NUTA BULLETIN

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YEAR : 36) 1st February 2011 (No : 02

IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 13689/2009

ALL INDIA RESEARCHERS COORDINATION COMMITTEE & ORS. ***..... Petitioners***
Through: Mr. Amit Kumar, Advocate with Mr. Ashish Kumar, Advocate.

versus

UNION OF INDIA & ORS. ***..... Respondents***
Through: Mr. Neeraj Chaudhari, Mr. Khalid Arshad and Mr. Bhagat Singh, Advocates for UOI. Mr. Amitesh Kumar, Advocate for UGC. Mr. Mohinder J.S. Rupal, Advocate with Mr. Sonam Gupta, Advocate for respondent No.3.

AND

W.P.(C) 2780/2010

SARIKA CHAUDHARY ***..... Petitioner*** Through: Ms. Sonia Mathur, Advocate.

versus

UNION OF INDIA & ORS. ***..... Respondents*** Through: Mr. B.V. Niren, Advocate for UOI. Ms. Maninder Acharya, Advocate for University of Delhi. Mr. Amitesh Kumar, Advocate for UGC.

Reserved on: 23 rd September, 2010 : Date of Decision: 06 th December, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

JUDGMENT MANMOHAN, J:

1. Present writ petitions have been filed under Article 226 of the Constitution of India challenging the constitutional validity of the Regulations dated 11th July, 2009 framed by the University Grants Commission (in short, "UGC") namely, UGC (Minimum qualifications required for the appointment and career advancement of Teachers in Universities and Institutions affiliated to it) (3 rd Amendment), Regulation, 2009 (in short, "Regulations 2009"). The relevant portion of the impugned Regulations, 2009 reads as under:-

"NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of Lecturers in Universities/ Colleges/Institutions.

Provided, however, that candidates, who are or have been awarded Ph.D. Degree in compliance of the "University Grants Commission (minimum standards and procedure for award of Ph.D Degree), Regulation 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/ Institutions.

2. The petitioners are aggrieved by the aforesaid Regulations, 2009 inasmuch as it does away with the exemption from compulsory NET/SLET examination for appointment as Lecturers in Universities. The said exemption was earlier provided by the UGC vide UGC (Minimum qualifications required for the appointment and career advancement of Teachers in Universities and Institutions affiliated to it) (2 nd Amendment), Regulations, 2006 (hereinafter referred to as, "Regulations 2006"). The relevant portion of Regulations 2006 is as under:-

"NET shall remain the compulsory requirement for appointment as Lecturer for those with Post Graduate Degree. However, the candidates having Ph.D. degree in the concerned subject are exempted from NET for PG level and UG level teaching. The candidates having M.Phil Degree in the concerned subject are exempted from NET for UG level teaching only."

3. Mr. Amit Kumar, learned counsel for the petitioners submitted that the power to frame Regulations had been exclusively conferred under the UGC Act, 1956 (hereinafter referred to as, "Act") on the UGC and the Union of India (for short "UOI") could not have interfered with the said power. According to him, the impugned Regulations framed by the UGC pursuant to direction by UOI vide letter dated 12 th November, 2008 was abdication of statutory power by the UGC.

ADDITIONAL AGENDA

of the General Body Meeting of NAGPUR UNIVERSITY TEACHERS' ASSOCIATION

to be held at 12.00 noon on *SUNDAY, the*

***27th February, 2011 at* Smt. Kesharbai Lahoti Mahavidyalaya, AMRAVATI**

विषय क्रमांक ५२९ :

नेटसेट बाबत केंद्र शासनाच्या मानव संसाधन विभागाचे ३ नोव्हेंबर, २०१० चे पत्र

(A) सन २०११ च्या नुटा बुलेटीनच्या पृष्ठ क्रमांक १ वर विषय क्रमांक ५२९ अंतर्गत विषयाच्या मथळ्यानंतर सुरुवातीला पुढील वाक्य वाचावे.:-

"महाराष्ट्र प्राध्यापक महासंघाच्या (एम्फक्टो) कार्यकारी मंडळाच्या दिनांक ३० जानेवारी, २०११ रोजी झालेल्या बैठकीत सम्मत करण्यात आलेला पुढील ठराव विचारात घेणे."

(B) या ठरावातील परिच्छेद ४.७ नंतर पुढील परिच्छेद ४.८ जोडण्यात यावा.

"४.८ दिनांक ३ ते ५ मार्च, २०११ या कालावधीमध्ये सलग तीन दिवस **न्यु दिल्ली येथे विद्यापीठ अनुदान आयोगाच्या वर्षानुवर्षे निर्णय न घेण्याच्या धोरणाविरूद्ध धरणे आंदोलन** करावे. हा निर्णय विद्यापीठ अनुदान मंडळ, मानवसंसाधन विकास खाते, केंद्र शासन, समविचारी खासदार आणि सर्व राजकीय पक्षांचे नेते मंडळी यांना तातडीने विनाविलंब पाठवावा."

It was submitted by the learned counsel that when a particular act is prescribed to be done in a particular manner under any statute, then the act must be done in that manner or not at all. To emphasise the said submission, reliance was placed on the decisions of the Supreme Court in

Rao Shiv Bahadur Singh Vs. State of U.P. AIR 1954 SC 322; Deep Chand Vs. State of Rajasthan AIR 1961 SC 1527 and ***State of U.P. Vs. Singhara Singh AIR 1964 SC 358*** wherein the rule laid down in ***Nazir Ahmed Vs. King Emperor AIR 1936 PC 253*** was upheld that when a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.

4. Mr. Amit Kumar further submitted that the direction given by the Government to the UGC to bring out the said Regulations, 2009 could not have been upheld in law as the exercise of power conferred on UOI under Section 20 of the Act was a general provision, which could not override Section 26(1) of the Act which was a special provision. It was submitted that it is well settled law that between special clause and general clause in the same statute, the special clause will prevail. The learned counsel for petitioners relied on a decision of Supreme Court in ***J.K. Cotton Spinning & Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Ors. 1961 (3) SCR 0185*** wherein it was stated that the rule is that whenever there is a particular enactment and a general enactment in the same statute, the latter taken in its most comprehensive sense would overrule the former.

5. Mr. Amit Kumar further submitted that it had been the consistent policy of UGC and the Government to grant exemption to those who had obtained M.Phil and Ph.D degree before the cut-off date. A similar exemption was also provided by Regulations 2006 which had given rise to legitimate expectation that a person having M.Phil/ Ph.D degree would be eligible for the post of Lecturer without anything more and created an impression that they would not have to pass NET. It was submitted that in view of the exemptions provided by earlier Regulations, a vested right had accrued in favour of petitioners for consideration for appointment to the post of Lecturer. However, with the introduction of the impugned amendment, the said right had been extinguished and M.Phil and Ph.D degrees holders would now have to pass NET examination to become eligible for the post of Lecturer.

6. It was also submitted by Mr. Kumar that the direction of the Government of India to reject the recommendations of UGC was an arbitrary exercise of power as the reason given by the Ministry of Human Resource and Development for making NET mandatory was that there is a wide variation in the procedure adopted by the Universities in awarding M.Phil and P.hd Degrees. The said reason, according to Mr. Kumar, was legally untenable as all the Universities in India were regularly checked by UGC for their academic standards.

7. Mr. Amit Kumar lastly submitted that Section 25(3) of the UGC Act categorically stated that no retrospective rule can be framed by UGC which would prejudicially affect the interest of any person to whom such rule may be applicable. Therefore, according to him, the impugned amendment is violative of Section 25(3) of the Act and liable to be declared void.

8. Mr. Neeraj Chaudhury, learned counsel for the Union of India submitted that the Central Government has been empowered under Section 20(1) of the Act to give directions to UGC on questions of policy relating to national purpose. Hence, it is within the domain of the Central Government to issue directions to UGC to frame regulations to give effect to the improvement of standards in teaching by prescribing an entry level qualification. According to him, Regulations 2009 were issued by UGC to comply with the intent of the policy directive dated 12 th November, 2008 issued by the Central Government.

9. Mr. Chaudhari further submitted that UGC had been entrusted with the duty of maintenance of standards of teaching, examination and research in universities. UGC on the basis of recommendations made by Professor R.C. Mehrotra Committee and the Vice Chancellor s conference held in 1989 had decided to hold a comprehensive National Test to determine the eligibility for Lecturer with reference to a common yardstick. The Supreme Court in ***University of Delhi Vs. Raj Singh, (1994) Suppl. 3 SCC***

महाराष्ट्र शासन
उच्च व तंत्र शिक्षण विभाग,
क्रमांक : संकिर्ण २०१०/(४५६१०/विशी-१)
मंत्रालय, मुंबई ४०० ०३२. : दिनांक २३ ऑगस्ट, २०१०

प्रति,

संचालक, उच्च शिक्षण, महाराष्ट्र राज्य, पुणे.

प्रा.बी.टी.देशमुख, विधान परिषद सदस्य, ३, सुबोध कॉलनी, विदर्भ महाविद्यालयाजवळ, अमरावती - ४४४ ६०४

श्री. विक्रम काळे, विधान परिषद सदस्य, मु.पो.पळसप, ता.जि. उस्मानाबाद

प्रा. सी.आर.सदाशिवन, एमफक्टो, अध्यक्ष, आर.के.गोकुळधाम, अे/ २०५, एस.व्ही.रोड, बोरीवली (प), मुंबई ४०० ०९२

विषय :- "विद्यापीठे व महाविद्यालयातील अधिव्याख्याता पदावरील अनियमित नियुक्ती" या विषयावरील एमफुक्टो यांचे निवेदन.

महोदय,

उपरोक्त विषयाबाबत मा.मंत्री (उ.व.तं.शि.) यांच्याकडे दि. १२.७.२०१० रोजी बैठक झाली होती. सदर बैठकीचे इतिवृत्त आवश्यक त्या कार्यवाहीसाठी यासोबत पाठविण्यात येत आहे.

आपला

(विकास तु. कदम)

कक्ष अधिकारी, महाराष्ट्र शासन

प्रत, (१) स्वीय सहायक, सचिव (उ.व.तं.शि.), मंत्रालय, मुंबई. **(२)** स्वीय सहायक, उप सचिव (विशि), उ.व.तं.शि., मंत्रालय **(३)** मा. मंत्री, (उ.व.तं.शि.) यांचे खाजगी सचिव, मंत्रालय, मुंबई यांना माहितीसाठी अग्रेषित. **(४)** निवड नस्ती कुलसचिव रा.तु.म. नागपूर विद्यापीठ यांना कार्यवाहीकरीता.

उच्च व तंत्र शिक्षण विभाग

मा. मंत्री (उ.व.तं.शि.) यांच्या समवेत एमफुक्टो या संघटनेच्या पदाधिकाऱ्यांच्या दि. १२.७.२०१० रोजी झालेल्या बैठकीचे इतिवृत्त

सदर बैठकीस पुढील अधिकारी/पदाधिकारी उपस्थित होते.

१) प्रा.बी.टी.देशमुख, वि.प.स.
२) विक्रम काळे, वि.प.स.
३) सचिव, (उ.व.तं.शि.)
४) उपसचिव (विशि)
५) संचालक, (उ.शि.)
६) श्री. सदाशिवन, अध्यक्ष, एमफुक्टो व इतर पदाधिकारी

२. सदर बैठकीमध्ये पुढीलप्रमाणे निर्णय घेण्यात आले.

(१) राष्ट्रीय शैक्षणिक गुणवत्ता मंच, नागपूर यांनी मा. कुलपती महोदयांना दि. १३ ऑगस्ट, २००९ रोजी सादर केलेल्या निवेदनाच्या अनुषंगाने राज्य शासनाने दि. १७ मे, २०१० रोजी अकृषि विद्यापीठांना निर्गमित केलेल्या पत्रातील परि. ३ मधील पुढील मजकूर वगळण्यात यावा. "राष्ट्रीय शैक्षणिक गुणवत्ता मंच, नागपूर यांनी सादर केलेले निवेदन व सहपत्राचे अवलोकन केले असता आपल्या विद्यापीठाकडून बेकायदेशीर नियुक्त्या झाल्याचे प्रथमदर्शनी दिसून येते."

(२) बिगर नेट-सेट अधिव्याख्यात्यांना सूट मिळण्याबाबत विद्यापीठ अनुदान आयोगाकडे सादर करण्यांत आलेल्या प्रकरणांवर त्वरीत कार्यवाही करण्यासाठी विद्यापीठ अनुदान आयोगास स्मरण करण्यात यावे.

(३) बिगर नेट-सेट अधिव्याख्यात्यांच्या संदर्भात मा. उच्च न्यायालयाने वेळोवेळी दिलेले आदेश विचारांत घेऊन विद्यापीठ अनुदान आयोगाने नेट-सेट मधून सूट देणेयाची प्रकरणे त्वरीत निकाली काढावीत अशी विनंती स्वतंत्र पत्राद्वारे विद्यापीठ अनुदान आयोगाला करण्यात यावी.

(४) ज्या बिगर नेट-सेट अधिव्याख्यातांना विद्यापीठ अनुदान आयोगाने सूट दिलेली आहे त्या अधिव्याख्यात्यांच्या सेवा CAS साठी कोणत्या दिनांकापासून ग्रहीत धरण्यात याव्यात याबाबत विद्यापीठ अनुदान आयोग सक्षम प्राधिकारी आहे. त्यामुळे याबाबत विद्यापीठ अनुदान आयोगाकडे विचारणा करण्यात आलेली आहे.

तथापि, या संदर्भात आयोगाकडून अद्याप कोणतेही आदेश प्राप्त झालेले नाहीत. त्यामुळे या संदर्भात विद्यापीठ अनुदान आयोगाकडून अंतिम उत्तर प्राप्त होईपर्यंत विद्यापीठ अनुदान आयोगाच्या अंतिम निर्णयाच्या अधिन राहून बिगर नेट-सेट अधिव्याख्यात्यांना विद्यापीठ अनुदान आयोगाने ज्या दिनांकास नेट-सेट मधून सूट दिल्याचे कळविले आहे त्या दिनांकापासून संबंधित अधिव्याख्यात्यांची CAS सेवा ग्राह्य धरण्यात यावी.

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516 had observed that the purpose of conducting a test like NET was to categorically evaluate the standard of candidates for the post of Lecturer, where two post graduate applicants were available from different universities.

10. Mr. Chaudhari also submitted that it was necessary to have a test to judge the abilities and standard of innumerable candidates who wish and aspire to secure the job of a Lecturer in colleges and universities. Keeping this objective in mind, the retention of NET/SLET as a compulsory requirement was insisted upon for appointment to the post of Lecturer for both undergraduate and post graduate level, irrespective of the candidate possessing M.Phil or Ph.D degree. It was submitted by Mr. Chaudhari that the NET/SLET is not an examination for degree but an eligibility test to determine the merit in an objective manner and the Regulations, 2009 were issued in this background.

11. Mr. Chaudhari further submitted that as the salaries and other allowances for teachers were higher than those of the Group „A civil servants, the Pay Review Committee had recommended that in order to justify the high salaries paid to the teachers in colleges and universities, the eligibility condition should be tightened and qualifications should be of a high order and the persons to be employed as teachers be assessed by means of an objective mechanism in the form of NET/SLET.

12. Mr. Amitesh Kumar, learned counsel for UGC submitted that UGC had been statutorily entrusted with the duty to take such steps as it may think fit for promotion and coordination of university education and for the determination and maintenance of standards of teaching, examinations and research in universities. Section 26 of the Act empowered the UGC to make regulations consistent with the Act amongst others for defining the qualifications that should ordinarily be required by any person to be appointed to the teaching staff of the university.

13. It was submitted by Mr. Amitesh Kumar that the Ministry of Human Resource and Development, Government of India had constituted a Committee to review the NET examination and the said Committee in its report had recommended as under:

"NET should be retained as a compulsory requirement for appointment of lecturer for both undergraduate and post graduate level, irrespective of candidate possessing M.Phil and Ph.D. degree."

14. Consequently, according to him, the Ministry of Human Resource and Development, Government of India had issued an order dated 12 th November, 2008 to UGC under Section 20(1) of the Act to take steps for implementing the recommendations of the report. It was further submitted that under Section 20 of the Act the Central Government was empowered to issue directions to UGC on questions of policy relating to national purposes and such directions are binding on UGC. In pursuance of the policy

MAHARASHTRA FEDERATION OF UNIVERSITY & COLLEGE TEACHERS' ORGANISATIONS (MFUCTO)
Affiliated to the AIFUCTO
Vidyapeeth Vidyarthi Bhavan, B-Road, Churchgate, Mumbai 400 020.

President
Prof. C.R.Sadasivan
R.K.Gokuldham, A/205
S.V.Road, Borivli (West)
Mumbai-400 092

General Secretary
Prof. E.H.Kathale
N/162, Reshimbagh
Nagpur - 440 009

23rd OCTOBER, 2010

Shri.Rajesh Tope,
Hon'ble Minister for Higher & Technical Education
Maharashtra State Mantralaya, Mumbai 400 032.

Reference : (i) Government letter dated 17th May, 2010 from Vikas Kadm section officer, Higher & Technical Education Department.

(ii) MFUCTO's protest letter dated 2nd July, 2010 on the said Government's Letter.

(iii) Meeting convened by you on 12th July, 2010 to discuss the issue covered in the letter.

Respected Minister,Sir.

I am shocked to know that the Government of Maharashtra in your Ministry has issued letter dated 23rd August, 2010 addressed to the Director of Higher Education, Pune; Prof. B.T.Deshmukh, MLC, Shri. Vikram Kale, MLC and Prof. C.R.Sadasivan, President, MFUCTO (myself). The said letter refers to the meeting that you had with the MFUCTO which Prof. B.T.Deshmukh and myself attended apart from three other MFUCTO representatives on 12th July, 2010 in your chamber at Vidhan Bhavan. This meeting was convened by you in the wake of letter dated 2 nd July, 2010 sent to you by me as President of the MFUCTO protesting against the contents of letter dated 17.5.2010 more particularly the statement that prima facie the allegations are found to be correct. MFUCTO had not received the letter dated 17th May, 2010 from your official shri. Vikas Kadam. Similarly MFUCTO has also not received letter dated 23.8.2010 so far.

You will recall that at the said meeting, MFUCTO discussed with you only the issue for which the meeting was called viz., contents of Government letter dated 17.5.2010 and nothing else. We expressed strong protest at the action of the Government and called upon you to withdraw the said letter and intimate accordingly the Universities and all others who have been sent the said letter. After going into the contents of the said letter, you directed that part of the letter which states that prima facie the allegations are found to be correct, should be withdrawn. In the letter dated 23.8.2010 which is disputed by MFUCTO, what is stated, in Sr.No.(1) only is correct and factual based on the discussion at the said meeting held by you with MFUCTO. **The rest of the decisions at Sr. Nos. (2), (3) and (4) are not part of the said meeting and it is shocking that the same have been included as part of our discussion and consensus. MFUCTO takes a serious objection to this.**

In view of the truthful facts presented herein, it is requested that other than what is stated in Sr. (1) viz., at Sr. Nos. (2), (3) and (4), should be dropped and not shown as part of the discussion held on 12th July 2010. If you so desire, you may separately issue a letter incorporating the said additional paragraphs to which MFUCTO should not be made a party. MFUCTO is ready and willing to discuss the entire issue covered in Sr. Nos. (2), (3) and (4) if you convene a meeting and inviting the MFUCTO Executive Committee.

To complete the record, I am enclosing a copy of the original letter dated 17th May, 2010 issued by Shri. Kadam from the Government and MFUCTO letter dated 2nd July, 2010.

A line in reply confirming our request would be highly appreciated.

With warm regards,

Yours faithfully
(C.R.Sadasivan)
President MFUCTO

Encl. : 2 documents as above
Copy to : (1) The Principal Secretary, Higher & Technical Education Department Government of Maharashtra, Mantralaya, Mumbai 400 032. **(2)** Prof. B.T.Deshmukh, MLC **(3)** Prof. Vikram Kale, MLC for information

(C.R.Sadasivan)

** FS:P 25 **

direction issued by the Government of India, the UGC in exercise of its power conferred by Section 26(1)(e) and (g) read with Section 14 of the Act had framed the Regulations, 2009.

15. Mr. Amitesh Kumar also submitted that the UGC s power to frame Regulations under Section 26 was subject to the same beingconsistent with the Act and rules made thereunder by the Central Government under Section 25.

16. Further, it was submitted that UGC had framed the impugned Regulations, 2009 in exercise of its power conferred by Section 26(1)(e) and (g) read with Section 14 of the Act. Hence, the contention that the UGC has not acted in the manner it is required to act under the provisions of the Act, is wholly unfounded.

17. He lastly submitted that a similar petition challenging the vires of the impugned Regulations 2009 had been dismissed on 26th April, 2010 by the Madras High Court in ***G. Sinthaiah Vs. University Grants Commission, W.P. 7116/2010***.

18. Having heard the rival contentions and on a perusal of the record, we are of the opinion that UGC was established by an Act of Parliament passed by virtue of power conferred under Entry 66 List 1, VII Schedule of the Constitution of India. The said Entry gives power to the Union of India to ensure that required standard of higher education in the country are achieved and maintained at the highest level. It is the responsibility of the Central Government to coordinate and determine the standards of higher education. This power includes the power to evaluate, harmonize and improve educational standards. In pursuance of the above objective, the Parliament enacted the Act.

19. The Union of India is empowered by Section 20(1) of the Act to give policy directions in relation to national purpose. Section 20 of the Act is reproduced hereinunder :-

"20. (1) In the discharge of its functions under this Act, the Commission shall be guided by such directions on questions of policy relating to national purposes as may be given to it by the Central Government.

(2) If any dispute arises between the Central Government and the Commission as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government shall be final." (emphasis supplied)

20. It is pertinent to mention that UGC made the NET examination compulsory for appointment to the post of teachers and lecturers in the universities for the first time by way of Regulations in 1991. The 1991 Regulations were based on the recommendations of Expert Committees appointed by the Union of India from time to time for evaluation, upgradation and maintenance of the standards of higher education in the country.

21. The Union of India constituted a Review Committee on NET under the Chairmanship of Prof. Bhalchandra Mungekar, Member Planning Commission (Education). The said Committee in its final report recommended as under:-

"Based on the intensive and extensive deliberations throughout the country and near unanimity among academics scientists, administrators, Vice Chancellors and potential candidates, most of whom would be teachers and particularly in

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3510 OF 2010

Smt Narsamma and anr v. State of Maharashtra and ors

Mr Anand Parchure, Adv for petitioners Mr A.G. Mujumdar, AGP for respondents

CORAM: D. D. SINHA AND A. P. BHANGALE, JJ

Dated : 18 th January, 2011

1. Heard learned counsel for the petitioners and learned Assistant Government Pleader for respondents.

2. Learned counsel for the petitioners has brought to our notice order dated 26 th November 2007 passed by the Division Bench of this Court whereby earlier Writ Petition No. 998 of 2007 filed by the petitioners came to be disposed of, permitting the petitioners to make representation in respect of the grievance regarding subject of computer science/engineering at the graduation level on no grant basis. Learned counsel has submitted that the **State Government was directed to decide the representation within a period of eight weeks from the date of receipt of representation.** It is submitted that the petitioners made representation in pursuance to the said order, but the State Government failed to take any decision thereon and, therefore, petitioners had approached this Court by filing other Writ Petition No. 5440 of 2008 seeking similar direction to the State Government which was disposed of by this **Court vide order dated 4 th May 2009 expecting the State Government to decide the representation of petitioners as early as possible after the code of conduct was over.**

3. We have heard learned counsel for the petitioners and learned Asst. Government Pleader for respondents and perused the orders dated 26 th November 2007 and 4 th May 2009 passed by this Court in Writ Petition No. 998 of 2007 and Writ Petition No. 5440 of 2008. Perusal of the order dated 26th November 2007 demonstrates that challenge raised by the petitioners to the part of the Government Resolution dated 24.9.1991 was turned down by this Court. However, in case of grant of permission by the State Government to some of the colleges/institutions to start the above referred subject on no grant basis, **petitioners were permitted to make representation in that regard to the State Government which was directed to be decided within the stipulated period. Similar order was passed by this Court on 4 th May 2009 in Writ Petition No. 5440 of 2008.**

4. It is highly unfortunate that inspite of positive directions given by this Court, the State Government failed to obey the same. Casual approach of the State Government is deprecated. We direct the State Government to decide the representation of the petitioner dated 19.12.2007 addressed to the Principal Secretary, Higher Education, Mantralaya, Mumbai, if not decided earlier within a period of four weeks from the date of communication of this order. It is made clear that no further time shall be granted for this purpose. Decision should be communicated to the petitioners within a period of fifteen days thereafter.

5. Petition disposed of.

JUDGE JUDGE

view of the floodgates being opened for the registration of M.Phil and Ph.D. degrees resulting only into a further deterioration of the quality of these degrees, and consequently making easy entry of the teaching profession of such degree holders, the Committee recommends that NET should be retained as a compulsory requirement for appointment of lecturer for both undergraduate and postgraduate level, irrespective of candidate possessing M.Phil. or Ph.D. degree"

22. In view of the recommendations of the final report of Mungekar Committee, the Union of India gave policy directions vide letter dated 12 th November, 2008 to UGC to issue regulations to make NET compulsory for appointment of teachers/lecturers in universities. The relevant portion of the said directions are reproduced hereinunder:-

"Now, therefore, in exercise of the powers, conferred by sub - section (1) of Section 20 of the University Grants Commission Act, 1956, the Central Government hereby directs that

(1) the UGC shall, for serving the national purpose of maintaining standards of higher education, frame appropriate regulations within a period of thirty days from the date of issue of this Order prescribing that qualifying in NET/SLET shall generally be compulsory for all persons appointed to teaching positions of Lecturer/Assistance Professor in higher education, and only persons who possess degree of Ph.D. after having been enrolled/admitted to a programme notified by the Commission, after it has satisfied itself on the basis of expert opinion, as to be or have always been in conformity with the procedure of standardization of Ph.D. prescribed by it, and also that the degree of Ph.D. was awarded by a University or Institution Deemed to be University notified by the UGC as having already complied with the procedure prescribed under the regulations framed by the Commission for the purpose. (2) the UGC shall notify the date or dates from which exemption from qualifying in NET/SLET in respect of Universities/ Institutions Deemed to be Universities as well as the discipline for which such exemption is being granted only on the recommendations of a Committee of Experts to be constituted by the Commission and that the experts therein shall be persons of high eminence in the respective disciplines for which the persons possessing Ph.D. are considered for exemption from qualifying NET/SLET.

(3) The UGC shall not give any blanket or general exemption from NET/SLET to any University/Institution Deemed to be University unless the degree of Ph.D. awarded by it in all disciplines or programmes meet the same level of rigour in terms of standards and quality as laid down by the Commission for each discipline under the regulations for the purpose, and that exemption from NET/SLET in respect of Ph.D. awarded by any University/Institution Deemed to be University or to one or more of its programmes/disciplines in respect of such Ph.D. shall be further subject to the University/Institution continuing to comply with the regulations of the UGC and shall be open to review or reconsideration by the Commission; and, such exemption shall be withdrawn in any or all disciplines or in respect of an award of Ph.D. to any person or persons, where the Commission has, on the basis of recommendation by the Committee of experts or on the basis of any inquiry conducted by it suo moto, reasons to believe that there has been deviation from or violation of the procedure prescribed by Commission."

23. In pursuance of the aforesaid policy direction given by the Union of India, the UGC in exercise of its powers conferred by Clause (e) and (g) of sub-Section 1 of Section 26 read with Section 14 of the Act, made the impugned Regulation, 2009 whereby qualifications were prescribed for teaching posts in the Universities and in any of the institutions affiliated to it. In our opinion, the quality of teaching in higher education is a matter of great concern and in order to position India as a powerhouse in the knowledge economy, the standards of education in Universities and other institutions of higher learning have to be improved substantially. The prescription of NET as an entry bar for being considered for appointment as a teacher has been placed in order to ensure a certain modicum of quality screening so that persons of quality enter the academic profession. Consequently, prescription of NET examination cannot be called to be arbitrary.

24. The contention of the learned counsel for the petitioners that the impugned Regulations framed by the UGC in pursuance of the directions by the Central Government is an abdication of its statutory powers, cannot be sustained as the abovesaid directives by the Central Government are with regard to policy relating to national purpose and, consequently, not only contemplated by the Act but also binding upon the UGC in terms of Section 20(1) of the Act.

25. Further, we are of the considered view that UGC s power to frame Regulations under Section 26 of the Act is not a stand-alone power but is subject to other provisions of the Act. Also the Regulations so framed under Section 26 of the Act have to be in consonance with the rules as framed by the Central Government under Section 25 of the Act. The UGC in discharge of its functions under the Act has to necessarily follow the policy directions issued to it by the Central Government as mandated by Section 20(1) which has been reproduced above. In our view, it cannot be said that Section 26 is special in nature and other provisions of the Act including Section 20 are general in nature or otherwise. Consequently, it cannot be held that Section 26 of the Act is special in nature and has overriding effect over the other provisions of the Act including Section 20.

26. The submission of learned counsel for petitioners that exemption granted by the Regulations 2006 has given rise to legitimate expectation that such policy would be continued and the impugned Regulation 2009 be quashed on ground of hardship insofar as it does not grant exemption to the petitioners, does not impress us. It has been time and again held by the Supreme Court that a Rule or a Regulation cannot be declared void on the ground of hardship. In this connection, we may refer to the Supreme Court s judgment in

State of Tamil Nadu & Anr. Vs. P. Krishnamurthy & Ors., (2006) 4 SCC 517 wherein the Apex Court has held as under:-

*" **Whether the Rule is valid in entirety?***

15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).

16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.

17. In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India this Court referred to several grounds on which a subordinate legislation can be challenged as follows: (SCC p.689, para 75)

"75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable

not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary." (emphasis supplied)

18. In Supreme Court Employees Welfare Assn. v. Union of India this Court held that the validity of a subordinate legislation is open to question if it is ultra vires the Constitution or the governing Act or repugnant to the general principles of the laws of the land or is so arbitrary or unreasonable that no fairminded authority could ever have made it. It was further held that the Rules are liable to be declared invalid if they are manifestly unjust or oppressive or outrageous or directed to be unauthorised and/or violative of the general principles of law of the land or so vague that it cannot be predicted with certainty as to what it prohibited or so unreasonable that they cannot be attributed to the power delegated or otherwise disclose bad faith.

19. In Shri Sitaram Sugar Co. Ltd. v. Union of India a Constitution Bench of this Court reiterated: (SCC pp. 251-52, para 47)

"47. Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be „reasonably related to the purposes of the enabling legislation . See Leila Mourning v. Family Publications Service. If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires : per Lord Russel of Killowen, C.J. in Kruse v. Johnson."

20. In St. John s Teachers Training Institute v. Regional Director, NCTE this Court explained the scope and purpose of delegated legislation thus: (SCC p. 331, para 10)

"10. A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes." (emphasis supplied)"

27. Further, it is not the case of the petitioners that there has been any violation of the provisions of the enabling act or of any provisions of the Constitution of India. In ***State of M.P. & Anr. Vs. Bhola Alias Bhairon Prasad Raghuvanshi, (2003) 3 SCC 1*** the Supreme Court has held under:-

"20. A delegated legislation can be declared invalid by the court mainly on two grounds: firstly, that it violates any provision of the Constitution and secondly, it is violative of the enabling Act. If the delegate which has been given a rule-making authority exceeds its authority and makes any provision inconsistent with the Act and thus overrides it, it can be held to be a case of violating the provisions of the enabling Act but where the enabling Act itself permits ancillary and subsidiary functions of the legislature to be performed by the executive as its delegate, the delegated legislation cannot be held to be in violation of the enabling Act." (emphasis supplied)

28. Moreover, legitimate expectation is a species of principle of estoppel and it is settled position of law that there cannot be any estoppel against statute. In this regard, the Constitution Bench of Supreme Court in ***Electronics Corpn. of India Ltd. v. Secy., Revenue Deptt., Govt. of A.P. (1999) 4 SCC 458*** observed as under :-

"20.……..It was contended by learned counsel that the appellant Company had acted upon this promise. Accordingly, the State Government was bound by its promise and was estopped from going back upon it.

21. There are two short answers to this contention. In the first place, there can be no estoppel against a statute. In the second place, the letter dated 17-10-1967 needs to be carefully read. It says that no notification was required for exempting the land from payment of non-agricultural assessment "so long as the units are run by the Government of India in public sector". The appellant Company is a separate and distinct legal entity that runs its own industry. The letter dated 17-10-1967 cannot be read as promising exemption to companies, though their shares be held wholly by the Union of India." (emphasis supplied)

29. Further, the Regulations made under statute are a part of the statute itself and have the same statutory force and effect. The Supreme Court in ***St. Johns Teachers Training Institute v. Regional Director, NCTE, (2003) 3 SCC 321*** following the decision of its Constitution Bench in ***Sukhdev Singh and Ors. Vs. Bhagatram Sardar Singh Reghuvanshi and Anr., AIR 1975 SC 1331*** held as under :-

"10. A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes. Rules and regulations made by reason of the specific power conferred by the statutes to make rules and regulations establish the pattern of conduct to be followed. Regulations are in aid of enforcement of the provisions of the statute. The process of legislation by departmental regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of rules and regulations is conferred by Parliament. The main justification for delegated legislation is that the legislature being overburdened and the needs of the modern-day society being complex, it cannot possibly foresee every administrative difficulty that may arise after the statute has begun to operate. Delegated legislation fills those needs. The regulations made under power conferred by the statute are supporting legislation and have the force and effect, if validly made, as an Act passed by the competent legislature. (See Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi.)" (emphasis supplied)

30. In view of the above, the principle of estoppel is not applicable in the present facts of the case. Consequently, the contention that the earlier exemption has created a legitimate expectation and UGC is estopped from doing away with the said exemption is without any merit.

31. Further the contention that there has been an arbitrary exercise of power in issuing the impugned Regulations is misconceived on facts and untenable in law. In fact, from the aforesaid it is apparent that various expert committees have concluded that there is a wide variation in the grant of Ph.D./ M.Phil. degrees in various universities in terms of the procedure of enrolment/admission to the said programmes and the non-mandatory nature of course work, absence of external evaluation or non insistence of full time enrolment by several universities in respect of their Ph.D. and M.Phil. programmes. This, in our view, makes the results of exams conducted by various examination bodies vary from university to university and they are therefore

neither reliable nor comparable. Consequently, to attain the objective of common national yardstick in terms of qualification for every candidate who aspires to be a lecturer and that the quality of education in higher education is maintained at the highest level, the impugned Regulations 2009 were issued.

32. We are of the considered opinion that confining the exemption to only those Ph.D. degree holders who had been awarded the Ph.D. degrees in compliance with University Grants Commission (Minimum Standards and Procedure for Award of Ph.D Degree), Regulation, 2009 and not extending the same to M.Phil. degree holders and every Ph.D. degree holder has a rational relation with the objective that the impugned Regulations seek to achieve and, therefore, the impugned Regulations, 2009 are neither arbitrary nor irrational and, therefore, are not violative of Article 14 of the Constitution of India. Consequently, in the present case the classification is based upon an intelligible differentia and it has a rational nexus with the differentia and the object sought to be achieved by the impugned Rules/Regulations. For this, we also find support from the decision of Supreme Court in ***Satyawati Sharma v. Union of India, (2008) 5 SCC 287*** wherein the Apex Court has held as under :-

"16. Article 14 declares that the State shall not deny to any person equality before the law or the equal protection of the laws. The concept of equality embodied in A rticle 14 is also described as doctrine of equality. Broadly speaking, the doctrine of equality means that there should be no discrimination between one person and another, if having regard to the subject-matter of legislation, their position is the same. The plain language of Article 14 may suggest that all are equal before the law and the State cannot discriminate between similarly situated persons. However, application of the doctrine of equality embodied in that Article has not been that simple. The debate which started in 1950s on the true scope of equality clause is still continuing. In last 58 years, the courts have been repeatedly called upon to adjudicate on the constitutionality of various legislative instruments including those meant for giving effect to the directive principles of State policy on the ground that same violate the equality clause. It has been the constant refrain of the courts that Article 14 does not prohibit the legislature from classifying apparently similarly situated persons, things or goods into different groups provided that there is rational basis for doing so. The theory of reasonable classification has been invoked in large number of cases for repelling challenge to the constitutionality of different legislations.

17. In Ram Krishna Dalmia v. Justice S.R. Tendolkar this Court considered the interplay of the doctrines of equality and classification and held: (AIR p. 547, para 11)

*"5. … It is now well established that while Article 14 forbid*sth *class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of [Supreme Court] that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure." Speaking for the Court, S.R. Das, C.J. enunciated some principles, which have been referred to and relied on in all subsequent judgments. These are: (AIR pp. 547-48, para 11)*

"11. … (a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be resumed (sic presumed), if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation." (emphasis supplied)

33. Moreover, we are of the considered opinion that it is not for the Court to question the wisdom of the policy directive of the Ministry of Human Resource and Development (UOI), when it is based on the recommendations of an expert committee (Mungekar Committee) and there has been no violation of the enabling Act or that of any provision of the Constitution. We are of the view that the Courts should not venture into academic arena which is best suited for academician and experts. We may refer with profit to the decision of the Supreme Court in ***P.M. Bhargava v. University Grants Commission,(2004) 6 SCC 661*** wherein it has held as under:-

"13. The counter-affidavit filed on behalf of UGC shows that UGC constituted a nine-member Committee which after discussion and deliberations recommended opening of the departments of "Jyotir Vigyan" in universities for award of degrees. The Committee has recommended to create such courses only in 20 out of 41 universities which had applied for the same and the degrees which would be awarded will be BA/ BA (Hons.)/MA/PhD. The decision to start the course has been

MAHARASHTRA FEDERATION OF UNIVERSITY & COLLEGE TEACHERS' ORGANISATIONS(MFUCTO)

विद्यापीठ अनुदान आयोगाच्या, नेट/सेट बाबत, वर्षानुवर्षे निर्णय न घेण्याच्या धोरणाविरूद्ध

दिनांक ३ ते ५ मार्च २०११ या कालावधीमध्ये

नवी दिल्ली येथे

सलग तीन दिवस धरणे आंदोलन कार्यक्रम

या धरणे आंदालनामध्ये संघटनेच्या पदाधिकाऱ्यांनी, कार्यकर्त्यांनी, व सर्व शिक्षकांनी बहुसंख्येने सहभागी होवून धरणे आंदोलन यशस्वी करावे अशी विनंती आहे.

- डॉ. एकनाथ कठाळे, *सरकार्यवाह*

(महाराष्ट्र प्राध्यापक महासंघाच्या (एम्फक्टो) कार्यकारी मंडळाच्या दिनांक ३० जानेवारी २०११ रोजी झालेल्या बैठकीत सम्मत करण्यात आलेला संपूर्ण ठराव (परिच्छेद १.१ ते परिच्छेद ४.८) २०११ च्या नुटा बुलेटीनच्या पृष्ठ १ ते ६ व पृष्ठ १३ वर प्रसृत करण्यात आला आहे.)

taken by an expert body constituted by UGC. The courts are not expert in academic matters and it is not for them to decide as to what course should be taught in universities and what should be their curriculum. This caution was sounded in University of Mysore v. C.D. Govinda Rao wherein Gajendragadkar, J. (as His Lordship then was) speaking for the Constitution Bench held that it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. In this case challenge was made to certain appointments and the Bench held that what the High Court should consider is whether the appointment made by the Chancellor on the recommendation of the Board had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should show due regard to the opinion expressed by the Board and its recommendations on which the Chancellor has acted. This principle was reiterated in J.P. Kulshrestha (Dr.) v. Chancellor, Allahabad University3 wherein it was held as under: (SCC p. 426, para 17) While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies. But university organs, for that matter any authority in our system, are bound by the rule of law and cannot be law unto themselves. If the Chancellor or any other authority lesser in level decides an academic matter or an educational question, the court keeps its hands off; but where a provision of law has to be read and understood, it is not fair to keep the court out."(emphasis supplied)

34. The above mentioned principle has been upheld by the Supreme in a catena of judgments. (See ***Rajender Prasad Mathur Vs. Karnataka University & Anr., AIR 1986 SC 1448, Chairman, J & K State Board of Education Vs. Feyaz Ahmed Malik & Ors., (2000) 3 SCC 59, Varanaseya Sanskrit Vishwavidyalaya & Anr. Vs. Dr. Rajkishore Tripathi & Anr., (1977) 1 SCC 279, Medical Council of india Vs. Sarang & Ors., (2001) 8 SCC 427).***

35. In addition, we find that the validity of NET examination, when first imposed by Regulations of 1991, was upheld by the Supreme Court in ***University of Delhi Vs. Raj Singh*** (supra) wherein it observed as under:-

20. The ambit of Entry 66 has already been the subject of the decisions of this Court in the cases of the Gujarat University and the Osmania University. The UGC Act is enacted under the provisions of Entry 66 to carry out the objective thereof. Its short title, in fact, reproduces the words of Entry 66. The principal function of the UGC is set out in the opening words of Section 12, thus:

"It shall be the general duty of the Commission to take ... all such steps as it may think fit for the promotion and coordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities ...."

It is very important to note that a duty is cast upon the Commission to take "all such steps as it may think fit ... for the determination and maintenance of standards of teaching". These are very wide-ranging powers. Such powers, in our view, would comprehend the power to require those who possess the educational qualifications required for holding the post of lecturer in Universities and colleges to appear for a written test, the passing of which would establish that they possess the minimal proficiency for holding such post. The need for such test is demonstrated by the reports of the commissions and committees of educationists referred to above which take note of the disparities in the standards of education in the various Universities in the country. It is patent that the holder of a postgraduate degree from one University is not necessarily of the same standard as the holder of the same postgraduate degree from another University. That is the rationale of the test prescribed by the said Regulations. It falls squarely within the scope of Entry 66 and the UGC Act inasmuch as it is intended to co-ordinate standards and the UGC is armed with the power to take all such steps as it may think fit in this behalf. For performing its general duty and its other functions under the UGC Act, the UGC is invested with the powers specified in the various clauses of Section 12. These include the power to recommend to a University the measures necessary for the improvement of University education and to advise in respect of the action to be taken for the purpose of implementing such recommendation [clause (d)]. The UGC is also invested with the power to perform such other functions as may be prescribed or as may be deemed necessary by it for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of such functions [clause (j)]. These two clauses are also wide enough to empower the UGC to frame the said Regulations. By reason of Section 14, the UGC is authorised to withhold from a University its grant if the University fails within a reasonable time to comply with its recommendation, but it is required to do so only after taking into consideration the cause, if any, shown by the University for such failure. Section 26 authorises the UGC to make regulations consistent with the UGC Act and the rules made thereunder, inter alia, defining the qualifications that should ordinarily be required for any person to be appointed to the teaching staff of a University, having regard to the branch of education in which he is expected to give instruction [clause (e) of sub-section (1)]; and regulating the maintenance of standards and the coordination of work or facilities in Universities [clause (g)]. We have no doubt that the word „defining means setting out precisely or specifically. The word „qualifications , as used in clause (e), is of wide amplitude and would include the requirement of passing a basic eligibility test prescribed by the UGC. The word „qualifications in clause (e) is certainly wider than the word „qualification defined in Section 12 - A(1)(d), which in expressly stated terms is a definition that applies only to the provisions of Section 12-A. Were this definition of qualification, as meaning a degree or any other qualification awarded by a University, to have been intended to apply throughout the Act, it would have found place in the definition section, namely, Section 2." (emphasis supplied)

36. Further, we find that Regulations 2009 are in no way retrospective in nature. In fact, they are prospective inasmuch as they apply to appointments made or proposed to be made after the date of notification and do not apply to appointments made on regular basis prior to the said date.

37. Consequently, the present writ petitions, being bereft of merit, are dismissed but with no order as to costs.

MANMOHAN, J **CHIEF JUSTICE**

DECEMBER 06, 2010

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