

# SUPREME COURT OF INDIA

Jatinder Singh

Vs.

Gurmeet Singh Sidhu

C.A.No.5030-5031 of 2001

(M Shah and R Sethi JJ.)

03.08.2001

## JUDGMENT

**Shah, J.**

1. Leave granted.

2. In these appeals the appellant has challenged the order dated 5.12.2000 passed by the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 5428 of 2000 and order dated 22nd December, 2000 passed in Review Application C.M. No. 31005 of 2000 in C.W.P. No.5428 of 2000. By the impugned order, the High Court allowed the petition filed by Respondent No.1 Gurmeet Singh Sidhu and held that he was eligible for consideration for the post of Lecturer in Sociology and as he was not interviewed, directions were issued to hold his interview for the said post. It was also further held that if respondent No.1 was found to be better on merit than the selected candidate, the appointing authority will take necessary steps in that behalf.

3. At the time of hearing, learned counsel for the appellant, who was selected and appointed to the post of lecturer and whose selection is set aside in pursuance of the aforesaid directions, submitted that respondent was not selected as he was not having qualifications prescribed by the UGC for the said post.

4. As against this, learned counsel for respondent No.1 submitted that respondent was duly qualified and the direction issued by the High Court is on the basis of qualifications prescribed by the Punjabi University. At the time of hearing of this matter, none appeared for the Punjabi University and the learned counsel who has filed his appearance for the State of Punjab submitted that he was not having any instructions.

5. For appreciating the issue involved, we would refer to the advertisement (Annexure P3) dated 22nd October, 1999 which provides for qualifications for the post in question. The relevant part is as under:

“7. Lecturer in Sociology One on regular basis 8 to 19 xx xx xx xx xx

Qualification and Grade as per UGC/Punjabi University rules. Enclose Bank Draft of Rs.100/- for the post of Lecturer and Rs.50/- for the other posts in favour of Principal Khalasa College, Patiala alongwith attested copies within 15 days from the date of the publication. For the post of Lecturer application may only be sent to Dean College Development Council, Punjabi University, Patiala. Applications be addressed in the name of Principal, Khalasa College, Patiala. The candidates who have already sent applications in response to advertisement published in English and Punjabi Tribune dated 3.6.99 need not send application again. Their earlier application will be considered.”

6. As per the said advertisement, required qualification is as prescribed by the UGC rules and the Punjabi University rules.

7. In the written statement filed on behalf of respondent-University before the High Court, it has been specifically stated that respondent no.1 has suppressed from the High Court the fact that qualifications for appointment to the post of lecturer were amended and an amendment was circulated to all colleges vide Circular dated 18th May, 1999. As per the said Circular, a candidate was eligible to be appointed as a lecturer in Sociology if he had cleared the eligibility test, namely, NET for lecturers conducted by UGC, CSIR or similar test accredited by the University. It was also pointed out that Punjabi University, Patiala had received a letter dated 21st September, 1999 signed by the UGC to the effect that NET examination was compulsory for a person to be appointed as a lecturer and only the candidates who had completed their M.Phil or submitted their Ph.D thesis up to December 31, 1993 were exempted from passing the NET examinations. The University further submitted that as per the advertisement appointment was to be made on the basis of the qualifications prescribed by the Punjabi University/UGC. The respondent no.1 was not fulfilling the above qualifications, therefore, he was rightly not appointed.

8. Further the appellant has produced a letter (Annexure P1) dated 18th May, 1999 circulated by the University which, inter alia, provides that besides fulfilling the above qualifications, candidates should have cleared the eligibility test (NET) for lecturers conducted by the UGC, CSIR or similar test accredited by the UGC.

9. From the facts stated above, the High Court held that the advertisement requires that the qualifications of a candidate should be as laid down by the University/UGC and this would mean that if the qualifications have not been laid down by the University, the qualification would be the one which may have been laid down by the UGC. The High Court observed that University has laid down the qualifications for the post in question by a notification dated 24th March, 1999. This reasoning of the High Court ignores the written statement filed on behalf of the University clarifying that Punjabi University, Patiala had amended the qualifications for appointment of lecturers and had circulated the same by letter dated 18th May, 1999 to the affiliated colleges. Further Respondent No.1 has applied for the post of Lecturer on the basis of the said advertisement and it was not open to him to contend that he

was not required to fulfil the qualifications prescribed by the UGC. Admittedly, he was not eligible as per the qualifications prescribed by the U.G.C. as he has not cleared NET. The High Court materially erred in ignoring the circular issued by letter dated 18th May, 1999 by observing that unless University adopts the recommendations of the UGC, it would not become applicable to the University and without adopting the same by the Syndicate, Circular was issued by the University.

10. Learned counsel for the respondent No.1 submitted that the High Court has rightly arrived at the conclusion that recommendations of the UGC were adopted by the Syndicate of the University on 29th June, 2000 and, therefore, it would be applicable to the University and to the affiliated colleges after the said date. In our view, this submission ignores the fact that the advertisement dated 22nd October, 1999 issued by the College specifically provided that candidate must be eligible as per the qualifications prescribed by the UGC and the University. That advertisement was as per Circular dated 18th May, 1999 by which all the non-government colleges affiliated to the University were informed that qualification for appointment to the post of lecturer was as per the UGC qualifications and the candidate must have cleared the eligibility test, that is, NET for lecturer conducted by the UGC, CSIR or similar test accredited by the UGC. Learned counsel for the appellant has also produced on record the Interview Call Letter (Annexure P5) dated 8th March 2000 written to respondent No.1 which specifically provides that passing of UGC test is necessary or that candidate must be M.Phil before December 1993 and at the time of coming for interview, he must satisfy that he was having necessary qualifications. After accepting interview call and applying on the basis of advertisement it was not open to respondent No. 1 to contend that the University had no power to circulate to all colleges the Circular dated 18th May, 1999. Further, it is stated that there is nothing to record to show that prior to the decision dated 29th June, 2000 taken by the Syndicate, it has earlier not prescribed qualifications for the post of lecturers. The resolution of the Syndicate which is produced on record only reiterates the previous position and provides that NET shall remain the compulsory requirement for appointment as lecturer even for candidates having Ph. D. degree. Relevant part of the resolution is as under: -

“NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidate who have completed M. Phil. Degree or have submitted Ph. D. thesis in the concerned subject up to 31st December, 1993, are exempted from appearing in the NET examination.”

11. Therefore, it cannot be said that for the first time NET qualification was introduced by the Syndicate or prior to 29th June, 2000, the said qualification was not compulsory. Further, we would only mention that the learned counsel for the appellant has pointed out that UGC (Qualifications Required of a Person to be Appointed to the Teaching Staff of a University and Institutions Affiliated to it) Regulations, 1991 as amended in 1995 do lay down that for appointment as lecturer in a college, the candidates apart from possessing prescribed academic qualifications, should have cleared the eligibility test for lecturers conducted by the UGC, CSIR or similar test accredited by the UGC. As this was not pointed out to the High Court, it is not required to be dealt with or decided in this appeal.

12. For the reasons stated above, the order passed by the High Court cannot be sustained. The impugned order passed by the High Court is quashed and set-aside. It is held that respondent no.1 Gurmeet Singh Sidhu was not eligible to be appointed as lecturer and that appellant was properly appointed to the post of lecturer Sociology by respondent No.4 Khalasa College, Patiala. Hence, appeals are allowed. There shall be no order as to costs.