

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

S.L.P. (CIVIL) No. 15816 OF 2023

In the matter of :

University Grants Commission

.....Petitioner

Versus

Priya Varghese &Ors.

.....Respondents

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DRAWN BY :

FILED BY:

(Manoj Ranjan Sinha &)
Nisha
Advocates

()
Advocate for the petitioner

DRAWN ON: .04.2024

FILED ON : .04.2024

Priya Varghese
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**REJOINDER AFFIDAVIT ON BEHALF OF THE
PETITIONER TO THE COUNTER AFFIDAVIT FILED
ON BEHALF OF RESPONDENT NO. 5**

I, Dr. Supriya Dahiya, University
Grants Commission, Bahadur Shah Zafar Marg, New Delhi –
110002, do hereby solemnly affirm and declare as under : -

1. That I am working as Education Officer in the University Grants Commission [hereinafter referred to as “the UGC”] herein and as such, I am conversant with the facts and circumstances of the instant case and hence, am competent to swear the instant affidavit.
2. That at the outset, it is respectfully submitted that the contents of the counter affidavit filed on behalf of the respondent no. 5 are incorrect and are not based on correct facts. The petitioner denies each and every averment and contention of the counter affidavit, except those which have been admitted hereinafter and the contents of the Special Leave Petition are reiterated in response.
3. The present Special Leave Petition is directed against the impugned final judgment and order dated 22.06.2023 passed

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by the Hon'ble High Court of Kerala at Ernakulam in Writ Appeal WA No. 27 of 2023 vide which the Hon'ble High Court while allowing the Writ Appeal of the Appellant - Respondent No. 1, set aside the judgment of the Ld. Single Judge through which the Ld. Single Judge had issued a direction to the competent authority of the University to re-assess the credentials of the Respondent No. 1 herein and to publish the final rank list accordingly. The Hon'ble High Court, vide the impugned judgment and order found *inter alia* that the writ petition was bad for non-joinder of parties and further declared that the period spent by the Writ Appellant- Respondent No. 1 on research under the Faculty Development Programme of the Kannur University was to be counted towards the 'research experience' of the Writ Appellant for the purposes of appointment as Associate Professor as stipulated under the UGC Regulations of 2018.

4. That, section 3.11 of the UGC Regulations, 2018 clearly and in an unambiguous manner states that *the time taken to acquire Ph.D. degree shall not be considered as research/teaching experience, except if it is done simultaneously with teaching assignment without taking any kind of leave*. This has been the norm for the Faculty Improvement Program as well as for the Faculty Development Program under the Xth and XIIth plans, respectively. The respondent no. 1 has failed to demonstrate that her research/teaching experience was done along with teaching assignment as was stipulated under Regulation 3.11 of the 2018 Regulations.

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5. It is respectfully stated and submitted that the UGC Regulation 2018 prescribes the necessary qualifications for appointment to various posts of teachers including the post of Associate Professor. Regulation 4.1(II) stipulates as follows:-

"4.0 Direct Recruitment

4.1 For the Disciplines of Arts, Commerce, Humanities, Education, Law, Social Sciences, Sciences, Languages, Library Science, Physical Education, and Journalism & Mass Communication.

xxxx

II. Associate Professor:

Eligibility

i) A good academic record, with a Ph.D. Degree in the concerned/allied/relevant disciplines.

ii) A Master's Degree with at least 55% marks (or an equivalent grade in a point-scale, wherever the grading system is followed). iii) A minimum of eight years of experience of teaching and / or research in an academic/research position equivalent to that of Assistant Professor in a University, College or Accredited Research Institution/industry with a minimum of seven publications in the peer-reviewed or UGC-listed journals and a total research score of Seventy five (75) as per the criteria given in Appendix II, Table 2."

6. That, it is further respectfully stated and submitted that the Kannur University, through its appointment/reappointment notification dated 22.09.2021 (referenced as B3/23389/2019), invited applications from candidates for various teaching positions on a regular basis. Apart from appointments to other posts, appointment to one post of Associate Professor in the Department of Malayalam was also mentioned. The notification dated 22.09.2021 itself prescribed the eligibility qualifications in accordance with the UGC regulations of 2018 for the said post. Respondent no.1, was not having the required minimum of eight years of teaching experience and / or research as mandated.

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7. It is to be further respectfully stated and submitted that Regulation 3.11 of the above UGC Regulations 2018, also clearly prescribed :

"3.11 The time taken by candidates to acquire M.Phil. and/or Ph.D. Degree shall not be considered as teaching/research experience to be claimed for appointment to the teaching positions. Further the period of active service spent on pursuing Research Degree simultaneously with teaching assignment without taking any kind of leave, shall be counted as teaching experience for the purpose of direct recruitment/promotion. Regular faculty members upto twenty per cent of the total faculty strength (excluding faculty on medical / maternity leave) shall be allowed by their respective institutions to take study leave for pursuing Ph.D. degree."

8. From the above, it is clearly made out that the time taken to acquire Ph.D. degree will not be counted as research/teaching experience, unless it is done simultaneously with teaching assignment without taking any kind of leave.
9. That it is respectfully stated and submitted that respondent no. 1 failed to show that she did her research work while pursuing her Ph.D. simultaneously with teaching assignments, without taking any leave.
10. It is respectfully stated and submitted that as per Regulation 8.2.(X) of UGC Regulations 2018, study leave availed by the candidate can only be counted as service for the purpose of retirement benefits. The relevant extract reads as follows:

"X. The period of study leave shall count as service for purpose of the retirement benefits (pension/contributory provident fund), provided that the teacher rejoins the University/College/Institution on the expiry of his/her study leave, and serve the institution for the period for which the Bond has been executed."

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11. It is respectfully stated and submitted that during the deputation, the seniority will be protected and counted as service for the purpose of retirement benefits (pension/contributory provident fund), provided that the teacher rejoins the University/College/Institution.
12. It is further respectfully stated and submitted that as per Regulation 4.1(II) of the 'UGC Regulations, 2018', the requirement of 'experience of teaching' refers to actual teaching experience and not that which can be construed or inferred, as the post of Associate Professor is of extreme importance to both a University and a College.
13. It is stated and submitted that the Hon'ble Supreme Court in the case of *Annamalai University vs. Secretary to Government, Information and Tourism Department and Others, (2009) 4 SCC 590*, have held that the provisions of UGC Act are binding on all the Universities whether conventional or open.
14. It is respectfully stated and submitted that the Hon'ble Supreme Court in the case of *Gambhirdan K. Gadhvi v. State of Gujarat and Ors. [(2022) 5 SCC 179]* have held :-
- “16. It cannot be disputed that UGC Regulations are enacted by the UGC in exercise of power under Section 26(1)(e) and 26(1)(g) of UGC act, 1956. Even as per the UGC act every rule and regulation made under that said Act, shall be laid before each House of Parliament. Therefore, being a subordinate legislation, UGC Regulation becomes part of the Act.”
15. It is further respectfully stated and submitted that, the UGC, as the author of the regulations, has already established a view and Respondent No. 5 cannot deviate from it or contradict it. This is especially pertinent considering the


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binding precedents set by this Hon'ble Court, which affirm that UGC regulations take precedence over any conflicting provisions in the State statutes or legislation.

16. That the facts stated in the above affidavit are true to best of my knowledge and have been derived from the records of the case. No part of the same is false and nothing material has been concealed therefrom.

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VERIFICATION

I, the above named deponent, do hereby verify that the facts stated in the above affidavit are true to my knowledge. No part of the same is false and nothing material has been concealed therefrom.

Verified at New Delhi on this the day of April, 2024.

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The fulfilment of these conditions is to be certified by the Registrar or the Dean (Academic Affairs) of the University concerned.

- II.** The clearing of NET/SLET/SET shall not be required for candidates in such disciplines for which NET/SLET/SET has not been conducted.
- 3.4** A minimum of 55% marks (or an equivalent grade in a point-scale, wherever the grading system is followed) at the Master's level shall be the essential qualification for direct recruitment of teachers and other equivalent cadres at any level.
- I.** A relaxation of 5% shall be allowed at the Bachelor's as well as at the Master's level for the candidates belonging to Scheduled Caste/Scheduled Tribe/Other Backward Classes (OBC)(Non-creamy Layer)/Differently-abled ((a) Blindness and low vision; (b) Deaf and Hard of Hearing; (c) Locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid-attack victims and muscular dystrophy; (d) Autism, intellectual disability, specific learning disability and mental illness; (e) Multiple disabilities from amongst persons under (a) to (d) including deaf-blindness) for the purpose of eligibility and assessing good academic record for direct recruitment. The eligibility marks of 55% marks (or an equivalent grade in a point scale wherever the grading system is followed) and the relaxation of 5% to the categories mentioned above are permissible, based only on the qualifying marks without including any grace mark procedure.
- 3.5.** A relaxation of 5% shall be provided, (from 55% to 50% of the marks) to the Ph.D. Degree holders who have obtained their Master's Degree prior to 19 September, 1991.
- 3.6** A relevant grade which is regarded as equivalent of 55%, wherever the grading system is followed by a recognized university, at the Master's level shall also be considered valid.
- 3.7** The Ph.D. Degree shall be a mandatory qualification for appointment and promotion to the post of Professor.
- 3.8** The Ph.D. Degree shall be a mandatory qualification for appointment and promotion to the post of Associate Professor.
- 3.9** The Ph.D. Degree shall be a mandatory qualification for promotion to the post of Assistant Professor (Selection Grade/Academic Level 12) in Universities.
- 3.10** The Ph.D. Degree shall be a mandatory qualification for direct recruitment to the post of Assistant Professor in Universities with effect from 01.07.2021.
- 3.11** The time taken by candidates to acquire M.Phil. and / or Ph.D. Degree shall not be considered as teaching/ research experience to be claimed for appointment to the teaching positions. Further the period of active service spent on pursuing Research Degree simultaneously with teaching assignment without taking any kind of leave, shall be counted as teaching experience for the purpose of direct recruitment/ promotion. Regular faculty members upto twenty per cent of the total faculty strength (excluding faculty on medical / maternity leave) shall be allowed by their respective institutions to take study leave for pursuing Ph.D. degree.
- 3.12 Qualifications:**
- No person shall be appointed to the post of University and College teacher, Librarian or Director of Physical Education and Sports, in any 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 if such person does not fulfil the requirements as to the qualifications for the appropriate post as provided in the Schedule 1 of these Regulations.
- 4.0 Direct Recruitment**
- 4.1 For the Disciplines of Arts, Commerce, Humanities, Education, Law, Social Sciences, Sciences, Languages, Library Science, Physical Education, and Journalism & Mass Communication.**
- I. Assistant Professor:**
- Eligibility (A or B) :**
- A.**
- i) A Master's degree with 55% marks (or an equivalent grade in a point-scale wherever the grading system is followed) in a concerned/relevant/allied subject from an Indian University, or an equivalent degree from an accredited foreign university.

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- ii) Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC or the CSIR, or a similar test accredited by the UGC, like SLET/SET or who are or have been awarded a Ph. D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of M.Phil./Ph.D. Degree) Regulations, 2009 or 2016 and their amendments from time to time as the case may be exempted from NET/SLET/SET :

Providea, the candidates registered for the Ph.D. programme prior to July 11, 2009, shall be governed by the provisions of the then existing Ordinances/Bye-laws/Regulations of the Institution awarding the degree and such Ph.D. candidates shall be exempted from the requirement of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions subject to the fulfillment of the following conditions :-

- The Ph.D. degree of the candidate has been awarded in a regular mode;
- The Ph.D. thesis has been evaluated by at least two external examiners;
- An open Ph.D. viva voce of the candidate has been conducted;
- The Candidate has published two research papers from his/her Ph.D. work, out of which at least one is in a refereed journal;
- The candidate has presented at least two papers based on his/her Ph.D work in conferences/seminars sponsored/funded/supported by the UGC / ICSSR/ CSIR or any similar agency.

The fulfilment of these conditions is to be certified by the Registrar or the Dean (Academic Affairs) of the University concerned.

Note: NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not conducted by the UGC, CSIR or similar test accredited by the UGC, like SLET/SET.

OR

- B. The Ph.D degree has been obtained from a foreign university/institution with a ranking among top 500 in the World University Ranking (at any time) by any one of the following: (i) Quacquarelli Symonds (QS) (ii) the Times Higher Education (THE) or (iii) the Academic Ranking of World Universities (ARWU) of the Shanghai Jiao Tong University (Shanghai).

Note: The Academic score as specified in Appendix II (Table 3A) for Universities, and Appendix II (Table 3B) for Colleges, shall be considered for short-listing of the candidates for interview only, and the selections shall be based only on the performance in the interview.

II. Associate Professor:

Eligibility:

- A good academic record, with a Ph.D. Degree in the concerned/allied/relevant disciplines.
- A Master's Degree with at least 55% marks (or an equivalent grade in a point-scale, wherever the grading system is followed).
- A minimum of eight years of experience of teaching and / or research in an academic/research position equivalent to that of Assistant Professor in a University, College or Accredited Research Institution/industry with a minimum of seven publications in the peer-reviewed or UGC-listed journals and a total research score of Seventy five (75) as per the criteria given in Appendix II, Table 2.

III. Professor:

Eligibility (A or B) :

A.

- An eminent scholar having a Ph.D. degree in the concerned/allied/relevant discipline, and published work of high quality, actively engaged in research with evidence of published work with, a minimum of 10 research publications in the peer-reviewed or UGC-listed journals and a total research score of 120 as per the criteria given in Appendix II, Table 2.

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