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*‘नुटा बुलेटीन’  
रौप्य महोत्सवी विशेषांक मालिका*

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*विशेषांक अकरावा*

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**नेट/सेट (दुसरा) विशेषांक**

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‘नुटा बुलेटीन’ रौप्य महोत्सवी विशेषांक मालिकेतील आजचा हा अकरावा विशेषांक. या विषयावरील या पुर्वीच्या विशेषांकानंतर नेट-सेट बाबतचे उपलब्ध झालेले मा. उच्च न्यायालयाचे महत्वपूर्ण निर्णय या अंकामध्ये प्रसृत करण्यात आलेले आहेत. त्याशिवाय अमरावती व नागपूर विद्यापीठाने व महाराष्ट्र प्राध्यापक महासंघाने या बाबतीत विद्यापीठ अनुदान आयोगाकडे मांडलेली कैफियत सुद्धा या विशेषांकात समाविष्ट करण्यात आलेली आहे.

प्रा. अनिल सोमवंशी, मुख्य संपादक

प्रा. सुभाष गवई, संपादक :

: प्रा.सुशील काळमेघ, प्रकाशक

# ‘नुटा बुलेटीन’ रौप्य महोत्सवी विशेषांक मालिका

## विशेषांक अकरावा : नेट/सेट (दुसरा) विशेषांक

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**APPELLATE SIDE, CIVIL JURISDICTION  
WRIT PETITION NO. : 5022 OF 2001**

1. Vishwaprakash S/o Laxman Sirsath, Aged : 45 Years Occu. : Service R/o 69, Builders Society Nandanwan Colony, Aurangabad, Tq. and Dist. Aurangabad.  
AND TEN OTHERS ...PETITIONERS

**VERSUS**

1. The State of Maharashtra Through its Secretary, Higher and Technical Education Department, Government of Maharashtra, Mantralaya. Mumbai - 32. (Copy to be served on the Government Pleader, High Court of Bombay, Bench at Aurangabad.)  
AND SEVEN OTHERS .... RESPONDENTS.

Shri P.M. Shah, Senior Counsel with Shri A.B. Tele, Advocate for the Petitioners. Shri U.K. Patil, A.G.P. for Respondent Nos. 1 and 2. Shri Pradeep Deshmukh, Advocate for Respondent No.3.  
Respondent Nos. 5 to 8 served - Absent

**CORAM: B.H. MARLAPALLE & N.H. PATIL, JJ.**

**DATED: 15th/18th/20th FEBRUARY, 2002.**

**ORAL ORDER:**

We have heard the learned counsel for the Petitioners as well as in the connected group of petitions, which have raised a common challenge to the Resolution of the Government of Maharashtra, issued on 18th October, 2001 and more particularly Clause 2(E) of the said resolution. The said clause reads as under:

“१) शासन निर्णय उच्च व तंत्र शिक्षण आणि सेवा योजन विभाग क्रमांक एनजीसी १७९४/७९७५/ विशि-४ दिनांक २२.१२.१९९५ रोजी जे आदेश काढले आहेत ते रद्द करण्यात येत आहेत.

२) खालील अटीवर दिनांक १९.९.१९९१ ते ११.१२.१९९९ या कालावधीत अनुदानित, विना अनुदानित महाविद्यालयातून व संस्था यामधून त्या वेळेच्या निवड समिती मार्फत नियुक्त झालेल्या अधिव्याख्यात्यांच्या सेवा खंडीत होणार नाहीत.

अ) या कालावधीतील नियुक्त्या झालेल्या सर्व (बिगर नेट / सेट) अधिव्याख्यात्यांनी डिसेंबर २००३ पर्यंत नेट / सेट परीक्षा उत्तीर्ण होणे आवश्यक आहे.

ब) वर नमूद केलेल्या मुदतीत नेट / सेट परीक्षा उत्तीर्ण न होणाऱ्या अधिव्याख्यात्यांना त्यांच्या सेवानिवृत्तीपर्यंत अधिव्याख्याता पदाच्या वेतनवाढी व्यतिरिक्त इतर कोणतेही आर्थिक लाभ (जसे पदोन्नती, वरिष्ठ श्रेणी, निवड श्रेणी) देण्यात येऊ नयेत. सेवा-निवृत्त होईपर्यंत ते रु. ८०००-१३५०० या वेतन श्रेणीतच वेतन घेतील.

क) हे बिगर नेट / सेट अधिव्याख्याता ज्या तारखेला नेट / सेट परीक्षा पास करतील त्या तारखेपासून त्यांची सेवा वरिष्ठ श्रेणी / निवड श्रेणीच्या लाभासाठी ग्राह्य धरली जाईल तसेच, जे अधिव्याख्याते नेट / सेट परीक्षा उत्तीर्ण होतील त्यांचे नाव ज्येष्ठता सूचीत नियमानुसार समाविष्ट केले जाईल.

ड) शासकीय महाविद्यालयातील अधिव्याख्यात्यांच्या सेवा महाराष्ट्र लोकसेवा आयोगाच्या सहमतीने पुढे चालू ठेवण्यात येतील.

ई) दिनांक ११.१२.१९९९ नंतर सेवेत आलेले बिगर नेट / सेट अधिव्याख्यात्यांना या सवलती देय असणार नाहीत. तसेच त्यांच्या सेवा परिवेक्षा कालावधी पूर्ण होण्याच्या आत संपुष्टात आणाव्यात.

३) विद्यापीठ अनुदान आयोगाने दिनांक ४.४.२००० च्या अधिसूचनेद्वारे निर्गमित केलेले विनियम २००० मध्ये खालीलप्रमाणे शैक्षणिक अहर्ता / पात्रता अट अंतर्भूत केली आहे. शासन निर्णय दिनांक १३.६.२००० अन्वये हे विनियम सर्व विद्यापीठे व महाविद्यालयांना लागू केले आहेत. या आदेशाद्वारे सर्व विद्यापीठे व महाविद्यालयांना असेही सूचित करण्यात आले आहे की, यापुढे दिनांक ४.४.२००० नंतर राज्यातील महाविद्यालयात / विद्यापीठात

अधिव्याख्याता पदावर बिगर अहर्ताधारक उमेदवारांच्या नियुक्त्या कोणत्याही परिस्थितीत करू नयेत अशा नियुक्त्या केल्यास त्यावर मान्यता व अनुदान दिले जाणार नाही. तसेच ४.४.२००० पासून अशा नियुक्त्या दिल्या असल्यास त्या तात्काळ रद्द कराव्यात. हे आदेश सर्व महाविद्यालयांना बंधन कारक असून, त्याप्रमाणे कार्यवाही न झाल्यास त्याची जबाबदारी संबंधित महाविद्यालयाची / विद्यापीठाची राहिल.”

2. By the above Resolution, the State Government has laid down that the Lecturers, who were appointed between the period from 19th September, 1991 to 11th December, 1999, and without possessing the qualifications of NET/SET, would be protected and they are required to obtain the said qualifications by December, 2003 or before and in case they failed to acquire these requisite qualifications, within the said period, they would be entitled for the pay scale of Rs. 8000-13500 till their superannuation. In addition, they shall not be entitled for promotion, senior grade or selection grade. Those who passed the NET/SET examination, within the stipulated extended period, would be entitled for senior/selection grade from that date and their seniority will be also counted accordingly. Such of those Lecturers, who were employed under the Government Colleges, their continuation would be in consultation with the Maharashtra State Public Service Commission. However, it is stipulated in the said Government Resolution that those Lecturers who did not possess the NET/SET qualifications **and have been appointed after 11th December, 1999 shall not be given the benefit of extended period to acquire the said qualifications and their services are required to be discontinued** before the completion of the probationary period. **The petitioners are aggrieved by this clause of termination of service while on probation.**

3. It is submitted that the said clause is discriminatory and, thus, violating the guarantee provided under Article 14 of the Constitution. The cut off date viz. 11th December, 1999 is unreasonably fixed and it has not nexus with the purpose sought to be achieved and, therefore, the decision of the cut off date is arbitrary. The principles of equality between similarly placed Lecturers viz. all those who have not acquired NET/SET qualifications has been breached. In any case, the Resolution dated 18th October, 2001 could be made operative prospectively after 18th October, 2001 and it cannot be made applicable to all the Lecturers who have been appointed prior to 18th October, 2001. By referring to the earlier Government Resolution dated 13th June, 2000 it has been submitted that while adopting the regulations framed by the University Grants Commission (the Commission, for short) vide notifications dated 4th April, 2000 the State Government did not lay down such a clause classifying the similarly placed Lecturers in different categories. In para 7 of

the said Resolution it was stated that the rules framed by the Commission would be made applicable from 4th April, 2000 and, therefore, any appointment which was made prior to 4th of April, 2000 could not be disturbed on the ground of lack of qualification. In addition, the rules framed by the Commission vide notification dated 4th April, 2000, do not provide for any such clause of termination. **A Government Resolution could not be made applicable retrospectively and it could be applicable only prospectively** i.e. from 18th October, 2001 and not even prior to the said date, in view of the earlier Resolution dated 13th June, 2000 by which a **legitimate expectation** was created in the minds of those who were appointed even after 4th April, 2000 that their appointment may be regularised by following the procedure, as laid down by the Regulations framed by the Commission and, therefore, the impugned Resolution also violates the doctrine of legitimate expectations. All the petitioners have been selected by a duly constituted selection committee and against sanctioned permanent posts. All of them meet the basic qualifications and failure to acquire the additional qualifications cannot be a justifiable reason to remove them from service or to declare them as ineligible to hold the post they have appointed for. Some of the petitioners belong to the reserved categories and they have been appointed pursuant to the directives of the State Government to fill in the reserved category quota by way of special drive. It is urged before us that the Government was required to consider the cases of reserved category candidates on a different footing and more particularly in keeping with the spirit of article 371(2) (C) of the Constitution. Elaborating this point, it has been submitted before us that adequate facilities for acquiring the NET/SET qualifications are not available in the backward areas like the Marathwada region and the State Government ought to have considered this prevailing reality while issuing the impugned Resolution. The State is required to give special considerations to the prevailing inadequate facilities in the backward regions and, therefore, it would have been appropriate for the State Government to extend the period for acquiring the qualifications on par with those who have been appointed prior to 11th December, 1999. In support of these submissions, the learned counsel have relied upon the following decisions.

(i) “Union of India and others V/S Hindustan Development Corporation and others” [AIR 1994 SC 988]

(ii) “Osmania University V/s R. Madhavi and others” [AIR 1998 A.P. 130]

A strong reliance has been placed on a recent judgment of the Calcutta High Court in the case of “Amiyakumar Ghosh V/s State of West Bengal and others” [Writ Petition No. 19293 (W) of 1999 with Writ Petition No. 12593 (W) of 2000]

**The Petitioners also contend that the regulations framed by the Commission are recommendatory in nature** and they do not have a statutory force. It was not necessary for the Government of Maharashtra to follow the said regulations as binding and, in any case, if a concession is given to one set of Lecturers, by extending the period for acquiring the additional qualifications, the State Government ought to have extended the same benefit to all those who have been appointed prior to October, 2001.

4. To examine the merit of these submissions, we have to consider the status of the Commission and the provisions of the University Grants Commission Act, 1956 (the UGC Act, for short).

5. The UGC Act came to be enacted under the provisions of entry 66 of list 1 of the 7th Schedule to the Constitution, which entitles the parliament to legislate in respect of “coordination and determination of standards in institutions of higher education or research or in scientific and technical institutions”. The preamble of the UGC act, which repeats the words of Entry No. 66, reads:

“An Act to make provisions for the coordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission”.

The UGC Act has come into force from 5th February, 1956. Section 2 of the UGC Act deals with definitions and the Central Government has established the Commission under section 4 of the UGC Act. Section 12 is regarding the functions of the Commission and it says “It shall be the general duty of the Commission to take in consultation with the Universities or other bodies concerned, 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, and for the purpose of performing its functioning under This Act the Commission may ... ..

(D) **Recommend** to any university the measures necessary for the improvement of University Education and advise the University upon the action to be taken for the purpose of implementing such recommendations.”

6. Section 12A enables the Commission to regulate fees and it prohibits donations in certain cases. Subsection (1) of the said section deals with the definitions of certain terms and the term “REGULATIONS” means regulations made under the UGC Act. Subsection (4) provides that if, after making, in relation to a college providing for a specified course of study, an inquiry provided in the manner in the regulations and after giving such college a reasonable opportunity of being heard, the commission is satisfied that such college has contravened the provisions of subsection (3), The commission may, with the previous approval of the Central Government, pass an order prohibiting such college from presenting any students then undergoing such course of study therein to any university for the award of the qualification concerned. Subsection (7) states that the provisions of section 12A and the regulations for the purpose of the said section shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 12 B states that no grant shall be given by the Central Government, The Commission or any other organisation receiving any funds from the Central Government, to a University which is established after the commencement of the University Grants Commission (Amendment) Act, 1972 unless the Commission has, after satisfying itself as to such matters as may be prescribed, declare such University to be fit for receiving such grant. Section 13 empowers the commission the right of inspection. Section 14 deals with the consequences of failure of universities to comply with recommendations of the commission and it states that if any university grants affiliation in respect of any course of study to any college referred to in subsection (5) of section 12A in contravention of the provisions of that section and fails within a reasonable time to comply with any recommendations made by the commission under section 12 or 13 or contravenes the provisions of any rule made under clause (f) or clause (g) of subsection (2) of section 25 or of any regulation under clause (e) or clause (f) or clause (g) of section 26, the commission after taking into consideration the cause, if any, shown by the university for such failure or contravention, may withdraw from the university the grants proposed to be made out of the fund of the commission. As per section 20 in the discharge of its functions under the UGC Act the commission shall be guided by such directions on questions of policy relating to national purpose as may be given to it by the Central Government. Section 26 deals with the powers to make regulations and clause (e) of subsection (i) there to deals with power to frame regulations defining the **qualifications that should ordinarily be required of any person to be appointed to the teaching staff** of the university and under clause (g) regulations can be framed for the maintenance of standard of work or facilities in the universities. As per subsection (3) of section 26 the power to make regulations conferred by the said section except clause (i) and clause (j) of subsection (1), shall include the power to give retrospective effect from a date not earlier than the date commencement of the UGC Act, to the regulations or any of them but not retrospective effect shall be given to any regulation so as to prejudicially affect the interest of any person to whom such regulation may be applicable.

7. The Commission framed the University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of University and Institutions affiliated to it) Regulations 1991 in exercise of the powers conferred by section 26(1) (e) read with section 14 of the UGC Act and they were notified on 19th September, 1991 in the Gazette of India. They apply to every University established or incorporated by or under the Central Act, Provincial Act or any State Act. These regulations were framed on the basis of the recommendations of a committee appointed under the chairmanship of Prof. R.C. Mehrotra (Mehrotra Committee). The Mehrotra Committee had recommended the following minimum qualifications for appointment to the post of Lecturer :

(i) Qualifying at the National Test conducted for the purpose by the UGC or any other agency approved by the UGC.

(ii) Master degree with atleast 55% marks or its equivalent grade and good academic record.

(iii) The minimum qualifications mentioned above should not be relaxed even for candidates possessing M.Phil., Ph.D. qualifications at the time of recruitment.

After examining the recommendations of the Mehrotra Committee as well as the commission, the Government of India prepared a scheme for revision of pay scales of teachers in the universities and colleges and other measures of maintenance of standards in higher education and by letter dated 17th June, 1987 the Government of India forwarded the said scheme to all the State Government and the Union Territories with a request to formulate detailed proposals for its implementations. The scheme was revised by the Central Government in 1988. In 1989 a conference of Vice Chancellors was held under the auspices of the commission and one of the major recommendations made in the said conference was "the national level test to determine the eligibility for Lecturers be conducted, when the State Government conducts such tests, while accrediting them caution be exercised. .... .."

Keeping these recommendations in mind the commission framed the 1991 regulations superseding the earlier regulations framed in 1982. In clause 2 of the 1991 regulations, qualifications for appointment to the teaching posts were laid down in the following words :

(2) Qualifications : No person shall be appointed to a teaching post in the University or in any of the institutions, including constituent or affiliated colleges which commenced under clause (f) of section 2 of the University Grants Act, 1956 or in any institution deemed to be a university under section 3 of the said Act in any subject if he does not fulfill the requirement as to the qualifications for the appropriate subject as provided in schedule I :

Provided that any relaxation in the prescribed qualifications can only be made by a University in regards to the posts under it or any of the institutions, including constituent or affiliated colleges recognised under clause (f) of section 2 of the aforesaid Act or by any institution deemed to be a university under section 3 of the said Act, with the prior approval of the University Grants Commission.

Provided further that these regulations shall not be applicable to such cases where selection through duly constituted selection committees for making appointment to the teaching posts have been made prior to the enforcement of these regulations.

The qualifications laid down in Schedule 1 of the 1991 regulations, framed by the commission for the post of Lecturer were, as under :

Good academic record with at least 55% marks or an equivalent grade at Master's level in the relevant subject from an Indian University or an equivalent degree from a foreign university.

Candidates, besides fulfilling the above qualifications, should have acquired the eligibility test for Lecturers conducted by the UGC, CSIR or similar tests accredited by the UGC.

8. The 1991 regulations were adopted by the Government of Maharashtra vide Government Resolution dated 8th January, 1991 on the basis of the Commission letter dated 30th January, 1990 and for the appointment of Lecturers in the university and colleges the following qualifications were laid down :

University Lecturers :

(a) A doctorate degree or research of an equally high standards;

(b) Good academic record with at least second class i.e. in the seven point scale.

(c) Masters degree in a relevant subject from the Indian University or an equivalent degree from a foreign university.

Having regard to the need for developing interdisciplining programs the degrees in (a) and (b) may be in relevant subject

College Lecturers:

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

(b) Good academic record with at least second class (C in the seven point scale) Master's degree in a relevant subject from an Indian University or equivalent degree from a foreign university.

Provided that 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 (b) above.

9. By a circular dated 10th February, 1993 the commission granted exemption from appearing in the eligibility tests to the following categories :

(a) All candidates who had passed UGC/ CSIR/ JRF examination.

(b) All candidates who were already awarded the Ph.D. degree.

(c) All candidates who were already awarded M.Phil. degree upto 31st March, 1991.

(d) All candidates who would submit their Ph.D. thesis upto 31st December, 1993.

By a further circular dated 15th June, 1993, in respect of candidates failing in category (c), exemption from appearing in the eligibility test was extended to candidates who were awarded M.Phil. degree up till 31st December, 1992. By a notification dated 21st June, 1995, the 1991 regulations came to be amended and the following proviso was added below the requirement regarding clearing the eligibility test for appointment to the post of Lecturer :

"Provided that candidates who have submitted Ph. D. thesis or passed the M.Phil. examination by 31st December, 1993, are exempted from the eligibility tests for Lecturers conducted by UGC/ CSIR or similar test accredited by the UGC".

10. The Government of Maharashtra consequently issued a Resolution dated 12th December, 1995 and adopted these amended qualifications as well. Prior to the said resolution the State Government had issued another resolution dated 28th April, 1994 and followed the changes made by the commission by its circular dated 10th February, 1993 as well as 15th June, 1993 regarding exemption of NET/SET examination in respect of M.Phil. and Ph.D. candidates. By the Resolution dated 22nd December, 1995 the Government of Maharashtra extended the date for acquiring the NET/SET qualifications to 31st March, 1996 and laid down that those Lecturers who were appointed on or after 19th September, 1991 without passing the NET/SET examination or M.Phil. examination upto 31st December, 1993 or not completed Ph.D. till the same date come to be governed by the qualifications as prescribed by the commission and as amended in 1995 viz. passing the NET/SET examination. It further specifically stated that those appointees holding the posts of Lecturer on account of non-availability of the qualifying candidates shall be treated as adhoc and in any case they would not be liable for removal from service only on account of not qualifying the NET/SET examinations. However, until the time they would pass the said examination they would not be entitled for the benefit of annual increments and such annual increments would be released only after they passed the examination.

11. The amended regulations of 1995 alongwith the regulations of 1991 came to be superseded by the Regulations framed in 2000 by the Commission and they are called the University Grants Commission (Minimum Qualifications Required for the Appointment and career advancement of Teachers in Universities and Institutions Affiliated to It) Regulations, 2000 (for short, the 2000 Regulations). These regulations have been adopted by the Government of Maharashtra vide its Resolution dated 13th June, 2000, as observed herein above. The qualifications clause in the newly framed regulations reads as under :

"2. Qualifications :

No person shall be appointed to a teaching posts in the university or in any of the institutions including constituent or affiliated colleges recognised under clause (f) of section 2 of the University Grants Commission Act, 1956 or in an institution deemed to be a university under section 3 of the said Act in a subject if he/ she does not fulfill the requirements as per qualifications for the appropriate subjects as provided in the annexure.

Provided that any relaxation in the prescribed qualifications can only be made by the University Grants Commission in a particular subject in which NET is not being conducted or enough number of candidates are not available with NET qualifications for specified period only. (This relaxation if allowed, would be given based on sound justification and would apply to affected universities for that particular subject for the specified period. No individual applications would be entertained).

Provided further that these regulations shall not be applicable to such cases where selection of the candidates having had the then requisite minimum qualification as were existing at that time through duly constituted selection committee for making appointments to the teaching posts have been made prior to the enforcement of these regulation".

Thus, the first proviso of Regulation 2 of the 1991 regulations regarding qualifications was replaced by the amended proviso as set out hereinabove. Clause 1.5.3 of the annexure to the regulations pertains to the qualifications for the post of Lecturer and it reads, thus :

"Good academic record with at least 55% of the marks (or an equivalent grade) at Masters degree level or an equivalent qualification from an Indian or foreign university. Candidates, besides fulfilling the above qualifications should have cleared National Eligibility Test for Lecturers (NET) conducted by UGC or similar tests accredited by the UGC.

Note :- NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidates who have completed M.Phil. degree or have submitted Ph.D. thesis in the concerned subject upto 31st December, 1993 are exempted from appearing in the NET examinations."

By Resolution dated 13th June, 2000 the Government of Maharashtra adopted the 2000 Regulations and clause 7 of the said Government Resolution reads as under :

"७. विद्यापीठ अनुदान आयोगाने दिनांक ४ एप्रिल २००० च्या पत्र क्र. ३-१-२००० (पी.एस.) अन्वये पाचव्या वेतन (५) आयोगाच्या वेतन श्रेणीनुसार प्राध्यापक, प्रपाठक पदाकरिता असणारी शैक्षणिक अर्हता तसेच अधिव्याख्याता पदाकरिता असणारे संबंधित विषयातील पदव्युत्तर पदवी किमान ५५ टक्के मार्कांसह उत्तीर्ण असणे चांगला शैक्षणिक अहवाल व नेट / सेट परीक्षा उत्तीर्ण असणे याबाबतची अधिसूचना जारी केली आहे. ही अधिसूचना विद्यापीठ व संलग्न महाविद्यालयातील शिक्षकांना शासनाने स्पष्टीकरणात्मक जारी केलेले निर्णय लक्षात घेऊन विद्यापीठ अनुदान आयोगाच्या अधिसूचनेच्या निर्गमनाच्या दिनांकापासून म्हणजेच दिनांक ४ एप्रिल २००० पासून लागू करण्यात येत आहे. संबंधित विद्यापीठांनी याची नोंद घ्यावी व त्यांच्या अधिनस्थ असणारी कोणतीही महाविद्यालये व विद्यापीठे ही स्वतः त्या अधिसूचनेतील व शासन निर्णयातील अटी व शर्तीचा भंग करणार नाहीत याची कृपया त्यांनी खात्री करून घ्यावी. जर शिक्षकांच्या झालेल्या नियुक्त्या वरील अटी व शर्तीचा भंग करणाऱ्या असतील असे आढळल्यास अशा शिक्षकांच्या वेतनावरील अनुदान शासनाकडून दिले जाणार नाही. महाविद्यालयीन शिक्षकांच्या नियुक्त्या करतांना विद्यापीठ अनुदान आयोगाच्या अधिसूचनेतील शर्तीचे काटेकोरपणे पालन करायची जबाबदारी संबंधित महाविद्यालयावर राहिल याची त्यांनी नोंद घ्यावी."

12. By the impugned Resolution dated 18th of October, 2001 the State Government has granted same concessions/ protection to those who have been appointed during the period from 19th September, 1991 to 11th December, 1999 and such protections have been denied to those who have been appointed after 11th December, 1999 and they face the eminent possibility of removal from service, as has been apprehended by the petitioners. The cut off date 11th December, 1999 has its origin in the Government Resolution of the same date issued by the State Government for implementing the Fifth Pay Commission Recommendations with effect from 1st January, 1996 and also the Government of India Scheme of 1998 which was circulated on 24th December, 1998. Clause 7 of the said Government Resolution is regarding the recruitment and qualifications for the teaching faculty. The qualifications for the post of Lecturer were stipulated as under:

"Good academic record with atleast 55% of the marks or an equivalent grade of (B) in the seven point scale with later grades O,A,B,C,D,E, & F at the Master's degree level in the relevant subject from an Indian University or an equivalent degree from foreign university.

Besides fulfilling the above qualifications candidates should

have acquired the eligibility test (NET) for Lecturer's conducted by the UGC, CSIR or similar test accredited by the UGC."

A perusal of the Resolutions issued by the Government of Maharashtra on 8th January, 1991, 11th December, 1999 and 13th of June, 2000 shows that the qualifications as laid down by the Commission for the appointment to the post of Lecturer have been in verbatim followed except that in case of a Ph.D. holder discretion was left with the universities concerned for granting exemption regarding NET/SET examination as is evident from clause 7 of the Resolution dated 11th December, 1999, which read as unders :

"7. Recruitment and Qualifications. - The direct requirement to the post of Lecturers, Readers and Professors in the universities and Lecturers in Colleges shall be on the basis of merit through all-India advertisement and selection by the duly constituted Selection Committees to be set up as prescribed in UGC Notification dated 24th December, 1998 under the Statutes/ Ordinance of the concerned University. Such Committees should have minimum of three experts, the head of the concerned Department and the Principal of the concerned College (in case of selection of college teachers).

Requirement of teachers in Government Colleges and Institutes of Sciences will be regulated by respective recruitment rules prescribed by the State Government in consultation with Maharashtra Public Service Commission.

The minimum qualifications required for the post of Lecturers, Readers, Professors. Assistant Directors of Physical Education, Deputy Directors of Physical Education, Directors of Physical Education, Assistant Librarians, Deputy Librarians, Librarian and Registrars will be those as prescribed by the University Grants Commission & accepted by State Government from time to time.

The minimum requirement of a good academic record 55% of the marks at the masters level and qualifying in the National Eligibility Test or an appredited test shall remain for the appointment of Lecturers. It would be optional for the University to exempt Ph.D. holders from NET or to require NET in their case either as desirable or essential qualifications for appointment as Lecturers in the University Departments and Colleges. The minimum requirements of 55% should not be insisted upon for Professors, Readers, Registrars, Librarians, Deputy Librarians, Directors of Physical Education, Deputy Librarians, Directors of physical Education for the existing incumbents who are already in the University system. However, these marks should be insisted upon for those entering the system from outside and those at the entry point of Lecturers, Assistanat Librarians, Assistant Director of Physical Education.

A relaxation of 5% may be provided, from 55% to 50% of the marks, at the master's level for the SC/ST category.

A. relaxation of 5% may be provided, from 55% to 50% of the marks to the Ph.D. degree holders who have passed their Master's degree prior to 19th September, 1991.

B. in the 7 point scale with later grades O,A, B, C, D, E & F shall be regarded as equivalent of 55% wherever the grading system is followed.

The Ph.D. shall continue to be a compulsory requirement for the designation of Reader. However, for other categories, like those of Registrars, Librarians and Physical Education Director, the Ph.D. should be a desirable and not an essential qualification."

However, that discretion left with the University has not been retained in the subsequent Government Resolution dated 13th of June, 2000 or the impugned Resolution and mainly because of the 2000 Regulations framed by the Commission which have been adopted by the State Government.

13. Regulation No. 2 of 1991 Regulation framed by the Commission opened with the words "no person shall be appointed to a teaching post in university or any of the institutions if he does not fulfil the requirements as to the qualifications for the appropriate subjects as provided in Schedule I. The Regulation, therefore, made a declaration that unless a candidate possessed the qualifications, as set out in Schedule I for the concerned post, viz. the Lecturer, his appointment shall not be made. It created a bar against the appointments of candidates not fulfilling the requirement of educational qualifications as set out in schedule I and in

Schedule I the following qualifications were formulated.

(a) good academic record with at least 55% marks (or an equivalent grade) at Master's degree level or an equivalent qualification for an Indian or foreign university.

(b) Candidates, besides fulfilling the above qualification, should have cleared national Eligibility Test for Lecturers (NET) conducted by UGC or similar tests accredited by the UGC.

There is only a provision for relaxation in terms of first proviso under Regulation 2. This proviso states that (a) relaxation in the prescribed qualifications could be made by university, (b) in regard to the post under it or any of the institutions, including constituent or affiliated colleges recognised under clause (f) of section 2 of the UGC Act or by an institution deemed to be an University under section 3 of the said Act and (c) with the prior approval of the Commission. **The Delhi High Court**, upon a writ petition filed by one Rajsingh had held that the 1991 Regulations were valid and mandatory and the university was obliged under law to comply therewith. This decision came to be challenged by the University of Delhi in Civil Appeal No. 1819 of 1994 which was decided by the Apex Court on 8th September, 1994 i.e. "University of Delhi V/s Raj Singh and others" [AIR 1995 SC 336]. The Supreme Court, on analysing the provisions of the Delhi University Act, the UGC Act and Entry No. 63 and 66 of List 1 of Schedule 7 of the Constitution held that (a) the first proviso to clause 2 permitted regularisation in the prescribed qualifications by university provided it is made with the prior approval of the UGC. (b) **the second proviso made the application of the said regulations prospective**; (c) clause 3 of the Regulations provided for the consequences of the failure of the University to comply with the recommendations made in clause 2 in the same terms as are set out in section 14 of the UGC Act; (d) the provisions of **clause 2 of the said Regulations are, therefore, recommendatory** in character and it would be open to an university to comply with the provision of clause 2 by employing as lecturer only such person who has fulfilled the requirement as to qualifications for the appropriate subject provided in the schedule to the said Regulation. It would be open, in specific cases, for the University to seek, the prior approval of the UGC to regularise these requirements. Yet again it would be open to the university not to comply with the provisions of clause 2 in which, in the event that it failed to satisfy the UGC that it had done so for good cause, it would lose its grants from the UGC. The said regulations do not impinge upon the power of the university to select its teachers. The University may still select its lecturers by written test and interview or either. Successful candidates at the basic eligibility test prescribed by the said Regulations are awarded no marks or ranks and therefore, all who have cleared it stand at the same level. There is, therefore, no element of selection in the process. The University's autonomy is not entrenched upon by the said Regulations.

14. When the 2000 Regulations were framed by the Commission on 4th April, 2000, clause 2 regarding the qualifications remained the same and the first proviso was amended. The relaxation in the prescribed qualifications was envisaged only in respect of subjects and in which NET is not being conducted or enough number of candidates are not available with NET qualifications for a specified period only. In addition, these relaxations were required to be made by the Commission alone and not by the University concerned as was the position in the earlier proviso under the said clause in the 1991 Regulations. It further clarified that relaxation would be given based on sound justification and would apply to affected universities for a particular subject for the specified period and no individual applications would be entertained. In Schedule I where the qualifications are prescribed for the post of Lecturer a specific note has been added which clarified that though NET would remain compulsory requirement for appointment of Lecturer even for the candidates having Ph.D. degree, the appointees with such qualifications or those who have completed M.Phil. degree up to 31st December, 1993 are exempted from appearing in the NET examination. Thus, the candidates who completed M.Phil. degree or had submitted Ph.D. Thesis in the concerned subject upto 31st December, 1993 are alone exempted from appearing in the NET examination and there is no other relaxation regarding qualifications for appointment to the post of Lecturer.

15. In the case of "University Grants Commission V/s Sadhana Chaudhary and others" [(1996)10 SCC 536] questions

relating to grant of exemption in qualifications, in the 1991 Regulations, were raised and more particularly the recruitment regarding clearing the eligibility test for the post of Lecturers or similar test accredited by the U.G.C. the exemption granted in favour of the M.Phil. or Ph.d. candidates, akin to the one under the note, in Schedule I of the 2000 Regulations was also a subject matter of challenge and the **Supreme Court held that granting of such exemption did not run contrary to the requirement prescribed by the Commission in the Regulations of 1991** read with circular dated 10th February, 1993 and 15th June, 1993 which were applicable at the relevant time and the amendment notification dated 21st June, 1995 was also upheld.

16. The Regulations framed by the Commission are applicable to the Universities in the State if the State Government has adopted them by way of a Government Resolution. The 1991 Regulations as well as 2000 Regulations have been adopted by the State Government, and the State Government did not give any other relaxation in addition to the relaxations already provided under clause 2 of the 2000 Regulations. It also laid down that the 2000 Regulation were being implemented from 4th April, 2000. It was further clarified that appointments made contrary to the Regulations shall not be eligible to receive the grant in aid from the State Government. The purport of this Government Resolution was, therefore, clear and loud to the universities as well as to the colleges/ institutions affiliated to them viz. you appoint the teachers who meet the qualifications, if you want to receive the grant in aid from the State Government, lest you do not receive any grants. The relaxation which was given by the State Government in the earlier Government Resolution dated 11th December, 1999 was only in respect of candidates with Ph.D. qualifications i.e. on parts with the 1991 Regulations amended in 1995. However, this was not repeated in the Government Resolution dated 13th June, 2000. Nevertheless, the 2000 Regulations, granting exemption to the M.Phil. Degree holders as well as the Ph.D. candidates, are applicable in the State of Maharashtra as well even as at present. Besides this, there is no other relaxation in terms of qualifications required for the post of Lecturer. **These Regulations are therefore binding on the universities and their affiliated colleges who are aided by the State Government.**

17. Amongst the petitioners, before us, there is no doubt that non of them holds a Ph.D. degree or has submitted thesis for Ph.D. prior to 31st December, 1993. None of them has completed the M.Phil. degree and all of them do not possess the NET/SET qualifications as at present. The petitioners, who are before us, could be categorised in the following groups.

- (a) Appointed from 12th Dec, 1999 to 3rd April 2000.
- (b) Appointees from 4th April, 2000 to 12th June, 2000.
- (c) Appointees from 13th June, 2000 to 18th October, 2001.

18. When the appointments are made to the post of Lecturer they are initially appointed on probation for a period of two years which is required to be extended for a **further period of one year under the concerned university statutes**. The Petitioners who were appointed on or after 11th December, 1999 were admittedly on probation as on 18th of October, 2001 when the impugned Resolution was issued by the State Government. The first group of appointees (appointees from 11th December, 1999 to 3rd April, 2000) were admittedly covered by the 1991 Regulations as amended in 1995 by the Commission and which amendment was upheld by the Apex Court in the case of University Grants Commission (supra). They do not possess the qualifications prescribed in terms of clause 2 read with the Schedule annexed to the Regulations for the post of Lecturer. The relaxation, which was contemplated in educational qualifications for appointment to the post of Lecturers, was only in term of the first proviso thereunder. There is nothing on record to show, before us, that any of the universities has submitted a proposal for approval to the Commission in respect of any post or in respect of any Petitioner. It was necessary in respect of such candidates that before the approval was granted by the concerned universities, to such appointment proposals were moved to the Commission for seeking approval in advance in relaxations of qualifications so long as the university concerned wanted to remain within the purview of the U.G.C. Act and the colleges concerned were desirous for grant in aid from the state Government for these appointments. If the colleges/ institutions concerned did not expect any grants from the State Government, they were free to appoint such unqualified lecturers and the Commission would not come in their way as

held by the Apex Court in the case of University of Delhi (Supra). As long as the universities concerned wanted to be covered under the provisions of the U.G.C. Act and the colleges / institutions affiliated to these universities were seeking grant-in-aid from the State Government, it was imperative that they complied with the provisions of the 1991 Regulations for these appointments. **The appointments so made were per-se-illegal in as much as they did not meet the educational qualifications and the relaxation clause was not complied with.** The qualifications prescribed vide resolution dated 11th December, 1999 did not provide for any relaxation in qualifications save and except those provided in the 1991 Regulations, as amended in 1995.

19. When the 2000 Regulations were framed by the Commission, the qualifications were maintained and the relaxation clause was modified thereby vesting the full authority with the Commission alone and the role of the universities concerned, for granting approval, was removed. These Regulations have been adopted by the State Government by the Resolution dated 13th June, 2000 but retrospectively. The appointees in the second group i.e. from 4th April, 2000 to 13th June, 2000 have not brought on record whether any such proposals, as contemplated under proviso 1 of clause 2 of these Regulations were moved before the U.G.C. for the respective subjects. The amended Regulations have considered the contingencies in different subjects and made a provision for granting relaxation on having been satisfied regarding the existence of such difficulties or lack of infrastructure etc. and that too for a limited period. In subjects like Urdu, Pali etc. where postgraduation studies are conducted by the Dr. Babasaheb Ambedkar Marathwada University at Aurangabad, there is a possibility that the necessary facilities for NET/SET examinations may not be available or the number of candidates who have successfully completed these qualifications is inadequate. In such an eventuality, the Commission has provided for granting relaxation. The universities concerned are required to approach the Commission making out a case for relaxation in the concerned subject before the subject appointments are approved by them and if the approvals are granted without complying with the requirements of the said proviso obviously the appointment would be illegal being contrary to the Regulation.

20. **So far as the third group is concerned we have no hesitation in our mind to hold that these appointments have been made in flagrant violation of the 2000 Regulations.** The State Government virtually issued a warning to the Universities, Colleges and/ or Institutions not to appoint Lecturers who did not meet the qualifications as prescribed by the Commission vide resolution dated 13th June, 2000. When these appointments were made the amended proviso to clause 2 of the 2000 Regulation was known to every one concerned including the appointees and they ought to be aware that they were not qualified for these appointments unless approval from the U.G.C. was obtained in advance. In none of these three groups the Universities concerned have complied with the requirements of first proviso of clause 2 of the 1991 Regulations as well as 2000 Regulations and all the colleges/ institutions where the petitioners are working are aided institutions and, Therefore, these Regulations are binding on them

21. Shri Shah, the learned senior counsel, who spearheaded the arguments on behalf of all the Petitioners, addressed us on the doctrine of promissory estoppel. In the case of "Council of Civil Services Union V/s Minister for the Civil Services" [(1984) 3 All ER 935] such an issue arose for considerations and the Court observed:

"An aggrieved person was entitled to invoke judicial review if he showed that a decision of a public authority affected him by depriving him of some benefit or advantage which in the past he had been permitted to enjoy and which he could legitimately expect to be permitted to continue to enjoy either until he was given reasons for its withdrawal and the opportunity to comment on those reasons or because he had received an assurance that it would not be withdrawn before he had been given the opportunity of making representation against the withdrawal."

Further, in Sreeh V/s Amalgamated Engineering Union"[(1971) 2 Queens Bench Division 175] turning down the plea of promissory estoppel the Court observed.

"If a man seeks a privilege to which he has no particular claim - such as appointment to some post or other - then he can

be turned away without a word. He need not be heard. No explanation need be given. ...."

22. In the case of "Osmania University V/s R. Madhavi and others" [AIR 1998 A.P. 130] as relied upon by the Petitioners, the Division Bench, while dealing with the doctrine of legitimate expectations, observed, thus :

"6. Coming to the scope of judicial review when a challenge is made on the basis of the doctrine of legitimate expectation, after referring to several judgments of the Courts in England, the Supreme Court pointed out, the doctrine of legitimate expectation, does not give scope to claim relief straightway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision - maker should justify the denial of such expectation by showing some overriding public interest. Therefore, even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits. ...."

By circular dated 28th April, 1994 relaxation was granted for NET/ SET qualifications to those lecturers who were appointed between the period from 27th February, 1989 to 31st March, 1990. Similarly, those who were appointed upto 19th September, 1991 and had possessed Master's Degree with 55% or more marks were also exempted from acquiring the M.Phil. degree. The period for acquiring NET/SET qualifications was also extended upto 31st March, 1996 and failure to do so, on the part of these appointees prior to 19th September, 1991, would result in termination of their services was also made clear. However, this relaxation was subsequently withdrawn by Resolution dated 22nd December, 1995 by the State Government and thus the promise of date of extension upto 31st March, 1996 to acquire the NET/SET qualifications was finally withdrawn by the said Resolution. This decision of the State Government was again reiterated and confirmed by the subsequent Resolution dated 11th December, 1999. The appointees on or after 12th December, 1999 can not claim that any promise was made by the State Government to relax qualifications and more particularly the passing of NET/SET examinations. None of them can therefore, invoke the doctrine of legitimate expectations.

23. The scheme of the 1991 Regulations as well as the 2000 Regulations, as analysed by us, has not aroused any expectations except the relaxation/ concession clause under the first proviso to clause 2 thereunder. Similarly, by the amendments carried out on 1995 the Commission granted some concessions in respect of the candidates who possessed the M.Phil./ Ph.D. qualifications or who had submitted their thesis before the cut off date. There were no promises of any concession or any relaxation in case of other candidates who did not have the qualifications of M.Phil. or Ph.D. from passing the NET/SET examination and a discretion was vested with the University in the 1991 Regulations to approach the Commission for approval in advance for obtaining approval in respect of some parts. This concession was subsequently modified in the 2000 Regulation in respect of subjects but the Universities power to grants such relaxation is removed and the power is now vested with the Commission. The Government of Maharashtra, while adopting these Regulations by the respective resolutions, has not gone beyond the Regulations and none of the Resolutions issued on 11th December, 1999 and thereafter have contemplated any concessions to the candidates similarly placed to the petitioners. The State Government did not hold promise at any time after 11th December, 1999 to the effect that the candidates not possessing the NET/SET qualifications would be considered for appointment as Lecturers in the private aided colleges or in the colleges run by the State Government. The arguments were perhaps based on the premises that the State Government had made some promise of concession but the record does not support this presumption. We, therefore, hold that the doctrine of legitimate expectation is not applicable while deciding the legality of the impugned Resolution dated 18th October, 2001.

24. We shall now proceed to examine each of the clauses of



the Government Resolution dated 18th of October, 2001. In the first clause the resolution dated 22nd December, 1995 came to be withdrawn.

In the second clause it has been stated that the Lecturers, who did not possess the NET/SET qualifications and who were appointed during the period from 19th September, 1991 to 31st December, 1993 under the aided, unaided colleges/ institutions through the selection committee would not be discontinued. They are on the other hand, required to obtain these qualifications latest by December, 2003. We do not find anything wrong with these conditions.

“४ जे अधिव्याख्याता पदव्युत्तर परीक्षेत ५५ ट कके किंवा त्यापेक्षा जास्त गुण मिळवून उत्तीर्ण झाले आहेत व त्यांची नियुक्ती दिनांक १९.९.१९९१ पर्यंत झाली आहे. परंतु ज्यांनी एम.फील परीक्षा उत्तीर्ण केलेली नाही त्यांनी एम.फील परीक्षेची अट शिथिल करण्यात आली असून त्यांच्या नियुक्त्या नियमित करण्यात येत आहेत.

५. शासन याद्वारे असे आदेश देत आहे की, जे अधिव्याख्याता ५५ ट कके पेक्षा जास्त गुण मिळवून पदव्युत्तर परीक्षा उत्तीर्ण झाले आहेत व ३१.१२.९३ पर्यंत एम.फील परीक्षा उत्तीर्ण झाले आहेत व ज्यांनी पीएच.डी. चा प्रबंध सादर केला आहे व ज्यांच्या नियुक्त्या विद्यापीठाच्या सक्षम समितीमार्फत करण्यात आल्या आहेत त्यांना नेट/सेट परीक्षा उत्तीर्ण होण्यापासून सुट देण्यात येत आहे तसेच जे अधिव्याख्याता ५५ ट कके पेक्षा कमी गुण मिळवून पदव्युत्तर परीक्षा द्वितीय श्रेणीत उत्तीर्ण झाले आहेत व ज्यांनी ३१.१२.१९९३ पर्यंत एम.फील परीक्षा उत्तीर्ण केली आहे अथवा ज्यांनी ३१.१२.१९९३ पर्यंत पीएच.डी चा प्रबंध सादर केला आहे अशा अधिव्याख्यात्यांच्या विद्यापीठ सक्षम निवड समितीमार्फत दिनांक ३१.१२.१९९३ पर्यंत झालेल्या नियुक्त्या या आदेशाद्वारे नियमित करण्यात येत आहेत.

६. शासन पत्र उच्च व तंत्र शिक्षण आणि सेवायोजन विभाग क्रमांक युएसजी-१०३३ I(२६४३७) |विशि-४, दिनांक २८.४.१९९४ अन्वये विद्यापीठिय व महाविद्यालयीन शिक्षकांच्या सेवा जरी ते राष्ट्रीय / राज्य पात्रता परीक्षा (नेट/सेट) उत्तीर्ण नसले तरी ३१.३.१९९६ पर्यंत वाढविण्याचे आदेश देण्यात आले आहेत व दिनांक ३१.३.१९९६ पर्यंत जे अधिव्याख्याता नेट/सेट परीक्षा उत्तीर्ण होणार नाहीत त्यांना सेवेतून कमी करण्याचे आदेश निर्गमित करण्यात आले आहेत.”

It is the same doctrine of legitimate expectation which perhaps weighed in the mind of the Government. With a benevolent intention the Government decided to extend this outer limit upto December, 2003 for all those who have been appointed upto 11th December, 1999 though these concessions were in fact withdrawn vide Resolution dated 22nd December, 1995. However, a finality to this withdrawal was given vide the Resolution dated 11th December, 1999 only, in view of the following preamble thereto. :

“Government of Maharashtra had approved the implementation of revised pay scales for University and College teachers with effect from 1st January, 1986 vide Government Resolution, Education and Employment Department No. NGC 1296/(1224)/UNI-4, dated 27th February, 1989. After appointment of the Fifth Pay Commission for Central Government employees, the University Grants Commission had appointed a Committee under Chairmanship of Prof. Rastogi to examine the present structure of emoluments and conditions of service of University and College teachers. After considering the Rastogi Committee's Report, the University Grants Commission submitted its recommendation to the Government of India. After examination of this report, Government of India evolved a scheme of pay revision for the University and College Teachers and other measures for improvement of standard in higher education. By their letter dated 27th July, 1998 and subsequent letters dated 22nd September, 1998 and 6th November, 1998, the Government of India accepted and approved the recommendations of UGC to Central Universities and Colleges thereunder. Similarly, the Government of India recommended to the State Government to implement this scheme in the State Universities and affiliated Colleges. The question of implementing Government of India's scheme of revision of pay scales of University and College teachers and other relevant guidelines and notifications issued by U.G.C. from time to time was under consideration of the State Government. After careful consideration of the Government of India's Package Scheme, 1996 for maintenance of standards in Higher Education, the State Government has now decided to implement the revised pay scales and the terms and conditions

of service as detailed below.”

25. The next sub clause of clause 2 viz. subclause (b) states that those Lecturers who are not successful in obtaining the NET/SET qualifications by December, 2003 will be continued in service till their retirement and except the annual increment they shall not be entitled for any other benefits like financial benefits, promotion, senior grade or selection grade. It further states that till their retirement they shall be continued in the pay scale of Rs. 8,000-13,000. **We certainly find fault with this clause.** When the Government has adopted the Regulations as framed by the Commission and if the Commission does not provide for such a clause in its Regulations, the State Government cannot deviate from the said Regulation. If the appointees upto 11th December, 1999 failed to obtain the NET/SET qualifications by December, 2003. Undoubtedly they continued to be unqualified to hold the post of Lecturer and they can not be continued beyond December, 2003. **The concession granted by the State Government in this clause is contrary to the Regulations framed by the Commission.** In case there are institutions/ universities who do not want to be covered under the U.G.C. Act, the position would be different but the Government Resolution dated 18th October, 2001 is in respect of all those aided, unaided colleges/ institutions covered under the U.G.C. Act. Though education is a subject in the concurrent list i.e. List III under the Seventh schedule (Serial No. 25), the State Government's power in that regard is subject to the provisions of Entry 63, 64, 65 and 66 and List-I under the said Schedule. **The Government adopted the 2000 Regulation framed by the Commission in toto vide Government Resolution dated 13th June, 2000 and retrospective from 4th April, 2000 under these circumstances, the Government's decision of granting concession, as set out in clause 2(b) of the impugned Government Resolution cannot be sustained.**

26. The impugned clause i.e. clause 2(e) in the Government Resolution dated 18th of October, 2001, states that all the appointees to the post of Lecturer, whose appointments are after 11th December, 1999 (who have been classified in the three different groups, in this judgment) would not be eligible for the concessions granted in subclause (a) as well as (c) of clause 2 and they are liable to be removed from service before the completion of their probationary period. None of the petitioners, who are before us, have been confirmed in service before the impugned Government Resolution was issued. The probationers do not have a vested right of being confirmed in service and more so when they do not meet the requirements of prescribed qualifications for appointment to the post which they hold. Vide Government Resolution dated 11th December, 1999 the State Government had made known its policy in no uncertain words to all the concerned, including the universities and colleges/ institutions and stated that the minimum qualifications required for the post of Lecturer, Reader, Professor, Assistant Director of Physical Education, Deputy Director of Physical Education, Director of Physical Education, Assistant Librarian, Deputy Librarian, Librarian and Registrars would be those as prescribed by the Commission and accepted by the State Government from time to time. This resolution had also referred to the scheme formulated by the Commission vide letter dated 24th December, 1998 wherein the minimum qualifications were stipulated for the post of Lecturer under clause 4.4.0. These qualifications were set out in the following words:

“Good academic record with at least 55% of marks or an equivalent grade of B in the point scale with latter grades O, A, B, C, D, E & F at the Master's degree level in the relevant subject from an Indian University or equivalent degree from foreign university.

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 U.G.C.”

By the Resolution dated 11th December, 1999 the scheme of 1998 framed by the U.G.C. was adopted and followed in toto, including the qualifications for the post of Lecturer. In view of this announcement of the State policy the universities or colleges/ institutions were not allowed to appoint candidates to the post of Lecturers who did not possess the NET qualifications or its equivalent from 12th December, 1999 unless these appointments were covered under the first proviso to clause 2 of the 1991 Regulations. Even when the Government issued its Resolution dated 13th of June, 2000, adopting the 2000 Regulations framed by the Commission, there was no concession granted, except

the concession in the first proviso to clause 2 therein and, therefore, in respect of the appointments made after 13th June, 2000 also the universities and colleges/ institutions were under an obligation to ensure that the candidates appointed to the post of Lecturer did possess the qualifications of NET/SET unless the Commission had granted prior approval within the ambit of the first proviso to clause 2 of the 2000 Regulations. Same is the case in respect of those appointees after 13th of June, 2000 till 18th of October, 2001. **None of the appointees in these three groups fulfill the eligibility conditions in respect of the qualifications and, therefore, they obviously stand in the category of unqualified candidates or ineligible candidates.**

**Does it mean that every one of them is liable to be removed from service during the probationary period or thereafter.** This question cannot be answered in general terms on the face of the relaxation granted under the first proviso to clause 2 of the 1991 Regulations as well as 2000 Resolution. It would be therefore, necessary to examine each case under this proviso and those who did not satisfy the requirements therein must obviously vacate the posts. We deem it appropriate to give these clarification in view of the language of subclause (e) of clause 2 of the impugned Government Resolution dated 18th October, 2001. **It would be necessary for the concerned university or the college/ institution to ascertain whether the appointee concerned is covered by the benefit under the first proviso to clause 2 of the 1991 Regulations or 2000 Regulations before taking the final decision of retention or removal as the case may be.** The State Government's decision impugned before us cannot be read in isolation and it must be read in conjunction with the 1991 as well as 2000 Regulations. A particular university or college/institution may justifiably put up a case before the Commission regarding non-availability of adequate facilities for NET/SET examination and / or inadequate number of qualified candidates in a particular subjects and more particularly against the posts reserved. These parameters / prevailing conditions could be examined by the Commission which is the final authority and the Commission has retained the discretion for applying its mind to all these ground realities and take appropriate decision of granting concessions in favour of such subjects. This discretion of the UGC cannot be taken away by the impugned Resolution which has to be read as an announcement of the Government policy to be implemented on the lines of the Regulations framed by the Commission and not in isolation.

27. Shri Shah, the learned counsel for the Petitioners placed before us a mercy petition, by relying upon a decision of the Supreme Court in the case of "H.C. Puttaswamy and others V/ s The Hon'ble Chief Justice of Karnataka High Court, Bangalore and others" [AIR 1991 SC 295] and urged before us to hold that as a matter of one time concession all those unqualified Lecturers, who are appointed prior to 13th of June, 2000 or 18th of October, 2001, should be held to be eligible for the concessions which have been granted in favour of the candidates who have been appointed on or before 11th December, 1999. We are afraid, this cannot be done by us while exercising our powers under Article 226 of the Constitution and more so on the face of the Regulations framed by the Commission which is a statutory body created under the U.G.C. Act. The Regulations framed by the Commission have also provided some room for relaxation and the concerned universities/colleges/institutions can approach the Commission for exercise of this power of relaxation in a given subject and for a specific period. It is not for this Court to exercise such powers. Shri. Dhobale also argued on the special provisions set out by the Constitution under Article 371 (2) (c) of the Constitution. He urged before us that concessions are required to be continued in favour of the candidates coming from backward regions as well as backward classes. The language of Article 371 does not contemplate concessions or relaxations to be granted for holding an academic post in technical education or higher education. The commission is an apex body who has been bestowed with the powers to frame the requirement of qualifications and other eligibility conditions and has accordingly framed the Regulations under which no relaxation is provided from the requirement of qualifications in respect of the candidates coming from either the backward regions or from the backward classes except a relaxation of 5% (from 55 to 50%) of the marks at the Master's level for the SC/ST category. The Commission has, thus, considered the subject matter and granted some relaxation. The submissions for further concessions made by the learned counsel do not impress us.

28. We have also noted that the title of the 1991 Regulations

framed by the Commission is different from the title of the 2000 Regulations. The earlier Regulations were titled as "**the University Grants Commission (Qualifications required for a person to be appointed to the teaching staff of the University and institutions affiliated to it) Regulations, 1991,**" whereas the later Regulations were titled as "**the University Grants Commission (minimum qualifications required for the appointment and Career Advancement of teachers in Universities and institutions affiliated to it) Regulations, 2000**". The emphasis, while framing the later Regulations, was for prescribing minimum qualifications required for appointment and for the career advancement of teachers in the universities and institutions affiliated to it. There was no emphasis in this regard in the 1991 Regulations. This deliberate change in the title of the Regulations also speaks about the intentions of the Commission to lay down a minimum qualifications for appointment and insisted that the teachers with these minimum qualifications are only appointed, subject, however, to the provision of relaxation in specific cases.

In the impugned Resolution dated 18th of October, 2001 the State Government has, in clause 3, called upon the Universities and affiliated colleges to implement the 2000 Regulations framed by the Commission and not to appoint lecturers who do not meet the qualifications set out in these Regulations. If appointments are made of ineligible candidates the State Government will not approve such appointments and grants will not be released in respect of them. The State Government is, therefore, mindful of the legal position that the affiliated college and the universities are bound by the Regulations framed by the Commission so long as they desire to be governed by the provisions of the U.G.C. Act and receive grants from the State Government.

29. It is well established by a catena of judicial enunciations that the academic standards as prescribed by the respective nodal agencies created by an Act of Parliament/ Legislature are to be followed and judicial interference in such areas is uncalled for. The Commission is a body created by the U.G.C. Act and in exercise of its statutory powers has prescribed the minimum qualifications for appointment to the post of lecturer as well as other faculty members. It is not safe for this Court to sit in appeal over the decision of the Commission in such matters. The academic standards, prescribed by the Commission, including the minimum qualifications prescribed for appointment of teaching staff, cannot be a subject matter of judicial review and this court would not venture to grant any relaxation in such qualifications, more so when the Commission itself has retained powers of relaxations in the given cases and for a specific period. The State Government by the impugned Resolution, has only announced its determination to implement the 2000 Regulations meticulously and also ensured that all the colleges/ institutions receiving grants, follow the same failing which the approvals to such appointments would not be granted and they would forfeit the grants available from the Government. It is for these reasons we do not agree with the view taken by learned Single Judge of the Calcutta High Court in the case of "Amiyakumar Ghosh" (supra).

30. In the result, the petition is rejected summarily subject to our observations that clause 2(b) of the impugned Government Resolution dated 18th October, 2001 is unsustainable and the same is quashed and set aside. We also hold that the cases of candidates appointed from 12th October, 1999 till 18th October, 2000 are required to be examined so as to ascertain the applicability of the first proviso to clause 2 of the 1991 Regulations as well as 2000 Regulations before their services are sought to be terminated by the respective universities and/ or colleges/ institutions.

Dt. 20.2.2002

True Copy

Sd/-

Assistant Registrar, High Court, Appellate Side

Bombay at Aurangabad

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(REPORTED ON PAGE 176 TO 198 OF 2003(2) M.H.L.J.)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
APPELLATE SIDE.**

**WRIT PETITION NO. 5782 OF 2001**

(OFFICE NOTES, OFFICE MEMORANDA OF CORAM, APPEARANCES, COURT'S ORDERS OR DIRECTIONS AND REGISTRAR'S ORDERS. : COURT'S OR JUDGE'S ORDERS)

**CORAM**

**V.G.PALSHIKAR & SMT. NISHITA MHATRE. JJ**

**DATE : 18.4.2002**

PC:

This bunch of petitions is listed today for final hearing and disposal. On the last occasion these matters came up for hearing judgment delivered by the Aurangabad bench was cited before us and the matter was adjourned to 18.4.2002 i.e. today for hearing and disposal. In our opinion, it may not be possible or necessary to dispose off all the cases which are listed today by one order as some cases or groups are basically different and are not covered by the main bunch of petitions as also the order passed at Aurangabad. We therefore intend to pass this order **in consonance with the judgment delivered by the bench at Aurangabad** and it will cover only those petitions which are mentioned in the schedule annexed to this order.

2. The Division Bench of this court in Aurangabad has held that Government Resolution dated 18.10.2001 is legal, Valid and it is held proper except the fact that clause 2 (b) thereof is held unsustainable and is therefore quashed and set aside and as a consequence of this setting aside the terminations effected by the various managements have become unsustainable. The bench at Aurangabad has also directed that the **services of such persons be not terminated and their cases be referred to the University Grant Commission (UGC)** for considering all questions and contentions of relaxation in relation to their passing of NET and SET examinations. However no time limit has been set by the bench for UGC to take decision. As a consequence of this order all petitions where terminations were intended but not effected and therefore the petitioners have come before this court are liable to be disposed of by adopting the same directions as in the judgement of the Aurangabad bench that is to say that their services be not terminated till UGC takes a decision on the question of condonation or relaxation as directed by the bench at Aurangabad.

3. There are some petitions where as a consequence of the resolution dated 18.10.2001 terminations have been effected. In view of the order passed by this court striking down clause 2 (b) of that resolution these petitions will have to be allowed to the extent that the termination of their services by management is liable to be set aside and directions are liable to be issued directing the **respective managements to reinstate those persons and subject them to the same condition viz.** send their papers for consideration before the UGC as directed by the Aurangabad bench.

4. There is yet another group of cases where terminations were effected for reasons other than of NET/SET examinations requirement. Those petitioners have challenged their terminations before the College tribunal and the college Tribunal as in some cases struck down the terminations and in some cases terminations have been confirmed. All these petitions being petitions directed against orders of the college Tribunal are liable to be decided and dealt with by a single bench. All such petitions are there fore hereby separated from this bunch and are directed to be placed before the appropriate single bench considering those matters for appropriate urgent orders regarding adinterim relief and final hearing. Since majority of the petitions are being disposed of following the judgment delivered by the Aurangabad bench **several contentions raised against the resolution dated 18.10.2001 are not canvassed and are not heard and we therefore hereby direct that the same shall remain open and available for challenge to any party i.e. to the petitioners, management and UGC if and when occasion for such challenge will arise.**

5. In view of the fact that no time limit is fixed by the Aurangabad bench. In our opinion, interest of justice require that such time limit is fixed. The process of receiving the requests from the management for consideration regarding relaxation etc. of the conditions by the UGC will take time and it would therefore be appropriate to fix some time limit. The managements where they are directed to approach the UGC for relaxation shall do so within **four months** from the date of the order of this court. The concerned University then process the same and forward them to UGC. This be done by the concerned Universities within **four months** of receiving the requests from the managements. **The UGC will have then four months** time to process the applications and request so made and then take decision.

6. In cases where by this **order reinstatement** of certain teachers is directed the **reinstatement shall be with continuity of service and all back wages and consequential benefits** for the period for which they were out of job. At the same time the managements will be at liberty to seek grant in aid in relation to that account if it has not already so done and utilized it for a replacement.

7. In the event the UGC takes decision adverse to the interests of teachers the management and the University are directed not to act upon it for a **period of four weeks from the date of communication** by UGC to the college through the University. **In the result the petitions mentioned in the schedule to this order are disposed of by this order.** Original side writ petition Nos. 421, 422, 423, 425 and 426 of 2002 will be placed before the learned single judge as directed above. Original side writ petition No. 837 of 2002 is also covered by this order. Writ petition Nos. 2444, 456 and 458 of 2002 shall be separately dealt with. It is ordered that the same be separated form this bunch and placed for hearing before the appropriate bench. Except those petitions mentioned to be heard separately, rest of the petitions mentioned in the schedule are covered by this order and are accordingly disposed.

Parties to act on copy of this order duly authenticated.  
18.4.2002.

**SCHEDULE TO NET SET CASES**

Sr.No.	District	W.P.No.(Name of the Advocate/s)	Name of the petitioner(s)
1.	Pune	5782/01	(Shri. S.S.pakale and Ms. Rupali Deo) Shri Sushilkumar p. Gurjar and 5 others
2.	Solapur	55/02	(Shri S.G.Kudale) Smt. K.M.khobragade.
3.	Nagpur	63/02	(S/Shri. S.V.Manohar, A.A.Naik and V.H. kedar.) Shri. Yeshodeep H. Kedar.
4.	Nagpur	64/02	(Shri. A.M.Gorday) Ku. Archana D. Deshmukh and another.
5.	Nagpur	65/02	(Shri.A.M.Gordey and S.A.Gordey) Shri Budhaghosh M. Lohakare.
6.	Nagpur	66/02	(Shri.A.M.Gordey and S.A.Gordey) Shri Satish R. Jajoo & 3 ors.
7.	Wardha	67/02.	(Shri.A.M.Gordey and S.A.Gordey) Shri. Sachchidanand R. Junghare.

8. Buldhana 68/02 (Shri. A. Parchure, P.N.Shende and P.P. Thakare) Wasudha J. Meshram and 2 others.
9. Wardha 69/02 (Shri. A. Parchure, P.N.Shende and P.P. Thakare) Miss Kalpana B. Dhole and 3 others.
10. Nagpur 70/02 (Shri. A. Parchure, P.N.Shende and P.P. Thakare) Shri. Swapnil R. Dahat and another.
11. Nagpur 71/02 (Shri. A. Parchure, P.N.Shende and P.P. Thakare) Kum. Priya S. Rajzada
12. Nagpur 72/02 (Shri. A. Parchure, P.N.Shende and P.P. Thakare) Kum. Shalini R. Gulmali and another
13. Bhandara 73/02 (Shri. A. Parchure, P.N.Shende and P.P. Thakare) Shri. Sanjay G. Tawade and 3 others.
14. Wardha 74/02 (S/Shri. A.M.Gordey and S.A. Gordey) Shri Shrikrishana B. Bodhe and 3 others.
15. Bhandara 75/02 (Shri. A. Parchure, and P.N.Shende) Shri. Anandrao K. Bhojar
16. Bhandara 76/02 (Shri. A. Parchure, and P.N.Shende) Shri. Amarkant I. Kahalkar
17. Chandrapur 77/02 (S/Shri. A.M.Gordey and S.A. Gordey) Kum. Maya B. Masram and another
18. Chandrapur 78/02 (Shri. A. Parchure, and P.N.Shende) Shri. Rajendra S. Muddamwar and 3 others.
19. Gadchiroli 79/02 (Shri. A. Parchure, and P.N.Shende) Shri. Ashok M. Dhote & 3 ors.
20. Chandrapur 80/02 (Shri. A. Parchure, and P.N.Shende) Shri. Anand T. Rajpure and 2 others.
21. Nagpur 81/02 (Shri Anand Parchure) Shri. Ramesh K. Ingole
22. Wardha 82/02 (S/Shri. A.M.Gordey and S.A. Gordey) Shri. Milind K. Telang
23. Nagpur 83/02 (S/Shri. A.M.Gordey and S.A. Gordey) Shri. Sudhir R. Kahate and 2 others
24. Yavatmal 84/02 (Dr. Anjan De.) Shri. Ravi S. Mehta
25. Wardha 85/02 (S/Shri.A. Parchure, P.S.Thakare and S. Khandekar.) Shri. Dilip M. Senad and 2 others
26. Wardha 86/02 (S/Shri.A. Parchure, P.S.Thakare and S. Khandekar) Shri. Sanjay D. Deshpande and another.
27. Nagpur 87/02 (S/Shri. A. Parchure, and S.Khandekar.) Shri. Vinod S. Dongre and 3 others.
28. Bhandara 88/02 (Shri. H.D.Dangre ) Shri. Tilakchand D. Bhandarkar
29. Chandrapur 89/02 (S/Shri. Anand Parchure, P.N.Shende and R.W.Joshi ) Shri. Sudarshan E. Diwase and another.
30. Yavatmal 90/02 (S/Shri. V.A.Kothale, D.P. Dapurkar and P.S.Patil) Shri. Ramzan S. Varani and 6 others.
31. Amravati 91/02 (S/Shri. V.A.Kothale, D.P. Dapurkar and P.S.Patil) Kum. Kalpana T Mehre & 4 others
32. Chandrapur 92/02 (S/Shri. Anand Parchure, P.N.Shende) Shri. G.G.Ramteke and 2 others
- 33 Chandrapur 93/02 (S/Shri. Anand Parchure, P.N.Shende) Shri. Shon B. Tangade and 7 others
34. Nagpur 94/02 (S/Shri. M.R.Joharapurkar & R.R.Joharapurkar) Shri. Damodhar T. Bawankule and another.
35. Yavatmal 95/02 (S/Shri. P.S.Patil, V.A.Kothale and D.P. Dapurkar S.R.Rajak and G.R.Sadar) Shri Baban S. Shetkar
36. Amravati 96/02 (S/Shri. P.S.Patil, V.A.Kothale and D.P. Dapurkar S.R.Rajak and G.R.Sadar) Shri Ganesh U., Khapekar
37. Akola 97/02 (Shri. S.V.Sohoni) Shri. Rajesh S. Nitnaware and another
38. Nagpur 98/02 (S/Shri.A.N.Gordey and S.A.Gordey) Shri. Dadarao K. Upase
39. Nagpur 98/02 (S/Shri. A. Parchure and P.P.Thakare) Shri. Hemraj W. Khondare and 4 others
40. Amravati 100/02 (Shri. Sanjeev P Deshpande) Shri. A.U.Bajpayee and 6 others
41. Bhandara 101/02 (Shri. M.Y.Wadodkar) Shri. Rajkumar B. Thaware
42. Chandrapur 102/02 (S/Shri.P.B.Patil and J.R.Kidilay) Shri. Akshay V. Dhote and 6 others
43. Nagpur 103/02 (Shri. M.Y.Wadodkar) Mrs. Shubhangi N. Wadaskar
44. Nagpur 104/02 (S/Shri. S.J.Khandalkar and D.S.Wasnik) Mrs. Vijayalaxmi J. Nandapurkar
45. Bhandara 105/02 (S/Shri. V.A.Kothale G.R.Sadar and S.A.Sapkal ) Shri Bhagwan D. Shinde.
46. Chandrapur 106/02 (Shri. A.Y.Kapgate) Shri G.J.Gaikwad and Anr.
47. Nagpur 107/02 (Shri. S.A.Gordey) Shri. D.S.Bhangade
48. Nagpur 108/02 (Shri.P.B.Patil ) Mrs. Subhada S. Mandavgade
49. Chandrapur 109/02 (Shri. M.Y.Wadodkar) Suresh M. Humne
50. Chandrapur 110/02 (S/Shri. S.B.Gawai Manoj Mishram and Kum. S. Das) Shri. Mareshwar K. Fule and 4 others
51. Wardha 111/02 (S/Shri. A..M.Gorday and S.A.Gorday) Shri. Pankaj R. Bhojar and another
52. Wardha 112/02 (S/Shri. A..M.Gorday and S.A.Gorday) Shri. Sunil H. Urkudkar
53. Bhandara 113/02 (Shri. Anand Parchure) Shri. R.R.Choudhari and 5 others
54. Yavatmal 113/02 (S/Shri V.A.Kothale S.A.Sapkal, G.R.Sadar, D.P.Dapurkar, P.S.patil and M.P.Gulhane) Kum. Madhuri P Rakhonde.
55. Nagpur 115/02 (Shri. Anand Parchure) Shri. Gajanan V. Gavai
56. Gadchiroli 116/02 (S/Shri.A.Parchure and S. Khandekar) Shri. Rajiv K. Pancham and another
57. Nagpur 117/02 (S/Shri. M.G.Bhangde and A.S. Chandurkar) Shri. I.S.Konlra and 7 others
- 58/Amravati 118/02 (S/Shri. V.A. Kothale, D.P.Dapurkar, G.R.Sada, M.P.Gulhane and P.S.Patil) Shri Vijay K. Tompe and another
59. Chandrapur 119/02 (Shri. A.V.Kapgate ) Kum. Vaishali T. Kapgate
60. Yavatmal 120/02 (Anjan De and V.Das) Shri. Sidaram K. Munde
61. Nagpur 121/02 (S/Shri.P.B.Patil J.R. Kedilay and S.P.Parmar) Shri Maruti R. Wagh and 5 others
62. Nagpur : 122/02 (S/Shri. P.B.Patil and J.R.Kidilay) Ms. Vatsala B. Taywade
63. Yavatmal 123/02 (S/Shri. S.S.Ghate, A.L.Pilakundwar & S.Y. Karadbhasne) Ms. Amna T. Pawar (Now Mrs. A.K.Rathod)
64. Chandrapur 124/02 (Anjan De and V.Das) Shri Vitthal N.Thawari and 3 others
65. Nagpur 125/02 (S/Shri.S.P.Pawar and J.R.Kidilay) Shri. Rajendra A. Raut
66. Nagpur 126/02 (Shri. Anand Parchure) Ms. Vandana K.Meshram
67. Bhandara 127/02 (S/Shri. A. Parchure and P.Shende) Shri. Manishkumar P. Dandare and 4 others
68. Nagpur 128/02 (S/Shri. A. Parchure and P.Shende) Shri. Sunil Chaturvedi and 2 others
69. Nashik 2905/01 (Shri. P.N.Joshi) Shri. Prakash A. Deshmukh
70. Nashik 2906/01 (Shri.P.N.Joshi) Mrs. Kavita S. Salunkhe.
71. Thane 3446/01 (Ms.S.D.Khot & Mr. Rohit Pawaskhar) N.K.T. Educ. Socy. & Anr.
72. Thane 3447/01 (Ms.S.D.Khot & Mr. Rohit Pawaskhar) N.K.T. Educ. Socy. & Anr.
73. Thane 3448/01 (Ms.S.D.Khot & Mr. Rohit Pawaskhar) N.K.T. Educ. Socy. & Anr.
74. Thane 3449/01 (Ms.S.D.Khot & Mr. Rohit Pawaskhar) N.K.T. Educ. Socy. & Anr.
75. Thane 3450/01 (Ms.S.D.Khot & Mr. Rohit Pawaskhar ) N.K.T. Educ. Socy. & Anr.
76. Thane 3451/01 (Ms.S.D.Khot & Mr. Rohit Pawaskhar) N.K.T. Educ. Socy. & Anr.
77. Thane 3452/01 (Ms.S.D.Khot & Mr. Rohit Pawaskhar) N.K.T. Educ. Socy. & Anr.
78. Thane 3453/01 (Ms.S.D.Khot & Mr. Rohit Pawaskhar) N.K.T. Educ. Socy. & Anr.
79. Thane 3454/01 (Ms.S.D.Khot & Mr. Rohit Pawaskhar) N.K.T. Educ. Socy. & Anr.
80. Thane 3455/01 (Ms.S.D.Khot & Mr. Rohit Pawaskhar) N.K.T. Educ. Socy. & Anr.
81. Thane 3456/01 (Ms.S.D.Khot & Mr. Rohit Pawaskhar) N.K.T. Educ. Socy. & Anr.
82. Thane 3457/01 (Ms.S.D.Khot & Mr. Rohit Pawaskhar) N.K.T. Educ. Socy. & Anr.
83. Thane 3458/01 (Ms.S.D.Khot & Mr. Rohit Pawaskhar) N.K.T. Educ. Socy. & Anr.
84. Thane 3459/01 (Ms.S.D.Khot & Mr. Rohit Pawaskhar) N.K.T. Educ. Socy. & Anr.
85. Thane 3460/01 (Ms.S.D.Khot & Mr. Rohit Pawaskhar) N.K.T. Educ. Socy. & Anr.
86. Thane 3461/01 (Ms.S.D.Khot & Mr. Rohit Pawaskhar) N.K.T. Educ. Socy. & Anr.
87. Solapur 6269/01 (Shri.S.D.Thokade ) Shri. Pandurang S. Bansode
88. Solapur 307/02 (Shri.S.D.Thokade) Shri. Suhas R. Patil
89. Solapur 622/02 (Shri.S.D.Thokade) Shri. Appasaheb S. Dhone
90. Kolhapur 711/02 (Shri. N.V.Bandiwadekar) Mr. Shobha V. Kalebag
93. Solapur 900/02 (Shri.A.S.Ramesan) Shri. V. P. Vhanbindage
94. Sangli 1163/02 (Shri. Sushil Mahadeshwar) Ms. Promodini B. Khamble.
95. Kolhapur 1165/02 (S/Shri.S.P.Kadam and A.P.Patil ) Shri. D.B.Shedge & 4 others
96. Kolhapur 1171/02 (S/Shri.S.P.Kadam and A.P. Patil) Shri. A.P.Jadhav
97. Kolhapur 1172/02 (S/Shri.S.P.Kadam and A.P. Patil ) Shri. U.N.Jadhav
98. Kolhapur 1173/02 (S/Shri.S.P.Kadam and A.P.Patil ) Shri. S.B.Jadhav
99. Satara 1174/02 (S/Shri.S.P.Kadam and A.P.Patil ) Shri. E.J.Pawar
100. Pune 1307/02 (Shri. S.S.Pakale ) Ms. Sangeeta S. Shinde.
101. Satara 2010/02 (Shri. S.P.Kadam and A.P.Patil ) Shjri. B.G.Sarale & 16 others
102. Kolhapur 2011/02 (Shri. S.P.Kadam and A.P. Patil) Shri. S.M.Salunkhe & 2 ors
103. Satara 2025/02 (Shri. S.P.Kadam and A.P.Patil) Shri. P.M.Salve & 2 others
104. Satara 2035/02 (Shri. S.P.Kadam and A.P.Patil) Shri. P.A.Khadake.

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**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**Appellate Side**

**PRESENT**  
**THE HON'BLE MR.JUSTICE ASHIM KUMAR BANERJEE**

W.P.No. 12593 (W) of 2000  
Narayan Chandra Jana & Ors.- Versus - Union of India & Ors.

AND

W.P.No.19293 (W) of 1999  
Amiya Kumar Ghosh - Versus - State of West Bengal & Ors.

For the Petitioner : Mr.Joyanta Kumar Mitra, For UGC : Mr.Anil Gupta, For State College Service Commission : Mr.Pulak Ranjan Mondal, For the State of West Bengal : Mr. Bhudeo Bhattacharyjee, For Union of India: Mr.Swapan Garai, Heard on : August 28, 2001 and August 30,2001.

**JUDGEMENT ON : SEPTEMBER 14,2001.**

**ASHIM KUMAR BANERJEE. J :**

Since both these writ petitions involve common questions of facts and law I intend to dispose of these writ petitions by a common judgement.

By a notification dated 19th September, 1991 the University Grant Commission made it obligatory for any candidate to be appointed as a teacher in colleges and universities affiliated under the University Grant Commission to undergo an eligibility test called National Eligibility Test (hereinafter referred to as "NET") or State Level Eligibility Test (hereinafter referred as "SLET")

By a further notification dated 21st June, 1995 appearing at page 156 of the writ petition the University Grant Commission gave relaxation for the said rule to those candidates who submitted their Ph.D., thesis or passed M.Phil examination by 31st December, 1993. After the said notification dated 21st June, 1995 the candidates who have obtained Ph.D.Degree or submitted thesis or passed M.Phil examination prior to 31st December, 1993 were exempted from under going an eligibility test either being "NET" or "SLET". The said notification was challenged by various writ petitioners having Ph.D. degree or M.Phil. degree or having submitted their Ph.D. thesis after 31st December, 1993. The issue was finally resolved by the Apex Court in the case of Sadhana Chowdhury reported in 1996 Volume 10, Supreme Court Cases, page 536. The relevant portion of the said judgement is quoted hereinbelow :-

"It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When fixing a line or a point is necessary and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless it is very wide off the reasonable mark. In the present case, the date, 31.12.1993, as fixed by notification dated 21.6.1995, in the matter of grant of exemption from the eligibility test for appointment on the post of lecturer has a reasonable basis keeping in view the time taken in submitting the Ph.D. thesis or obtaining M.Phil. degree by candidates who had undertaken the study for Ph.D. or M.Phil. Degree prior to the issuance of the 1991 Regulation and cannot be held to be capricious or whimsical or wide off the reasonable mark. The High Court has proceeded on the basis that the cut-off date for the purpose of granting exemption from eligibility test should have nexus with the date of the advertisement

inviting applications for appointment on the post of Lecturers. The High Court was in error in taking this view. The exemption from eligibility test that has been granted under para 5 of the Haryana Public Service Commission advertisement dated 23.1.1995 is relatable to the introduction of the requirement of eligibility test in the 1991 Regulations. The object underlying the grant of exemption is to mitigate the resultant hardship to candidates who had registered for Ph.D.degree or has joined the course for M.Phil. degree on the basis of the minimum qualifications prescribed under the 1982 Regulations. The validity of the fixation of cut-off date for the purpose of grant of exemption from the eligibility test has to be considered with reference to the date of issuance of the 1991 Regulations and not with reference to the date of advertisement inviting applications for appointment on the post of Lecturers. Therefore, it is not possible to uphold the direction of the High Court that it would not be necessary to appear in the eligibility test for candidates who have applied or/are applying for the Lecturer's posts pursuant to the advertisement dated 23.1.1995 if they have obtained M.Phil. degrees or submitted Ph.D. thesis before 31.12.1994, i.e., prior to the date of the publication of advertisement dated 23.1.1995 and the further direction to the Haryana Public Service Commission and State of Haryana to ensure that as and when any such advertisement is issued, they should bear in mind that the eligibility dates be not far off from the date of advertisement. However, since Respondents 1 and 2 who had moved the High Court by filing the writ petition obtained their M.Phil degrees prior to 31.12.1993, they would be entitled to exemption from clearing the eligibility test under the terms of the notification dated 15.6.1995, the decision of the High Court, insofar as it relates to the said respondents, is not required to be disturbed".

On persual of the said judgement it appears that the Apex Court sustained the said notification by observing that the said notification was logical and reasonable in as much as that in the matter of grant of exemption from the eligibility test the Commission kept in view the time taken in submitting the Ph.D. thesis or obtaining M.Phil degree candidates who had undertaken the study of Ph.D. or M.Phil degree prior to issuance of 1991 Regulations. On persual of the said judgement it appears that the Apex Court gave very much credence and heavily relied on Mehrotra Committee report which suggested the introduction of eligibility test.

After the said judgement of the Apex Court the

Commission appointed a further committee called "Rastogi Committee" to review the situation. The said Rastogi Committee however gave its report suggesting that the time limit stipulated in the said notification dated 21st June, 1995 should be lifted to enable all the Ph.D. M.Phil degree holders to be considered to the post of Lecturers and Professors in various college and university. The relevant extract of the said Rastogi Committee Report is quoted below :-

"Regarding "NET", exemption exists for those who have qualified to M.Phil., or submitted the thesis for award of Ph.D. before December, 1993. The plea is to extend this provisions for doctorate degree holders without any time limit. The point for consideration are as follows :-

The need to promote research in various areas of knowledge in the country. Promotion of research is crucial for the University system. The employment opportunities for the doctoral candidates exist mainly in teaching institution and research centres. If opportunities for doctoral candidates into academic institution are made difficult. it would adversely effect the research activities in the higher education system. Not many will opt for full-time research it must also be conceded that a candidate with a doctoral degree develops abilities to formulate problems, set out the objectives of investigation, gather data from journals, books and experiments, analyse them properly and then draw valid conclusion. This means he/she would have already enquired deeply into the subject and developed an appreciation for scholarly pursuit. All these are valuable asset

for an academic. We also have cases where Indian candidates who have qualified for Ph.D. abroad seek placement in teaching institution in India. Certainly, they would not have passed NET. Hence, by insisting upon it, would be looking such talent for our education system. The committee has taken into account all these aspects and recommends that the candidates who have obtained a Ph.D. after 1993 should also be exempted from qualifying in NET/SLET to be able to become eligible for the post of a Lecturer".

After the said Rastogi Committee report the Commission issued a further notification dated 24th December, 1998 appearing at page 160 of the first writ petition. By the said notification the University Grant Commission makes the said eligibility test optional for the appointing authorities for the candidates having Ph.D.Degree. The Commission by the said notification, made the said test desirable or essential qualification. Following the said circular various universities invited applications for the post of Lecturers and/or Professors by making SLET or NET for the Ph.D. degree holders as desirable and/or essential qualification. By virtue of the said circular and/or subsequent invitation by the various universities undergoing NET or SLET by the Ph.D. degree holders become optional and thereby the earlier rule has been relaxed. Various advertisements, as mentioned before, after the said 98 notification have been annexed to the first writ petition.

By a further memo dated 21st January, 2000 appearing at page 174 of the first writ petition the State of West Bengal through Deputy Secretary, Ministry of Education, wrote to the West Bengal College Service Commission that the candidates having M.Phil or Ph.D. degree prior to 31st December, 1993 would not need to undergo "NET" or "SLET". By a further notification dated March, 2000 issued on 4th April, 2000 appearing at page 176 of the first writ petition the University Grant Commission made it obligatory for the candidates to go in for "NET" or "SLET" having Ph.D. or M.Phil qualification after 31st December, 1993, thereby the earlier relaxation given by the University Grant Commission vide its notification dated 24th December, 1998 was withdrawn. Hence this writ petition.

Mr.Joyanta Mitra, learned counsel appearing for the writ petitioner submitted that since the notification dated 21st June, 1995 had already been upheld by the Apex Court, prayer for setting aside the same was not pressed and the present challenge was restricted to the notifications dated 21st January, 2000 and 4th April, 2000 appearing at page 174 and 176 of the writ petition.

Mr.Mitra submitted that the Apex Court judgement was mainly based upon the Malhotra Committee report. He further submitted that in the case before the Apex Court the authority of the Commission to fix the cut off date was challenged. Since the Apex Court held that the Commission was competent enough to fix such cut off date such plea was no more available to him.

He further contended that after the Apex Court judgement Rastogi Committee report considered all aspects and recommended withdrawal of cut off date. Commission relied on the said Rastogi Committee report, relaxed the said cut off date and once such rule was relaxed the candidates having Ph.D. and M.Phil qualification for 31st December, 1993 were not required to go in for SLET or NET and got appointments on the basis of their educational qualification . Imposition of cut off date would unreasonably discriminate between two groups of similarly circumstanced candidates i.e. successful candidates having Ph.D. and/or M.Phil qualification after 31st December, 1993 who got appointments on the basis of the 1998 circular without being required to undergo SLET or NET and the unsuccessful candidates and/or prospective candidates having similar qualification who would have to undergo SLET or NET to become eligible for the post.

According to Mr.Mitra such differentiation was unreasonable and the restriction imposed by the impugned notifications are liable to be quashed and/or set aside.

Mr.Anil Kumar Gupta, learned counsel appearing for the Commission, submitted that the issue is now res-integra in view of the decision of the Apex Court in the case of Sadhana Chowdhury (Supra). The Apex Court held that the Commission was competent to fix the cut off date. The cut off date fixed by Commission being 31st December, 1993 had been approved by the Apex Court. Hence, the same was not open to challenge. He

**महाराष्ट्र शासन**

**क्रमांक: यूएसजी २००२/(३८/०३)/विशि-४**

**उच्च व तंत्र शिक्षण विभाग,**

**मंत्रालय विस्तार भवन, मुंबई ४०० ०३२ दिनांक : २ मे, २००३**

प्रति,

कुलसचिव, सर्व विद्यापीठे,

शिक्षण संचालक, उच्च शिक्षण, महाराष्ट्र राज्य, पुणे,

सर्व विभागीय सहसंचालक, उच्च शिक्षण.

**विषय :- अधिव्याख्याता पदावरील शैक्षणिक अर्हतेबाबत**

महोदय,

विद्यापीठ अनुदान आयोगाने विद्यापीठ व महाविद्यालयातील अधिव्याख्यात्यांकरिता लागू केलेली शैक्षणिक अर्हता/पात्रता, राज्यातील विद्यापीठे व संलग्नित महाविद्यालयात नियुक्त होणाऱ्या अधिव्याख्यात्यांसाठी लागू करण्यात आली आहे. त्याप्रमाणे विहित शैक्षणिक अर्हतेचे/पात्रतेचे उमेदवारच या पदावर नियुक्त करावेत अशा सूचना विद्यापीठांना वेळोवेळी देण्यात आलेल्या आहेत. तथापि, बऱ्याचशा महाविद्यालयातून दिनांक १९.९.१९९९ नंतर विगर नेट/सेट अधिव्याख्यात्यांच्या नियुक्त्या करण्यात आल्या आहेत. या नियुक्त्यांसंदर्भात मुंबई न्यायालयाच्या औरंगाबाद खंडपीठाने व मुंबई उच्च न्यायालयाने दिलेल्या निकालाच्या अनुषंगाने शैक्षणिक अर्हतेत सूट देण्याचे अधिकार वा ती शिथिल करण्याचे अधिकार विद्यापीठ अनुदान आयोगाचे असल्याने महाविद्यालयांनी अशी प्रकरणे संबंधित विद्यापीठामार्फत विद्यापीठ अनुदान आयोगाकडे विहित वेळेत सादर करून विद्यापीठ अनुदान आयोगाची संमती घ्यावयाची आहे. ही संपूर्ण प्रक्रिया लवकरात लवकर पूर्ण होण्याच्या दृष्टीने काही विद्यापीठांकडून अशी प्रकरणे विद्यापीठ अनुदान आयोगाकडे सादर करण्यात आली आहेत. ज्या विद्यापीठांनी अशी प्रकरणे अद्यापि सादर केली नसतील त्यांनी ती विद्यापीठ अनुदान आयोगाकडे विहित विवरणपत्रात सादर करावयाची आहेत. (विवरणपत्राची प्रत सोबत माहितीकरिता जोडली आहे) सादर विवरणपत्राप्रमाणे संपूर्ण माहितीसह आपला प्रस्ताव विद्यापीठ अनुदान आयोगाकडे विनाविलंब सादर करून त्यांची मान्यता घ्यावी व केलेल्या कार्यवाहीबद्दल शासनास अवगत करावे, हि विनंती.

आपला विश्वासू,

(फु.स. मेश्राम)

अवर सचिव, महाराष्ट्र शासन

further submitted that the Rastogi Committee report was recommendatory in nature and the Commission was not bound to act in terms of the recommendation made by the said report.

Mr.Swapan Garai, learned counsel appearing for the Union of India, Mr.Bhudev Bhattacharjee, learned counsel appearing for the State of West Bengal and Mr.Pulak Ranjan Mondal, learned counsel appearing for the State College Service Commission in effect supported Mr.Gupta.

Mr.Bhattacharjee, learned counsel appearing for the State of West Bengal, relied on a recent decision of the Apex Court reported in the case of Union of India - Vs - R. Sarangapan reported in AIR, 2000, Supreme Court, page - 2163, and submitted that fundamental rules could not be invoked for challenging the cut off date because the parties are prejudiced by the same unless it is shown to be arbitrary or discriminatory.

In my view, the submission of Mr.Gupta is quite justified to the extent that the Rastogi Committee report was recommendatory in nature and had no binding effect on the Commission. In my view, to enable the Commission to take a

## UNIVERSITY GRANTS COMMISSION

**Bahadur Shah Zafar Marg  
NEW DELHI - 110 002**

F-3-3/2000(PS): 17 July, 2003  
By Registered Post/Speed Post

The Registrar  
Amravati University  
University P.O.  
Amravati 444 602.

**Sub :** Appointment of teaching staff in Universities and Colleges .  
Sir,

I am directed to bring to your attention of the following provision in the UGC Regulation of 4.4.2000 regarding minimum qualifications for appointment of Lecturer, Assistant Registrar, Assistant Librarian and Assistant Physical Education in the University & Colleges.

"No person shall be appointed to a teaching post in University (or) in any of institutions including constituent or affiliated Colleges recognised under Clause (f) of the Section of UGC Act 1956 (or) in an institution deemed to be University section 3 of the said Act in a subject if she/he does not fulfil the requirements as to the qualifications for appropriate subjects as prescribed by the Commission."

At present the Universities/Colleges are following the practice of first appointing the candidate who are not qualified as per UGC Regulations & then sending their proposals for exemption. The appointments are made before the clearance is received from the UGC. This leads to several litigations.

To avoid this all the State Governments/ Universities/ Colleges are advised not to appoint such candidates till the clearance is received from UGC. The proposals may be sent to the UGC immediately after the selection of the candidates by the selection committee in the prescribed proforma alongwith sound justification (through the University in the case of affiliated Colleges) for relaxation/exemption as per UGC norms in a particular subject in which NET/SLET is not being conducted or sufficient number of candidates are not available with NET/SLET qualifications for a specified period only.

The appointment letter shall be issued only after receiving the relaxation from the UGC.

This may also be brought to the notice of the colleges affiliated to your University.

Yours faithfully,  
Mrs. Urmil Gulati)  
Under Secretary

decision on a subject the Commission is entitled to appoint expert for opinion as has been done by the Commission in the instant case by appointing Mehrotra Committee and Rastogi Committee. Mehrotra Committee suggested the cut off date as on 31st December, 1993, the Apex Court upheld the same, even then the Commission wanted to review the situation and the Rastogi Committee came into existence. Hence, it can not be said that the Commission had acted in arbitrary manner, Hence, I am unable to agree with the contention of Mr.Mitra that the Rastogi Committee should have been considered by the Commission before issuing the notification and thereby the Commission had acted in arbitrary manner in fixing the cut off date without having regard to the recommendation of the Rastogi Committee.

However, the argument of Mr.Mitra with regard to discrimination sounds logic. I have carefully examined the Apex Court judgement in the case of Sadhana Chowdhury (Supra). In my view, the Supreme Court examined the rationality of the cut off date. According to Supreme Court since 1991 regulation made it obligatory for a candidate to go in for NET or SLET some relaxation should be made for those who were undergoing M.Phil studies prior to issuance of 1991 regulation. Supreme Court was of the view that two year period was reasonable for a candidate to complete Ph.D. and/or M.Phil course who were continuing studies prior to 1991 regulation. In my view, such reason was justified. Some persons might have been continuing research work for obtaining Ph.D. qualification or undergoing studies for obtaining Ph.D. qualification or undergoing studies for obtaining M.Phil degrees in 1991, asking them to undergo NET or SLET might cause undue hardship to them and by the process they might cross the age limit to become eligible for appointment. If that be the logic which prompted the Apex Court to hold the cut off date justified, applying the same logic I feel that the subsequent notification is contrary to the principle laid down by the Apex Court.

Let me now examine the reasonability of the main notification applying the principle laid down by the Apex Court in the case of Sadhana Chowdhury (Supra). The persons having Ph.D. degree and M.Phil qualification on and from 1st January, 1994 till 24th December, 1998 were not required to undergo NET or SLET to become eligible for the post. Once the said 1998 notification was issued those persons having Ph.D. and M.Phil qualification during the said period i.e. 1st January 1994 to December, 1998 and even thereafter became eligible for the post without undergoing NET or SLET, some of them became successful in getting appointment. The persons who were carrying on research work or having Ph.D. qualification and/or M.Phil course prior to 1998 or even thereafter by virtue of the said 1998 notification were under the impression that they would not have to go in for NET or SLET. Hence, they did not sit for the said test. Now in 2000 if they are asked to go in for NET or SLET to become eligible for the said post it would create undue hardship and by the time they pass NET or SLET they may cross the age limit. 1995 notification made the cut off date prospectively to 1991 regulation whereas 2000 notification made it retrospectively. Hence the Commission can not take the protection of the Apex Court decision in the case of Sadhan Chowdhury (Supra) in sustaining the 2000 notification. In my view, the 2000 notification is quite valid and justified if it is applied prospectively so that the future candidates who are today studying M.Phil or doing research work for obtaining Ph.D. qualification would have to sit for SLET or NET to become eligible for the post. The petitioners being prompted by 1998 notification did not undergo SLET or NET, asking them to sit for SLET or NET at this stage would be totally unreasonable and in my view, is contrary to the principle laid down in the case of Sadhana Chowdhury (Supra).

In the result the writ petition succeeds in part.

**The notification dated 21st January, 2000 and 4th April, 2000 appearing at page 174 and 176 of the first writ petition being W.P.No. 12593 (W) of 2000 are quashed and/or set aside.** It is, however, made clear that the University Grant Commission are entitled to issue further notification of the like nature fixing the cut off date prospectively and not retrospectively.

Urgent certified copy be given to the parties as and when applied for.

\*\*\*\*\*

**AMRAVATI UNIVERSITY, AMRAVATI.**  
**Maharashtra (India)**

**Dr. S.N.Patil**  
M.Sc. Ph.D.  
Vice Chancellor

**By Registered AD**  
No.AU/8/10/C-2140/2002  
Date : 10 / 12 /2002

To,  
The Chairman,  
University Grants Commission, Bahadurshah Zafar Marg,  
New Delhi- 110 002.

**Subject :** Proposal regarding questions and contentions of relaxation in relation to passing of NET and SET examinations, as directed by Hon'ble Bombay High Court, Bombay, in Writ Petition No. 5782/2001 decided on 18-4-2002 : Submission by Amravati University, Amravati.

**Reference :** (1) Common Judgement passed by the Hon'ble Bombay High Court, Bombay in Writ Petition No. 5782/2001 with bunch of Writ Petitions delivered on 18.4.2002.

(2) Judgement delivered by the Hon'ble Supreme Court, reported in A.I.R. 1995 on page No.336 in University of Delhi v/s Rajsingh & others, in Civil appeal No. 1819 of 1994, dated 8-9-1994.

(3) Judgement delivered by the Hon'ble High Court judicature at Bombay, Nagpur Bench, Nagpur in writ petitions No. 887/2001,888/2001, 889/2001, 890/2001, 891/2001, 892/2001, 893/2001, 1506/2001, 1762/2001, 4272/2001 decided on 24.06.2002.

Respected Sir,

Whereas a Common Judgement was delivered by the Hon'ble High Court of Judicature at Bombay in Writ Petition No. 5782/2001 with bunch of Writ Petitions on 18.4.2002 (Please refer enclosure No. 1). Para 2 of the said Judgement is as follows :

"2. The Division Bench of this Court in Aurangabad has held that Government Resolution dated 18-10-2001 is legal, valid and it is held proper except the fact that clause 2(b) thereof is held unsustainable and is therefore quashed and set aside and as a consequence of this setting aside the terminations effected by the various Managements have become unsustainable. The bench at Aurangabad has also directed that the services of such persons be not terminated and their cases be referred to the University Grants Commission (UGC) for considering all questions and contentions of relaxation in relation to their passing of NET and SET examinations. However no time limit has been set by the bench for UGC to take decision. As a consequence of this order all petitions where terminations were intended but not effected and therefore the petitioners have come before this Court are liable to be disposed of by adopting the same directions as in the judgement of the Aurangabad bench that is to say that services be not terminated till UGC takes a decision on the question of condonation or relaxation as directed by the bench at Aurangabad." and;

Whereas following observations appear in para 5 of the said Judgement :-

"5. In view of the fact that no time limit is fixed by the Aurangabad bench, in our opinion, interest of justice require that such time limit is fixed. The process of receiving the requests from the Management for consideration regarding relaxation etc. of the conditions by the UGC will take time and it would therefore be appropriate to fix some time limit. The Managements where they are directed to approach the UGC for relaxation shall do so within four months from the date of the order of this Court. The concerned University then process the same and forward them to UGC. This be done by the concerned Universities within four months of receiving the requests from the Managements. The UGC will have then four months time to process the applications and request so made and then take decision."

Now therefore, in view of the above, and after taking into consideration provisions of the Amravati University Act, 1983, Maharashtra Universities Act, 1994, Amravati University Stat-

utes ( Statute 8 of 1979, Statute 1 of 1989 & Statute 2 of 2001), UGC Regulations 2000 communicated by D.O.No. F-3-1/2000(PS), dated 4-4-2000 and judgement delivered by the Hon'ble Supreme Court (reported in A.I.R. 1995 on page No.336 University of Delhi v/s Rajsingh & others) in civil appeal No. 1819 of 1994 decided on 8-9-1994, Amravati University hereby submits, questions and contentions of relaxation in relation to the passing of NET and SET examinations, as follows :-

**Amravati University**

1) The Amravati University is a full fledged University created by the enactment of Amravati University Act, 1983 (Mah XXXVII of 1983) (Please refer enclosure No. 2) and is recognized by UGC also. Now the Amravati University is governed by Maharashtra Universities Act 1994 (Mah. XXXV of 1994) (Please refer enclosure No.3) which was enacted by the Government of Maharashtra to provide for a unified pattern for the constitution and administration of non-agricultural and non-technological Universities in the state of Maharashtra.

**Legal instrument for prescribing qualification**

2) The recruitment qualification of the teachers of the university and the affiliated colleges is a subject matter to be regulated by the statute under section 51(8) of Maharashtra Universities Act, 1994 (Please refer enclosure No. 3), as well as under section 40 (iv) of Amravati University Act, 1983 (Please refer enclosure No. 2). It is submitted that the matter to be regulated by statute, can be for the time being regulated by the direction issued by Hon'ble Vice-Chancellor of University under section 14(8) of Maharashtra Universities Act, 1994 and same provision was in existence under section 11(6) (b) of Amravati University Act, 1983. It is further submitted that for the purpose of securing and maintaining uniform standards, the state Govt. can prescribe a standard code by notification in the official Gazette under section 8(3) of Maharashtra Universities Act, 1994. The same provision was in existence under section 87 of Amravati University Act 1983. In view of the above submission it is clear that legal instrument for prescribing qualification is -

- i) Statute of the University - **OR**
- ii) Direction issued by the Vice-Chancellor - **OR**
- iii) Standard Code issued and notified in Official Gazette by the State Government.

**Lawful qualifications from 25.09.89 till 30.12.1999**

3) The Amravati University was created after the bifurcation of Nagpur University and so statutes prepared by Nagpur University were made applicable to Amravati University under the provision of section 108(2) of the Amravati University Act 1983 and hence Statute 8 of 1979 (Please refer enclosure No. 4) regarding implementation of UGC revised pay scales for teachers working in the affiliated colleges Statute 1979 was made applicable to Amravati University. In the year 1989, Education and Employment Department of Govt. of Maharashtra had issued a Resolution no. NGC/1286/1224/Uni-4 dated 27.02.1989 (Please refer enclosure No. 5) regarding implementation of revised pay scales for the University and College teachers, which also prescribes for the recruitment and qualifications for the posts of Lecturers, Readers, Professors, Librarians and Physical Education teachers. This resolution is converted into legal instrument namely Statute 1 of 1989 (Please refer enclosure No.



6) by the Amravati University after getting assent from the Hon'ble Chancellor vide letter no. CS/AU/STT/89/B/(194)/1807 dated 25.09.1989. Clause 8 of the Statute 1 of 1989 provides for the minimum qualifications required for the appointment to the post Lecturers, Relevant extract prescribing minimum qualification referred in clause 8 of Statute 1 of 1989 is reproduced as below :-

**“Generally the minimum qualifications for appointment to the post of Lecturer in the scale of pay of Rs. 2200-4000 shall be Master’s Degree in the relevant subject, with at least 55% of marks, or its equivalent grade and good academic record.”**

According to this the minimum qualifications required for the appointments to the post of lecturers was Master’s Degree in the relevant subject with at least 55% of marks; or its equivalent grade and good academic record. This provision was in existence in the University till the issuance of Direction No. 7 of 1999 (Please refer enclosure No. 7) which was published in Amravati University Gazette [Part-I] on 30.12.1999 on page no. 97. This direction was issued in consequence to the Government Resolution No. NGC/298/[4619]/UNI-4 dated 11-12-1999 (Please refer enclosure No. 8) making provision for revision of pay scales of teachers and for prescribing other measures for maintenance of standard in higher education. It is submitted that for the first time NET/SET was introduced (on 30.12.1999) as a necessary requirement at the recruitment level as per University Grants Commission Regulation in Amravati University. This Direction lateron was converted into Statute No. 2 of 2001 (Please refer enclosure No. 9) which was assented by Hon'ble Chancellor vide his office letter No. CS/AU/STT/43/00/A/(3727)/98 dt. 11th Jan., 2001.

#### Old qualification, New qualification, Cutoff date

4) Old arrangement for recruitment in the teaching cadre consist of (i) qualifications prescribed by clause 8 of Statute 1 of 1989 (Please refer enclosure No. 6) which reads as **“Generally the minimum qualifications for appointment to the post of Lecturer in the scale of pay of Rs. 2200-4000 shall be Master’s Degree in the relevant subject, with at least 55% of marks, or its equivalent grade and good academic record.”** and (ii) selection committees prescribed in clause 9 of the same Statute which reads as **“the Selection Committee has already been laid down in Appendix accompanying Government Resolution, Education and Youth Services Department No. USG.1177/129387/XXXII(Cell), dated 25th October 1977,”**. This mentioned Govt. Resolution was then converted in Statute 8 of 1979 (Please refer enclosure No. 4). This arrangement was continued to be in operation till it is replaced by the new arrangement which came into existence by issuance of Direction No.7 of 1999 on 30.12.1999(Please refer enclosure No. 7), which prescribes the new qualifications making the NET/SET compulsory at the recruitment level and composition of selection committees for recruitment in the teaching cadre. This Direction was lateron converted to Statute 2 of 2001 (Please refer enclosure No. 9) as such **it is very clear that the lawful cut-off date for demarking old arrangement and new arrangement is 30.12.1999.**

#### Standard code never issued

5) This was the situation about the qualifications at the recruitment level for lecturer in Amravati University whereas the Govt. of Maharashtra was constantly changing its mind and instead of prescribing the recruitment level qualification through legal instrument as State Govt. is empowered to prescribe standard code (No such standard code prescribing qualifications was ever enacted by the State Government) under section 8(3) of Maharashtra University Act, 1994 (under section 87 of Amravati University Act, 1983), the Govt. was using informal instruments such as letters or Circulars or Government Resolutions for regulating important matters like provisions prescribing qualification and termination of Teachers working in the University and affiliated Colleges.

#### Approach of the State Government

6) The approach of the State Govt. is very clear from the following submission -

(a) Depending upon the UGC notification No. F-1/11/87/CPD dated 19th Sept. 1991 the state Govt. has issued a GR dated 23rd October 1992 (Please refer enclosure No. 10) which was immediately withdrawn by the new GR dated 27th November 1992 (Please refer enclosure No.11).

(b) Meanwhile UGC was continuously writing to State Govt. for setting up a accredited NET at State Level and to make suitable amendment in the University Statute.

(c) The constantly changing mind of the State Govt. will be clear from the fact that, the State Govt. has issued three circulars within the span of three months. First circular was issued on 2-2-1994 (Please refer enclosure No. 12) directing the University to continue the services of the teacher, who have not passed the NET for further period till 31st March 1994. Second Circular was issued on 7-3-1994 (Please refer enclosure No. 13) for extending the limit of passing NET till 31-3-1995. Third circular was issued on 28-4-1994 (Please refer enclosure No. 14) specifying therein that the tenure of services of the teachers in the Colleges and Universities has been further extended up to 31-3-1996 for passing NET.

(d) There after Higher and Technical Education and Employment Department of the State of Maharashtra again issued Government Resolution No. NGC/1794/7945/UE-4 dated 22-12-1995 (Please refer enclosure No. 15) for withdrawing the limit of passing NET/SET examination which was earlier prescribed till 31-3-1996 and it was clearly mentioned that the appointment of such lecturers should be considered on ad-hoc basis. Even though such appointments should be considered on ad-hoc basis, such lecturers shall not be removed from the services on the ground that they have not passed NET/SET examination, however yearly increments shall not be granted to such lectures till they pass NET/SET Examination.

(e) Then the State Government again issued GR dated 22-5-1998 (Please refer enclosure No. 16) by resolving to relax the condition of withholding the yearly increments with effect from 1.4.1998. It further prescribes that the yearly increments of the lecturers after 1.4.1998 should not be withheld on the ground that such Lecturers have not passed NET/SET examination.

(f) Instead of firmly introducing NET/SET as a compulsory qualification at recruitment level by the competent legal instrument such as Standard Code, The State Govt. was constantly introducing NET/SET qualification by informal instruments and was simultaneously enjoying the benefits of not introducing it. Since NET/SET was not inducted as a compulsory qualification at the recruitment level by legal instrument, hundreds of candidates, without NET/SET, were recruited from 1991 till the cutoff date i.e. 30.12.1999 in this university area. Advertisements were approved, selections were

Dr. Tilak R. Kem : Additional Secretary  
University Grants Commission  
Bahadur Shah Zafar Marg  
New Delhi - 110002

No. F.1-1/2002(PS) Exemp.

31st July, 2002

Shri. R.B. Kanade  
Secretary, School Education,  
Government of Maharashtra,  
Mantralaya, Mumbai - 400 032.

**Subject :-** University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in universities and institutions affiliated to it (1st Amendment) Regulations 2002.

Sir/Madam,

In partial modification in UGC Regulations issued vide office letter No. F.3-1/2000(PS) dated 4.4.2000 on the above subject, please find enclosed a copy of the Notification No. F.1-1/2002(PS) Exemp. Dated 31.7.2002. This has been sent to the Manager, Government of India Press, Civil Lines, Delhi, for publication in the Gazette of India.

It is requested that the amendments in the UGC Regulations, 2000 may also be brought to the notice of the Institutions/Colleges affiliated to your University.

Yours faithfully,  
(Dr. Tilak R. Kem)

made, approvals were granted by the university, and because it was the perfectly lawful recruitment in the teaching cadre, 100% salary grants were paid by the State Govt. in respect of such lawfully recruited teachers year after years and continued to be so paid even today. A small number of teachers shown in **Appendix-A**, from out of the lawfully recruited so many teachers are carved out for discriminatory treatment by Govt. resolution No. NGC 720/11815/[38]/01/UE-4 dated 18.10.2001 (Please refer enclosure No. 17) .

### Supreme Court

7) "The University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of a University and institutions affiliated to it) Regulations 1991" as notified on 19th September, 1991, by the University Grants Commission, were analysed by SUPREME COURT in Civil Appeal No. 1819 of 1994, decided on 8-9-1994, in University of Delhi, Appellant v/s Raj Singh and others, Respondents. (A.M. AHMADI AND S.P. BHARUCHA, JJ. : AIR 1995 SUPREME COURT 336) It was ruled by the Apex Court as follows :-

**i) Regulations are valid :** Regulations (1991), notified on 19th September, 1991, by the University Grants Commission are valid.

**ii) recommendatory :** The provisions of clause 2 of the said Regulations are, therefore, recommendatory in character.

**iii) application prospective :** The second proviso to clause 2 makes the application of the said Regulations prospective.

### First and Second proviso of clause 2 of "UGC Regulation 2000"

8) UGC has issued a letter bearing No. F-3-1/2000(P/S) dated 4-4-2000 along with "UGC Regulation 2000" a notification No. F 3-1/2000 [P/S] dated March 2000 prescribing therein Regulation on minimum qualification for appointment and career advancement of Lecturers, Readers and Professors in the Universities and Colleges in supersession to all earlier regulations framed by UGC. It is reiterated herewith that U.G.C. made applicable the NET/SET requirement prospectively, in as much as there is a specific Second proviso to clause 2 as below :-

**"Provided further that these regulations shall not be applicable to such cases where selections of the candidates having had the then requisite minimum qualification as were existing at that time through duly constituted Selection Committees for making appointments to the teaching posts have been made prior to the enforcement of these regulations."**

The same regulation dated 4-4-2000 provides that the relaxation in the prescribed qualification can be made only by the UGC as per following first proviso to clause(2).

**" Provided that any relaxation in the prescribed qualification can only be made by the University Grants Commission in a particular subject in which NET is not being conducted or enough number of candidates are not available with NET qualifications for a specified period only. ( This relaxation, if allowed, would be given based on sound justification and would apply to effected universities for that particular subjects for the specified period. No individual application would be**

*University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in universities and institutions affiliated to it) (Ist Amendment) Regulations 2002  
To be published in the Gazette of India, Part III, Section - 4*

University Grants Commission : Bahadur Shah Zafar Marg  
New Delhi - 110 002

**F.1-1/2002(PS) Exemp. : 31st July, 2002**

### NOTIFICATION

In exercise of the powers conferred by clause (e) & (g) of sub-section (1) of Section 26 read with Section 14 of University Grants Commission Act, 1956 (3 of 1956), and in supersession of the Regulations issued under University Grants Commission letter No. F.1-93/74(CPP) Part (v) dated 13th June, 1983. No. F.1-11/87(CPP-II) dated 19th September, 1991 and No. F.1-11/87(CPP) dated 21st June, 1995 and Notification No. 1-93/74(CP) dated 19th February, 1985 26th November, 1985 and No. F.3-1/94(PS) dated 24th December, 1998 and UGC Regulations No. F.3-1/2000(PS) dated 4.4.2000, the University Grants Commission hereby makes the following Regulations to amend the University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in universities and institutions affiliated to it) Regulation, 2000, namely :-

Short Title, Application and Commencement

(i) These regulations may be called University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in universities and institutions affiliated to it) (Ist Amendment), Regulation, 2002.

(ii) They shall apply to every university established or incorporated by or under a Central Act, Provincial Act or a State Act, every institution including a constituent or an affiliated college recognized by the Commission, in consultation with the university concerned under Clause (f) of Section 2 of the University Grants Commission Act, 1956, and every institution deemed to be a university under Section 3 of the said Act.

(iii) They shall come into force with immediate effect.

In the University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in universities and institutions affiliated to it) Regulation, 2000, wherever the following para occurs :

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

It should be substituted with the following para:

"NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidates who have completed M.Phil degree by 31st December 1993 or have submitted Ph.D. thesis to the university in the concerned subject or before 31st December, 2002 are exempted from appearing in the NET examination. In case such candidates fail to obtain Ph.D. degree, they shall have to pass the NET examination."

(Dr. Tilak R. Kem)  
Additional Secretary

entertained.)"

### G.R. 13.6.2000

9) Thereafter the State of Maharashtra has again issued GR No. NGC/200/73396/[50]/2000/UE-4 dated 13-6-2000 (Please refer enclosure No. 18) for implementing recommendations of the UGC. This Govt. resolution dated 13.6.2000, alongwith U.G.C. Regulation 2000, was implemented vide Direction No. 9/2000, by this University.

### Cases covered by Second proviso of para 2 of "UGC Regulation 2000" :-

10) All the already appointed approved teachers, shown in **Appendix-A** are aggrieved by the recent GR No. NGC 720/11815/[38]/01/UE-4 dated 18-10-2001. The aforesaid GR provides that the lecturers who have not passed NET/SET examination but are appointed Prior to 11-12-1999 are required to pass the NET/SET examination before December 2003. Further the recruited lecturers will be removed from services who came after 11-12-1999 before completion of their period of probation. All these teachers were selected in between 11-12-1999 to 30-12-1999 i.e. **cutoff** date (the date of issue of Direction No. 7 of 1999) and their appointments are duly approved by the Amravati University.

According to Amravati University NET/SET condition is not applicable to these teachers and their services can not be terminated on the following grounds :-

(a) All these Lecturers were selected by duly constituted selection committees.

(b) As a candidate they were having the then requisite minimum qualification as per University Statute.

(c) All these cases are covered under the second proviso of Clause 2 of UGC regulation 2000.

(d) This issue is earlier decided by the Hon'ble Supreme Court of India as can be seen in Judgment reported in AIR 1995 Supreme Court 336 University of Delhi V/S Rajsingh and others.

(e) All these UGC regulations relate to all applicants i.e. candidates only and not to the lecturers already appointed, as decided by the Apex Court in the Judgement referred at 2 above.

(f) The second proviso to clause 2 of UGC regulation 2000 dated 4.4.2000 makes the application of said Regulation prospective and not retrospective.

(g) After prescribing NET/SET as a minimum qualification by legal instruments i.e. after the issuance of Direction No. 7/1999 on 30-12-1999 the Amravati University has not given even a single approval to the candidate who has not cleared the NET/SET i.e. not having minimum qualification as prescribed.

### Cases covered by First proviso of para 2 of "UGC Regulation 2000"

11) All the applicants mentioned in **Appendix-B** are aggrieved by the decision of the Amravati University as the university has not granted approval due to issuance of Direction No. 7/1999 and interview has been conducted after 30-12-1999. Hon'ble High Court Judicature at Bombay, Nagpur Bench, Nagpur has given decision on 24-06-2002 (Please refer enclosure No. 19) as under :

"In view of the decision of this Court (Bench at Bombay), in writ petition No.5782/2001, decided on 18-4-2002 alongwith bunch of similar petitions involving the same issue of eligibility in reference to NET/SET examination, nothing survives in this group of petitions as the issue is well covered and the case of the petitioners would be governed by the said decision, and therefore, these petitions stand disposed of accordingly. Parties to act upon the directions issued in the said decision."

In all the cases mentioned in **Appendix-B** the Amravati University is of the opinion that these are fit cases for granting approval provided that the relaxation in prescribed qualification is granted by UGC and so UGC is hereby requested to relax the qualification on the following grounds.

[a] All the advertisements were duly approved by Amravati University before 30-12-1999 i.e. before the issuance of Direction No. 7/1999, the **cutoff** date.

[b] All the candidates were selected by duly constituted Selection Committees.

[c] They are having then time minimum qualification as per duly approved advertisements on the date of the approval of the advertisement mentioned in column No. 5 of **Appendix-B** even though the date of Interview i.e. date of selection is after the **cutoff** date i.e. 30.12.1999.

[d] All these interviews were conducted before 4/4/2000 i.e. before the date of issuance of UGC Regulation, 2000.

[e] As the candidates having NET/SET qualification were not available at the time of selection, the Selection Committee has recommended their names for selection to the post of lecturers.

[f] In view of the fact that these are the cases in a transitory period and UGC is empowered for providing relaxation in prescribed qualification as per first proviso of clause 2 of UGC Regulation, 2000.

## 12) REQUEST IN RESPECT OF

### (A) Cases covered by Second proviso of para 2 of "UGC Regulation 2000" :-

Every teacher (approved by this university) mentioned (at Sr.No. 1 to 30) in column No. 2 of the **Appendix-A** working as a lecturer in the college mentioned in column No. 3, was duly selected by a duly constituted selection committee on a date mentioned in column No. 6 of **Appendix-A**, and was having the then requisite minimum qualification (mentioned in column No. 4 of **Appendix-A**) as were existing at that time. (NET/SET was prescribed as a compulsory qualification at the recruitment level in this university for the first time by Direction No. 7 of 1999, dated 27.12.1999 (Please refer enclosure No. 7) published in the Amravati University Gazette on 30.12.1999 on page No. 97) As per the judgement delivered by the Supreme Court of India referred at 2 above, U.G.C. Regulation 1991 regarding NET/SET can be implemented prospectively. In supersession of all previous notifications, U.G.C. issued "UGC Regulation 2000" notification. Every teacher mentioned in **Appendix-A** is covered by second proviso of Para 2 of the 2000 Regulation. It is the considered view of this university that NET/SET qualification is not applicable to the teachers mentioned in the **Appendix-A** as they are covered by second proviso of para 2 of the UGC regulation 2000 and protected by the Supreme Court judgement referred at 2 above. U.G.C. may kindly confirm this view of the university

### (B) Cases covered by First proviso of para 2 of "UGC Regulation 2000"

Every Candidate (not approved as teacher by this university) mentioned (at Sr.No. 1 to 10) in column No. 2 of **Appendix-B** was an applicant for the post of a lecturer in the subject mentioned in column No. 2 and in the college mentioned in column No. 3, was duly selected by a duly constituted selection committee on a date mentioned in column No. 6 of **Appendix-B**, and was not having the then requisite minimum qualification as on the date of selection, since NET/SET was prescribed as a compulsory qualification at the recruitment level in this university for the first time by Direction No. 7 of 1999, dated 27.12.1999 (Please refer enclosure No. 7) published in the Amravati University Gazette on 30.12.1999 on page No. 97. Hence approval of the University was not granted. In supersession of all previous notifications, U.G.C. issued "UGC Regulation 2000" notification.

It is the considered view of this university that cases mentioned in **Appendix-B** are fit cases for granting approval provided that the relaxation in prescribed qualification is granted by UGC in accordance with the powers conferred on it by first proviso of Para 2 of the UGC Regulation, 2000 and so UGC is hereby requested to relax the qualification on the grounds mentioned in para 11 above.

Thanking You,

Yours faithfully

(Dr.S.N.Patil)

Vice Chancellor, Amravati University.

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Encl : (1) Enclosure Nos. 1 to 19 As mentioned above : not printed here. (2) Appendix-A & B are not printed here. See page 1 to 6 of 2003 EX-File

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## NAGPUR UNIVERSITY

No.NU/CS/02 \* Dated : 17th December, 2002

To,

The Secretary, University Grants Commission, Bahadurshah Zafar Marg, NEW DELHI- 110 002

**Subject :** Proposal regarding questions and contentions of relaxation in relation to passing of NET and SET examinations, as directed by Hon'ble Bombay High Court, Bombay, in Writ Petition No. 5782/2001 decided on 18.4.2002, submission by Nagpur University, Nagpur.

**Reference:** 1 Common Judgement by the Hon'ble Bombay High Court, Bombay in Writ Petition No. 5782/2001 with bunch of Writ Petitions vide judgement delivered on 18.4.2002

2 Judgement delivered by the Hon'ble Supreme Court, reported in A.I.R. 1995 on page No. 336 in University of Delhi v/s Rajsingh & Others, in Civil appeal No. 1819 of 1994, dated 8.9.1994.

3 Judgement delivered by the Hon'ble High Court Judicature at Bombay, Nagpur Bench, Nagpur in Writ Petition No. 1115/2001, dated 18.4.2001.

4 Judgement delivered by the Hon'ble High Court Judicature at Bombay, Nagpur Bench, Nagpur in Writ Petition No. 4402/2001 and 4403/2001, decided on 28.12.2001.

5 Maharashtra State Government Resolution No. NGC/1201/1/815/(38/01) VISHI-4, dated 18.10.2001

6 Maharashtra State Government Resolution No. dated 22.12.1995

Whereas a Common Judgement was delivered by the Hon'ble High Court of Judicature at Bombay in Writ Petition No. 5782/2001 with bunch of Writ Petitions vide judgement on 18.4.2002. Para 2 of the said judgement is as follows:

"2. The Division Bench of this Court in Aurangabad has held that Government Resolution dated 18.10.2001 is legal, valid and it is held proper except the fact that clause 2(b) thereof is held unsustainable and is therefore quashed and set aside and as a consequence of this setting aside the terminations effected by the various Managements have become unsustainable. The bench at Aurangabad has also directed that the services of such persons be not terminated and their cases be referred to the University Grants Commission (UGC) for considering all questions and contentions of relaxation in relation to their passing of NET and SET examinations. However, no time limit has been set by the bench for UGC to take decision. As a consequence of this order all petitions where terminations were intended but not effected and therefore the petitioners have come before this Court are liable to be disposed of by adopting the same directions as in the judgement of the Aurangabad bench that is to say that services be not terminated till UGC takes a decision on the question of condonation or relaxation as directed by the bench at Aurangabad." And

Whereas following observations appear in para 5 of the said judgement:

"In view of the fact that no time limit is fixed by the Aurangabad Bench, in our opinion, interest of justice require that such time limit is fixed. The process of receiving the requests from the Management for consideration regarding relaxation etc. of the conditions by the UGC will take time and it would therefore, be appropriate to fix some time limit. The Managements where they are directed to approach the UGC for relaxation shall do so within four months from the date of the order of this Court. The concerned University then process the same and forward them to UGC. This be done by the concerned Universities within four months of receiving the

requests from the Managements. The UGC will have then four months time to process the applications and requests so made and then take decision".

Now therefore, in view of the above, and after taking into consideration provisions of the Nagpur University Act, 1974, Maharashtra Universities Act, 1994, Nagpur University Statutes (Statute 8 of 1979, Direction No.1 of 1989 and Direction No. 7 of 1999), UGC Regulations 2000 communicated by D.O. No. F-3-1/2000 (PS), dated 4.4.2000 and judgement delivered by the Hon'ble Supreme Court (reported in AIR 1995 on page No. 336 University of Delhi v/s Rajsingh & others) in Civil appeal No. 1819 of 1994 decided on 8.9.1994, Nagpur University hereby submits, questions and contentions of relaxation in relation to the passing of NET and SET examinations, as follows :-

### Nagpur University

1) The Nagpur University is a full fledged University created by the enactment of the State Legislature and is recognised by UGC also. Now the Nagpur University is governed by Maharashtra Universities Act, 1994 (Mah. XXXV of 1994) which was enacted by the Government of Maharashtra to provide for a unified pattern for the constitution and administration of non-agricultural and non-technological Universities in the State of Maharashtra.

### Legal instrument for prescribing qualification

2) The recruitment qualification of the teachers of the University and the affiliated colleges is a subject matter to be regulated by the Statute under Section 51(8) of Maharashtra Universities Act, 1994, as well as under Section 37(xxi) of Nagpur University Act, 1974. It is submitted that the matter to be regulated by statute, can be for the time being regulated by the direction issued by Hon'ble Vice-Chancellor of University under Section 14(8) of Maharashtra Universities Act, 1994 and same provision was in existence under Section 11(6) (b) of Nagpur University Act, 1974. It is further submitted that for the purpose of securing and maintaining uniform standards, the State Govt. can prescribe a standard code by notification in the official Gazette under Section 8(3) of Maharashtra Universities Act, 1994. The same provision was in existence under Section 77-A of Nagpur University Act, 1974. In view of the above submission it is clear that legal instrument for prescribing qualification is-

- i) Statute of the University- **OR**
- ii) Direction issued by the Vice-Chancellor- **OR**
- iii) Standard Code issued and notified in Official Gazette by the State Government.

### Lawful qualifications from 3.5.89 till 28.12.1999

3) Nagpur University had issued Statute 8 of 1979 regarding implementation of UGC revised pay scales for teachers of affiliated colleges known as "Implementation of UGC revised pay scale for teachers working in the affiliated colleges statute 1979". In the year 1989, Education and Employment Department of Govt. of Maharashtra had issued a Resolution No. NGC/1286/1224/Uni-4 dated 27.2.1989 regarding implementation of revised pay scales for the University and

college teachers, which also prescribes for the recruitment and qualifications for the posts of lecturers, Readers, Professors, Librarians and Physical Education teachers. This resolution is converted into legal instrument namely Direction No. 1 of 1989 by the Nagpur University. Clause 8 of the Direction No.1 of 1989 provides for the minimum qualifications required for the appointment to the posts Lecturers. Relevant extract prescribing minimum qualification referred in clause 8 of Direction 1 of 1989 is reproduced as below :

**“Generally the minimum qualifications for appointment to the post of Lecturer in the scale of pay of Rs. 2200-4000 shall be Master’s Degree in the relevant subject with at least 55% of marks, or its equivalent grade and good academic record”.**

According to this the minimum qualifications required for the appointments to the post of lecturers was Master’s Degree in the relevant subject with at least 55% of marks; or its equivalent grade and good academic record. This provision was in existence in the University till the issuance of Direction No. 7 of 1999 which was issued by Nagpur University on 28.12.1999. This Direction was issued in consequence to the Government Resolution No.NGC/298/(4619)/UNI-4, dated 11.12.1999 making provision for revision of pay scales of teachers and for prescribing other measures for maintenance of standard in higher education. It is submitted that for the first time NET/SET was introduced (on 28.12.1999) as a necessary requirement at the recruitment level as per University Grants Commission Regulation in Nagpur University.

#### Old qualification, New qualification, Cut-off date

4) Old arrangement for recruitment in the teaching cadre consist of (I) qualifications prescribed by clause 8 of Direction 1 of 1989 which reads as **“Generally the minimum qualifications for appointment to the post of Lecturer in the scale of pay of Rs. 2200-4000 shall be Master’s Degree in the relevant subject with at least 55% of marks, or its equivalent grade and good academic record”.** And (ii) selection committees prescribed in clause 9 of the same Direction which reads as **“for purposes of recruitment to the post of lecturers/ Librarian/Director/Instructor of Physical Education in**

### UNIVERSITY GRANTS COMMISSION

BAHADUR SHAH ZAFAR MARG

NEW DELHI - 110 002

F.3-1/2000(PS)P/H

October 17,2002

The Registrar,  
(All Universities/State Education Secretaries/ Secretary,  
MHRD, Delhi/Regional Offices).

Sri/Madam,

In continuation to this office letters D.O. No. F.3-1/2000(PS) dated 4-4-2000 and No. F.1-1/2002(PS)Exemp dated 31-7-2002 vide which the UGC Regulations on minimum qualifications for appointment and Career Advancement of Teachers in Universities and Colleges were issued, it is further to inform you that the Commission has decided to grant relaxation of 5% (from 55% to 50%) of marks at the Master's level to the Physically and visually handicapped persons in appointments as Lecturer in the Universities and Colleges.

This may also be brought to the notice of the Institutions/Colleges affiliated to your University.

Yours faithfully

Sd/-

(Dr. K.P. Singh)

Deputy Secretary

**Colleges and Principal of Colleges, the composition of the Selection Committee has already been laid down in Appendix accompanying Government Resolution, Education and Youth Services Department No. USG.1177/ 129387/XXXII (Cell), dated 25<sup>th</sup> October, 1977”.** This mentioned Govt. Resolution was then converted in Statute 8 of 1979. This arrangement was continued to be in operation till it is replaced by the new arrangement which came into existence by issuance of Direction No. 7 of 1999 on 28.12.1999 which prescribed the new qualifications making the NET/SET compulsory at the recruitment level and composition of Selection Committees for recruitment in the teaching cadre. As such, **it is very clear that the lawful cut-off date for demarking old arrangement and new arrangement is 28.12.1999.**

#### Standard Code never issued

5) This was the situation about the qualifications at the recruitment level for lecturer in Nagpur University. Whereas the Govt. of Maharashtra was constantly changing its mind and instead of prescribing the recruitment level qualification through legal instrument as State Govt. is empowered to prescribe standard code (No such standard code prescribing qualifications was ever enacted by the State Government ) under section 8(3) of Maharashtra Universities Act, 1994 (under Section 77-A of Nagpur University Act, 1974), the Govt. was using informal instruments such as letters or circulars or Government Resolutions for regulating important matters like provisions prescribing qualification and termination of teachers working in the University and affiliated Colleges.

#### Approach of the State Government

(6) The approach of the State Govt. is very clear from the following submission.-

(a) Depending upon the UGC notification No. F-1/11/87/CPP, dated 19<sup>th</sup> September, 1991 the State Govt. has issued a GR dated 23<sup>rd</sup> October, 1992 which was immediately withdrawn by the new GR dated 27<sup>th</sup> November, 1992.

(b) Meanwhile UGC was continuously writing to State Govt. for setting up an accredited NET at State level and to make suitable amendment in the University Statute.

(c) The constantly changing mind of the State Govt. will be clear from the fact that, the State Govt. has issued three circulars within the span of three months. First circular was issued on 2.2. 1994 directing the University to continue the services of the teachers, who have not passed the NET for further period till 31<sup>st</sup> March 1994. Second circular was issued on 7.3.1994 for extending the limit of passing NET till 31.3.1995. Third circular was issued on 28.4.1994 specifying therein that the tenure of services of the teachers in the Colleges and Universities has been further extended upto 31.3.1996 for passing NET.

(d) Thereafter Higher and Technical Education and Employment Department of the State of Maharashtra again issued Government Resolution No. NGC/1794/7945/UE-4, dated 22.12.1995 for withdrawing the limit of passing NET/SET examination which was earlier prescribed till 31.3.1996 and it was clearly mentioned that the appointment of such lecturers should be considered on ad-hoc basis. Even though such appointments should be considered on ad-hoc basis, such lecturers shall not be removed from the services on the ground that they have not passed NET/SET examination, however, yearly increments shall not be granted to such lecturers till they pass NET/SET examination.

(e) Then the State Government again issued GR dated 22.5.1998 by resolving to relax the condition of withholding the yearly increments with effect from 1.4.1998. It further prescribes that the yearly increments of the lecturers after 1.4.1998 should not be withheld on the ground that such lecturers have not passed NET/SET examination.

(f) Instead of firmly introducing NET/SET as a compulsory qualification at recruitment level by the competent legal instrument such as Standard Code, the State Govt. was constantly introducing NET/SET qualification by informal instruments and was simultaneously enjoying the benefits of not introducing it. Since NET/SET was not inducted as a compulsory qualification at the recruitment level by legal instrument, hundreds of candidates without NET/SET, were recruited from 1991 till the cut-off date i.e. 28.12.1999 in this university area. Advertisements were approved, Selection were

made approvals were granted by the university and; because it was the perfectly lawful recruitment in the teaching cadre, 100% salary grants were paid by the State Govt. in respect of such lawfully recruited teachers year after years and continue to be so paid even to-day. A small No. of teachers shown in Appendix A, from out of the lawfully recruited so many teachers are carved out for discriminatory treatment by Govt. resolution No. NGC/1181/(38)/01/UE-4, dated 18.10.2001.

### Supreme Court

7) "The University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of a University and institutions affiliated to it) Regulations 1991" as notified on 19<sup>th</sup> September, 1991 by the University Grants Commission, were analysed by SUPREME COURT in Civil Appeal No. 1819 of 1994, decided on 8.9.1994, in University of Delhi, Appellant V/S Raj Singh and others, Respondents. (A.M. AHMADI AND S.P. BHARUCHA,); AIR 1995 SUPREME COURT 336) It was ruled by the Appex Court as follows:

**i) Regulations are valid :** Regulations (1991), notified on 19<sup>th</sup> September, 1991, by the University Grants Commission are valid.

**ii) recommendatory :** The provisions of clause 2 of the said Regulations are, therefore, recommendatory in character.

**iii) Application prospective :** The Second proviso to clause 2 makes the application of the said Regulations prospective.

### UNIVERSITY GRANTS COMMISSION

Bahadur Shah Zafar Marg  
New Delhi - 110 002

**F-3-1/2002(PS) 18 January, 2003**  
(By Registered Post)

Shri R.B. Kanade  
Secretary, School Education,  
Government of Maharashtra,  
Mantralaya, Mumbai - 400 032

Sir,

The UGC, vide its Notification No. 3-1/94(PS) dated 24.12.1998, had extended the benefit of four and two advance increments to teachers who hold Ph.D./M.Phil degrees respectively at the time of recruitment as Lecturer.

It is clarified that these four/two advance increments shall not be admissible to teachers who were/will be recruited as Lecturer by providing relaxation from NET for having submitted Ph.D. upto 31.12.2002 or M.Phil upto 31.12.1993 in view of UGC's Notification issued vide its letter No. F. 1-1/2002(PS) Exemp dated 31.7.2002 Relevant extract from the Notification is reproduced below:-

"NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidates who have completed M.Phil. degree by 31st December, 1993 or have submitted Ph.D. thesis to the university in the concerned subject on or before 31st December, 2002 are exempted from appearing in the NET examination. In case such candidates fail to obtain Ph.D. degree, they shall have to pass the NET examination."

This is for your information and necessary action please.

Yours faithfully,  
(Dr. K.P. Singh)  
Deputy Secretary

### First and Second proviso of clause 2 of "UGC Regulation 2000"

8) UGC has issued a letter bearing No. F-3-1/2000(P/S)/ dated 4.4.2000 alongwith "UGC Regulation 2000" a notification No. F.3-1/2000 (P/S) dated March 2000 prescribing therein Regulation on minimum qualification for appointment and Career advancement of Lecturers, Readers and Professors in the Universities and Colleges in supersession to all earlier regulations framed by UGC. It is reiterated herewith that UGC made applicable the NET/SET requirement prospectively, in as much as there is a specific Second proviso to clause 2 as below :

**"Provided further that these regulations shall not be applicable to such cases where selections of the candidates having had the then requisite minimum qualification as were existing at that time through duly constituted Selection Committees for making appointments to the teaching posts have been made prior to the enforcement of these regulations."**

The same regulation dated 4.4.2000 provides that the relaxation in the prescribed qualification can be made only by the UGC as per following first proviso to clause (2).

**"Provided that any relaxation in the prescribed qualification can only be made by the University Grants Commission in a particular subject in which NET is not being conducted or enough number of candidates are not available with NET qualifications for a specified period only. (This relaxation, if allowed, would be given based on sound justification and would apply to affected universities for that particular subject for the specified period. No individual application would be entertained)".**

### Govt. Resolution dated 13.6.2000

9) Thereafter the State of Maharashtra has again issued GR No. NGC/200/73396/(50)/2000/UE-4, dated 13.6.2000 for implementing recommendations of the UGC.

### Cases covered by Second proviso of para 2 of "UGC Regulation 2000" :-

10) All the already appointed approved teachers, shown in appendix A are aggrieved by the recent GR No. NGC/720/11815/(38)/01/UE-4, dated 18.10.2001. The aforesaid GR provides that the lecturers who have not passed NET/SET examination but are appointed Prior to 11.12.1999 are required to pass the NET/SET examination before December 2003. Further the recruited lecturers will be removed from services who came after 11.12.1999 before completion of their period of probation. All these teachers were selected before 28.12.1999 i.e. the date of issue of Direction No. 7 of 1999 and their appointments are duly approved by the Nagpur University.

According to Nagpur University NET/SET condition is not applicable to these teachers and there services cannot be terminated on the following grounds :-/

(a) All these lecturers were selected by duly constituted Selection Committees.

(b) As a candidate they were having the then requisite minimum qualification as per University Statute/Direction.

(c) All these cases are covered under the second proviso of clause 2 of UGC regulation 2000.

(d) This issue is earlier decided by the Hon'ble Supreme Court of India as can be seen in Judgement reported in AIR 1995 Supreme Court 336 University of Delhi V/S Raj Singh and others.

(e) All these UGC regulations relate to all applicants i.e. candidates only and not to the lecturers already appointed as decided by the Appex Court in judgement referred at 2 of above.

(f) The second proviso to clause 2 of UGC regulation 2000 dated 4.4.2000 makes the application of said Regulation prospective and not retrospective.

### Cases covered by Judgement delivered by the Hon'ble High Court, Mumbai, Nagpur Bench, Nagpur in Writ Petition No. 1115/2001 dated 18.4.2001

11 The U.G.C. while making recommendation regarding 5<sup>th</sup> Pay Commission prescribed the qualification for the recruitment of teachers in the affiliated colleges vide notification dated 27.7.98, 22.9.98 and 6.11.98. These recommendations of

the UGC regarding 5<sup>th</sup> Pay Commission along with qualification were accepted by the Govt. of Maharashtra and issued G.R. No. NGC/1298/(4619)/UNI-4, dated 11<sup>th</sup> December, 1999. In order to give effect to the UGC notification, and Govt. Resolution dated 11.12.99, Nagpur University issued direction No. 7/1999 on 28.12.99 to implement the revised pay scale in the Nagpur University area. This was the first time when NET/SET qualification were prescribed through a legal instrument for the appointment of teachers in the Nagpur University.

Accordingly, the affiliated colleges gave advertisements in the National news papers for recruitment of teachers. The interviews were conducted by the duly constituted selection committees and names of the selected candidates were sent to the University for the approval of the Hon'ble Vice-Chancellor. The selection Committees recommended the candidates without NET/SET qualification mainly because the suitable candidate with NET/SET qualification were not available in sufficient number. The Hon'ble Vice-Chancellor of Nagpur University granted the approval to such selections only for one academic session on the recommendations of the duly constituted selection Committee as a stop-gap arrangement and to avoid loss of teaching in the affiliated colleges and to safeguard the interests of the students.

Aggrieved by this decision, some of the teachers specially in Janata College, Chandrapur, approached to the Hon'ble High Court and prayed to grant onward approval in terms of the provisions of G.R. dated 22.12.95. They also expressed apprehensions that since they did not have onward approval their services were likely to be terminated at the end of the session. Therefore, direction from the Hon'ble High Court was sought to grant the approval on onward basis. The Hon'ble High Court, Nagpur Bench, Mumbai vide its decision dated 18.4.2001 directed the University to give onwards approval to these teachers, on the basis of G.R. dated 22.12.95.

In compliance with the direction of the Hon'ble High Court, the Nagpur University granted onward approval to the teachers selected /appointed after 28.12.99. As such, it is only on the direction of the Hon'ble High Court the onwards approval was given to the teachers who were selected through duly constituted selection committees though they did not have the NET/SET qualification.

In all the cases mentioned in the Appendix B, the Nagpur University is of the considered opinion that these are fit cases for granting relaxation in the prescribed qualification by U.G.C. and therefore UGC is hereby requested to relax the qualification on the following grounds :

i) The Selection Committee has recommended the names of the non NET/SET candidates for the post of Lecturer as sufficient number of candidates with NET/SET qualification were not available.

ii) All these candidates were selected by the duly constituted Selection Committee;

iii) The Govt. Resolution dated 22.12.95 was in force till 18.10.2001 which specifically stated that no teachers should be terminated on the ground that he did not possess NET/SET qualification.

iv) The advertisements were given in National news papers after obtaining the prior permission from the Nagpur University for filling-in these posts.

v) The Hon'ble High Court by order dated 18.4.2001 had directed the University to grant onward approval;

vi) In view of the fact that these are the cases in a transitory period and power of granting relaxation in the prescribed qualification vest only with the UGC as per the first proviso of Clause-2 of UGC Regulation 2000.

## 12) REQUEST IN RESPECT OF

### (A) Cases covered by Second proviso of para 2 of "UGC Regulation 2000"

Every teacher (approved by this University) mentioned (at Sr. No. 1 of 22) in column No. 2 of the Appendix A working as a lecturer in the affiliated College mentioned in column No.9, was selected by a duly constituted selection committee on a date mentioned in column No. 7 of Appendix A, and was having the then requisite minimum qualification (mentioned in column No. 5 of Appendix A) as were existing at that time. NET/SET

was prescribed as a compulsory qualification at the recruitment level in this University for the first time by direction No. 7 of 1999 dated 28.12.1999. As per the judgement delivered by the Supreme Court of India referred at 2 above NET/SET regulation can be implemented prospectively. In supersession of all previous notification. Every teacher mentioned in appendix A is covered by second proviso of para 2 of the 2000 Regulation. It is the considered opinion of this University that NET/SET qualification is not applicable to the teachers mentioned in the Appendix A as they are covered by second proviso of para 2 of the UGC regulation 2000 and protected by the Supreme Court judgement referred at 2 above, UGC may kindly confirm this view of the University.

### (B) Cases covered by the Judgement delivered by Hon'ble High Court, Mumbai, Nagpur Bench, Nagpur, in Writ Petition No. 1115/2001 dated 18.4.2001

For all the cases listed in the Appendix B, relaxation is requested from the UGC on the following grounds :

i) These appointments were made on the recommendations of the duly constituted Selection Committee and onward approval to these selections were given by the University on the direction from the Hon'ble High Court.

ii) Most of the teachers listed in appendix B have completed 2 years and they are deemed confirmed as per Nagpur University Statute 53. Therefore their services cannot be terminated only on the ground of NET/SET qualification.

In view of these situation there is no any other alternative but to relax the condition of NET/SET in favour of these appointed teachers.

Therefore, the UGC is requested to relax the condition of NET/SET, in favour of the already appointed teachers as listed in Appendix-B.

### (C) Cases covered by First proviso of para 2 of "UGC Regulation 2000"

The candidate (not approved as teacher by this University) mentioned (at Sr. No.1) in column No.3 of Appendix-C was an applicant for the post of a lecturer in the subject mentioned in column No. 2 and in the college mentioned in column No.9, was duly selected by a duly constituted selection committee on a date mentioned in column No. 7 of Appendix – C and was not having the then requisite minimum qualification as on the date of selection, since NET/SET was prescribed as a compulsory qualification at the recruitment level in this University for the first time by Direction No. 7 of 1999 dated 28.12.1999. Hence, approval of the University was not granted. In supersession of all previous notifications, UGC issued "UGC Regulation 2000" notification.

It is the considered view of this University that a case mentioned in Appendix – C is fit case for the University to grant approval provided the relaxation in prescribed qualification is accorded by UGC in accordance with the powers vested with UGC by the first proviso of para 2 of UGC Regulation 2000. Hence UGC is hereby requested to relax the qualification on the grounds mentioned below :

i) The Selection Committee has recommended the name of the candidate as the NET/SET candidate was not available ;

ii) The selection was made by the duly constituted selection committee;

iii) The advertisement was given in National news papers after obtaining the prior permission from the Nagpur University for filling-in the post;

iv) The Hon'ble High Court by order dated 18.4.2002 has directed the management to approach the UGC through University for getting relaxation in the NET/SET qualification.

Thanking you,

Yours sincerely,

Registrar

Nagpur University

(Appendix- 'A', 'B', 'C' are not printed here. See 2003 EX-File)

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## MAHARASHTRA FEDERATION OF UNIVERSITY & COLLEGE TEACHERS' ORGANISATIONS

University Club House, B-Road, Churchgate, Mumbai 400 020.

Prof. Dr. E.H. Kathale  
President,  
N 162, Reshimbagh  
NAGPUR 440 009  
Tel No. (0712) 2741098

Prof. C.R. Sadasivan  
General Secretary  
Gokuldharm Bldg 1, S.V. Rd.  
Borivli (W), Mumbai 400 092  
Tel : (022) 28063667, 56938030

MUMBAI, 30TH MARCH 2003.

### MEMORANDUM TO THE UGC

#### ON APPOINTMENT OF TEACHERS IN THE UNIVERSITIES AND COLLEGES IN MAHARASHTRA AND THE NET/SET QUALIFICATION CONDITION

##### 1. INTRODUCTION :

The Executive Committee of the MFUCTO at its meeting held on Sunday, 2nd February 2003 at Mumbai, considered various developments in respect of the NET/SET qualification condition in the State of Maharashtra and the grave injustice being caused to a large section of teachers working in the Universities and affiliated colleges for no fault of theirs. It was resolved that a delegation of the MFUCTO should meet the Chairman of the University Grants Commission and present a detailed Memorandum incorporating therein all the relevant facts on the basis of which a special consideration from the UGC for the said section of teachers would not only be necessary but just and proper. Accordingly, this Memorandum is being submitted to the UGC to serve as the central document for discussion and a just resolution of the issues involved in the problem.

##### 2. LAWFUL INSTRUMENT FOR PRESCRIBING QUALIFICATIONS :

2.1 The Non-Agricultural Universities in Maharashtra, viz, University of Mumbai, SNDT Women's University, University of Pune, Nagpur University, Amravati University, Shivaji University, North Maharashtra University, Dr. Babasaheb Marathwada University and Ramanand Tirth University are governed by the provisions of the Maharashtra Universities Act, 1994. **Section 51(8) of the said Act provides that Recruitment and Qualifications of the teachers of the Universities and the affiliated colleges is to be regulated by Statutes to be made by the Universities.** In case Statutes do not exist or where Statutes exist but they need to be amended, and if in the opinion of the Universities it is likely to take time before new Statutes could be brought into existence or existing Statutes could be amended, Section 14(8) of the Act provides **the Vice Chancellors with powers to issue directions.**

2.2 Section 8(3) of the said Act empowers the State Government to issue **Standard Code** for the purpose of securing and maintaining uniform standards by Notification in the official Gazette.

2.3 It may be pointed out that the UGC is fully aware of such provisions in the Universities Act in different States in the country and therefore in all the Regulations/Notifications that the UGC has been issuing from time to time, the UGC has been emphasizing that it would be necessary for the Universities to

make Statutes to implement the UGC Notifications/Regulations.

##### 3. LAWFUL QUALIFICATIONS :

3.1 The qualifications applicable to teachers have been modified from time to time in the country. These have been given effect to prospectively and never retrospectively. Though the UGC issued Notification No. F-1/11/87/CPP dated 19th September 1991, invoking the qualification of NET/SET for teachers effective from 19th September 1991, the State Government issued Government Resolution (GR) only on 23rd October 1992. However, this was immediately withdrawn and replaced by a new GR dated 27th November 1992. **In fact, the State Government was vascillating in taking a policy decision for the introduction of NET/SET as entry point qualification condition for recruitment of teachers in the Universities and the Colleges** keeping in mind that such NET/SET qualified teachers were not available in such numbers as to meet the needs of the University system. This will be clear from the fact that within a span of just three months, three circulars were issued by the State Government: the **first** dated 2nd February 1994 directing to continue the services of the teachers who have not passed NET for a further period till 31st March 1994; the **second**, dated 7th March 1994 extending the time limit for passing NET till 31st March 1995; and the **third**, dated 28/4/1994 specifying that the tenure of services of the teachers in the colleges and universities has been further extended up to 31st March 1996 for passing NET.

3.2 It is worth noting that all this time the UGC was continuously writing to the State Government for setting up accredited NET at the State Level and also to make amendments to the existing University Statutes.

3.3. It is necessary to point out that thereafter the State Government issued **GR dated 22nd December 1995 by which the time limit for clearing NET/SET was completely withdrawn**, and that though such appointments should be treated as ad hoc, they shall not be removed from the service of the colleges and universities on the ground that they have not passed NET/SET examination. It was provided in the said GR that such teachers shall not be entitled to draw their annual increments till they pass NET/SET examination.

3.4 It is necessary and equally important to point out that thereafter Government issued another **GR dated 22nd May 1998 by which the annual increments of teachers without NET/SET which had been declared as not being entitled to, were restored**



**in entirety.** It was declared that annual increments shall not be withheld on the ground that the Lecturer has not passed NET/SET examination.

3.5 Thus, it is clear that instead of firmly introducing NET/SET as compulsory entry point qualification condition for recruitment of candidates through the competent legal instruments such as the Standard Code, the **State Government took resort to informal instruments paying lip sympathy to the UGC directions.**

3.6 In Maharashtra, NET/SET qualification, though stated from time to time by the Government, **was never brought into existence as entry point qualification condition by the lawful machinery**, viz., the Statutes or Directions by the Vice Chancellor of the Universities or the Standard Code by the State Government

3.7 It may be pointed out that for implementing the Fourth Pay Commission scales of pay in Maharashtra after holding negotiations with the MFUCTO, the Government issued the GR dated 27th February 1989 (in the booklet at page 15 to 23)

In relation to qualification of NET/SET, it was stated at para 9 (Page 17)

"...The detailed scheme for conducting the test including its design, the agencies to be employed in the conduct of the test, content administration, etc., will be worked out by the UGC keeping in view the requirement of the media of instruction followed by the different universities and colleges and other relevant considerations... The same procedure should continue to be in operation till it is suitably replaced by the comprehensive test to be prescribed by the UGC."

3.8 The said GR was converted in to Statutes in the different Universities in Maharashtra and the same were assented to by the Chancellor. **The teachers who were appointed under the said Statutes were therefore lawfully recruited and they do not require any relaxation from NET/SET qualification condition.**

3.9 In fact, in Maharashtra, orders for introduction of the State Eligibility Test were issued only in July 1994 and the Nodal Centre was created by GR dated 14th July 1994 (in the NET/SET booklet at page 28 to 30). In fact, thereafter the first examination for SET was held only in December 1995.

3.10 All the Lecturers, barring a few, appointed during this entire period were through duly constituted Selection Committees as per the UGC requirements. By not introducing NET/SET as entry point qualification condition, as already pointed out hereinbefore, several hundreds of Lecturers were recruited with PG qualifications with B+ (55% or more) and good academic record through properly constituted selection committees but without NET/SET. **This process went on from 19th September 1991 almost till 30th December 1999** (in Amravati University area) and almost till that date in other University areas. All these appointments were also after the posts in which they were selected being advertised as per the requirements of law. All such appointments were approved by the Universities concerned and their posts were covered by 100 per cent salary grant-in-aid by the State Government. These Lecturers continue to hold their posts and continue to be paid salaries and covered by the salary grants-in-aid including payment of arrears on account of the revision of pay scales under the Fifth Pay Commission. In fact, the State Government in its GR dated 18th October 2001 has placed on record that more than 6000 Lecturers fall under this category.

#### 4. COURT DECISIONS :

4.1 In the University of Delhi V/s Raj Singh and Others, the Hon'ble Supreme Court (AIR 1995, SC, 336) while dealing with the UGC Notification dated 19th September 1991 ruled that **(i) Regulations are valid; (ii) They are recommendatory in character; and (iii) the application of the provisions was prospective.**

4.2 The UGC issued Notification dated March 2000 and forwarded the same to all the State Governments and the Universities by letter dated 4th April 2000 which was called "Minimum Qualification for appointment and Career Advancement of Lecturers, Readers and Professors in the Universities and Colleges Regulations, 2000". This Notification was in supersession of all earlier Regulations framed by the UGC. In Second Clause to qualifications, it was made clear that the application would be prospective by the following second proviso.

**"Provided further that these Regulations shall not be applicable to such cases where selections of the candidates having had the then requisite minimum qualification as were existing at that time through duly constituted selection committees for making appointments to the teaching posts have been made prior to the enforcement of these regulations."**

4.3 The said Notification provided for relaxation in the prescribed qualification with the condition that only the UGC could make such relaxation as under :

"Provided that any relaxation in the prescribed qualification can only be made by the UGC in a particular subject in which NET is not being conducted or enough number of candidates are not available with NET qualifications for a specified period only. (This relaxation, if allowed, would be given based on sound justification and would apply to affected universities for that particular subjects for the specified period. No individual application would be entertained)".

4.4 The Government of Maharashtra issued GR dated 13th June 2000 bringing the provisions of the said Regulation into effect in the State. Thereafter the Universities issued directions under Section 14(8) of the Maharashtra Universities Act, 1994. Thereafter the Government issued further GR dated 18th October 2001. The Universities issued directions to implement the provisions of the said GR dated 18th October 2001. The GR and the University directions provided that all Lecturers appointed prior to 11/12/1999 but who have not passed NET/SET examination, were required to pass the said examination by December 2003. It was further provided in the GR that the Lecturers who have come into the post after 11/12/1999 and who have not passed NET/SET examination should be removed from service before they complete the period of probation. The appointment of almost all these Lecturers had already been approved by the Universities concerned by then.

**4.5 The services of such teachers could not be terminated for the reasons that**

- a) They were selected by duly constituted selection committee;
- b) As candidates, they possessed the then requisite minimum qualification prescribed under the Statute;
- c) All these cases fell under Second Proviso to Clause 2 of the UGC Regulation, 2000;
- d) The decision of the Hon'ble Supreme Court in University of Delhi V/s. Raj Singh & Others applied to them;
- e) The UGC Regulations applied only to candidates who wanted to become Lecturers and not to the Lecturers who were already appointed;
- f) The second Proviso to Clause 2 was only to be prospective in operation and not retrospective;
- g) After the Government and the Universities prescribed NET/SET as minimum entry point conditions for Lecturers with a clear direction that no non NET/SET candidate should be appointed as Lecturers, the Universities did not appoint any such candidates as Lecturers and when the colleges appointed such candidates, the Universities have rejected approval of such appointments.

4.6 Some of the Lecturers who were aggrieved by the said GR dated 18th October 2001 moved the Hon'ble High Court at Mumbai or at High Court Bench at Nagpur and Aurangabad. The Aurangabad bench of the Bombay High Court (Appellate Jurisdiction) (B.H. Marlapalle & N.H. Patil, JJ) disposed of a bunch of several Petitions by Oral Judgement and Order dated 15th, 18th and 20th February 2002. The said Judgement was passed after taking into consideration all developments in respect of NET/SET qualification conditions imposed by the UGC. Thereafter the same issue came up for decision/ clarification at Mumbai before the Division Bench of the High Court (V.G. Palshikar & Smt. Nishita Mhatre, JJ) in respect of a bunch of writ petitions. Taking into consideration the Judgment and Order passed already by the Aurangabad Bench, the High Court at Bombay disposed of the petitions by further Judgment and Order dated 18th April 2002. The said two Judgments dated 20th February 2002 and 18 April 2002 are hereto annexed and marked as **EXHIBITS A & B** respectively.

4.7 The Judgment dated 18th April 2002 of the High Court at Mumbai in para 5 observed as under:

"5. In view of the fact that no time limit is fixed by the Aurangabad Bench, in our opinion, interest of justice require that such time limit is fixed. The process of receiving the requests from the management for consideration regarding relaxation etc., of the conditions by the UGC will take time and it would therefore be appropriate to fix some time limit. The Managements where they are directed to approach the UGC for relaxation shall do so within four months from the date of the order of this Court. The concerned University then process the same and forward them to UGC. This be done by the concerned Universities within four months of receiving the requests from the managements. **The UGC will have then four months to process the applications and request so made and then take decision.**" (Emphasis added).

The Hon'ble High Court in the Judgment and Order at para 6 stated that where reinstatement of Lecturers had been ordered, the same shall be with continuity of service and all back wages and consequential benefits for the period for which they were out of job. The Judgment further clarified that at the same time the managements will be at liberty to seek grant in aid in relation to that account if it has not already so done and utilized it for a replacement." The Hon'ble High Court has further stated that in the event of the UGC taking a decision adverse to the interests of teachers, the management and the university are directed not to act upon it for a period of four weeks from the date of communication by the UGC to the college through the University.

4.8 It may be pointed out that in the light of the order and directions issued by the Hon'ble High Court, the Universities have already submitted (or submitting) the cases of Lecturers to the UGC for examining the same for relaxation from the qualification condition of NET/SET.

#### 5. RELAXATION BY THE UGC :

5.1 The UGC will have to decide the cases submitted for relaxation by the Universities. The UGC Regulation dated 4th April 2000 (as contained in the GR dated 13th June 2000 issued by the Government of Maharashtra) as also the Regulation dated 19th September 1991 in the first proviso to clause 2 provides for relaxation in certain cases. The issue has to be considered by taking into account several important facts such as

(a) The Government of Maharashtra did not make the NET/SET qualification condition an entry point recruitment condition till December 1999.

(b) The Universities did not enact Statutes for the purpose of making NET/SET condition an entry point recruitment condition;

(c) The posts which teachers were appointed since 1991 were duly advertised as per the requirements;

(d) The Lecturers were appointed after interview and after meeting the requirements of law through duly constituted selection committees;

(e) The appointments of such Lecturers were approved by the Universities concerned right till the end of academic year 1999-2000;

(f) The said Lecturers received annual increments and the government had ordered that such Lecturers shall not be terminated from service only on account of their not having passed NET/SET examination;

(g) Many of these Lecturers have worked for even as long as 11-12 years and performed all duties associated with the posts of Lecturers including participating in conducting examinations and assessing answer books;

(h) These Lecturers were never referred to the UGC for the benefit of exemption from NET/SET as provided in the UGC Notification dated 19th September 1991 and also 4th April 2000;

(i) These Lecturers have not come into the University system illegally but only on the basis and within the ambit of law established and administered by the State Government and the Universities in the State.

5.2 With reference to old qualification, new qualification and the **cut off date**, it is necessary to point out that old arrangement for recruitment in the teaching cadre consists of -

(i) qualifications prescribed by clause 8 in the GR dated 27th February 1989 (page 17 of the booklet) which had become Statute and which reads as "Generally the minimum qualifications for appointment to the post of Lecturer in the scale of pay of Rs.

2200-4000 shall be a master's degree in the relevant subject with at least 55% of marks, or its equivalent grade and good academic record"; and

(ii) selection committees prescribed in clause 9 of the same Statute which reads as "the Selection Committee has already been laid down in the Appendix accompanying Government Resolution, Education and Youth Services Department No. USG.1177/129387/XXXII (Cell), dated 25th October 1977". This also was converted into Statute in all the Universities in the State.

**This arrangement was continued to be in operation till it was replaced by the new arrangement which came into existence by issuance of directions by the Vice Chancellors. For instance, in Amravati University it was done by Direction No. 7 of 1999 dated 30th December 1999 and in other Universities in the State also around the same date.** These prescribed the new qualifications making the NET/SET compulsory at the recruitment level and composition of selection committees for recruitment in the teaching cadre. These directions in some of the Universities have been converted into Statutes and in some others they are in the process of being done. Thus it is crystal clear that the lawful cut off date for demarking old arrangement and new arrangement is 30th December 1999 or a few days prior to that or a few days thereafter. According to the Hon'ble Supreme Court of India decision, NET/SET would not be applicable to them.

**5.3 The MFUCTO therefore submits that gross injustice has been done to a section of Lecturers in the State of Maharashtra for no fault of their own. The number of such teachers at more than 6000 is staggering which is about 25 to 20 percent of the total strength of University and college teachers in the State of Maharashtra.** The Hon'ble High Court through two Judgments of the Division Benches have provided an opportunity to the Universities and the UGC to act correctly to do away with the injustice that these Lecturers, though lawfully appointed, have suffered, apart from the uncertainty to which these young Lecturers have been subjected to.

5.4 In view of the foregoing, the MFUCTO requests that the UGC

**(a) Immediately issue direction to all Non Agricultural Universities in Maharashtra that in respect of Lecturers appointed prior to the cut off date, viz. 30th December 1999, NET/SET qualification condition is not applicable; and**

(b) Consider the cases of all those Lecturers who have been appointed after the cut off date without NET/SET for the purpose of considering eligibility for relaxation from the NET/SET qualification as per the First Proviso to qualifications contained in the UGC Regulation called the UGC (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and institutions affiliated to it Regulation 2000 dated 4th April 2000.

5.5 Along with this Memorandum, Several important documents are enclosed including a booklet containing all the various Notifications/Regulations/Rules issued by the UGC and the Government of Maharashtra in relation to the NET/SET.

5.4 The MFUCTO desires that the UGC provide an opportunity to the MFUCTO to explain in person the various aspects of this human problem in the form of improper treatment of NET/SET qualification conditions in the State of Maharashtra. **The MFUCTO deputation would wait on the Chairman of the UGC on any appointed day and time at New Delhi** so that the complicated issues involved in this vexed problem will stand settled once and for all and injustice would stand removed. It is towards this end that the MFUCTO is submitting this Memorandum **and is seeking immediate appointment for discussion.**

sd/-

(E.H. Kathale)

President

MAHARASHTRA FEDERATION OF UNIVERSITY & COLLEGE TEACHERS ORGANIZATIONS.

sd/-

(C.R. Sadasivan)

General Secretary

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