

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24042 of 2019

Vijay Kumar Gupta S/o Khushiha Gupta, R/o village- House no. C6, Second Floor, Gali No. 2, Hardev Nagar, Jharoda Majraa, North Delhi, Delhi – 110084 ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Higher Education, New Secretariat, Patna.
2. The Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, (Bailey Road), Patna - 800001 through its Chairman.
3. The Chairman, the Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, (bailey Road), Patna - 800001.
4. The Secretary, the Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, (Bailey Road), Patna - 800001.
5. The Joint Secretary cum Controller of Examination, 15, Jawahar Lal Nehru (Baily Road), Patna- 800001.
6. Pooja Gupta, Assistant Professor (Hindi), Hindi Department (PG), North Campus, B.N. Mandal University, Bihar.
7. Stuti Ray, Assistant Professor (Hindi), Hindi Department, Ramesh Jha Mahila College, Saharsa, B.N. Mandal University, Bihar.
8. Mayank Bhargav, Assistant Professoer (Hindi), Hindi Department, M.L.T. College, Saharsa, B.N. Mandal University, Bihar ... Respondents

Appearance :

For the Petitioner	:	M/s Kumar Brijnandan & Alka Verma, Advs.
For the State	:	Mr. Amit Bhushan, AC to GP XVII
For the BPSC	:	Mr. P.N. Shahi, Sr. Adv. With M/s Sanjay Pandey & Nishant Kumar Jha, Advs.
For Respondents 6,7 & 8 :	:	Mr. Abhinav Shrivastava, Adv.

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

RESERVED JUDGMENT

Date : 18.05.2022

Heard the parties.

2. By way of this writ petition the petitioner has prayed for a direction to the Bihar Public Service Commission (hereinafter referred to as, “the B.P.S.C.”) to grant marks for M.Phil with NET as per Schedule-V of the advertisement and revise the merit of the petitioner accordingly by giving him 4 marks instead of 2 marks as given by the B.P.S.C.



3. The case was heard at length and the judgment was reserved whereafter written submission has been filed by both the petitioner and respondent-B.P.S.C.

4. Brief facts which require to be noted are that advertisements were issued for different posts of Assistant Professors in different Universities by the B.P.S.C. on the basis of requisition received from the Universities. The petitioner had applied against the Advertisement No. 50/2014 for the post of Assistant Professor (Hindi) wherein total number of vacancies were shown as 250. 126 vacancies were meant for open category (unreserved). The last date for submitting applications form was 20th November, 2014.

5. The advertisement laid down the education qualifications as under :

“Educational Qualification : –

1. A candidate should have throughout good academic record with minimum 55% marks at the Master’s degree or equivalent (or equivalent grade). Relaxation of 5% marks for SC/ST candidate of State, while physically challenged persons from any part of the country will be relaxation of 5% marks at Master’s degree. But both benefits shall not be admissible to any such candidate.

2. A candidate must have passed NET/SET or equivalent test accredited to UGC.

3. The candidates who have obtained Ph.D Degree, shall be exempted from passing the National Eligibility Test.



4. NET/SET shall also not be required for such Master's Programme disciplines for which NET/SET is not conducted.”

6. The selection process provided 15 marks for interview and 85 marks were to be given for educational qualification. The weightage for the educational qualifications was as Matriculation-10 marks, Intermediate-10 marks, Graduation-25 marks, Post Graduation-30 marks, Ph. D or M Phil- 10 marks, sub total 85 marks, interview was 15, total 100 marks. The candidate who was entitled to claim the benefit of either M. Phil or Ph. D but not for both. Schedule-V of the advertisement specified the marks allotted for Ph. D or M. Phil in following column :

Schedule-V

Marks for Ph.D or M.Phil

Sl. No.	Grade Points	Marks
1.	Ph.D as per UGC Regulations 2009 and with NET	10.00
	Ph.D as per UGC Regulations 2009 and without NET	7.00
2.	Ph.D not as per UGC Regulations 2009 and with NET	5.00
3.	M.Phil as per UGC Regulations 2009 and with NET	4.00
4.	M.Phil not as per UGC Regulations 2009 and with NET	2.00

Note :- Ph.D or M.Phil in the subject for the selection of the candidate will only be considered.

7. The question involved in the present petition is limited to the aforesaid aspect only, i.e., whether the petitioner was entitled to received 4 marks or 2 marks for his M. Phil qualification.



8. Case of the petitioner is that he obtained M. Phil qualification from the University of Delhi in 2013. The University certified that the M.Phil qualification of petitioner as per UGC Regulation 2009. A letter was issued on 17th March, 2016 by the Department of Education, Government of Bihar, clarifying and directing B.P.S.C. to accept M.Phil qualification granted by the University situated outside Bihar if the M.Phil qualification has been awarded after two years from the date of notification of UGC Regulation 2009, i.e., 17th July, 2009. The petitioner had passed M. Phil and had also cleared NET qualification in Hindi. A combined merit list of candidates was published wherein petitioner was placed at number 132 wherein the B.P.S.C. granted only 2 marks to the petitioner treating his M. Phil not as per U.G.C. Regulation 2009.

9. Learned counsel submits that the petitioner's M.Phil has to be treated as per U.G.C. Regulation 2009 in view of the certificate issued by the University of Delhi. He further submitted that the University of Delhi had also awarded M.Phil qualification to one Prashant Kumar who was admitted by the B.P.S.C. and awarded 4 marks. The petitioner was denied 4 marks. He submitted that if 4 marks were added, the petitioner's rank would change from 132 to 85 in the combined merit list with total score of 78.40 instead of 76.40. He pointed out that the cut-off marks for the general category was 76.60, thus, on account of wrongful counting of lesser marks treating the M.Phil not as per U.G.C.



Regulation 2009 the petitioner has been ousted from selection process.

It is submitted that the demand for detail of criteria was made by the B.P.S.C. by publishing the interview programme for Hindi on 15.05.2018 asking for a certificate from candidates to obtain from their respective Universities as to how many and in what criteria they had passed Ph. D/M Phil.

It has been submitted that there was no such mention of requirement of furnishing details of criteria either in the statute for appointment of teachers (Assistant Professor Grade) for the University of Bihar 2014 or any advertisement. Interview programmes for other subjects were also published where no such demand of criteria was made therefore it has been submitted that the demand from the petitioner to submit M. Phil certificates with details of 11 criteria is discriminatory and arbitrary.

It was further submitted that in a similar case relating to one Nitu Kumari Vrs. The State of Bihar & Ors. (C.W.J.C. No. 7905 of 2019), this Court held the insisting on furnishing of details of criteria to be redundant, inapplicable and not necessary to be complied with relying on K. Manjusree Vrs. State of A.P. & Anr., reported in (2008) 3 SCC, 512.

Learned counsel further submitted that as per clause 20 of U.G.C. Regulation 2009 no such demand could have been raised and the criteria as laid down under the University Grants Commission (Minimum Standard and Procedure for Award of Ph.



D. Degree Regulation) 2009 has to be strictly followed by the University. It is submitted that once a certificate has been issued by the awarding University certifying that the degree has been awarded in accordance with the regulations and provisions of UGC it would be sufficient to satisfy all the requisite condition under U.G.C. Regulation 2009 and further demanding the details of criteria was contrary to the U.G.C. Regulation 2009.

Further 11 point criteria has never been notified by the U.G.C. as has been noted by the Supreme Court in paragraph 24 of the judgment passed in P. Suseela & Ors. Vrs. University Grants Commissions & Ors., reported in (2015) 8 SCC, 129. He therefore submitted that the B.P.S.C. is wrongfully and surreptitiously introducing 11 point criteria which never existed in the statute.

10. Per contra learned counsel for the respondents in his arguments and written submissions has supported the stand taken by the B.P.S.C. in awarding only 2 marks to the petitioner. It is stated that in Clause 9 of the interview programme and Clause 7 of the interview letter the candidature of the candidate called for interview was fully provisional appearing for the interview does not confirm the candidature of the candidate and the Commission has absolute right to take necessary decision after being satisfied with regard to verification of relevant certificates.

It is stated that all the candidates who were called for



interview were directed to be present with the original and photo stat copy of the different certificates and as per clause 2 (cha) of the interview letter those candidates who claimed to have passed UGC-NET must produce their passed original certificate issued by the UGC on or before the last date of submission of application form. In view of clause 20 of U.G.C. Regulation 2009 it was directed that the candidates who would produce the certificate issued under the signatures of Registrar of his/her University at the time of interview which would show that the person has done Ph.D/M.Phil with U.G.C. Regulation 2009, failing which, only 2 marks would be allotted treating M.Phil being done without U.G.C. Regulation 2009. It was submitted that as per clause 12.1 of notification of U.G.C. Regulation 2016 prescribes itself that the award of M. Phi/Ph. D degree to candidates registered on or after 11 July, 2009, till the date of notification of Regulations shall be governed by the U.G.C. Regulation 2009.

11. Learned counsel submits that the petitioner has submitted his M. Phil certificate with 5 criteria in place of 11 criteria, thus, his M. Phil degree is not under U.G.C. Regulation 2009 and he was therefore awarded 2 marks for his M.Phil degree accordingly. Explaining its stands it was stated by the counsel that the 11 point criteria has been laid down by the Standing Committee of the University Grants Commission and in the minutes of 479th meeting of University Grants Commission held on



08.07.2011 presided over by the Chairman and it was considered and decided as per item number 2.05 of the agenda that 11 point criteria laid down by the Standing Committee on M.Phil/Ph.D U.G.C. Regulation 2009 may be uploaded of University Grants Commission web-site. Learned counsel relied on Dr. Ramesh Kumar Yadav & Anr. Vrs. University of Allahabad & Ors. (2012 SCC Online All 667) to point out the issue of 11 point criteria having been discussed earlier.

“13 : That it is stated that the Hon’ble Apex Court vide its judgment/order dated 16.03.2015, held that the passing of NET test is the essential eligibility conditions for appointment of Assistant Professors in Universities and Colleges and those candidates shall be exempted from requirement of passing the NET test who have been awarded Ph.D. Degree in compliance of the University Grants Commission (Minimum Standard and Procedure for Award of Ph. D. Degree Regulation) 2009. The said judgment of the Hon’ble Apex Court is reported in 2015 (3) PLJR (SC) 278 (P Suseela & others etc. etc. vs. University Grants Commission & Others etc. etc.)”

12. Thus the learned counsel submits that the awarding of 2 marks can not be said to be in any manner unjustified.

13. Learned counsel also relied upon judgment passed in case of Jainendra Kumar Vrs. The State of Bihar & Ors. passed in C.W.J.C. No. 23258 of 2019 which was dismissed by the coordinate Bench of this Court vide its judgment dated 04.09.2021 upholding in the said case of awarding of 2 marks as correct. Counsel for the B.P.S.C. has also submitted that the B.P.S.C. has already sent the names to the Education Department and appointments have been made thus the selection process is over.



14. Respondent no. 6 has also filed written submissions and he stated that even respondent no. 6 was allowed 2 marks on the basis of her M.Phil degree and many persons including respondent no. 6 have been awarded only 2 marks for M.Phil NET and in case the Court interferes then the marks should be exceeded to all eligible persons.

15. Counter affidavit has been filed by respondent no. 8 which indicates that two selected candidates Miss Anamika and Miss Jyoti Singh did not join on their respective post and other many persons have not joined even after selection.

16. Before this Court examines the issue it would be appropriate to quote the order passed by the coordinate Bench of this Court in case of Jainendra Kumar (supra) which is as under :

“5. I have heard the learned counsel for the parties and gone through the materials on record. This Court finds that the dispute/ issue in the present case lies in a narrow compass, inasmuch as it is the contention of the petitioner that he has been awarded M.Phil degree as per the U.G.C. Regulations, 2009, hence he should be awarded 04 marks whereas on the contrary, the respondent-B.P.S.C. is of the view that the petitioner has been awarded M. Phil degree without complying with the Regulations, 2009, hence as per Schedule-V, he is entitled to only 02 marks, since Sl. No. 4 of Schedule V to the Advertisement no. of 50 of 2014, stipulates that in case a candidate possesses M. Phil Degree, not as per U.G.C. Regulations, 2009, but has qualified NET, only 02marks would be awarded. This Court finds that as per the U.G.C. Regulations, 2009, M. Phil degree is required to be awarded in consonance and in compliance of Regulations 5 to 20 of the U.G.C. Regulations, 2009, whereas admittedly, the certificate issued to the petitioner dated 18.05.2018, by the Jawahar Lal Nehru University, New Delhi, does not show that Regulations No.6,7,9 (IV), 15 and 19 have been followed while



awarding M. Phil degree to the petitioner, hence the respondent-B.P.S.C. has rightly granted 02 marks instead of 04 marks to the petitioner, inconsonance with the stipulation set out at Sl. No. 4 to Schedule-V of the Advertisement no. 50 of 2014, which clearly provides that only if a candidate possesses M. Phil Degree as per U.G.C. Regulations, 2009 + NET, 04 marks would be awarded, however in case a candidate possesses M. Phil degree not as per U.G.C.Regulations, 2009 but has qualified NET, then such a candidate will be awarded only 02 marks. Therefore, this Court finds that the petitioner is not entitled for award of 04 marks and the respondent- B.P.S.C. has rightly awarded him 02 marks.”

17. So far as Jainendra Kumar’s case is concerned he has passed M.Phil degree which was not in compliance of Regulation 5 to 20 of U.G.C. Regulation 2009 as he did not show that Regulations 6, 7, 9(4), 15 and 19 have been followed while awarding degree to the petitioner. It has been also brought to the knowledge of this Court that another judgment has been passed by the same coordinate Bench in Nitu Kumari Vrs. The State of Bihar & Ors. on 14.08.2020 wherein the Court reached to following conclusion :

“25. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the writ petition stands allowed and the Respondent-Commission is directed to consider the case of the petitioner for appointment on the post of Assistant Professor in Hindi subject under advertisement no. 50 of 2014, considering the Ph.D. Degree of the petitioner in Hindi to be as per the UGC Regulations, 2009 as also taking into account the fact that the petitioner stands exempted from passing the National Eligibility Test/SET and considering the fact that the petitioner has already been held to be eligible by the Respondent-Commission, which is apparent from the list of eligible candidates published in the month of December, 2014 (Annexure-4 to the writ petition), pertaining to advertisement no.50 of 2014. This Court further holds



that since the advertisement no. 50 of 2014 does not postulate or prescribe for production of Ph.D. certificate and mark-sheet of Pre Ph.D. Degree and details of criteria fulfilled during the course of obtaining Ph.D. Degree, the Respondent-Commission cannot change the criteria (rule of the game) midway, as has been done vide notification dated 15.5.2018 by inserting new conditions, hence, the said new conditions required to be fulfilled, are held to be redundant, inapplicable and not necessary to be complied with qua the petitioner herein for the purposes of consideration of her case for appointment on the post of Assistant Professor in Hindi pursuant to the advertisement no. 50 of 20174. In this regard reference be had to the Judgments rendered by the Hon'ble Apex Court in the cases of P.K.Ramachandra Iyer v. Union of India, reported in (1984) 2 SCC 141, Umesh Chandra Shukla v. Union of India, reported in (1985) 3 SCC 721, Durgacharan Misra v. State of Orissa, reported in (1987)-4 SCC 646 and in the case of K. Manjusree v. State of A.P., reported in (2008) 3 SCC 512.”

18. In the said detailed judgment the Court had taken a view that the criteria had been changed at the time of interview which could not have been done.

19. In the aforesaid backdrop it would be necessary to notice as to how the University has introduced the 11 point criteria as a condition to hold whether the Ph.D granted by a statutory University in terms of UGC Regulations, 2009 shall not be treated to be a Ph.D under UGC Regulations, 2009.

20. In **P. Susheela & Ors. Vrs. University Grants Commission & Ors.**, reported in (2015) 8 SCC, 129 the Apex Court observed as follows :

“23. We have already pointed out how the directions of the Central Government under Section 20 of the UGC Act pertain to questions of policy relating to



national purpose. We have also pointed out that the regulation making power is subservient to directions issued under [Section 20](#) of the Act. The fact that the UGC is an expert body does not take the matter any further. The UGC Act contemplates that such expert body will have to act in accordance with directions issued by the Central Government.

24. The Allahabad High Court adverted to an expert committee under the Chairmanship of Professor S.P. Thyagarajan which laid down that if six out of eleven criteria laid down by the Committee was satisfied when such University granted a Ph.D. degree, then such Ph.D. degree should be sufficient to qualify such person for appointment as Lecturer/Assistant Professor without the further qualification of having to pass the NET test. The UGC itself does not appear to have given effect to this recommendation of the Thyagarajan Committee. However, the High Court thought it fit to give effect to this Committee's recommendation in the final directions issued by it. When the UGC itself has not accepted the recommendations of the said Committee, we do not understand how the High Court sought to give effect to such recommendations. We, therefore, set aside the Allahabad High Court judgment dated 6th April, 2012 in its entirety.”

21. Thus the 11 point criteria is not for the purpose of assessing whether the Ph.D is the one acquired under the UGC Regulations, 2009 or otherwise, the qualification of M. Phil has been awarded by the Delhi University. The petitioner has acquired M. Phil qualification from University of Delhi and it is stated in



the certificate issued by the University that the M. Phil qualification is as per UGC Regulations, 2009. Thus, the petitioner ought to have been granted 4 marks instead of 2 marks. It is not the case of the respondents that the certificate has been obtained by the petitioner by way of fraud or forgery. There was no such requirement of furnishing details of criteria either in the statute of appointment of teachers for Universities of Bihar, 2014 or in the advertisement. Thus, such a pre-condition of furnishing details of criteria which the University has not provided to the petitioner, could not have been made available by the petitioner. However, on the said count his marks could not have been reduced from 4 to 2. More over, the 11 point criteria is with regard to awarding Ph.D degree with 6 out of 11 prior to 31.12.2009 and there is no such condition of 11 point criteria for M.Phil. Even the 11 test criteria which the Allahabad High Court had referred to and and quoted in **P. Susheela & Ors.** (supra), need not find favour with the Apex Court and the Allahabad High Court judgment was set aside in entirety. Thus, the learned counsel appearing for the University and that the attempt made to oust the petitioner from obtaining 4 marks instead of 2 marks is found to be illegal and unjustified. The petitioner's valuable right of consideration for appointment on the basis of the M.Phil degree awarded to him by the University of Delhi has been curtailed by the action of the respondents in introducing the 11 point criteria for awarding marks although the same is neither a part of the statute nor was a part of



the advertisement. The same can, therefore, be found to be arbitrary and extraneous.

22. In the present case, the judgment passed in C.W.J.C. No. 23258 of 2019 (Jainendra Kumar Vrs. the State of Bihar & Ors.) and Nitu Kumari by the coordinate Bench will have no application as the University which granted the M.Phil degree has mentioned that the degree has been passed in terms of UGC Regulation, 2009. Neither the selecting body nor any other authority could have gone behind such a certificate to examine whether UGC Regulation, 2009, have been followed or not. University of Delhi is statutory University duly recognized by the University Grants Commission and the degrees awarded by the same have to be treated as sacrosanct and can not be a matter of challenge by another University.

23. Accordingly, the writ petition deserves to be allowed and is accordingly allowed.

24. The respondents are directed to revise the merit of the petitioner and allocate the requisite marks to which the petitioner is entitled on acquiring M. Phil degree from a recognized University, may be University of Delhi, and the action of allotting only 2 marks instead of 4 marks for acquiring the qualification is held to be bad in law. The respondents are directed to revise the merit of the petitioner accordingly and if he is found fit and having merit higher than the person who have been



appointed, the respondents are directed to appoint the petitioner too on the post of Assistant Professor.

25. The writ petition is accordingly **allowed**. No costs.

(Sanjeev Prakash Sharma, J)

Shamshad/-

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CAV DATE	21.02.2022
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