawn, with immediate effect. Respondent no.3, in turn, vide letter dated 9/12.07.2010, conveyed the said decision of the UGC to respondent no.2 College. This letter was received in the office of respondent no.2 College evidently on, 13.07.2010.

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2.12 Consequently, the petitioner, on 21.07.2010, was removed from permanent employment and re-engaged so to say, on an ad hoc basis.

2.13 The petitioner, through the aegis of the Principal of respondent no.2 College, made a representation dated 16.09.2010 to the UGC, for confirmation of his appointment in the permanent post of Assistant Professor.

2.14 The Principal of Respondent no.2 College also, attempted to intercede on behalf of the petitioner and, issued a communication in that behalf dated 19/20.10.2010. Apart from conveying to the UGC, the background in which the appointment was made in the reserved category for handicapped persons, it was also brought to its notice that the interim order in Sambhavana's case [WP(C) 16258/2006] was vacated on account of the fact that the petitioner had been appointed against a vacant substantive teaching post. The principal, thus, called upon the UGC to take a sympathetic view in the matter as the turn of events had caused immense psychological and economic stress to the petitioner, who otherwise, had progressed further by registering for Ph.D with respondent no.3 i.e., the University of Delhi. The letter concluded with the note that since the petitioner suffered from 100% visual impairment, it put "responsibility on institution mechanism".

2.15 The aforementioned letter was followed by yet another letter of the Principal of respondent no.2 College dated 28.01.2011/ 02.02.2011, once again, requesting the UGC to take a sympathetic view in the matter.

2.16 Since, the petitioner's engagement with respondent no.2 College, on ad hoc basis, came to an end on 07.06.2011, he moved this court by way of the present writ petition, on 12.08.2011. On 16.08.2011, notice was issued to the respondents. Since then, pleadings have been completed.

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2.17 The respondents have filed their counter affidavits. The petitioner in turn has filed a rejoinder to the counter affidavit filed on behalf of respondent no.1.

SUBMISSIONS OF COUNSELS

3. Arguments in the matter, on behalf of the petitioner, were advanced by Mr. Pankaj Sinha assisted by Ms. Nupur Grover, while on behalf of UGC, submissions were made by Mr. Amitesh Kumar, Advocate; respondent no.2 was represented by Mr. S.S. Ahluwalia, Advocate and respondent no.3, i.e., University of Delhi was represented by Mr. Mohinder J.S. Rupal.

4. Mr. Pankaj Sinha broadly made the following submissions :-

4.1 The petitioner was appointed against a reserved vacancy for a visually handicapped person; having attained the qualification even before approval was received from UGC vide communication dated 16.03.2010, his removal from the post of Assistant Lecturer, consequent to withdrawal of approval by UGC, was contrary to the provisions of Section 33 of the PWD Act.

4.2 In support of the aforesaid submission, it was stated that the Selection Committee had appointed the petitioner as Lecturer (English), on an ad hoc basis, on 07.02.1999, against a permanent post, subject to the petitioner acquiring a degree in M.Phil or, clearing the NET within a period of two years, with a caveat, that such terms of engagement received, the approval of the UGC. The petitioner having completed his M.Phil from English Department, University of Delhi on 22.09.2009 (pursuant to the recommendation for grant of such accommodation by respondent no.2 College, which having received the approval of UGC on 25.03.2010), such approval, could not have been withdrawn retrospectively by the UGC vide its communication dated 13.07.2010, that too after the petitioner had been absorbed on a permanent basis, on 26.03.2010.

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4.3 The action of UGC, in the first instance, of granting approval for according time to the petitioner to acquire the necessary qualification was in line with the Office Memorandum (in short OM) dated 29.12.2005 issued by the Ministry of Personnel, Public grievances & Pensions, Department of Personnel & Training, Government of India, under the provisions of PWD Act. Particular emphasis was placed on paragraph 22 of the said OM, which according to the learned counsel for the

petitioner, mandated relaxation of general standards, if sufficient number of persons with disabilities were not available on the basis of the general standards stipulated to fill all vacancies reserved for such candidates; provided such candidates were not found fit for such posts. The contention was that the only post of Lecturer (English), which was available in the reserved category for visually handicapped persons, was advertised by respondent no.2 College. The petitioner was the only candidate, who applied against the said reserved post. The petitioner was selected for the post and the only relaxation made in his favour was to accord time for completing his M.Phil. It was submitted that the statutory regime that was in force at that particular point of time exempted candidates who had acquired M.Phil degrees from taking the NET. The petitioner, having acquired M.Phil degree within seven months of his appointment; while the time accorded was two years, could not have been removed from employment only because UGC decided to reverse its earlier decision, made in favour of the petitioner. Such reversal was contrary to both the aforementioned OM dated 29.12.2005 and the provisions of Section 33 of the PWD Act.

4.4 The UGC, failed to recognize the fact that the order of interim injunction issued by the Division Bench of this court in Sambhavana's case on recruitment of academic staff was vacated only when respondent no.2 College informed the Division Bench of this court that it had filled up the reserved post for visually handicapped by inducting the petitioner. In support of this submission, reliance WP(C) 5865/2011 Page 7 of 21 was placed on the communication dated 19/20.10.2010 and 28.01.2011 / 02.02.2011.

4.5 The removal of the petitioner, who was appointed in the first instance on an ad hoc basis and, thereafter, confirmed in the post of Lecturer (English), could not have been removed by withdrawal of relaxation granted in his favour to take the NET provided he acquired a degree in M.Phil within two years; a condition which admittedly, was fulfilled by him. Such removal of the petitioner, who admittedly falls within the category of persons with disabilities, would violate the provisions of Section 33 of the PWD Act.

4.6 The appointment of the petitioner was made by respondent no.2 college in consonance with the obligation cast upon it to reserve and fill posts with persons with disabilities. It is in this context that a post for Lecturer (English), was advertised in the visually handicapped category. The petitioner, being the only applicant, was, upon qualifying the interview conducted by a duly constituted Selection Committee, appointed on an ad hoc basis, to the post of Lecturer (English).

5. As against this, Mr. Amitesh Kumar, who appeared for respondent no.1 UGC drew my attention to the averments made in the counter affidavit filed on behalf of the said respondent for the purpose of bringing to fore the mode and manner in which the regulations framed for prescribing qualification for appointment of teaching staff in the Universities and the Colleges affiliated to them have been amended from time to time. In the background of these regulations, Mr. Amitesh Kumar, summed up his specific objections in this case in the following manner :

(i). The petitioner had obtained a relaxation specific to him, which was prohibited, under : The University Grants Commission (Minimum qualifications required for appointment and Career Advancement of Lecturers, Readers & WP(C) 5865/2011 Page 8 of 21 Professors in the Universities

and Colleges) Regulations, 2000 (in short 2000 Regulations). Consequently, the petitioner was required to acquire the minimum qualification prescribed for appointment as a Lecturer, at the undergraduate level.

(ii). Under the UGC (Second Amendment) Regulations, 2006, a provision was made for exempting candidates having a degree in M.Phil in the concerned subject from qualifying NET, for appointment at the undergraduate level.

(iii). The advertisement, which was taken out by respondent no.2 College, on 28.10.2008, stipulated that candidates having M.Phil in the concerned subject were exempted from NET, for undergraduate level teaching, only. The petitioner, in order to be considered, was required to have a degree in M.Phil or ought to have qualified the NET for appointment as a Lecturer at the undergraduate level. Since, the petitioner, had neither obtained a degree in M.Phil nor qualified the NET, he was ineligible to apply and, consequently, could not have been considered for the post of Lecturer. In the absence of requisite qualifications, the petitioner could not have been appointed to the post of Lecturer. The continuation of the petitioner in the post for a period of time, though wrongly appointed, would not create any right in his favour. Empanelment is at best a condition of eligibility and does not by itself, amount to selection or investment of a right to be appointed unless the relevant Service Rules expound to the contrary. In support of the submissions, reliance was placed on the following judgments of the Supreme Court : State of Orissa & Anr. V. Mamta Mohanty 2011 (3) SCC 436 at pages 453 & 454, para 38 to 41; State of Bihar V. Secretariat Asstt. Successful Examinees Union 1986 (1994) 1 SCC 126, at page 129 para 8; and All India SC&ST Employees' Assn. V. A. Arthur Jeen 2001 (6) SCC 380, at page 387 para 10.

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(iv). The advertisement issued in the instant case did not advert to any clause based on which exemption or relaxation from fulfilment of minimum eligibility requirement could be made. The power of relaxation though may be reserved in the relevant statutory rule, the said power should nevertheless be mentioned in the advertisement. This would be necessary to ensure that those candidates who became eligible due to relaxation are afforded an equal opportunity to apply and compete. Relaxation of any eligibility condition provided in the advertisement without due publication would be contrary to provisions of Article 14 and 16 of the Constitution. Reliance in this behalf was placed on the following judgment of the Supreme Court : Bedanga Talukdar V. Saifudaullah Khan & Ors. (2011) 12 SCC 85, at page 92, para 29.

(v). The power of relaxation should be clearly spelt out and that even where power of relaxation is available, it cannot be exercised in a manner that it completely distorts the Regulations. The power of relaxation is intended to be used only in 'marginal cases'. In the absence of an enabling provision for grant of relaxation, no relaxation could have been made. Even if such power is provided under the statute, it cannot be exercised arbitrarily. Such power of relaxation cannot be exercised by treating it as an implied, incidental or ancillary power for enforcement of statutory provisions. Incidental and ancillary powers cannot be used in derogation of the object of the statute. Such power can be exercised only to make such legislation effective so that ultimate power does not become

illusory. Since, there was no provision for entertaining an application of an individual candidate, relaxation by itself cannot confer any right on the petitioner. The aforesaid submissions were sought to be supported by relying upon the following judgments of the Supreme Court : State of Orissa V. Mamata Mohanty 2011 (3) SCC 436, paras 42 to 51; State of Karnataka V. R. Vivekananda Swamy 2008 (5) SCC 328, para 25; Kendriya Vidyalaya Sangathan V. Sajal Kumar Roy 2006 (8) SCC 671, paras 12 &13; and Food WP(C) 5865/2011 Page 10 of 21 Corporation of India & Ors. V. Bhanu Lodh & Ors. 2005 (3) SCC 618, para 12 to 14.

6. Mr. Rupal, who appeared for respondent no.3 i.e., University of Delhi, adopted the stand taken on behalf of the UGC.

6.1 Mr. Ahluwalia, who appeared for respondent no.2 College, submitted that the petitioner was a person who fell within the definition of persons with disabilities defined under the provisions of the PWD Act. The petitioner, having 100% visual impairment had applied for appointment to the post of Lecturer (English) in the reserved category for visually handicapped persons pursuant to an advertisement issued by respondent no.2 College. The petitioner, who was at that point in time studying for his M.Phil degree, applied against the advertisement issued by respondent no.2 College.

6.2 The Selection Committee, upon due evaluation, selected the petitioner for the post of Lecturer (English), albeit on an ad hoc basis since, at the relevant point in time, he had neither cleared his NET examination nor, had he obtained a M.Phil degree.

6.3 The petitioner was, however, offered an appointment on an ad hoc basis in the background of the fact that a writ petition was pending in this court being: WP (C) 16258/2006 titled : Sambhavana Vs. Delhi University & Ors., in which respondent no.2 was arrayed as respondent no.76, wherein the issue, which was being examined, was, the absorption of persons with disabilities in various colleges and Universities in line with the provisions of the PWD Act. In terms of the directions issued by the Division Bench from time to time, respondent no.2 College was directed to fill up posts for persons with disabilities, with an attendant direction to respondent no.3 University of Delhi to ensure compliance of its orders. It is in the background of these directions that the advertisement was issued by respondent no.2 College on 28.10.2008 and, after the appointment WP(C) 5865/2011 Page 11 of 21 of the petitioner; albeit on adhoc basis on 07.02.2009, an affidavit dated 20.03.2009 was filed in that case, to the effect that, the directions issued by the Division Bench, stood complied with.

6.4 Upon the petitioner acquiring a M.Phil degree and, consequent to, the UGC approving respondent no.2 College's requests for granting time to the petitioner to acquire the M.Phil degree, the petitioner was absorbed on a permanent basis with it, w.e.f. 26.03.2010 and, issued, the requisite identity card in that behalf.

6.5 Mr. Ahluwalia also affirmed the position that respondent no.2 College had written to the UGC to consider the case of the petitioner sympathetically for grant of re-approval, so to say, qua the exemption granted to the petitioner, in the first instance.

6.6 Mr. Ahluwalia submitted that since tenure of the petitioner for appointment on ad hoc basis came to an end, on 07.06.2011, the petitioner was discharged from his service with respondent no.2 College.

6.7 Mr. Ahluwalia, though expressed respondent no.2 College's helplessness due to the fact that the power to grant finances, approval of appointments, etc. vests with the UGC and, therefore, respondent no.2 College would ultimately have to abide by the decision of the UGC.

REASONS

7. I have heard the learned counsels for the parties and perused the record. The broad facts of the case set out above are not in dispute. The essential aspects, which have emerged are as follows :-

7.1 Respondent no.2 College was arrayed as a party to WP (C) 16258/2006 titled: Sambhavana Vs. Delhi University & Ors., wherein the said WP(C) 5865/2011 Page 12 of 21 respondent alongwith other colleges and Universities were injuncted from making further recruitments in view of their failure to discharge their obligations to employ persons with disabilities in accordance with the provisions of Section 33 of the PWD Act. One such order was passed on 04.04.2007.

7.2 Respondent no.2 College to show its commitment to the cause of persons with disabilities and to demonstrate to the Division Bench of this court that it intended to fulfil the obligations cast on it under Section 33 of the PWD Act, issued an advertisement on 28.10.2008, for appointment of academic and non- academic staff; which included invitation of application for one post of a Lecturer (English) for a visually handicapped person.

7.3 It is in this background that the petitioner had applied against an advertisement dated 28.10.2008, issued by respondent no.2 College. The advertisement, which was published in major Dailies, invited applications for filling up vacant academic and non-academic posts, as indicated above. More specifically, the advertisement, amongst others, invited an application against two permanent posts for Lecturer (English) in reserved category. Out of the two posts, one post was reserved for a visually handicapped person while the other was reserved for a Scheduled Tribe candidate. The advertisement provided for the following qualifications :-

"..2. Candidate should have qualified the National Eligibility Test (NET) for Lecturers conducted by the UGC/CSIR or similar test accredited by the UGC.

However, the candidates having Ph.D. Degree in the concerned subject are exempted from NET or PG level and UG level teaching. The candidates having M.Phil in the concerned subject are exempted from NET for UG level teaching only..".

(emphasis is mine) WP(C) 5865/2011 Page 13 of 21 7.4 The petitioner, applied for the post reserved for visually handicapped persons. Pertinently, the petitioner at this point in time had enrolled himself with respondent no.3, for obtaining a degree in M.Phil. As would transpire, the petitioner was the only applicant to the post reserved for visually handicapped person.

7.5 The petitioner, was selected by a duly constituted Selection Committee and, consequently, was appointed to the post of Lecturer (English); albeit on an ad hoc basis, on 07.02.2009. Since, the petitioner, did not have a degree in M.Phil, and being a person with disability, respondent no.2 College, on 13/14.02.2009, applied to UGC to either exempt the petitioner from taking the NET or grant an accommodation for a period of two years to the petitioner to obtain a M.Phil degree.

7.6 In the meanwhile on 20.03.2009, respondent no.2 College filed an affidavit with a Division Bench in the Sambhavana's case, which broadly conveyed to the court that it had complied with the directions issued by it. Notably, the injunction order dated 04.04.2007 was vacated by the court qua respondent no.2 College based on the assertion made in the said affidavit. The fact that relaxation had been given to the petitioner, as recommended by the Selection Committee, was conveyed to the Division Bench by respondent no.2 College. It was further averred in the said affidavit that the petitioner would be appointed against the post after receiving approval from UGC.

7.7 Undisputedly, on 16.03.2010, UGC wrote to respondent no.3 i.e., University of Delhi. Notably, the subject of the communication was as follows:-

"Proposals received from the University of Delhi, Delhi for exemption from NET examination for the appointment as Lectures in its various affiliated colleges."

(emphasis is mine) WP(C) 5865/2011 Page 14 of 21 7.8 As would be evident from the subject of the communication, extracted above, that there were several proposals submitted for exemption from NET, in respect of, various colleges affiliated to the University of Delhi. The body of the communication dated 16.03.2010, would show that these proposals were considered at the meeting of the Commission held on 23.02.2010. One such proposal which, evidently, found favour with UGC for exemption was, the proposal of the petitioner, forwarded to it, by the University of Delhi i.e., Respondent no.3. The reason articulated in the letter of 16.03.2010 for grant of approval was that, NET qualified candidates were not available. The source of power was also indicated in the communication dated 16.03.2010. The source being: the UGC Regulations of "1991/2000".

7.9 In these circumstances, what is clear is that, under the 2000 Regulations, which superseded the 1991 Regulations, the UGC had the power, inter alia, to grant relaxation qua prescribed qualifications where, "enough number of candidates were not available with NET qualifications for specified period only." This source of power is contained in the March 2000 notification published in the Gazette of India, Part-III, Sector-4. The relevant portion is extracted hereinbelow :-

"..No person shall be appointed to a teaching post in university or in any of institutions including constituent or affiliated colleges recognised under clause (f) of Section 2 of the University Grants Commission Act, 1956 or in an institution deemed to be a university under Section 3 of the said Act in a subject if he / she does not fulfil the requirements as to the qualifications for the appropriate subjects as provided in the Annexure.

Provided that any relaxation in the prescribed qualifications can only be made by the University Grants Commission in a particular subject in which NET is not being conducted or enough number of candidates are not available with NET qualifications for a specified period only. (This relaxation, if allowed, would be given based on sound justification and would apply to affected Universities for that WP(C) 5865/2011 Page 15 of 21 particular subject for the specified period. No individual applications would be entertained.."

(emphasis is mine) 7.10 What is also clear upon a close reading of UGC's communication dated 16.03.2010, addressed to University of Delhi i.e., respondent no.3, that several proposals had been received by it via the University of Delhi i.e., respondent no.3 in respect of various colleges affiliated to it for seeking exemption from NET. These proposals were considered by UGC at its meeting held on 23.02.2010. One such proposal, which found, favour with UGC, was that of the petitioner, and that too on the ground that enough candidates, who had cleared NET were not available. Therefore, the fact that there was power vested in the UGC and, that the power, had been exercised in consonance with the parameters prescribed under the 2000 Regulations, cannot be in issue. It was also not a case of UGC having entertained, an individual application, for grant of exemption from NET.

7.11 The argument of UGC, after having exercised the power, that it was wrongly exercised, in view of the fact that the power of relaxation, was not adverted to in the advertisement; an argument advanced only to defeat the cause of the petitioner, is untenable for the following reasons :-

(i). First, the underlying rationale of the judgments of the Supreme Court, cited before me, which is that the power of relaxation qua qualifications should be adverted to in the advertisements calling for applications for public employment is, premised on the equal opportunity clause, contained in the Constitution of India, as reflected in Articles 14 and 16. In other words, the rationale is that a prospective candidate would be deprived of a fair and equal chance of gaining public employment unless the power of relaxation qua qualifications is in public domain. This can be done either by stating so, in as many words either in the advertisement or by other means, such as: by gazetting WP(C) 5865/2011 Page 16 of 21 the relevant rules and regulations of appointment. Undoubtedly, in this case the March 2000 notification was gazetted and, was therefore, in public domain. The first proviso to Regulation 2 invested the UGC with a power to relax the prescribed qualifications, inter alia, where sufficient number of candidates were not available with NET qualifications; albeit for a specified period only. It cannot thus be said that the petitioner, so to say, stole a march over other aspiring candidates without this aspect being brought in public domain.

7.12 Admittedly, the 2000 Regulations were amended on 14.06.2006, which were referred to as, the University Grants Commission (Minimum Qualifications Required for the appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to it (Second Amendment Regulations, 2006) [in short 2006 Regulations].

7.13 The amendment which was brought about and, which is relevant, for this case, was that, candidates having M.Phil degrees in the concerned subject were exempted from NET for teaching at the undergraduate level. The relevant portion of the amendment is extracted hereinbelow:

"...NET shall remain the compulsory requirement for appointment as Lecturer for those with post-graduate degree. However, the candidates having Ph.D. degree in the concerned subject are exempted from NET for PG level and UG level teaching. The candidates having M.Phil degree in the concerned subject are exempted from NET for UG level teaching only.." (emphasis is mine) 7.14 The UGC having regard to the aforesaid powers, invested in it, exercised the same in relation to the petitioner (who had applied against an advertisement issued, on 28.10.2008), while considering his case, amongst others, at its meeting held on 23.02.2010. Pertinently, though the UGC (Minimum qualifications required for the appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) (3rd Amendment), Regulation 2009 [in short 2009 Regulations] had come into force w.e.f.

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17.07.2009, it chose to exercise its powers of relaxation, as per the 2006 Regulations.

7.15 I may only note here that Mr. Amitesh Kumar, both in his oral and written submissions, has categorically stated that the instant case would be covered by Regulations which were in vogue prior to 2009 Regulations, in view of the fact that, the advertisement in issue against which applications had been invited, was issued, on 28.10.2008.

7.16 Therefore, having regard to the above, I have no doubt that both arguments of the UGC that the power of relaxation could not be exercised in favour of an individual, and that, such a power if available could not have been exercised unless it was clearly adverted to in the advertisement are in my opinion, misconceived, as demonstrated above.

7.17 The other argument of UGC that it was bound by the directive issued by the Government of India under Section 20 of the University Grants Commission Act, 1956 (in short the UGC Act) to the effect that no exemption from qualifying NET could have been granted, cannot be accepted in this particular case, as this argument was premised on the following orders issued by the Government of India and the consequent communications exchanged with the Government of India, on the issue. The specific orders / communication issued in this behalf and relied upon are as follows:- Order dated 12.11.2008 issued by Government of India, Ministry of Human Resource and Development, Department of Higher Education (MHRD); Letter dated 16.07.2009 issued by MHRD to Chairman, UGC; Letter dated 03.11.2010 issued by MHRD to Secretary-in-Charge, UGC.

7.18 A perusal of the orders and the correspondences, referred to above, would show that UGC seemed to take the stand that the proviso to the 2000 Regulations remained in force till the notification of the UGC (Minimum WP(C) 5865/2011 Page 18 of 21 qualifications required for the appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it)

(3rd Amendment), Regulation 2009 [in short 2009 Regulations]. Though order dated 12.11.2008 had been passed, the UGC, in its own wisdom, had taken a decision that it had the power to relax the qualifications. It is in that context that at its meeting held on 23.02.2010, it chose to take up the cases for relaxation of the rigour of taking the NET examination. One such case, which was taken up, was that of the petitioner. The petitioner's case was approved by the UGC on the ground that NET qualified candidates were not available.

7.19 Consequent thereto, upon receipt of communication of approval by the UGC, the petitioner on 26.03.2010 was permanently absorbed in the post of Assistant Professor.

7.20 Having regard to the fact that in the meanwhile i.e., on 22.09.2009, the petitioner had not only acquired the relevant qualifications but had also been absorbed, in my opinion, the UGC could not take recourse to the MHRD directive of 12.11.2008, and those issued thereafter, to take a u-turn on the issue, by withdrawing its approval.

7.21 As indicated above, the approval was withdrawn by UGC on 02.06.2010, much after the petitioner had already been permanently absorbed and had attained the relevant qualifications, as per the provisions of the 2006 Regulations.

7.22 The initial approval granted by UGC vide its communication dated 16.03.2010, having been acted upon, could not have been made in effective, after it had already been acted upon, more particularly, when, the defect, if any, in the appointment had in the meanwhile got cured.

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8. Furthermore, in my view, the action taken by the UGC was, in consonance with the provisions of Section 33 of the PWD Act, which required it to grant reasonable accommodation to persons with disabilities. None of the directives of the MHRD, which were general in nature, could have possibly taken into account, this aspect of the matter, as the proposal with regard to the petitioner was available only with the UGC.

8.1 It may be pertinent to note at this stage the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training vide Office Memorandum (O.M.) dated 29.12.2005, wherein under clause 22 it chose to accord relaxation in suitability standard to persons with disabilities. The relevant clause reads as follows :-

"..22. RELAXATION OF STANDARD OF SUITABILITY : If sufficient number of persons with disabilities are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. Thus, to the extent the number of vacancies reserved for persons with disabilities cannot be filled on the basis of general standards candidates belonging to this category may be taken by relaxing the standards to make up the deficiency in the reserved quota subject to the

fitness of these candidates for appointment to the post / posts in question. .."

(Emphasis is mine) 8.2 The aforementioned clause quite clearly seems to indicate that suitability standards amongst persons with disabilities can be relaxed where sufficient number of persons are not available on the basis of the general standard or prescribed standard to fill vacancies reserved for persons with disability. This clause, in a sense, introduces the concept of reasonable accommodation, which is applied to, persons, falling within the category of persons with disabilities.

Ordinarily, the concept of 'reasonable accommodation' is applied in the context of provision of facilities to persons with disabilities by bringing about necessary WP(C) 5865/2011 Page 20 of 21 modifications and/or adjustments in the work and/or social the environment enveloping such persons so that they can enjoy and exercise on equal basis, with others, their human rights and fundamental freedoms. The attempt is to create for them a barrier free environment. The Office Memorandum dated 29.12.2005, however, in a sense takes this concept further by affording relaxation in suitability standards. In my opinion, as correctly argued by the counsel for the petitioner, since no one other than the petitioner had applied against the vacancy advertised for visually impaired persons, the grant of relaxation in time frame by the UGC, in the first instance, was the appropriate approach, which it ought not to be allowed to reversed at this juncture by the UGC, based only on the plea that it was bound by the directives of MHRD, which obviously were not issued in the context of the provisions of the PWD Act and O.M. dated 29.12.2008.

9. Therefore, having regard to the above, the writ petition is allowed. The decision of the UGC dated 02.06.2010, whereby it withdrew the exemption granted to the petitioner from taking NET, is quashed. Accordingly, the petitioner will be reinstated forthwith to the permanent post of Assistant Professor from the date when he was first employed, without break-in-service; sans the obligation to pay salary and allowances for the period spanning between 07.06.2011 and the date of this judgment. All other concomitant consequential benefits shall, however, accrue to the petitioner, in view of the directions issued above. Parties shall, though, bear their own costs.

10. With the aforesaid observations in place, the writ petition and the pending applications are disposed of.

RAJIV SHAKDHER, J.

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