

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA
(CIRCUIT AT PORT BLAIR)

No. O.A. 351/00072/A&N/2016

Date of order: 27.3.2019

Present : Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Shri C. Hamza,
S/o. Shri C. Marakkar,
R/o. Delanipur Village,
Port Blair,
South Andaman,
Aged about 46 years,
Worked as Guest Lecturer (History),
In Jawaharlal Nehru Rajkeeya Vidhyalaya,
Port Blair till April, 2016,
744 102.
2. Shri Dulal Chandra Mazumdar,
S/o. Late Bimal Chandra Mazumdar,
R/o. Netaji Nagar,
Little Andaman,
South Andaman,
Aged about 41 years,
Worked as Guest Lecturer (History),
In Jawaharlal Nehru Rajkeeya Vidhyalaya,
Port Blair till April 2016,
744 207.
3. Shri R. Sankar,
S/o. Late M.A. Raju,
R/o. Junglighat Village,
South Andaman,
Aged about 36 years,
Worked as Guest Lecturer (English),

In Jawaharlal Nehru Rajkeeya Vidhyalaya,
Port Blair till April, 2016.
744101.

4. Dr. Mukta Tyagi,
D/o. Shri Sushil Kumar Tyagi,
Aged about 44 years,
R/o. RGT Road,
Port Blair,
South Andaman,
Worked as Guest Lecturer (Hindi),
In Jawaharlal Nehru Rajkeeya Vidhyalaya,

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Port Blair till April 2016,
744 101.-

5. Shri Tito Paul
S/o T.P.Paul
Aged About 43 Years
R/o Dollygunj Village,
Port Blair
South Andaman
Worked As Guest Lecturer (Physics),
In Jawaharlal Nehru Rajkeeya Vidhyalaya,
Port Blair Till April, 2016,
744 103.

6. Dr Milan Halder,
S/o Shri Harendra Halder,
Aged About 39 Years
R/o Havelock Village
Port Blair
South Andaman
Worked As Guest Lecturer (Economics),
In Jawaharlal Nehru Rajkeeya Vidhyalaya,
Port Blair Till April, 2016, 744 211

7. Shri V. Kumar
S/o Shri Vellai Swamy,
Aged About 40 Years
R/o Burmanallah Village
Port Blair,
South Andaman,
Worked As Guest Lecturer (Geography),
In Jawaharlal Nehru Rajkeeya Vidhyalaya,
Port Blair Till April, 2016,
744 105.

Applicants

Vs

1. The Union of India
Service through the Secretary,
Ministry Of Human Resource Development,
New Delhi 110 001.
2. The Andaman and Nicobar Administration
Service through the Chief Secretary,
Andaman and Nicobar Administration
Port Blair 744 101.

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3. The Chief Secretary
Andaman and Nicobar Administration,
Secretariat Building,
Port Blair 744 101.
4. The Secretary (Higher Education),
Andaman and Nicobar Administration,
Secretariat Building,
Port Blair 744 101.
5. The Assistant Secretary (Higher Education),
Andaman and Nicobar Administration,
Secretariat Building,
Port Blair 744 101.
6. The Principal,
Jawaharlal Nehru Rajkeeya Vidhyalaya,
A & N Islands,
Port Blair 744 101

For the Applicants

Mr. R. Kumar, Counsel

For the Respondents

Mr. S.C. Misra, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicants have approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- (a) The applicants pray this Hon'ble Tribunal to permit the applicants to file the instant joint application in terms of the Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987, to file a single application as the cause of action and the nature of relief prayed for and have common interest in the matter.
 - (b) An order do issue directing the respondent authorities restraining them from proceeding with the recruitment process by engaging the Assistant Professor on contract basis replacing the applicants till the disposal of this original application.
 - (c) An order do issue directing the respondents not to disturb the service of the Guest Lecturer of the applicants in their respective subjects and allow them in the said post of Guest Lecturer till the regular employee is recruited through due process of law.
 - (d) And to pass such further or other order(s) and/or direction(s) as to this Hon'ble Tribunal may deem fit and proper."
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2. The applicant's prayer for joint prosecution in terms of Rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987, on grounds of commonality of interest and common cause of action is allowed.

3. Heard Ld. Counsel for both sides, examined pleadings and documents on record.

4. The submissions of the applicants, as articulated through their Ld. Counsel, is that the applicants are all engaged as Guest Lecturers in respective discipline in JNRM, Port Blair and paid salary as per UGC norms. The seven applicants have been engaged from 1997, 2001, 2006, 2009 and 2015 respectively. That, an employment notice was published by the respondent authorities on 19.5.2016 proposing to engage Assistant Professors on contract basis for a period of six months in the academic year 2016-2017 in colleges of the A&N Administration. The applicants apprehend that, they might be debarred from competing in the fresh selection process on account of being over-aged and, alleging that the respondent authorities, in violation of the principle of the Hon'ble Apex Court that temporary arrangements cannot be made to replace the applicants with another group of similar incumbents, are trying to engage new incumbents in their place in the guise of Assistant Professors on contractual basis. The applicants have, hence, approached the Tribunal praying that they may be allowed to continue to function as Guest Lecturers until recruitment of regular incumbents to the said posts.

5. The respondents, on the other hand, have argued as follows:-

That, as per the UGC regulations on minimum qualification for teachers & other academic staff in Universities & Colleges and Measures for the maintenance of standards in higher education - 2010, (communicated vide UGC's letter No. F. 3-1/2009 dated 30.6.2010) mandates the following recruitment qualification for Assistant Professors, Associate Professors and Professors in Universities and Colleges - "3.3.0 - of its annexure "The minimum requirements of a good academic record 55% marks (or an equivalent grade in a

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point scale wherever grading system is followed) at the master level and qualifying in the NET, or an accredited test SLET, SET shall remain for the appointment of Assistant Professors. Para 3.3.1 stipulates NET/SLET/SET shall remain the minimum eligibility condition for recruitment and appointment of Assistant Professors in Universities/Colleges/Institutions. That, as there were no candidates fulfilling the criteria as per UGC norms for the post of Assistant Professors, the applicants were engaged for imparting lectures for two hours on "as and when required" basis till availability of well qualified candidates in the best interest of students. Further vide Order No. 575 dated 19.10.2015 it was categorically mentioned that their engagement as "resource persons" will be purely on "as and when required" basis, and that they shall have no right to claim for extension of their term or for any regular post in the department. The applicants have joined only after accepting the offer of engagement against the terms & conditions and that, applicants were never engaged as Assistant Professors.

That, the A&N Administration has notified vacancies of Assistant Professors on contract basis in the various Colleges against the sanctioned post of Assistant Professors as per the qualifications prescribed in the notified Recruitment Rules.

6. The issue to be adjudicated upon, in the instant O.A., is whether the applicants can rightfully claim to continue to function as Guest Lecturers given the requirements of UGC regulations mandating minimum qualification of teachers and other academic staff in Universities and Colleges.

7. At the outset, we refer to the employment notice dated 19.5.2016, which had been issued to fill up the post of Assistant Professors on contract basis. The said notification categorically states that the engagement of contract faculties will be purely in accordance with the approved and notified rules in force. Accordingly, the educational qualifications have been prescribed as follows:-

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"(2) Educational Qualification for JNRM, MGGC and ANCOL

Candidates possessing good academic record with at least 55% marks or an equivalent grade of B in the 7 point scale with letter grades O, A, B,C,D,E and F at the Master's Degree level from a recognized University or Institute.

NOTE 1: The terms "Good Academic Record" means at least second class with fifty percent marks in Graduation Degree.

NOTE2: The exact discipline in which Master's Degree is required will be indicated at the time of each recruitment.

- (i) Should have cleared the National Eligibility Test (NET) for Lecturers/Assistant Professors conducted by the UGC, CSIR or similar test accredited by the UGC, like State Level Eligibility Test (SLET)/State Eligibility Test (SET).

NOTE 1: NET/SLET/SET shall remain the minimum eligibility condition for recruitment and appointment as Assistant Professor.

Provided, however, that candidates who are or have been awarded Ph. D Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for award of Ph.D. Degree) Regulation, 2009 and candidates who possess Master Degree Programmes in such discipline for which NET/SLET/SET accredited test is not conducted, shall be exempted from the minimum eligibility condition of NET/SLET/SET for recruitment and appointment as Assistant Professor.

It is clear therefrom that the respondent authorities have a set of recruitment rules in force issued in accordance with the UGC regulations on minimum qualification for teachers and other academic staff of Universities and Colleges and measures for the maintenance of standards in Higher Education, 2010. It is also a settled principle of good governance in the field of education that well qualified teaching faculties are required whether on contract or on regular basis in order to maintain academic standards and to extend quality education. It is in this context, that the UGC has prescribed certain standards and the respondents are absolutely within their rights to promulgate recruitment rules in keeping with such UGC regulations. The UGC regulations dated 30.6.2010 has been annexed at R-1 of the reply of the respondent authorities and the regulations on Recruitment and Qualification state as follows:-

"3.0.0 RECRUITMENT AND QUALIFICATIONS

3.1.0 The direct recruitment to the post of Assistant Professors, Associate Professors and Professors in the Universities and Colleges shall be on the basis of merit through all India advertisement and selections by the duly constituted Selection Committees as per the provisions made under these Regulations to be incorporated under the Statutes/Ordinances of the concerned university. The composition of such committees should be as prescribed by the UGC in these Regulations.

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3.2.0 The minimum qualifications required for the post of Assistant Professors, Associate Professors, Professors, Principals, Assistant Directors of Physical Education and Sports, Deputy Director of Physical Education and Sports, Directors of Physical Education and Sports, Assistant Librarians, Deputy Librarians, Librarians will be those as prescribed by the UGC in these Regulations.

3.3.0 The minimum requirements of a good academic record, 55% marks (or an 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 for the appointment of Assistant Professors.

3.3.1 NET/SLET/SET shall remain the minimum eligibility condition for recruitment and appointment of Assistant Professors in Universities / Colleges / Institutions.

Provided however, the 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 Professor or equivalent positions in Universities/Colleges/Institutions.

3.3.2 NET/SLET/SET shall not be required for such Masters Degree Programmes in disciplines for which NET/SLET/SET accredited test is not conducted.

3.4.0 A minimum of 55% marks (or an equivalent grade in a point scale wherever grading system is followed) will be required at the Master's level for those recruited as teachers at any level from industries and research institutions and at the entry level of Assistant Professors, Assistant Librarians, Assistant Directors of Physical Education and Sports.

3.4.1 A relaxation of 5% may be provided at the graduate and masters 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% marks (or an equivalent grade in 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 mark procedures.

3.5.0 A relaxation of 5% may 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.

3.6.0 Relevant grade which is regarded as equivalent of 55% wherever the grading system is followed by a recognized University shall also be considered eligible.

3.7.0 The Ph.D. Degree shall be a mandatory qualification for the appointment of Professors and for promotion as Professors.

3.8.0 The Ph.D. Degree shall be a mandatory qualification for all candidates to be appointed as Associate Professor through direct recruitment.

3.9.0 The period of 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 position."

During hearing, Ld. Counsel for the applicant would admit that the applicants have not qualified in the NET/SLET/SET which is a mandatory condition for engagement as contractual Assistant Professors as per Employment Notice dated 19.5.2016. The UGC had mandated that NET/SLET/SET

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shall be the minimum eligibility condition for recruitment / or appointment of Assistant Professors in University/Colleges/Institutions.

It is a settled principle of law that prescribed qualifications must have same rational nexus with the requirement of concerned service and should be Constitutionally valid. As laid down in **Banarasidas v. State of UP, AIR 1956 SC 520** it is open to the appointing authority to lay down requisite qualifications for recruitment to Government service. Further, in **Commissioner, Corpn. Of Madras, Madras Corpn. Teachers' Mandram, 1997 (2) SLR 466 (SC)**, the Hon'ble Apex Court had categorically stated that prescription of recruitment qualifications pertains to the domain of policy. In **Surinder Singh v. UOI (2007) 11 SCC 599** it has been held that it is for the State to decide on the qualifications required and the Courts cannot substitute the requirements on their assessment of what the requirement should be and that it is the prerogative and authority of the employer.

Accordingly, it is not open to the Tribunal to question the UGC regulations or to mandate the respondent authorities not to issue employment notice on the basis of recruitment rules drafted on the basis of such UGC regulations. It is also not understood as to why the applicants, who claim to be Guest Lecturers from as early as in 1997, 2001, 2006 and 2009, could not have acquired sufficient skills to qualify in NET/SLET/SET respectively which are essential pre-requisites in a teaching profession associated with higher education.

Ld. Counsel for the applicant robustly urges that although the applicants have preferred representations at Annexure A-16 to the O.A. colly. they may be accorded liberty to prefer further comprehensive representations to the respondent authorities to consider their prayer in relaxation of overage/academic qualifications.

We are not inclined to intervene with the Employment Notice, as the same has been issued in the interest of quality education, is not vires to any statute or suffers from malafide. At the same time, the applicants are accorded liberty to prefer comprehensive representations to the

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respondent authorities, who may thereafter dispose of the same in accordance with law within a period of four weeks from the date of receipt of such representations and to communicate the decision to the applicants forthwith thereafter.

8. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Manjula Das)
Judicial Member

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