

**Court No. - 32**

**Case :-** WRIT - A No. - 4124 of 2022

**Petitioner :-** Dr. ( Smt). Sushila Joshi

**Respondent :-** State of U.P. and Another

**Counsel for Petitioner :-** Arvind Kumar Singh

**Counsel for Respondent :-** C.S.C.

**Hon'ble Siddharth,J.**

Heard Sri Arvind Kumar Singh, learned counsel for the petitioner and Sri B.K. Yadav, learned Standing Counsel appearing on behalf of the State-respondents.

This writ petition has been filed praying for quashing the orders dated 07.7.2015, 15.05.2020 and 02.06.2020 passed by respondent Nos. 1 & 2, i.e., Principal Secretary, Department of Higher Education, Anubhag-5, Civil Secretariat, U.P., Lucknow and Director of Higher Education, U.P., Prayagraj, receptively.

The brief facts of the petition are that petitioner has done B.A., M.A. in Sanskrit and has also been awarded Ph.D. in the year 1986 from Garhwal University, Srinagar, Garhwal. The petitioner secured 54.80% marks in High School; 50.40% marks in Intermediate; 47.20% marks in B.A.; 57.20% marks in M.A. and also completed her Ph.D. in 1986, much prior to her selection and appointment on the post of Lecturer in Government Degree College, Uttarkashi.

The State Government has framed U.P. Higher Education (Group-A) Service Rules, 1985, (hereinafter referred as "Rule of 1985" only) prescribing educational qualification for selection and appointment on various posts including Lecturer in Government Degree Colleges run by the State Government. In order to meet out shortage of Lecturers in various Government Degree Colleges, State Government issued Government Order dated 30.03.1987 whereby it relaxed the qualification and permitted appointment of part

time teachers on vacant and sanctioned post. Pursuant to aforesaid Government Order and after due selection petitioner was initially appointed as part time Lecturer in Government Degree College, Uttarkashi, vide appointment letter dated 12.02.1987. Pursuant to the aforesaid appointment letter petitioner joined her duty on 13.02.1987 and since then she performed her duty with full devotion and utmost satisfaction of her superior authorities. Petitioner was transferred to Government Degree College, Hamirpur, vide order dated 06.03.2000 passed by the respondent no.2, Director of Higher Education, U.P. Prayagraj. The petitioner was granted minimum pay scale of Rs.2200-4000 vide order dated 13.3.2000. State Government-respondent no.1 had declared the petitioner as ad-hoc Lecturer with effect from 10.10.1996 vide order dated 01.04.2004. Respondent no.1 has illegally and without application of mind declined to regularize the services of petitioner vide order dated 07.7.2015.

A counter affidavit has been filed on behalf of the respondents, wherein it has been stated that the requisite qualification for the teachers of Government Degree Colleges has been provided under Rule 8 & 9 of the Rules of 1985 as well as in the Appendix which provides that a person must have 55% aggregate marks in intermediate and graduation or he may have 50% marks each in intermediate and graduation classes. The petitioner neither possessed 50% marks each in intermediate and graduation examination separately nor 55% aggregate marks in intermediate and graduation. She secured 50.4% in intermediate and 47.2% in graduation and therefore, she does not fulfil the requirements of Rules 1985. Hence by the impugned order dated 7.7.2015, she was denied regularization in service.

The learned counsel for the petitioner has submitted that column no. 10 of the aforesaid order dated 07.7.2015 itself speaks

that requirement of average 55% marks in the intermediate and graduation or 50% marks each in both examinations is not required from those candidate who possess Ph.D degree. Thus the petitioner has fulfilled minimum educational qualification for appointment of Lecturer. Her claim for regularization has been non-suited on wholly non existent ground.

Feeling aggrieved by aforesaid order petitioner has moved representation before the respondent no.1 for reconsideration of her claim for regularization in service.

When aforesaid claim of the petitioner was not considered by the respondents petitioner filed Writ-A No. 191 of 2019 (Dr. Sushila Joshi Vs. State of U.P. and others) before this Court which was disposed of with direction to consider the claim of the petitioner for regularization vide order dated 15.7.2019.

Despite the aforesaid order duly been served upon the respondents they did not considered the claim of the petitioner. Therefore, petitioner approached this Court and filed Contempt Petition No. 8411 of 2019 (Dr. Sushila Joshi Vs. Vandana Sharma).

When the notice was issued to the opposite parties in contempt proceedings respondents have, without considering the provisions of Rules, 1985 and without considering the government orders, rejected the claim of the petitioner again vide order dated 15.5.200 and consequential order dated 02.6.2020 passed by respondent nos. 1 & 2 respectively.

In the aforesaid impugned orders it is categorically stated that if candidate possessed Ph.D. degree then requirement of average 55 percent marks in the Intermediate and graduation or 50% marks in each of the two examinations shall be exempted. It is further clear that petitioner possessed Ph.D. degree in the year 1986

whereas she has joined services on 13.2.1987 pursuant to her selection recommended by the selection committee.

It is well settled that educational qualification can not be looked into at the time of regularization. It can be seen at initial stage of appointment.

In identical matter, this Court has passed an order dated 13.01.2021 in Writ-A No. 12321 of 2019 (Dr. Om Prakash Singh Vs. State of U.P. and others). The claim of regularization of Dr. Om Prakash Singh was rejected on the ground of lack of minimum required marks in intermediate and graduation. While setting aside impugned order this Court directed the respondents to release the amounts payable to the petitioners.

During service minimum pay scale has been granted to the petitioner. Respondents have deducted G.I.S., etc., from the salary of the petitioner at par with permanent government employees/ lecturers. However at the fag end service when liability of payment of retiral dues and pension etc., lies on the respondents they have rejected claim of the petitioner on wholly non existent ground.

It has further been submitted that sub Rule 4 of Appendix to the Rules of 1985 provides regularization in service on good academic record. The State Government has redefined the academic record vide government order dated 13.10.1997 providing that 55% marks in post graduate examination and 45% marks in graduate examination would be considered to be good academic record. The petitioner secured 57.2% in M.A. and 47.2% in B.A. and she also did her Ph.D. in 1986. The regularization of services of petitioner shall have been made keeping in view her good academic record by the Selection Committee in view of the government order dated 30.3.1987. Since she had Ph.D Degree

the requirement of minimum marks in graduation and intermediate examination was not relevant for her.

When the notice was issued to the opposite party in contempt proceedings then respondents have without considering the provisions of Rules, 1985 and without considering the government orders rejected the claim of the petitioner again vide order dated 15.5.200 and consequential order dated 02.6.2020 passed by respondent nos. 1 & 2 respectively.

After considering the rival submissions, this Court finds that a perusal of the Appendix of the rule of 1985 has become necessary, which are as follows:-

“APPENDIX

*[See Rule 8(2)]*

*1. The following shall be the minimum qualifications for the post of Lecturer in the Faculties of Arts, Science and Commerce :-*

*(a) An M. Phil Degree or a recognised degree beyond the Master's level or published work indicating the capacity of the candidate for independent research work; and*

*(b) consistently good academic record with at least first or high second class Master's degree or an equivalent degree of a foreign University, in the relevant subject.*

*2. The following shall be the minimum qualification for the post of Lecturer in the Faculty of Education :-*

*(a) An M. Phil Degree or a recognised degree beyond the Master's level or published work indicating the capacity of the candidate for independent research work; and*

*(b) a consistently good academic record with at least first or high second class Master's degree in Education and also Master's degree or an equivalent degree of a foreign University, in the relevant subject.*

*3. The minimum qualifications for the post of Lecturer in the Faculty of Law shall be a degree in Master of Law with consistently good academic record.*

*4. If the Selection Committee is of the view that the research work of a candidate as evident either from his thesis or from his*

*published work is of a very high standard, it may relax any of the qualifications prescribed in sub-clause (b) of clause (1), or sub-clause (b) of clause (2), as the case may be.*

*5. Where no candidate possessing the qualifications prescribed in sub-clause (a) of clause (1) or sub-clause (a) of clause (2) is available or considered suitable, the College on the recommendations of the Selection Committee may appoint a person possessing a consistently good academic record on the condition that he obtains such qualifications within five years of his appointment failing which he shall not be able to earn future increments until he fulfils the requirements.”*

The government order dated 13.10.1997 relied by learned counsel for the petitioner provides that in exercise of power under Section 50 (6) of the U.P. State Universities Act 1973 the Hon'ble Governor approved the following eligibility for selection on the post of Lecturer in his Universities and affiliated colleges governed by the Universities Act 1973 as follows:-

(a) 55% marks in post graduate examination alongwith good academic record.

(b) the candidates who have qualified the educational eligibility test conducted by Universities Grant Commission or Council of Scientific and Industrial Research or who have Ph.D. degree prior to 31.12.1993 or had attained the qualification of M.Phill prior to 31.12.1992.

Good academic record has been defined in the government order aforesaid as candidate having 55% marks in post graduate and 45% marks in graduation examination.

On the touch stone of the above Rule 4 of above Appendix and the government order dated 13.10.1997, it is clear that the petitioner had more than 55% marks in post graduation (57%) and also more the minimum marks in graduation fixed by the government order dated 31.10.1997 (47.2%).

As per the Appendix, the petitioner has the qualification of Ph.D. and also high second class in Master Degree, if as per Clause 4 of the Appendix, Ph.D degree of the petitioner is taken into account, she was required to be given regularization in service qualification provided as per sub Rule (b) of Clause I of Appendix. The petitioner did not required any relaxation in qualification as per Clause 1 Sub Clause (b) of Appendix because she had high second class marks in Master Degree (57%) alongwith Ph.D. The finding in the impugned order dated 7.7.2015 of the respondent no.1 that the petitioner does not fulfils the requirement of research work of very high standard as per clause 4 of Appendix is not based on any reason. Despite opportunity granted by this Court by the order dated 15.7.2019 passed in Writ-A No. 9191 of 2019, the respondent no.1 again reiterated his earlier order dated 7.7.2015. Good academic record was not defined in the Act of 1985, but has been defined in the government order dated 13.10.1997 and the petitioner fulfilled the requirement having 57 percent in M.A. and 47 percent in graduation examination, besides Ph.D.

The petitioner was appointed on 12.2.1987 and after working for more than 32 years, she has retired from service in May, 2019. The respondents have not explained in their counter affidavit as to how the petitioner was given appointment in the year 1987 in case she was not eligible for appointment for the post. The impugned orders do not interpret the Appendix of the Rule 1985 nor there is any consideration of the government order dated 13.10.1997, which relaxed the requirements of marks in the Master Degree and Graduation Degree. Even otherwise the petitioner is having Ph.D Degree of the year 1986, much before the cut off date 31.12.1993 as per the government order dated 13.10.1997. Hence she was fully eligible to be regularized in service.

In view of the above, the impugned orders passed by respondent nos.1 & 2 are hereby quashed.

Since the petitioner has retired and the legal position is clear, this Court is of the view that second remand the respondents would be futile exercise since the petitioner had earlier approached this Court and opportunity was given to the respondents to pass correct order in accordance with law vide order dated 15.7.2019 passed in Writ-A No. 9191 of 2019, but the respondents did not complied the same and after filing of the Contempt Petition No. 8411 of 2019 they have again passed illegal orders dated 15.5.2020 and 02.6.2020 reiterating their earlier stand in the order dated 7.7.2015, which have been quashed. Therefore positive mandamus is issued to the respondents to regularise service of the petitioner from the date the similarly situated employees were regularized as per the order dated 7.7.2015 passed by respondent no.1, Secretary, Department of Higher Education, Anubhag-5, Civil Secretariat, U.P. Lucknow.

The petitioner shall be entitled to pension and all other consequential service benefits in view of the judgement of this in case of **Sunita Sharma Vs. State of U.P. and others, Writ-A No. 25431 of 2018.**

Keeping in view after taking into consideration, her post adhoc service since the year 1987 to the year 2015 and her regular salary for the post of Lecturer shall be paid to her with effect from the date of regularization in service till the date of superannuation in May 2019. The post retiral benefits of the petitioner shall be calculated and paid to her, within twelve weeks from today.

In this order is not complied within the time provided, petitioner shall be paid interest on the entire arrears of salary and pension at the rate of 12 percent per annum.



The State Government shall be free to recover the amount of interest from the public servant/servants, who is/are found responsible for the delay.

The writ petition is allowed.

**Order Date :- 13.5.2022**

Ruchi Agrahari