

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2082 OF 2013**

Maharashtra Federation of University & College Teachers Organizations having its registered office at C/o. BUCTU, Vidyapith Vidyarthi Bhavan B-Road, Churchgate, Mumbai 400 020 (through its General Secretary)...Petitioner. Vs. (1) The State of Maharashtra through the Principal Secretary Department of Higher & Technical Education Mantralaya, Mumbai-400 032. (2) The Director of Education (Higher Education), Maharashtra Central Building, Pune 411 001. (3) The University Grants Commissioner Bahadur Shah Zafar Marg New Delhi 110 002. (Through its Secretary) (4) Union of India, Through the Secretary, Ministry of Human Resources Department served through the office of Assistant Solicitor General, High Court, Bombay....Respondents.

(With all the Writ Petitions, about 400 in number)

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ANOOP V. MOHTA AND A. A. SAYED, JJ.

DATE : December 23, 2015

ORAL JUDGMENT : (Per Anoop V. Mohta, J.)

Rule, returnable forthwith. Heard finally by consent of parties.

Background for a common Judgment

2 By consent, heard finally specifically in view of the following order passed by Supreme Court dated 25 March 2015 in Civil Appeal No.10759/2013 - State of Maharashtra v. Asha Ramdas Bidkar, against the Judgment dated 1-8-2013 of Aurangabad Bench in Asha Ramdas Bidkar v. State of Maharashtra (Writ Petition No.11477/2010):

"1 On the taking up of Civil Appeal No.10760 of 2013 we have come to learn that several Respondents as well as other Lecturers/Assistant Professors similarly placed who are vitally affected by the core issue which has now been canvassed before us have neither been impleaded nor have been heard by the High Court of Judicature at Bombay. We are further informed that as on date there are over hundred Writ Petitions pending in the Principal Bench and the Benches at Nagpur and Aurangabad of the High Court of Judicature at Bombay. It has been pointed out by the Learned Senior Counsel that Maharashtra Federation of University & College Teachers Organisation, (MFUCTO), Respondent in Civil Appeal No.10759/2013, had filed a Writ Petition which is pending before the Principal Bench. This Association is also seeking to be heard in the proceedings before us.

2 In these circumstances the course which commends itself to us is to stay the operation of the Impugned Order without, in any manner, causing any disadvantage to any of the parties who are the beneficiaries to the Impugned Judgment. We are staying the operation of the Impugned Judgment since several other Writ Petitions are also pending and Coordinate Benches would otherwise be bound to follow the previous decision or refer the conundrum or recommend to the Hon'ble Chief Justice to constitute a Larger Bench, if the already articulated terms of the Co-ordinate Benches are found to be unacceptable. It is not controverted that Public Notice had not been given in respect of this litigation. Therefore, there is the need to stay the operation of the Impugned Order, so as to enable denovo consideration of the pending Writ Petition.

3 Accordingly, we request Hon'ble the Chief Justice of the High Court of Judicature at Bombay to constitute or nominate a Bench at the Principal Bench, to which all pending Writ Petitions should be transferred, and which Bench should forthwith take up the matters, in expedition, and decide all the Writ Petitions preferably within a period of six months from today. We also direct the State of Maharashtra to give wide publicity to the pendency of these Writ Petitions at the Principal Bench so that any person desirous of being heard may be able to do so, if that is found by it to be necessary and/or expedient.

4 In view of the above, learned counsel for the Appellant in Civil Appeal No. 10760 of 2013 seeks leave to withdraw the Appeal with liberty granted to the Appellant to approach the High Court of Judicature at Bombay. This Appeal is dismissed as withdrawn with liberty granted as prayed for.

5 We reiterate that the reason for which we have stayed the Impugned Order is to enable the Division Bench to look into the matters and decide them afresh. This does not preclude them from chartering the same course as in the Impugned Judgment, but that should be by way of a Judgment containing reasons for the conclusion.

6 Mr. B. H. Marlapalle learned Senior Counsel for the State of Maharashtra assures the Court that no adverse action shall be taken against the Respondents in the Appeals before us. The above arrangement shall, needless to clarify, be subject to the final orders that will be passed in Civil Appeal No.10759 of 2013.

7 Liberty is also granted to affected persons to seek in the High Court of Judicature at Bombay ad interim orders which may place them on parity with other Lecturers/Assistant Professors similarly placed."

3 The Supreme Court by this order, therefore, stayed the judgment dated 1.8.2013 in Asha Ramdas Bidkar (supra) and consequently also the following relief so granted by the Division Bench, which reads as under :

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4) It is not in dispute on the part of the University Grants

**The Universities never stated that Regulations
are not binding.**

(See Para 86 of the Judgment)

Resolutions of 8.7.2011 itself was for the protection of services of the lecturers regularly appointed between 19.9.1991 to 3.4.2000. It is for the protection of services only. The aspects of regularising the services of such candidates/teachers/lecturers in the background so referred above, need no interference. (See Para 79 of the Judgment)

Commission or even by the respondent Nos. 1 to 3 that petitioners were appointed, granted approval and their appointments were made in conformity with the rules and regulations, except the passing of NET/SET examination.

5) *Based on the scheme announced by UGC and adopted by the State Government, the lecturers in Senior Colleges who possess requisite qualification and qualifying duration of service are entitled for pecuniary benefit of higher scale of pay under the scheme called as "Career Advancement Scheme" ("CAS" for short). According to the Petitioners they do qualify for said benefit.*

15) *The stand taken by the State is wholly unjust and deserves to be rejected.*

16) *Therefore, now the respondent Nos. 1 to 3 ought not and cannot deny to the petitioners the benefit of Career Advancement Scheme.*

17) *This Court, therefore, allows the writ petition in terms of prayer clauses (A) and (B), with modification that interest on arrears shall carry interest @ 6% per annum, from the date when the payment became due."*

Due notices of hearing

4 All the writ petitions, about 400 in number, have been transferred and tagged. This Special Bench as directed by the learned Chief Justice on 4 June 2015, has listed the matters for final hearing by consent.

5 Due notices, as directed, have been given from time to time starting from 16.07.2015/20-08-2015, to the concerned parties, through the Registry at the Principal Bench and the Benches at Nagpur, Aurangabad and Goa, apart from notices/intimations by the State including public notices, as stated, even in news papers also. All the timely orders are part of record.

Restricted to Broader issues/challenges

6 By consent, all have proceeded with some of the Petitions, as lead Petitions instead of individual Petition for and against the broader common issues, revolving around relevancy/importance of National Eligibility Test (NET)/State Eligibility Test (SET) (for short, the "NET/SET") qualification/examination as stated to be necessary and essential qualification for getting appointment and all the service benefits, including "Career Advancement Scheme" benefits (CAS) and related monetary entitlement including "the continuity of service". The counter challenges are also raised against the UGC letters/resolutions granting the relaxation/exemption from such qualification and to the State Government Circular dated 27.06.2013 granting continuity of service and other

benefits to non-NET/SET teachers/lecturers from the date of Resolution, subject to certain conditions. (The impugned Circular).

7 Admittedly, some matters are pending even in Supreme Court. We have, therefore, without touching the issues so pending in the Supreme Court, but as directed and observed in the order so reproduced above, consciously proceeded to decide common connected issues so raised revolving around NET/SET qualification and its importance in service career of Lecturers/teachers, who have been duly appointed by the respective Universities, during the period 19.9.1991 to 3.4.2000, based upon then existing provisions of UGC Act and the Regulations, and State Government Circulars, so referred in the impugned Resolution/circular.

Petitioners/teachers/lecturers/Universities/ Colleges and Respondents

8 The Writ Petitions, by invoking Articles 14, 16, 21, 226 of the Constitution of India, are filed by individual Petitioners/teachers/lecturers and through their respective Associations and thereby various challenges are raised including the requirement and the mandate of NET/SET qualification for all the benefits including CAS, apart from continuity of service, in view of relaxation/exemption have been granted by the UGC in mass, on the Universities/teachers/lecturers representations made, individually and/or collectively/in mass.

9 The counter Writ Petitions are filed by lecturers/teachers/persons who are holding the NET/SET certificate/qualification and those who have passed the NET/SET examination pursuant to the mandate so issued from time to time, by the Respondents-University Grants Commission (UGC)/Universities and the State. They have raised various issues and resisted the claim of the above group of Petitioners who have not acquired the NET/SET qualification or passed such test. They have also challenged the Respondent's action of stated exemption/relaxation and the State's action of granting (who have not completed and/or obtained NET/SET qualification yet) continuity of service, all related benefits, by the impugned Resolution and related actions.

10 The following Non-Agriculture Universities in Maharashtra are also Respondents in these respective matters :

(1) University of Mumbai (2) Savitribai Phule Pune University (3) Rashtrasant Tukdoji Maharaj Nagpur University (4) Sant Gadge Baba Amravati University (5)

It is clear that CAS provides benefits for a teacher who has appointed on full time regular basis and renders continuous services will get time bound promotion, whereby he receives senior designation and increased pay scale. (See Para 81 of the Judgment)

This judgment shall not be given effect, so far as the order of vacating interim orders are concerned, till the Supreme Court passes an appropriate order. (See Para 88 of the Judgment)

North Maharashtra University, Jalgaon (6) Swami Ramanand Teerth Marathwada University, Nanded (7) Dr. Babasaheb Ambedkar Marathwada University, Aurangabad. (8) Shivaji University Kolhapur (9) Solapur University, Solapur (10) SNDT Women's University, Mumbai (11) Gondwana University, Gadchiroli (Est.2011)

11 The colleges are having following streams of subjects :-

(1) Arts (2) Science (3) Commerce (4) Education (5) Social work (6) Law (7) Music (8) Journalism & Mass Communication.

The parties Affidavit-rejoinder-written submissions are filed.

12 The contesting respective parties have filed affidavits/additional affidavits, rejoinders, synopsis and the written notes of Arguments.

Union of India/Central Government

13 The Union of India/Central Government is the supreme authority to deal with the every aspects of education policy and related issues, in India. All are bound by the orders/directions of the Central Government under the University Grants Commission Act, 1956 (The UGC Act). The Union of India has also filed an affidavit after directions issued by this High Court. **It is submitted that no such affidavit was filed by the Union of India at earlier point of time opposing the contentions of the Petitioners including the action of UGC of granting stated relaxation from the qualification of NET/SET requirement. Union of India has opposed the grant of prayers in the Petitions of non-NET/SET lecturers.**

Basic UGC Act provisions

14 The Respondent/UGC is a statutory body established under the UGC Act. This Act makes provision for the coordination and determination and standard in Universities and for that purpose to establish University Grants Commission. The following are the relevant provisions. Section 2 deals with the definitions. Chapter III deals with the powers and functions of the Commission. Section 14 deals with the Consequences of failure of Universities to comply with recommendations of the Commission. The other relevant sections are 20, 22, 26 (1), (c), (d), (e) and clauses (2) and (3). Same are reproduced as under :

“20 Directions by the Central Government.

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

(2) If any dispute arises between the Central Government

and the Commission as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government shall be final.

22 Right to confer degrees.

(1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, degree means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette.

26 Power to make regulations.

(1) The Commission may, by notification in the Official Gazette, make regulations consistent with this Act and the rule made thereunder,

(a) regulating the meetings of the Commission and the procedure for conducting business thereat;

(b) regulating the manner in which and the purposes for which persons may be associated with the Commission under section 9;

(d) specifying the institutions or class of institutions which may be recognised by the Commission under clause (f) of section 2;

(e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University having regard to the branch of education in which he is expected to give instruction;

(f) defining the minimum standards of instruction for the grant of any degree by any University;

(g) regulating the maintenance of standards and the coordination of work or facilities in Universities.

(h) regulating the establishment of institutions referred to in clause (ccc) of section 12 and other matters relating to such institutions;]

(2) No regulation shall be made under clause (a) or clause (b) or clause (c) or clause (d) 17 [or clause (h) or clause (i) or clause (j)] of sub-section (1) except with the previous approval of the Central Government.

(3) The power to make regulations conferred by this section [except clause (i) and clause (j) of sub-section (1)] shall include the power to give retrospective effect from a date

Such eligibility/mandatory tests, which affects the selection and appointments, cannot be overlooked merely because in in 11/7/2009 (UGC) Notification specifically made NET/SET eligibility criteria as mandatory. This in no way can be read to mean it was earlier recommendatory, and not binding. (See Para 47 of the Judgment)

We are not willing to accept the submissions so made by the learned counsel appearing for the Petitioners that 1991 Regulations of UGC are not mandatory referring to cases of *Raj Singh, Beena Inamdar and Jagdish Prasad (supra)*. (See Para 48 of the Judgment)

not earlier than the date of commencement of this Act, to the regulations or any of them but no retrospective effect shall be given to any regulation so as to prejudicially affect the interests of any person to whom such regulation may be applicable.]”

Section 28 deals with the provision of laying of rules and regulations before Parliament.

Teachers/Lecturers without NET/SET TEST QUALIFICATION but have been appointed by the Colleges/Institutions, affiliated to the Universities.

15 We are essentially concerned with teachers/lecturers who have not acquired NET/SET though appointed, between 19.09.1991 and 3.4.2000, in their respective affiliated degree colleges in the State of Maharashtra. We are not concerned with the teachers who have acquired NET/SET qualification even after their initial appointments, as they are entitled for all the benefits as announced by the Respondents. The teachers/lecturers who have acquired M.Phil and Ph.D. after their initial appointment are also entitled for the declared benefits.

Important dates and events, referring to the Regulations/Circulars

16 The common undisputed relevant dates and events inter alia concerning progressive development of issue of minimum qualification of degree college, teachers/lecturers in Maharashtra, as relied/referred in of the lead Writ Petition No.2082/2013, are as under :

On 13.6.1983, U.G.C. Regulations concerning qualifications. Required qualifications: M.Phil. With Second Class Masters Degree and “Good Academic Record” was notified.

17.6.1987 : Govt. of India Notification for implementation of 4th Pay Commission.

27.2.1989 : State Govt. adopts the Central Government Scheme w.e.f. 1.1.1986. Career Advancement Scheme introduced by this for the first time granting senior scale and selection grade to lecturers. M.Phil. as a qualification requirement done away with and the only qualification required for lecturers now was Masters with more than 55% marks. Universities asked to amend the Statutes.

1989 : Statutes framed by some of the Universities to adopt the above G.R.

19.9.1991 : U.G.C. Qualifications Regulation. In addition to Masters Degree with more than 55% marks prescribes for the first time NET/SET as eligibility criteria for Degree College Lecturers. It provides that any relaxation can only be given by the University concerned with prior approval of the U.G.C. It further provides that if there is a failure to comply, Grants may be stopped. Under this Regulation even those having Ph.D. or M.Phil. are required to do NET/SET. This Regulation was prospective i.e. for those lecturers who would be appointed after 19.9.1991

23.10.1992 : State Govt.’s Resolution adopting the

above U.G.C. Regulation

27.11.1992 : State Govt.’s Resolution superseding the October, 1992 Resolution and asking Universities to issue directives in accordance with the U.G.C. Regulation of 1991

10.2.1993 : UGC Circular granting exemption from doing NET/SET to those candidates who have (i) completed Ph.D. (ii) who will submit their Ph.D. thesis by 31.12.1993 and (iii) those candidates who have been awarded M.Phil. by 31.3.1991

6.1993 : U.G.C. provides that those candidates who have done M.Phil. upto 31.12.1992 or those who submit Ph.D. thesis upto 31.12.1993 are exempt from doing NET/SET. UGC also requests Universities to amend statutes.

10.12.1993 : State Govt.’s resolution adopting the U.G.C. Circular dated 10.2.1993

2.2.1994 : State Govt.’s letter to Universities that those lecturers appointed without NET/SET can be continued upto 1.3.1994 but not to be continued after that.

28.4.1994 : Govt. letter : Those teachers appointed without NET/SET should be removed by 31.3.1996

8.6.1994 : Govt. Resolution : Adopting the UGC Circular exempting those candidates who have done M.Phil upto 31.3.1992 from appearing for NET/SET

14.7.1994 : Govt. G.R. appointing Pune University as Nodal Agency for conducting SET Exam, especially in regional language.

21.6.1995 : UGC 1st Amendment to 1991 Regulations. Those candidates who have submitted Ph.D. thesis or passed M.Phil. by 31.12.1993 are exempt from doing NET/SET.

22.12.1995 : State Govt. Resolution :

(i) The date of 31.3.1996 for passing NET/SET removed;

(ii) Those who have come into service after 19.9.1991 and have not completed NET/SET and have not passed M.Phil. by 31.12.1993 and have not submitted Ph.D. thesis by 31.12.1993 will be required to do NET/SET;

(III) Non NET/SET teachers to be treated as ad hoc but their services not to be terminated on account of not having NET/SET. However they will not get annual increment and their services upto they acquire NET/SET will not be counted for senior scale/ selection grade.

22.5.1998 : Govt. Resolution allowing annual increments to those candidates who have not passed NET/SET

27.7.1998 : Central Govt.’s letter to all States concerning revision of pay scales for all Central Universities and Colleges. The letter states that 80% of additional expenditure for the period 1.1.1996 to 31.3.2000 will be provided by the Central Govt. The Central Govt.

Therefore, it was observed that for those candidates qualification of NET/SET was not compulsory. This judgment, therefore, is also of no assistance. (See Para 60 of the Judgment)

We are not inclined to accept the contention that there was no provision either in the Statute and/or the Act making NET/SET qualification compulsory.

The fact that more than two lac persons/teachers/professions/candidates have already acquired NET/SET even some of them during the period 19.09.1991 to 3.4.2000, itself sufficient to deny the contention of such Petitioners.

(See Para 31 of the Judgment)

would pay provided entire scheme is adopted as a whole. Universities were asked to have required changes to their Statutes.

24.12.1998 : UGC issues Notification on revision of Pay Scales and minimum qualifications for Universities and Colleges. NET/SET made mandatory. Relaxation can be given by Universities after prior approval of the UGC. Universities asked to amend Statutes. If conditions not fulfilled, grant may be withheld.

11.12.1999 : Govt. Resolution adopting 5th Pay Commission from 1.1.1996 on the basis of the UGC Notification dated 24.12.1998. For the first time NET/ SET accepted as the required eligibility criteria Career Advancement continued with some modifications.

2000 : Universities amend their statutes to implement the above scheme. For the first time NET/SET is brought in as eligibility condition.

4.4.2000 : UGC supersedes 1991 Regulation and 1998 Notification and brings in new Minimum Qualifications Regulations. It is now mentioned that relaxation can only be made by UGC in a particular subject where NET/ SET is not being conducted or enough candidates are not available and such relaxation would only be for a specified period. Universities were directed to amend their Statutes.

The Notification further provides that the Regulations concerning qualifications will not be applicable for those candidates who had the earlier requisite qualifications and who have been selected by the duly constituted selection committees prior to the enforcement of these Regulations. The consequence of non implementation could be that grants be stopped.

Required qualifications are M.Phil with NET/ SET but those candidates who have M.Phil. prior to 31.12.1993 or have submitted Ph.D. thesis prior to 31.12.1993 are exempt.

13.6.2000 : State Govt. G.R. adopting the above Regulations. The G.R. further provided that after 4.4.2000 no candidate be appointed without NET/SET and if appointed grants wont be paid.

3.8.2001 : Statement of Minister of Education in the Assembly stating that since the Government and the Universities had not adopted the 1991 UGC Regulations through proper legal instruments number of lecturers/ teachers were appointed till 11.12.1999 without NET/ SET.

18.10.2001 : Govt. Resolution. It records that between 19.9.1991 and 11.12.1999 6000 non NET/SET lecturers/ teachers appointed. The Govt. decided that these candidates will not be removed. But they will have to clear

NET/ SET by December, 2003. If they don't complete by December,2003 they will not be removed till retirement but they will only get increments only and no senior scale, selection grade, etc. From the date on which they complete NET/SET will held eligible for senior scale, etc. Those teachers/lecturers appointed after 11.12.1999 without NET/SET should be removed before their probationary period comes to an end.

The G.R. further states that since the above NET/SET qualifications have been brought in from 4.4.2000, after that date i.e. after 4.4.2000 no non NET/SET candidates be appointed.

31.7.2002 : U.G.C.'s 1st Amendment to 2000 qualifications Regulations. Exemption for those who have obtained M.Phil till 31.12.1993 to continue. But exemption to those who had submitted Ph.D. thesis by 31.12.1993 replaced now with exemption only to those who have submitted Ph. D. thesis by 31.12.1992. Besides it is mentioned that if these candidates fail to obtain Ph.D. they will be required to do NET/SET.

December, 2002 (onwards) : Universities write to UGC stating that NET/SET was made compulsory only after the University Statutes were amended (i.e. after December, 1999) and thus those appointed prior to that date should be treated as regularly appointed.

26.7.2004 : Govt. of Assam adopts NET/SET qualification only from 24.12.1998.

9.12.2004 : UGC letter to Universities. When NET exemption is granted the same should be on the footing that the concerned teacher should acquire NET/SET within 2 years of date of exemption.

14.6.2006 : U.G.C. carries out 2nd Amendment to 2000 Regulation and prescribes that candidates not having NET/SET but having M.Phil. or Ph.D. will also be qualified as being appointed as degree college lecturers.

1.6.2009 : U.G.C. Regulations for award of M.Phil. and Ph.D. Degrees requiring passing of an entrance test to do M.Phil. Or Ph.D.

30.6.2009 : U.G.C. carries out 3rd Amendment to 2000 Regulations and prescribes that NET/SET will be compulsorily required for recruitment of lecturers and the earlier exception of M.Phil. was being done away with. Those candidates not having NET/SET but having Ph.D. in accordance with the 2009 regulations of U.G.C. will however be treated as qualified.

This was litigated extensively and the Bombay High Court has passed number of judgments stating that those teachers appointed before 1.7.2009 with M.Phil and without NET/SET will be treated as qualified.

If there was no such requirement and/or insistence, there was no question of these candidates to acquire and or to proceed to acquire the qualification.

(See Para 24 of the Judgment)

There is no denial to these Circulars and/or any challenge raised at an appropriate time by the concerned parties.

(See Para 20 of the Judgment)

Supreme Court has passed a Judgment which deals with teachers appointed after 30.6.2009 with M.Phil. and held that such teachers (even if they obtained M.Phil. prior to 30.6.2009) will not be held eligible if they do not have NET/SET.

12.8.2009 : State Government adopts the 6th Pay Commission Scales and Career Advancement Scheme w.e.f. 1.1.2006. Qualifications required: Masters with 55% and NET/SET. Designations changed to Asst.Professor, Associate Professor and Professor.

26.8.2009 : Agreement between State and MFUCTO (Petitioner).

(i) Revised Scales will also be applicable to non NET/ SET teachers approved by the University. They will be put in the lowest Scale. (ii) Decision of UGC concerning exemption from NET/SET will be final.

19.11.2009 : G.R. issued incorporating the above condition.

15.12.2009 : UGC replies to RTI query enclosing detailed correspondence with State concerning exemption from NET/SET

30.6.2010 : UGC Regulations for Minimum Qualifications and Revised Pay Scales as per 6th Pay. Masters with 55% and NET/SET.

Career Advancement.

2011 : Universities adopt the above Regulations of UGC.

10.6.2011 : MFUCTO's (Petitioner's) delegation to UGC asking that the entire service of Non NET/SET teachers from 1991 to 4.4.2000 be counted for career advancement

8.7.2011 : UGC's Meeting. Those Non NET/SET teachers appointed between 19.9.1991 and 3.4.2000 and whose applications are sent by Universities to UGC be approved on regular basis.

12.8.2011 : MFUCTO to U.G.C. asking clarification regarding from which date the placement be done for those appointed without NET/SET between 19.9.1991 and 3.4.2000

Explanatory Note addressed by MFUCTO

16.8.2011 : UGC's letter to State Government communicating the decision dated 8.7.2011

26.8.2011 : UGC's letter to MFUCTO (Petitioner) clarifying that services for all purposes should be counted from the time they were regularly appointed.

15.3.2012 : UGC's letter to the Petitioner stating that the actual date of effect for grant of exemption to a particular candidate shall be the date of exemption actually granted by the Universities to the concerned candidate

appointed on "regular basis".

2.5.2012 : Meeting between Petitioner and the State officials took place. State agrees that the service rendered by the non NET/SET teachers between 19.9.1991 and 3.4.2000 from the date of their appointment should be taken into consideration for all purposes.

13.6.2013 : UGC minimum qualifications 2nd Amendment concerning Selection Process.

27.6.2013 : Impugned G.R. of the State Government.

Those appointed between 19.9.1991 and 23.10.1992 at no stage acquired NET/SET. Services regularised of non NET/SET candidates for 24.10.1992 to 3.4.2000 on following conditions:

(a) Lecturers/Teachers should have been appointed on regular basis;

(b) Appointed as per prescribed procedure; University should have approved their appointments

(c) University should have submitted their proposals for its approval.

Their services for all purposes will be counted from the date of the Government decision i.e. from 27.6.2013.

They will be covered by the 2005 Pension Scheme.

Common judgments cited by the parties

17 The learned counsel appearing for the parties have read and referred the various judgments including the following judgments :

(1) State of Maharashtra & ors. v. Asha Bidkar and ors.¹ (1 Order dt.25.03.2015 in Civil Appeal No. 10759 of 2013 by Supreme Court)

(2) Beena Inamdar v. University of Pune & ors.² (2012 (1) All MR 787)

(3) University of Delhi v. Raj Singh & ors.³ (3 (1994) Supp (3) SCC 516)

(4) Suresh Patilkhede v. Chancellor, University of Maharashtra and ors.⁴ (4 2012 (6) ALL MR 326)

(5) T. P. George and ors v. State of Kerala & ors⁵ (5(1992) Supp. (3) SCC 191)

(6) Baburao Yadavrao Nareddiwar v. State of Maharashtra⁶ (6 (2002) 3 Mh. L. J. 515)

(7) Jagdish Prasad Sharma & ors v. State of Bihar & ors⁷ (7 (2013) 8 SCC 633)

(8) Kalyani Mathivanan v. K. V. Jeyaraj & ors.⁸ (8(2015) 6 SCC 363)

(9) P. Suseela & ors v. University Grants Commission & ors.⁹ (9 2015(8) SCC 129 - Supreme Court Judgment dated 16.03.2015 in SLP (Civil) Nos.36023-36032 of 2010)

There is no material/data placed on record by such Petitioners and/or respective parties, to show that they were not aware of the basic requirement of qualification of NET/SET.

(See Para 23 of the Judgment)

The requirement of such teachers to have the qualification, and as in fact many teachers/lecturers have acquired such qualification, that itself is sufficient to reject the contention of the Petitioners to treat the condition and/or requirements of the Regulations being recommendatory. The UGC Regulations dated 4.4.2000 cannot be used and utilised by the Petitioners to say that NET/SET qualification requirement held to be mandatory, subsequently.

(See Para 25 of the Judgment)

(10) *Khandesh College Education Society v. Arjun Hari Narkhede*¹⁰ (2011) 7 SCC 172)

(11) *Dr. Mahesh Kulthe v. Union of India*¹¹ (Judgment dated 17.10.2013 in WP/10149/2010 (Aurangabad Bench))

(12) Some judgments are referred in other paragraphs of this judgment.

Relevant UGC Regulations and the State Circulars = positive representation about the mandate of the NET/SET qualification

18 The following UGC Regulations are also read and referred. The details and purpose of those Regulations are as under - The detailed chart of some of them are part of record.

Date : UGC Regulation relating to qualification of Teacher.) Qualification for Lecturer

13.6.1983 : UGC (Qualifications required of a person to be appointed to a teaching staff of a University or other Institution affiliated to it) Regulation, 1982 Reg. 2 – Qualification as per Schedule I to X.) M.Phil or degree beyond Master's Level + Master Degree (minimum 2nd Class) Or Master Degree (with higher 2nd Class) + First Degree (with 2nd Class) Or Master Degree (with 2nd class) + First Degree (with 1st Class)

19.9.1991 : UGC (Qualifications required of a person to be appointed to the teaching staff of the University & Institutions affiliated to it) Regulation, 1991) Reg. 2 – Qualifications provided as per Schedule I First Proviso – Relaxation in prescribed qualification can only be made by University, with the prior approval of UGC. Second Proviso – These regulations shall not apply, where selection through duly constituted Selection Committee have been made prior to these regulations. Schedule I – Clause (3)A Good academic record + Master Degree (minimum 55% marks or equivalent grade in relevant subject) + NET/SLET.

21.6.1995 : UGC (Qualifications required of a person to be appointed to the teaching staff of a University & Institutions affiliated to it) (First Amendment) Regulation, 1995 Proviso – Exemption from NET/SLET to candidates

– who submitted Ph.D. thesis or who passed M.Phil exam prior to 31.12.1993.

4.4.2000 : UGC (Minimum qualifications required for the appointment and Career Advancement of Teachers in Universities & Institutions affiliated to it) Regulation, 2000, Reg. 2 – Qualification provided as per Annexure – 1.3.3 Lecturer. First Proviso – Any relaxation in prescribed qualification can only be made by UGC a) in a particular subject in which NET is not being conducted or b) enough number of candidates are not available with NET for specified period only. This relaxation would be given based on sound justification and would apply to Universities for that particular subject for specified period. No individual applications would be entertained. Second Proviso – This regulations shall not be applicable where candidates were selected (having the then requisite minimum qualification) through duly constituted Selection Committee prior to enforcement of these regulations. Good academic record + Master Degree (minimum 55% marks or equivalent grade of B in the 7 point scale with later grades O, A, B, C, D, E, F in relevant subject) + NET/SLET. Note – NET shall remain compulsory requirement even for candidates with Ph.D. degree. But candidates who submitted Ph.D. thesis or who passing M.Phil exam prior to 31.12.1993, are exempted from NET.

31.7.2002 : UGC (Minimum qualifications required for the appointment and Career Advancement of Teachers in Universities & Institutions affiliated to it) (First Amendment) Regulation, 2002.) Note substituted as under :- NET shall remain compulsory requirement even for candidates with Ph.D. degree. But candidates who passing M.Phil exam prior to 31.12.1993 or who submitted Ph.D. thesis prior to 31.12.2002, are exempted from NET.

14.6.2006 : UGC (Minimum qualifications required for the appointment and Career Advancement of Teachers in Universities & Institutions affiliated to it) (Second Amendment) Regulation, 2006.) Note substituted as under :- NET shall remain compulsory requirement even for candidates with Ph.D. degree. But candidates who have completed Ph.D. degree are exempted from NET for teaching at PG Level & UG Level. Candidates who

It is submitted that no such affidavit was filed by the Union of India at earlier point of time opposing the contentions of the Petitioners including the action of UGC of granting stated relaxation from the qualification of NET/SET requirement. Union of India has opposed the grant of prayers in the Petitions of non-NET/SET lecturers.

(See Para 13 of the Judgment)

completed M.Phil degree are exempted from NET for teaching at UG level.

11.7.2009 : UGC (Minimum qualifications required for the appointment and Career Advancement of Teachers in Universities & Institutions affiliated to it) (Third Amendment) Regulation, 2009. Note substituted as under :- NET/SLET shall remain minimum eligibility condition for recruitment and appointment of lecturers. But, candidates who completed Ph.D. degree [in compliance with UGC (Minimum Standards & Procedure for Award of Ph.D. Degree) Regulation, 2009] are exempted from NET/SLET.

24.12.1998 : 5 th Pay Scale w.e.f. 1.1.1996 Not in Government Gazette : UGC notification on revision of pay scales, minimum qualifications for appointment of teachers in Universities & Colleges and other measures for maintenance of standards, 1998. Letter 3.1 – Persons to be appointed to a teaching post only if he fulfills minimum qualifications and other service conditions as indicated in the notification. 3.2 – Relaxation in prescribed qualification only by University, with prior approval of UGC. Notification 3.1.0 – Direct recruitment – on the basis of merit through all India advertisement and selection by duly constituted Selection Committee of concerned University and composition of Selection Committee as prescribed by UGC Regulation. 3.2.0 – minimum qualifications will be those as prescribed by UGC from time to time. 3.3.0 – minimum requirement :- good academic record + Master's degree (55%) + NET. University can exempt Ph.D. holder from NET – Minimum requirement of 55% should not be insisted upon for existing incumbents who are already in university system. But, 55% marks should be insisted upon for those entering the system from outside and those as

entry point of lecturer. 4.4.1 - Good academic record + Master Degree (minimum 55% marks or equivalent grade of B in the 7 point scale with later grades O, A, B, C, D, E, F in relevant subject) + NET/SLET.

30.6.2010 : In Government Gazette dated 18.9.2010 UGC (minimum qualifications for appointment of teachers & other academic staff in Universities & Colleges and other measures for maintenance of standards in Higher Education) Regulation, 2010. Regulation 1.3 First Proviso – Any candidate becomes eligible for promotion under CAS (Career Advancement Scheme) in terms of these regulations after 31.12.2008, the promotion of such candidate shall be governed by the provisions of these regulations. Second Proviso – In the event, any candidate became eligible for promotion under CAS prior to 31.12.2008, the promotion of such candidate under CAS shall be governed by UGC (minimum qualifications required for appointment and Career Advancement of Teachers in Universities & Institutions affiliated to it) Regulations, 2000. Regulation 2 – Minimum qualification as provided in Annexure. Annexure 3.0.0 – Recruitment & qualifications 3.1.0 – Direct recruitment – on the basis of merit through all India advertisement and selection by duly constituted Selection Committee of concerned University and composition of Selection Committee as prescribed by UGC Regulation. 3.2.0 – Minimum qualification will be those as prescribed by UGC regulations. 3.3.0 – minimum requirement :- good academic record + Master's degree (55% or equivalent grade in a point scale) + NET/SLET. 3.3.1 – NET/SLET/NET shall remain minimum eligibility recruitment condition for appointment of Assistant Professors. But, candidates who completed Ph.D. degree [in compliance with UGC (Minimum Standards &

PENSION AND GRATUITY

There is no issue that non-NET/SET teachers, inspite of no requisite qualification of NET/SET have been getting pay Commission's scale, HRA, Leave Travel Allowance, DA,TA and all other related benefits, including increments and pension and gratuity.

(See Para 37 of the Judgment)

The challenge to the validity of the impugned State Government Resolution dated 27 June 2013 is rejected. The action of the State of Maharashtra is upheld.

(See Para 91 (3) of the Judgment)

Supreme Court Judgment

(1) "From the above discussion, we have come to the conclusion that the entire daily wage service of the petitioner from 1988 till the date of his regularization is to be counted as qualifying service for the purpose of pension." This is the operative part of the Judgment by the High Court for the States of Punjab and Haryana at Chandigarh in CWP No.2371 of 2010 (Date of decision : **31.8.2010**) Harbans Lal Petitioner Versus The State of Punjab and others Respondents. This Judgment is circulated on page 58 of this Bulletin.

(2) SLP was filed by the State in the Apex Court. "**The Special Leave Petitions** are, accordingly, dismissed." by Supreme Court of India (Record of Proceedings Petition(s) for Special Leave to Appeal (Civil)...../2011 CC 17901/2011 (From the judgement and order dated 31/08/2010 in CWP No.2371/2010 of The High Court of Punjab & Haryana at Chandigarh) State of Punjab & Ors. Petitioner(s) Versus Harbans Lal Respondent(s)) **on 30/07/2012**. This Order of the Supreme Court is circulated on page 58 of this Bulletin.

(3) The Supreme Court of India (Civil Appellate Jurisdiction **Review Petition** (C) No.2038 of 2013 In Special Leave Petition (C) No.23578 of 2012 State of Punjab and Ors...petitioner(S) Versus Harbans Lal...respondent(S)) **on November 04, 2015** heard the matter and following is the Order of the Supreme Court :- "**The Review Petition is dismissed** accordingly. Accordingly, **all the Special Leave Petitions are dismissed**. We direct the State of Punjab not to file any more special leave petitions against the similar issues as considered by the High Court in the impugned judgment(s) and Order(s)." This Order of the Supreme Court is circulated on page 59 of this Bulletin.

The Regulations so referred above, including of the year 1991, itself provide that the prior approval for the relaxation would be obtained by the Universities/Colleges before appointment.

(See Para 31 of the Judgment)

Procedure for Award of Ph.D. Degree) Regulation, 2009] are exempted from NET/SLET.

Feb.2011 : Gazetted on 9.4.2011 : (UGC Regulations on minimum qualifications for appointment of teachers & other academic staff in Universities & Colleges and measures for maintenance of standards in Higher Education (First Amendment) Regulation, 2011.) Not relevant regarding qualification.

13.6.2013 : Gazetted on 13.6.2013 : (UGC (Minimum qualification for appointment of teachers & other academic staff in Universities & Colleges and measures for the maintenance of standards in Higher Education) (Second Amendment) Regulation, 2013.) Not relevant regarding qualification.

Teachers/Lecturers are aware of requirement of NET/SET qualification

19 After going through the affidavit filed by the Respondents including their written submissions, it is clear that the State had directed all the Universities to apply the UGC Regulations 1991, by State Government Resolution dated 23.10.1992. It was made known to all, even by the Universities, at the relevant time, that

“Qualifications for appointment to the teaching Posts - 1. No person shall be appointed to teaching posts in the University or in any College affiliated to the University or Institution recounted by the University, if he/she does not fulfill required qualifications for appropriate subject, as prescribed by University Grants Commission/University from time to time.”

20 All other similar directions and communications were issued from time to time by the State, based upon the UGC's Regulations. **There is no denial to these Circulars and/or any challenge raised at an appropriate time by the concerned parties.** The State in the year 1994 itself by the Resolution had announced that the services of teachers/lecturers who do not acquire qualification of NET/SET till 31.03.1996, should be considered as ad-hoc teachers, but they would not be terminated from the services with further rider that they would not be given the annual increments. It was specifically provided that their services would be considered for the purpose of CAS from the date on which they would clear the NET/SET. It was also made clear that those lecturers who had passed the NET/SET earlier would be considered as senior to others. There is nothing on record to show that the Respondents have made any representation and/or communicated to such teachers who have not acquired NET/SET that they would be treated equally with the lecturers/teachers who have acquired the NET/SET. The State positive representations, as recorded above, on the contrary, were otherwise. It is relevant to note that State Resolution dated 18.10.2001 was challenged by the lecturers who were appointed between the period 12.12.1999 to 3.4.2000 – 4.4.2000 to

12.6.2000 –13.06.2000 to 13.10.2000. By a judgment of this Court in *Vishwaprakash Laxman Sirsath v. State of Maharashtra*,¹² (12 2003 (2) Mh. L. J. 176) it is observed that candidates who failed to obtain NET/SET qualification be continued to be unqualified and can be continued till December 2003 and, therefore, clause 2(b) of Government Resolution dated 18.10.2001 was set aside. In the affidavit, the State has made the position very clear that the lecturers who do not clear the NET/SET would continue till their retirement with only increments without any other monetary benefits.

21 A clarification issued by UGC dated 9.12.2004 had further provided that in case the relaxation/exemptions in question for the posts were granted in view of the special circumstances, the candidates would be required to clear NET/SET within a period of two years from the date of exemptions by the UGC. We have noted even the UGC's Resolution based upon the meetings held on 3rd and 4th September 2008, though, for recommending the cases for exemption, the time was further granted of four years to pass the said examination for acquiring the additional qualification. The UGC, by communication dated 12.11.2008, was directed by the Government of India not to grant such exemptions in future and notified the Regulation of 2009, accordingly. Therefore, we have considered in totality the purpose, object and the time to time representations/directives issued by the Respondents and specifically the mandate of acquiring the NET/SET qualification in view of National Education Policy, apart from the additional benefits as announced by the State of Maharashtra. It is, therefore, clear that the Respondents, all the time have been intimating and informing to the concerned parties including to the ad-hoc and/or contract and/or temporary appointed lecturers/teachers, to grab the opportunity and acquire the eligibility qualification.

22 The UGC's decision of 8.7.2011, of granting exemption/relaxation in the background, therefore, itself is not sufficient to grant the claim so raised by the Petitioners in view of the peculiarity of the circumstances so reproduced. Even the communication of UGC to the State is, in no way, sufficient to compel the State to grant CAS benefits and/or related benefits other than so announced. We are inclined to observe at this stage itself that in view of the reasons given in these judgments, the relaxation/exemption, even if granted by UGC, cannot be made applicable retrospectively and the relaxation, even if any, would be only to regularise the services subject to the restricted benefits so announced by the State Government from time to time.

Teachers/Lecturers were aware of requirement of NET/SET

23 **There is no material/data placed on record by such Petitioners and/or respective parties, to show that they were not aware of the basic requirement of qualification of NET/SET.** Merely because the

The challenge to letters 16.08.2011 and 26.08.2011 is also disposed off for above reasons.

(See Para 85 of the Judgment)

Once the approval is granted, the appointments made even without obtaining the UGC's prior approval, would stand regularised but for limited purpose.

(See Para 34 of the Judgment)

Petitioners were appointed in vacant posts, after due approval, in the circumstances so referred above, for want of nonavailability of NET/SET candidates during the above period, in no way, can be stated to be the reason to overlook the mandate of the NET/SET qualification, so insisted, through out even during the period in question.

24 We are concerned not only with the appointments so made at the relevant time, but also concerned with its continuity or protection of such long services, and the benefits of the CAS which the Petitioners who have not acquired NET/SET qualification are claiming from the date of initial appointments and/or from the date of relaxation. No case is made out to grant such benefits by overlooking the facts and circumstances including about so many candidates who have after initial appointment, acquired the NET/SET qualification even during this period. **If there was no such requirement and/or insistence, there was no question of these candidates to acquire and or to proceed to acquire the qualification.** Non-acquisition of NET/SET for whatever may be the reason, inspite of the mandate of qualification so declared by the UGC from time to time, disentitle them to claim such similar benefits, by treating themselves equally with the persons/candidates who have acquired the qualification of NET/SET. These are clearly two distinct, distinguishable and unequal classes, cannot be treated equally or on same level. **These different classes with and/or without NET/SET need to be treated differently, including for the grant of benefits of CAS and other related aspects.** The persons who have acquired NET/SET qualification are entitled for all the benefits as declared by the respective Respondents from the date of acquisition of qualifications.

UGC Regulations are binding to all.

25 We are not accepting the submission that 1991 Regulations as issued under Section 26(1)(e) and, therefore, are not governed by Section 20 of UGC Act. It is difficult to dissect Section 20 and read in isolation Section 26(1)(e) and/or (g). We have to consider the total scheme of the UGC Act and the intention behind the same of insisting upon the requisite clarification and/or test. Many times Universities used to appoint teachers/lecturers without NET/SET qualification and had made representation for post facto approval to the UGC. The clauses so read about the Regulations clearly provide for "prior approval" from UGC which admittedly was not obtained before appointment. **In our view, the Petitioners wrongly relied upon University of Delhi (supra) for their submission that proviso of clause (2) of the Regulations of 19.09.1991 are directory in nature.** The power to appoint by the Institutions/Colleges/University to select its teachers is not restricted. **The requirement of such teachers to have the qualification, and as in fact many teachers/lecturers have acquired such qualification, that itself is sufficient to reject the contention of the Petitioners**

to treat the condition and/or requirements of the Regulations being recommendatory. The UGC Regulations dated 4.4.2000 cannot be used and utilised by the Petitioners to say that NET/SET qualification requirement held to be mandatory, subsequently.

Teacher with & without NET/SET/TEST/QUALIFICATION and their stated equal rights?

26 We are also concerned with the categories of the teachers who were granted individual and/or common relaxation by the UGC. The teachers who acquired the required qualification are getting their CAS and other benefits from the date of acquisition of this qualification. The teachers who have not acquired the qualification are also claiming the similar benefits from the date of their initial appointments. The teachers from private aided colleges and/or from Government colleges and/or from unaided colleges are also involved in the matter.

27 Various schemes, regulations, framed by UGC from time to time are read and referred by the counsel. The counsel have read and referred the provisions of respective University Acts. There is no serious dispute with regard to these provisions of the respective Universities so referred, including their power to permit to appoint teacher/staff as and when necessary, but by following the due procedure of law and taking note of declared and prescribed qualification for different classes of teachers including additional qualifications so prescribed by the UGC.

28 The respective Universities have also filed their affidavits basically supporting the Petitioners' cases who have not completed the NET/SET qualification or who have not acquired the NET/SET qualification. The Universities in their affidavits submitted that they have permitted to appoint these teachers by following the due procedure of law, but in view of exigency and urgency for want of teacher at the relevant time, without NET/SET qualification, as no much qualified candidates were available, during the period between 19.09.1991 to 3.4.2000. Admittedly, the Universities, based upon the Rules, Regulations and Scheme so announced including by the State through the various Associations had made the representations to the UGC to grant the relaxation. The parties have read and referred those representations. We have noted that the applications/representations for relaxation were forwarded by the Universities on behalf of such persons who have not acquired NET/SET qualification but are appointed at the respective posts. Those relaxation applications were considered and decided by the UGC from time to time on the respective applications and granted relaxation from the date so specified. Such Petitioners are also, though not acquired NET/SET qualification claiming all the CAS benefits from the date of their respective appointments or at least from the date of relaxation, along with the teachers/persons who have

"It not only would not forfeit its grant but the appointment made without obtaining the UGC's prior approval would stand regularised."

Apex Court quoted by High Court (See Para 33 of the Judgment)

This Regulation is made under the provisions of Section 26(1) (e) which defines the qualification that are “ordinarily” and not “invariably” required of a lecturer. These provisions cannot be read in isolation. (See Para 33 of the Judgment)

acquired the NET/SET.

29 The State has filed affidavit dated 1 October 2015, opposing such Petitioner’s claim in every aspect. However, considering the facts and circumstances at the relevant time, basically between the period from 19.9.1991 and 3.4.2000, as there were no fully eligible candidates available and there was urgent requirement of teachers to be appointed for the respective vacant posts, so that the students education should continue, the State had been insisting for many years, and extended the period, so as to enable such teachers to acquire qualification of NET/SET. The teachers appointed between this period, have been extended the limited benefits by the State Circulars, in the interest of justice and considering the long continuity in service. [The said State action, therefore, is also challenged by the persons who have acquired the NET/SET qualification already.] We find nothing wrong with the Circular as it is in the interest of all the concerned in above background and as it is within the power and jurisdiction of the State when it comes to regularisation of service of such teachers, including grant of continuity with the limited monetary benefits, except CAS and related aspects.

Teachers duly appointed, but without NET/SET qualification -regularisation

30 The appointments were made by the duly constituted Selection Committee as per the respective University Statutes including Act, Ordinance, Statutes etc. (The University Statutes). The appointments were against the clear vacant posts and taking note of constitutional reservation at the time of appointments as at the relevant time, NET/SET qualified candidates were not available sufficiently. It is stated that in some cases, in the advertisement, there was no reference of NET/SET qualification. All these Petitioners have been continuing in service without any break and receiving the pay scale and annual increments regularly. They have been claiming permanency after completion of probation. The State ultimately has granted the same by impugned Circular/Resolution dated 27 June 2013.

NET/SET qualification compulsory ?

31 We are not inclined to accept the contention that there was no provision either in the Statute and/or the Act making NET/SET qualification compulsory. The fact that more than two lac persons/teachers/professions/candidates have already acquired NET/SET even some of them during the period 19.09.1991 to 3.4.2000, itself sufficient to deny the contention of such Petitioners. The sending of proposal for exemption/relaxation for the post from NET/SET qualification by the Universities/Colleges, after

going through the respective proposals, in most of the matters, show that it was referring to the initial appointments so made at the relevant time for want of qualified NET/SET candidates. **The Regulations so referred above, including of the year 1991, itself provide that the prior approval for the relaxation would be obtained by the Universities/Colleges before appointment.** It was also with intention for providing them time for acquiring NET/SET qualification. After reading the Regulations and the State Circular so recorded above and after hearing both the parties, we find no substance in the Petitioner’s submission that this relaxation for the post to the Universities so granted was for all the purposes as claimed, even for the CAS from the date of initial appointments and/or from the date of exemption granted by the Universities.

Post-Proposal by the Universities for “relaxation” or “exemption”

32 The proposal submitted on behalf of the Petitioners for relaxation for the respective post of Universities itself contemplates the existence of binding condition of acquiring NET/SET qualification as announced and mandated by the UGC from time to time.

33 The Supreme Court in University of Delhi (supra) dealt with the UGC Regulations notified on 19.09.1991 for appointment of teaching staff of University and Institutions affiliated to it, whereby it was necessary to appoint/select lecturers in accordance with the said Regulations. However, referring to first proviso to clause 2 of the Regulations, it is observed that the clause permits relaxation in the prescribed qualification by a University, with the prior approval of the UGC. **This Regulation is made under the provisions of Section 26(1) (e) which defines the qualification that are “ordinarily” and not “invariably” required of a lecturer. These provisions cannot be read in isolation.** The consequences of failure of University to comply with the recommendations made, are also dealt with by referring to Section 14 of the UGC Act. It is also noted that the selection process so followed before selecting the lecturers by written tests and interviews or either the University’s autonomy, was not entrenched upon by the Regulation. The power of UGC of relaxing the requirement of clearing the NET/SET, therefore, has been recognized by the Supreme Court in University of Delhi (supra). The Supreme Court has ultimately concluded as under :

“24 As analysed above, therefore, the Delhi University may appoint as a lecturer in itself and its affiliated colleges one who has cleared the test prescribed by the said Regulations; or it may seek prior approval for the relaxation of this requirement in a specific case; or it may appoint as

It is relevant to note that all the parties including the teachers/candidates at the relevant time, during these periods, were fully aware of the State Government Resolutions dated 12.12.1995, 12.05.1998, 26.08.1999, 18.10.2001, whereby protective reliefs and the monetary benefits have been extended to non-NET/SET teachers.

(See Para 37 of the Judgment)

Therefore, the submission that UGC Regulations do not become automatically binding on the State Government or the Universities is also incorrect.

(See Para 39 of the Judgment)

lecturer one who does not meet this requirement without having first obtained the UGC's approval, in which event it would, if it failed to show cause for its failure to abide by the said Regulations to the satisfaction of the UGC, forfeit its grant from the UGC. If, however, it did show cause to the satisfaction of the UGC, it not only would not forfeit its grant but the appointment made without obtaining the UGC's prior approval would stand regularised."

34 In present matters also, we are inclined to observe that the provision was specifically made of relaxation. The UGC, at relevant time, was empowered to grant relaxation after considering the various factors and subject to their satisfaction, as appointments were required to be made by the University/colleges of such lecturers, without required qualification, but it was subject to prior approval. **Once the approval is granted, the appointments made even without obtaining the UGC's prior approval, would stand regularised but for limited purpose.**

Only "regularisation" or "continuity of service to NonNET/SET and related State pay scale and increments

35 We have also noted that the proposals submitted by Universities/Petitioners though scrutinized by the expert committee of UGC and thereafter placed before the Exemption Committee and vide order dated 23 March 2010, communicated its decision granting the exemption to some Petitioners from passing the NET/SET qualification is required to be read and to mean for the basic appointments so made at the relevant time during this period, and not for benefits of CAS from the date of initial appointments so claimed and/or from the date of exemption granted by the UGC. The relaxation so granted after so many years, after repeated representations made by the concerned parties, in no way, read to mean that such non-NET/SET persons be treated equally with the candidates who possess the NET/SET qualification.

36 The regularisation of service from the date of initial appointment, in our view, also cannot be disturbed as they have admittedly have been working during the situation where NET/SET candidates were not available. The State is required to strike the balance in the interest of all the concerned, being the paying authority of salary and all other related benefits to such lecturers/teachers. This is also in view of the State's obligations to provide and facilitate all kinds of education to all the concerned. The State's extension to grant them annual increments and benefits of Fifth and Sixth Pay Commission, in the background and the future related benefits, if occasion comes - we are not inclined to disturb the same. There is no question of granting benefit of seniority from the date of their initial appointments and/or from the date of their relaxation or confirmation, as prayed. The protection of service of Petitioners by these exemptions/relaxations cannot be equated with the persons who got other benefits including CAS as they have passed the NET/SET examination. The persons appointed with due qualification need to be respected in every aspect. The reliance so

placed on *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and ors*, ¹³(13)(1990) 2 SCC 715) is also of no assistance as the basic requisite NET/SET qualification throughout was the essential condition of such service, which admittedly was not acquired by such Petitioners. There is no legal right/entitlement so claimed by the Petitioners for want of qualification itself.

Role of UGC to grant approval to exemption or relaxation

37 It is relevant to note that all the parties including the teachers/candidates at the relevant time, during these periods, were fully aware of the State Government Resolutions dated 12.12.1995, 12.05.1998, 26.08.1999, 18.10.2001, whereby protective reliefs and the monetary benefits have been extended to non-NET/SET teachers. The condition of acquisition of NET/SET was never specifically waived by the State for the reliefs so claimed in the Petitions. Every such teachers have accepted the benefits. **There is no issue that non-NET/SET teachers, inspite of no requisite qualification of NET/SET have been getting pay Commission's scale, HRA, Leave Travel Allowance, DA, TA and all other related benefits, including increments and pension and gratuity.**

38 Communication dated 26.08.2011 between the State and the Petitioner after the Meeting held with the Chief Minister on 2.5.2012 would not prevail over the position of law and the Circulars/Resolutions/Regulations, so issued from time to time. The role of UGC is therefore restricted by declaring required qualification for the requisite posts. This power, in no way, can be extended to compel the State to pay the salary and/or requisite benefits. The State's power, therefore, to grant the salary and related benefits based upon their constitutional obligation and the need of the time, including their power to grant the benefits to the NET/SET acquired candidates and/or deny the benefits who have not acquired such qualification in no way can be stated to be unjust or contrary to any provisions. Such power is not arbitrary and/or discriminatory.

State Adoption of Regulations

39 The submission, based upon the case of Kalyani (supra) referring to paragraphs 56 to 62 that the UGC's Regulations are not applicable unless they are adopted, in the facts and circumstances, are liable to be rejected as the Petitioners/Respondents have been acting upon the same since long and proceeded accordingly since so many years. **Therefore, the submission that UGC Regulations do not become automatically binding on the State Government or the Universities is also incorrect.** The mandate of requisite qualification and insistence for the appointments based upon the same itself shows that such qualification so announced from time to time and as insisted upon has a binding force for all the

This decision of 11.03.2015 based upon the events and law of the year 2011-2012. We are not concerned with the appointments made after 3/4/2000.

(See Para 40 of the Judgment)

The submission of the learned counsel appearing for the Petitioners who have not acquired the NET/SET qualification that the UGC Regulations dated 19.9.1991 are binding only if adopted by the State and/or Universities and/or not automatically binding is incorrect and unacceptable.

(See Para 42 of the Judgment)

concerned.

40 Both the parties have read and relied also upon Kalyani (supra), wherein the Apex Court has dealt with the provisions of Articles 246, 254 of Constitution of India, Schedule VII List I, Entry 66 and List III Entry 25, read with the provisions of UGC Act and the UGC Regulations 2010 and University framed Statutes, Ordinances, Rules, Regulations and Norms and held as under :

“27 From the aforesaid provisions, we find that the University Grants Commission has been established for the determination of standard of Universities, promotion and co-ordination of University education, for the determination and maintenance of standards of teaching, examination and research in Universities, for defining the qualifications regarding the teaching staff of the University, maintenance of standards etc. For the purpose of performing its functions under the UGC Act (see Section 12) like defining the qualifications and standard that should ordinarily be required of any person to be appointed in the Universities [see Section 26(1)(e)(g)] UGC is empowered to frame regulations. It is only when both the Houses of the Parliament approve the regulation, the same can be given effect. Thus, we hold that the U.G.C. Regulations though a subordinate legislation has binding effect on the Universities to which it applies; and consequence of failure of the University to comply with the recommendations of the Commission, the UGC may withhold the grants to the university made out of the Fund of the Commission. (See Section 14)

62 In view of the discussion as made above, we hold:

62.1 To the extent the State Legislation is in conflict with Central Legislation including sub-ordinate legislation made by the Central Legislation under Entry 25 of the Concurrent List shall be repugnant to the Central Legislation and would be inoperative.

62.2 The UGC Regulations being passed by both the Houses of Parliament, though a sub-ordinate legislation has binding effect on the Universities to which it applies.

62.3 UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central Universities and Colleges thereunder and the Institutions deemed to be Universities whose maintenance expenditure is met by the UGC.

62.4 UGC Regulations, 2010 is directory for the Universities, Colleges and other higher educational institutions under the purview of the State Legislation as the matter has been left to the State Government to adopt and implement the Scheme. Thus, UGC Regulations, 2010 is partly mandatory and is partly directory.

62.5 UGC Regulations, 2010 having not adopted by the State Tamil Nadu, the question of conflict between State Legislation and Statutes framed under Central Legislation does not arise. Once it is adopted by the State Government, the State Legislation to be amended appropriately. In such case also there shall be no conflict between the State Legislation and the Central Legislation.”

This decision of 11.03.2015 based upon the events and law of the year 2011-2012. We are not concerned with the appointments made after 3/4/2000. This judgment is also after all the earlier High Court judgments referred and cited by the parties.

41 In these present matters, the State by the impugned Circular, itself has endorsed the adoption of Regulations in 1992 and therefore, granted benefits accordingly, subject to conditions so mentioned. All the parties have been acting upon the same since 1991/1992 to 2000, now cannot be permitted to challenge the same. The submission of non-NET/SET Petitioners are self contradictory. They have been enjoying all the State benefits so declared from time to time, now claiming equality with the candidates who have possessed the NET/SET qualification. They are bound by those Policies and the conditions.

42 The submission of the learned counsel appearing for the Petitioners who have not acquired the NET/SET qualification that the UGC Regulations dated 19.9.1991 are binding only if adopted by the State and/or Universities and/or not automatically binding is incorrect and unacceptable. There is no justification coming on record and/or placed on record why others have completed and acquired NET/SET qualification even during this period. The adoption arguments by the State is after thought and is contrary to the record and the conduct of the Petitioners.

43 We have also noted that there is no specific provision under the UGC Act and/or in the Maharashtra Universities Act which requires that UGC Regulations are required to be adopted by the State Government and/or by University. Neither it is supported by any judgments. In some cases, Pune University, on 28.08.1986 have adopted the UGC Regulations and so also by the State Government Resolution dated 27.02.1989.

44 Reliance is also placed in T. P. George v. State of Kerala (supra) to support their contentions that UGC Regulations do not bind automatically, unless it is specifically adopted by a Statute/University. The adoption of Universities in 2000, even if any, would not affect the rights of such appointee, without NET/SET qualification during the period 1991 to 2000. This judgment is of no assistance to the non-NET/SET Petitioners, specifically in view of the recent Supreme Court judgments in “Suseela”, “Kalyani” and the order in “Asha Bidkar” (supra), and the provisions of mandate so reinforced by giving importance to the qualification prescribed by the UGC in the interest of excellence of Education. There was no question to keep the relaxation issues pending for so many years by the UGC, though the appointments were made without any prior

In these present matters, the State by the impugned Circular, itself has endorsed the adoption of Regulations in 1992 and therefore, granted benefits accordingly, subject to conditions so mentioned.

(See Para 41 of the Judgment)

There was no question to keep the relaxation issues pending for so many years by the UGC, though the appointments were made without any prior relaxation/ approval of requisite qualifications for such period.

(See Para 44 of the Judgment)

relaxation/approval of requisite qualifications for such period.

Post or prior “relaxation” by UGC

45 After going through the documents so placed on record, including the basic qualification and regulations, we have noted that the word “prior relaxation” was used for the initial appointment on the respective post of lecturer/ professor. **There is nothing mentioned and/or pointed out that the stated relaxation was granted prior to or on the date of their appointments.** On the contrary, **the documents and the communication of UGC shows that the relaxation to the posts were granted, after 8 to 15 years from the date of respective dates of appointments so mentioned in the communication by the UGC.**

UGC cut off date 3.4.2000 to grant of relaxation

46 We are not inclined to accept the case that the UGC’s cut off date i.e. 3-4-2000 was the last date for granting relaxation as that was the date from which the UGC’s minimum qualification came into effect. We are not inclined to accept the case that NET/SET qualification became mandatory only from 4.4.2000. We are not inclined to accept that the qualification criteria was never a criteria for CAS. It means the Petitioners appointments were treated ad-hoc, by the State, for the purpose of CAS. The late relaxation, in the circumstances, in view of mandate so declared, even if any, cannot be sufficient to treat them equally with candidates who have acquired NET/SET in time.

University Statute cannot be read in isolation

47 The provisions of earlier University Acts, in no way, assist the Petitioners to claim these benefits, in view of clear declaration from time to time by the State Circulars, (State affidavit) and UGC Regulations 1991 (UGC Affidavit). All the concerned were aware of the requirement of NET/SET/TEST qualifications. **Such eligibility/mandatory tests, which affects the selection and appointments, cannot be overlooked merely because in in 11/7/2009 (UGC) Notification specifically made NET/SET eligibility criteria as mandatory. This in no way can be read to mean it was earlier recommendatory, and not binding.**

48 We are not willing to accept the submissions so made by the learned counsel appearing for the Petitioners that 1991 Regulations of UGC are not mandatory referring to cases of *Raj Singh, Beena Inamdar and Jagdish Prasad* (supra). The effect of Regulation of UGC and its requirement, considering the aims and objects of UGC Act and Regulations so framed cannot be overlooked as the requisite qualification is for the excellence of education.

49 The provisions of the University Statutes cannot be read in isolation without reading the qualification so prescribed by the UGC which binds all the concerned, including the University, College and Teachers. The University, the State Government, therefore, are under obligation to follow and take note of qualifications so declared for appointments and for grant of benefits so announced. The judgment in *Khandesh* (supra) is of no assistance. The judgment of Supreme Court in *Khandesh* (supra) dealt with the aspect of Earned Leave and encashment of unutilised Earned Leave on the retirement of teachers/lecturers who were working in aided private college, therefore, held not to be the Government servants. This judgment is also of no assistance to the Petitioners.

Union of India’s stand - UGC has no power to grant exemption

50 The learned senior counsel appearing for the Union of India referring to the provisions of UGC Act and the affidavit so filed, for the first time in this Petition, submitted that the UGC has no power to grant any exemption for want of specific exemption provisions under the UGC Act. The statement is made that such arguments are not made even before the Supreme Court and/or in pending matters. This Court has, as recorded, in many matters earlier, directed UGC to consider/decide the proposal of granting exemption or relaxation. The UGC, as recorded, apart from other and/or even for want of provision, as contended, but pursuant to orders passed by this Court, have implemented the orders and granted the same. The learned counsel for the UGC stated that the UGC nowhere received any such adverse communication earlier at any point of time, except the affidavit in question, for the first time in this Court. We have noted that the UGC after granting the relaxation in the background, in the year 2011, has forwarded the communication to the Union of India for appropriate approval. Admittedly, there was no refusal or return communication received at the relevant time. After reading the provisions and the regulations so referred, even assuming for want of specific provisions in law about the power of UGC to grant “exemption”, the power of “relaxation” in qualification, including of NET/SET for the appointment, is clearly provided in UGC Regulations since 1991 itself. Mere use of the word “exemption” that itself cannot be read to mean that the UGC has no power of “relaxation” in qualification. The Rules/Regulations specifically prescribe such power.

51 We are not inclined to accept the submission of Union of India/Central Government, to extent that **all the exemptions granted by UGC are without jurisdiction.** The learned counsel appearing for the UGC has read and referred various regulations and Circulars/ Resolutions and the communication whereby they have admittedly proceeded and granted relaxation/exemption.

Merely because the counting of past service is necessary as per UGC Regulations, the State policy to regularise such services from the date of resolution, cannot be used against the State for CAS claim.

(See Para 69 of the Judgment)

Appointed as Principal of Colleges and got all the benefits that itself cannot be the reason to extend the benefit similar to the NET/SET qualified teachers.

(See Para 73 of the Judgment)

52 The power to relax, in our view, was for the basic appointment or for the post and not for any other State benefits. The challenge of the regulations not placing before the House of Parliament is also unacceptable, at this stage of proceedings.

53 The non-NET/SET candidates cannot compare themselves with the persons who acquired Ph.D and M.Phil upto a particular date. The relaxation so granted and as upheld in *University Grants Commission v. Sadhna Chaudhari*,¹⁴ (1996) 10 SCC 536 cannot be the reason and is of no assistance to grant the relief so prayed as facts and circumstances are different.

54 The Supreme Court judgment dated 16.03.2015 in P. Suseela (supra), is based upon the events between the period 2011 to 2015 and the related UGC Rules/Regulations. This judgment is arising out of a large number of Appeals of four High Courts, including of Delhi High Court, dated 6 December 2010, whereby, the constitutional validity of the UGC Regulations 2009 under which NET/SET held to be the minimum eligibility condition for recruitment and appointments of lecturers/teachers in University/Colleges/Institutions. The law so declared re-iterating the mandate of provisions of UGC Act and the Regulations made thereunder, including the interpretations of Sections 20 and 26(1)(e) are relevant considering the issues so raised by the Petitioners.

55 The Apex Court in P. Suseela (supra), after considering the rival contentions, decided the the issues about “the legitimate expectation” and “vested rights if not eligible” in the matter of appointments so also the importance of the directions issued under Section 20 of the UGC Act and observed as under :-

“12These directions are not only made in exercise of powers under Section 20 of the Act but are made to provide for coordination and determination of standards which lies at the very core of the UGC Act. It is clear, therefore, that any regulation made under Section 26 must conform to directions issued by the Central Government under Section 20 of the Act.

13It is clear, therefore, that Section 26(2) would not stand in the way of the directions issued in the present case by the Central Government to the Commission.

15 Similar is the case on facts here. A vested right would arise only if any of the appellants before us had actually been appointed to the post of Lecturer/Assistant Professors. Till that date, there is no vested right in any of the appellants. At the highest, the appellants could only contend that they have a right to be considered for the post of Lecturer/Assistant Professor. This right is always subject to minimum eligibility conditions, and till such time as the appellants are appointed, different conditions may be laid down at different times. Merely because an additional eligibility condition in the form of a NET test is laid down, it does not mean that any vested right of the appellants is affected, nor does it mean that the regulation laying down such minimum eligibility condition would be retrospective in operation. Such condition would only be prospective as it would apply only at the stage of appointment. It is clear, therefore, that the contentions of the private appellants before us must fail.

17 The arguments based on Article 14 equally have to be rejected. It is clear that the object of the directions of the Central Government read with the UGC regulations of 2009/2010 are to maintain excellence in standards of higher education. Keeping this object in mind, a minimum eligibility condition of passing the national eligibility test is laid down. True, there may have been exemptions laid down by the UGC in the past, but the Central Government now as a matter of policy feels that any exemption would compromise the excellence of teaching standards in Universities/Colleges/Institutions governed by the UGC. Obviously, there is nothing arbitrary or discriminatory in this – in fact it is a core function of the UGC to see that such standards do not get diluted.

22 We have already pointed out how the directions of the Central Government under Section 20 of the UGC Act pertain to questions of policy relating to national purpose. We have also pointed out that the regulation making power is subservient to directions issued under Section 20 of the Act. The fact that the UGC is an expert body does not take the matter any further. The UGC Act contemplates that such expert body will have to act in accordance with directions issued by the Central Government.”

56 The Supreme Court in *Suseela's case (supra)* has declared that these Central Government directions are prospective and would apply to the appointments made after 2009 regulations. Everybody needs to follow these directions issued under Section 20 of UGC Act. However, in the present facts and circumstances, as we are concerned with the appointments so made of teachers during the year 1991 to 2000 and in view of the order passed by the Division Bench of this Court in many matters including *Mohan Kulte (supra)* the power of relaxation of UGC of the persons appointed between 1991 and 2000 would not be affected by this direction. The High Court judgments have attained the finality.

High Court's orders to consider proposal for exemptions/relaxations.

57 The learned counsel appearing for the Petitioners in support of their submissions have also read and referred judgment of this Court apart from the judgment of Supreme Court so referred above, including judgment dated 20.02.2002 in *Vishwaprakash (supra)* whereby directions were issued for sending the cases of Petitioners to UGC from colleges through the concerned Universities based on the provisions of 19.09.1991 and 4.4.2000 Regulations for claiming relaxations/exemptions. In another matter, by order dated 18.04.2002, further time was granted to the college/University and UGC to complete the process of exemption. This order, as stated earlier, remained intact as there was no further challenge raised to the same. On the contrary, the UGC, as recorded earlier, has already, though late, acted upon the same.

The relaxation, if any, that itself no reason to claim equal benefits.

58 The relaxation, even if, granted pursuant to the orders so referred above and/or otherwise that itself, in

We are not inclined to accept the submission of Union of India/Central Government, to extent that all the exemptions granted by UGC are without jurisdiction.

(See Para 51 of the Judgment)

A Division Bench judgment dated 20.04.2011 in Writ Petition No.4909 of 2010- Tikaram Dewaji Kose and ors v. State of Maharashtra and ors., (Nagpur Bench) directed the UGC to communicate to the State Government the date when such relaxation/exemption become effective. Accordingly it was provided.

(See Para 62 of the Judgment)

our view, cannot be the foundation and/or reason to act against the said policy decision of State Government not to grant the said CAS benefits to such nonNET/SET teachers appointed between 19.09.1991 and 3.4.2000.

59 The order passed by the Division Bench dated 20.04.2011 in Writ Petition No. 4908 of 2010 (Smt.Meenakshi Ajay Jumle & Anr. Vs. State of Maharashtra & Ors.) was on a foundation of granting them CAS benefits in senior scale and selection grade as NET/SET exemptions were granted by UGC/University and by counting their past service from the first date of regular appointment. The direction was issued to UGC to communicate to the State the date on which the exemption became effective as per Notification dated 5.11.2008. The State Government, however, considering the totality of the matter has now taken the policy decision to grant benefit from the date of Notification which cannot be faulted. This is also for the reason that non-NET/SET teachers/lecturers are different than the teachers who possess the NET/SET qualification. They are not equal as recorded above. We are not inclined to issue direction to cover all the teachers appointed during the period from 19.09.1991 to 3.4.2000 whose representations for approval were sent to the UGC for such benefits. The other judgments so cited by the learned counsel appearing for the Petitioners are also of no assistance as those facts and circumstances are different.

60 The reliance on judgment dated 20.10.2010 (Aurangabad Bench) in Writ Petition No.357 of 2010, *Atul Suresh Patil & Ors. Vs. State of Maharashtra & Ors.*, was in the background of challenge to the UGC Notification dated 11.07.2009 and as stated to be recorded to act prospectively, so far as the necessity to have NET/SET qualification in the cases of M. Phil and Ph. D degree holders. **Therefore, it was observed that for those candidates qualification of NET/SET was not compulsory. This judgment, therefore, is also of no assistance.**

61 In Dr.Mahesh Kulthe, the Division Bench based upon Asha Bidkar vs. State of Maharashtra¹⁵ (15 2014 (1) All MR 116), including the other judgments so referred, has quashed and set aside the communication referring to the pay fixation of the lecturers taking into account the dates of their appointments and gave them benefit of CAS. The fact that the Supreme Court has stayed the judgment

(Asha Bidkar) and directed to decide the issue afresh therefore, also the judgment of Dr.Mahesh Kulthe (supra), in our view, is of no assistance except the fact that the UGC has acted upon the same, as even accepted by the counsel for the UGC. We are not inclined to accept the case that the services of such teachers should be counted from the date of their regular appointment.

62 A Division Bench judgment dated 20.04.2011 in Writ Petition No.4909 of 2010- Tikaram Dewaji Kose and ors v. State of Maharashtra and ors., (Nagpur Bench) directed the UGC to communicate to the State Government the date when such relaxation/exemption become effective. Accordingly it was provided.

63 All the appointments made during the period 1991 to 2000 have been protected by the State. Therefore, the decision in Sudhir Sharadrao Hunge v. State of Maharashtra, ¹⁶ (16 2010 (4) Mh. L. J. 572) and/or judgment in Atul Suresh Patil v. The State of Maharashtra¹⁷ (¹⁷ Judgment dt. 20 October 2010 in WP/357/2010 Aurangabad Bench) will not carry the Petitioners case further to claim CAS benefits and/or to declare Clauses 15/16 of impugned State Resolution bad in law.

64 The State's earlier affidavit, where willingness was expressed to provide CAS benefits, after stated relaxation by the UGC, even if any, in view of the policy decision so taken,being empowered to do so and now issued the impugned Resolution/circular by giving restricted benefits, subject to conditions, in our view, is just and proper.

65 A Division Bench of this Court in *Suresh Patilkhede (supra)* on 11 May 2012, in a Public Interest Litigation, while dealing with the UGC Act, Sections 12(d), 12(j) and 26(1) and Maharashtra Universities Act, 1994 and UGC (Minimum Qualifications for Appointment of Teachers and Other Academic Staff in University and Colleges and Measures for Maintenance of Standards in Education) Regulations 2010, held that Regulation 7.3.0, is recommendatory in nature. We are not concerned with the said Regulation. However, considering the recent Supreme Court judgments so referred above in *P. Suseela, Kalyani Mathivanan and the order in State of Maharashtra v. Asha Bidkar (supra)*, this judgment is of no assistance to the Petitioners to support their case.

The State's earlier affidavit, where willingness was expressed to provide CAS benefits, after stated relaxation by the UGC, even if any, in view of the policy decision so taken,being empowered to do so and now issued the impugned Resolution/circular by giving restricted benefits, subject to conditions, in our view, is just and proper.

(See Para 64 of the Judgment)

There is nothing mentioned and/or pointed out that the stated relaxation was granted prior to or on the date of their appointments. (See Para 45 of the Judgment)

66 In *Baburao (supra)*, a Division Bench of this Court, dealt with the right of teacher which flow from the Statute framed by the University including the issue of age of superannuations. This judgment on facts is distinguishable. We are not dealing with the issue of superannuation in the present matters.

UGC power of relaxation or exemption

67 The basic events as stated by the learned counsel appearing for UGC are as under, which they have filed along with their submissions and as per the affidavit filed in the present Petition and also before the Supreme Court of India in support of their contention. The stand taken accordingly, while granting the stated relaxation for the post at the relevant time :

(Sr.No.) Dates : Events

(1) **12.11.08** : Direction under Sec.20 of UGC Act, 1956 issued by Ministry of Human Resources Development, Govt. of India to UGC (i) to frame appropriate Regulations within a period of 30 days from the date of issue of this order prescribing that qualifying in NET/SLET shall generally be compulsory ... & (ii) that a Degree of PhD Awarded by the University shall be in compliance with the procedure prescribed under the UGC Regulation.

(2) **11/7/2009** : UGC issued Regulations in pursuance of the above mentioned Direction issued by Government of India(GOI for short); providing thereby thus (i) NET/SLET shall remain minimum condition for recruitment and appointment of Lecturer in Universities/Colleges/Institutions; (ii) Proviso that Candidate for being Awarded PhD Degree will have to ensure compliance with "UGC (minimum Higher Standards and procedure for Award of PhD Degree) Regulation 2009.

(3) **30.03.2010** : A further Directive under Sec 20 issued by MHRD Ministry Government of India under Sec 20 of UGC Act, 1956; listing therein 3 clauses thus; (i) UGC shall not take up specific cases for exemption from the application of 2009 NET/Regulation after the said Regulations have come into force..... for appointment as Lecturers in Universities/ Colleges/Institutions; (ii) that appropriate Amendment to the 2nd Proviso to Clause (2) of the UGC 2000 Regulation shall be made by UGC to give full effect to the policy direction of the Central Government dated 12.11.2008, within 30 days from the date of issue of present direction; (iii) that the decision taken in its 468th meeting held on 23.02.2010 vide Agenda Items 6.04 and 6.05 to grant Specific Exemptions from the applicability of NET shall not be implemented

(4) **18/9/2010** : Pursuant to the aforementioned Directive, UGC framed 2010 Regulations, incorporating the aforesaid stipulations.

(5) **12.08.2010 & 27.09.2010** : UGC passed 2 Resolutions at its 471st meeting held on 12.08.2010 and 472nd Meeting held on 27.09.2010 that the said Regulations

are prospective in nature; as more particularly set out in those Regulations.

(6) **03.11.2010** : Government of India issued a (Demi-official) D.O. Letter dated 03.11.2010 disagreeing with the aforesaid decision of UGC and whereby it was stated that a Candidate seeking appointment for the Post of Asst professor/Lecturer must fulfill the minimum Eligibility condition of having passed NET Test.

(7) **08.07.2011** : UGC held its 479th meeting whereat it took a decision to grant NET/SLET Exemption to the Teachers appointed on regular basis between September 19, 1991 and till 03.04.2000 in the State of Maharashtra; based on 1991 and 1998 UGC Regulations in view of various representations received from the Universities in Maharashtra as more particularly set-out in the said resolution. Incidentally, the said representations also made reference to certain Judicial Orders passed by this Hon'ble Court.

(8) **16.08.2011** : A communication sent by UGC to Government of Maharashtra, regarding the aforementioned UGC Resolution.

(9) **24th Aug, 2011** : UGC held its 480th meeting : wherein proceedings of the aforementioned 479th Meeting were confirmed; and wherein again the then Secretary, MHRD GOI, was present and at both the said UGC meetings; there was no observation made on behalf of MHRD, Govt of India on the exemption issue.

(10) **6th Sept 2011** : A communication sent by UGC about the aforementioned 479th Meeting to the Personal Secretary of the then Human Resources Minister, & Secretary of MHRD, Govt, of India . At the said 479th Meeting held on 8.7.2011, Ministry of HRD , Government of India (GOI), was represented by the then Secretary (Higher Education). No observation made at the said meetings on behalf of MHRD; GOI

(11) **18.6.12** : Letter sent by the Dy. Secretary MHRD, GOI, to the Secretary UGC enclosing herewith an application -----A reference received from Prof. Santosh Kumar M. Patil

(12) **27.12.2013** : A reply to the aforementioned MHRD, GOI letter dated 18/6/12 sent by UGC Secretary to Joint Secretary (Higher Education) Ministry of HRD, GOI.

(13) **17th Oct, 2013** : Judgment and order passed by Aurangabad Bench High Court in Writ Petition No. 10149 of 2010 wherein Union of India was also a party. The authorities to consider Petitioners cases for granting exemption.... Without being tramelled by direction dated 30/3/2010 issued by HRD Ministry (para 31 of the said Judgment – direction dated 30/3/2010 was issued u/s 20 of UGC Act, 1956. No review filed against the said order nor SLP filed.

The documents and the communication of UGC shows that the relaxation to the posts were granted, after 8 to 15 years from the date of respective dates of appointments so mentioned in the communication by the UGC.

(See Para 45 of the Judgment)

we are concerned with the appointments so made of teachers during the year 1991 to 2000 and in view of the order passed by the Division Bench of this Court in many matters including *Mohan Kulte (supra)* the power of relaxation of UGC of the persons appointed between 1991 and 2000 would not be affected by this direction. The High Court judgments have attained the finality.

(See Para 56 of the Judgment)

(14) 9th Oct, 2014 : MHRD Govt. of India letter for UGC referring to earlier D.O. letter dated 21/04/2014 in connection with the said Judgment of Aurangabad Bench in WP.No.10149/10 (Dr. Mahesh S/o P. Kulthe v/s. UOI, UGC & Ors and asking UGC to respond to contempt Petitions.

(15) 15th Aug, 2015 : A detailed order passed by UGC in compliance with the said Judgment and order in WP.No.10149 of 2010 passed by the Aurangabad Bench as above, mentioned in sr no13.

(16) 31st July, 2013 : 494th UGC, meeting was held whereat UGC commission approved and decided that all such cases where faculty appointment were made by the college prior to 2000 with prior approval of the affiliating University, may considered for similar exemption.

68 The undisputed events and the contentions revolving around those letters mentioned in above para, by the UGC, have crystalized the situation so far as grant of exemption/relaxation by the UGC for the teachers appointed between 1991 to 2000. We, for reasons so recorded above, therefore, accept the contentions of the UGC so far as actual grant of relaxation, from time to time.

69 The affidavit filed by UGC in various matters also accept that the direction of the Central Government do not apply to the appointments in question and the applications for approval made accordingly. **The submission, therefore, now raised by the learned counsel appearing for the Central Government/ Union of India about these regulations prescribing relaxation for the persons who are appointed during 1991 and 2000 is therefore unacceptable. The power to grant such relaxation for the post to the UGC to nonNET/SET teachers appointed during 1991 and 2000 for the purposes of regularising the appointments, therefore, need to be accepted.** The UGC resolution in the meeting dated 8.7.2011 to grant approval, in State of Maharashtra, where Universities have granted exemption from requirement of NET, based upon 1991 and 1998 is not against the Supreme Court's decisions. The Central Government and the State are not accepting the stated exemption effect as sought to be contended by the non-NET/SET Petitioners. Any decision even of UGC, if contrary to the clear provisions, it will not be given effect to, is the case of Union of India and as that of the State also. **Merely because the counting of**

past service is necessary as per UGC Regulations, the State policy to regularise such services from the date of resolution, cannot be used against the State for CAS claim.

70 We are inclined to accept the following contentions of the State (Respondents 1 and 2) filed through affidavit dated 1 October 2015 in Writ Petition No.2082 of 2013 which reads as under :

"29 I further say that under the provision of Section 8 of Maharashtra Universities Act, 1994, the University is not empowered to revise pay, allowance, other benefits etc to teachers, employees, grant any special pay, allowance or other extra remuneration or any benefits having financial implications on State Government. Thus, the university cannot take any decision related to matters which has financial implications, without prior permission of the State Government or unless and until State Government accepts it. I further say and submit that it is thus clear that the services of concerned teachers who did not fulfill qualification as per UGC Regulation, 1991 could not have been considered for any benefits, till the G.R.Dated 27.06.2013. I say that, from the date of 27.06.2013 State Government has accepted financial responsibility of the NonNET/SET teachers appointed during the period of 19.09.1991 to 03.04.2000. However, the impugned G.R has been issued sympathetically considering situation which has been arisen out of large scale irregular appointments, hence, the concerned teachers do not acquire any right of claiming the benefits from date of appointments or any earlier date than prescribed in the impugned G.R. Thus it is humbly submitted before the Hon'ble High Court that the submission of the petitioners regarding giving the benefits of the CAS from the date of their initial appointment without having NET/SET qualification may kindly be quashed and set aside as per the issue is not only related to the petitioners but is covers very large number of teachers and it will prejudicially affect the interest of Net/MPhil/Ph.D qualified teachers and accordingly will pollute whole state of Higher Education. I, therefore submit that in the facts and circumstances raised herein above, the said Writ Petition and other similar writ petitions be dismissed with costs."

71 Strong reliance was placed by the learned counsel appearing for the Petitioners who are holders of NET/SET qualification on the judgment of a Division Bench of this Court in *Beena Inamdar v. University of Pune (supra)*. While dealing with the provisions of Maharashtra Universities Act, 1994, Sections 5(9), 5(60), 14(8) and the UGC Act, Sections 12 (d), 14, 26(1)(e), it is noted that the qualification prescribed by the UGC, though not

It is declared that the teachers/professors/lecturers/candidates who have not acquired NET/SET/TEST qualification and who are appointed during 24.10.1992 to 3.4.2000 (except 19.9.1991 to 23.10.1992) (see Government Resolution dated 27.06.2013) are not entitled for CAS (Career Advancement Scheme) (See Para 91 of the Judgment)

The submission, therefore, now raised by the learned counsel appearing for the Central Government/Union of India about these regulations prescribing relaxation for the persons who are appointed during 1991 and 2000 is therefore unacceptable. The power to grant such relaxation for the post to the UGC to nonNET/SET teachers appointed during 1991 and 2000 for the purposes of regularising the appointments, therefore, need to be accepted.

(See Para 69 of the Judgment)

provided in the State University Act or the Statute, the University is not absolved from abiding by the qualifications prescribed by the UGC. This is in the background that all the Universities are affiliated to the UGC specifically for the grant and related benefits. Referring to various Supreme Court judgments, it is concluded that all the Universities or the Colleges affiliated to such Universities to such Universities are bound by UGC Regulations. The non-compliance, if any, can be excused by relaxation only by the UGC, if case is made out and not as of right. This reported case was also a case of appointments of non-NET/SET candidates, as the Principal of the College based upon advertisement dated 6 July 2006. The facts are distinguishable, but the law so laid down giving importance to the UGC declared prescribed qualification, cannot be overlooked. The judgment of Supreme Court in *University of Delhi v. Raj Singh (supra)* along with others was referred by the Division Bench and thereby dismissed the petition giving importance to the prescribed qualification for the related posts of Principal.

72 The State's conscious decision knowing fully the consequences thereto including the obligations of disbursement of salaries and all related benefits itself projected the important role in dealing with the employment and service matters of education institutions, covering by Universities, which are affiliated to the UGC.

Ph. D./M.Phil are exempted from NET/SET

73 Merely because some of the NET/SET candidates based upon then existing merit and/or otherwise after acquiring Ph.D/M.Phil have been **appointed as Principal of Colleges and got all the benefits that itself cannot be the reason to extend the benefit similar to the NET/SET qualified teachers.** We see there is nothing wrong when the State Government has taken a policy decision to grant the declared benefits to the non-NET/SET teachers. Merely because for some subjects, NET/SET examinations were not available, but the appointments were made, without NET/SET test, is a different issue. These are two different classes. The doctrine of equal pay and status for equal work cannot be extended as prayed, in the circumstances.

74 The regularisation of services of non-NET/SET candidates, because of State Resolution and/or relaxation so granted by the UGC that itself is not sufficient to treat

them equally with the candidates who have passed the NET/SET and acquired basic eligibility for the post. The Supreme Court Judgment in *Jagdish Kumar and ors v. State of H. P.*¹⁸ (18 (2005) 13 SCC 606) is on different facts and circumstances specifically in view of specific conditions so put in by the State and the UGC to get all the rights and the benefits from the date of appointments or from the date of acquiring qualification. These are not the cases of challenge to the seniority list to be prepared based upon the passed departmental examination.

Similar duties by Non-NET/SET or with NET/SET = equal pay scale & increment benefits.

75 The submission that non-NET/SET teachers have been performing all the duties that are performed by the NET/SET teachers, is of no assistance to grant the benefits so claimed as the class so created and recognized by the State, in no way can be stated to be discriminatory and/or treating equals unequally. On the contrary, the State, inspite of above basic qualification lacuna and or no requisite qualification and/or failure to acquire qualification inspite of opportunity granted, protected their services by earlier Resolutions and by the Resolution in question.

The role of State of Maharashtra and its financial burden

76 The financial burden on the State is relevant factor. All eligible candidates who have passed the NET/SET examination, the State is providing them all benefits as announced. In the present cases, in the circumstances so referred above, though they have not acquired the NET/SET, still considering the background and the reason so mentioned in Government Resolution dated 27 June 2013, the State has granted the benefits from the date of Resolution. The benefits so extended, though from the date which is also the issue, but considering the reason so recorded and in the interest of justice and to protect the interest of such teachers, who have been working since long, but not getting the CAS benefits for want of NET/SET qualification, cannot be stated, to be bad in law. The State's action is reasonable, fair, just and proper and within their power and authority. Union of India had released grants from 1991 to 1995 to such non-NET/SET lecturers.

77 It is relevant to note that the UGC, now has no

Union of India referring to the provisions of UGC Act and the affidavit so filed, for the first time in this Petition, submitted that the UGC has no power to grant any exemption for want of specific exemption provisions under the UGC Act.

(See Para 50 of the Judgment)

We are not inclined to accept the case that the UGC's cut off date i.e. 3-4-2000 was the last date for granting relaxation as that was the date from which the UGC's minimum qualification came into effect. (See Para 46 of the Judgment)

specific role to play with regard to the payment of salary and all other CAS benefits, as ultimately it is the respective States who are required to make the arrangement for such payment. Selection of candidates to whom such benefits should be granted or not, or from which date, in the present case, the persons who acquired the qualification and who have not acquired the qualification, in our view, is within the power and jurisdiction of the State. The action and the condition for such benefits, can not be stated to be discriminatory and/or violative of Article 14 of the Constitution of India so also the the State Resolution in question.

78 As recorded, even the Supreme Court in *Suseela* (supra) deprecated/prohibited UGC for any blanket NET/SET exemptions. We have also noted that Union of India/Central Government, at no point of time, accepted the proposals so forwarded and/or never granted approval to the action of relaxation/exemption so issued by the UGC. In some cases, the UGC, in the year 2010, even withdrew the relaxation granted earlier. The State Government's action of considering and of taking sympathetic view by way of concession, in the background of the litigation and the Circular issued by the Respondents and the interpretation given is within the State policy.

79 Respondent No.3/UGC, in Writ Petition No.10166 of 2013, dated 23.11.2015 has also clarified the position that even if exemptions have been granted, **Resolutions of 8.7.2011 itself was for the protection of services of the lecturers regularly appointed between 19.9.1991 to 3.4.2000. It is for the protection of services only. The aspects of regularising the services of such candidates/teachers/lecturers in the background so referred above, need no interference.**

80 Therefore, in this background, the restriction so put by the State Government of granting benefits including of protecting services from the date of resolution as a policy decision considering the State's obligation, we are not accepting the alternate submission of the Petitioners that they are entitled for the benefits if not from the date of appointments, but at least from the date of stated individual date of exemption granted by the UGC.

81 It is clear that CAS provides benefits for a teacher who has appointed on full time regular basis and renders continuous services will get time bound promotion, whereby he receives senior designation and increased pay scale. Therefore, a qualified person who is in continuous services is entitled for the CAS benefits as per the scheme. The requirement of NET/SET, therefore, cannot be overlooked and the appointments, therefore, even if made, who has not passed the NET/SET examination cannot be treated equally. However, the pay scale of such teacher (non-NET/SET teacher) is at par with that of NET/SET qualified teacher.

82 In view of above and in view of the judgment of Supreme Court in *State of Orissa v. Mamata Mohanty*,¹⁹ (19 2011 (3) SCC 436) in para 70 which is reproduced

hereinbelow, we are not accepting the case of rival Petitioners and we are accepting the stand and the submission so raised by the State and so also their Resolution, whereby the benefits such as CAS and other related benefits have been denied, but services have been protected.

"70 In the facts and circumstances of the case, we feel that terminating the services of those who had been appointed illegally and/or withdrawing the benefits of grant-in-aid scheme of those who had not completed the deficiency in eligibility/educational qualification or withdrawing the benefit thereof from those who had been granted from the date prior to completing the deficiency, may not be desirable as a long period has elapsed. So far as the grant of UGC pay scale is concerned, it cannot be granted prior to the date of acquisition of higher qualification. In view of the above, the impugned judgment/order cannot be sustained in the eyes of law."

State granting continuity of service to Non-NET/SET candidates/lecturers/professors

83 The grant of continuity of service and regularisation by the State though they have not acquired requisite qualification of NET/SET which is the recent development after the judgment so referred above and as the State has taken that decision and as it is in the interest of protecting the services of all concerned and as they have been in service for so many years, therefore, also we are not inclined to disturb the policy decision so taken by the State, with concurrence of the State General Administration and Law and Judiciary Departments. However, the regularisation of non-NET/SET teachers, ad-hoc teachers preferences from the date of Government Resolution, and other benefits so announced, is just, proper and within the frame work of law keeping in mind the mandate of Supreme Court Judgments and the provisions about basic qualification of NET/SET.

84 The Government (State Policy) (translation portion) (State affidavit) decision is as under :

"14 Taking into account the scenario set out in the Introduction, the Notification of the University Grants Commission dated 19.9.1991 was implemented in the State from 23.10.1992; hence provisions of the said G.R cannot be made applicable with retrospective effect from 19.9.1991. Ergo, the qualification contained in University Grants Commission Notification dated 19.9.1991 cannot be made applicable to teachers appointed prior to 23.10.1992."

15 For such among the non-NET/SET teachers appointed during the period 23.10.1992 to 3.4.2000 who have not acquired the educational qualification prescribed by the University Grants Commission (NET/SET, Ph.D., M.Phil), the Government is sanctioning regularization of their services for all purposes from the date of issuance of this Government Resolution, subject to the following conditions :

- a) Concerned teacher ought to have been appointed on Regular Basis.*
- b) Appointment of concerned teachers was made in the teaching post in accordance with the prescribed procedure*
- c) Appointment of concerned teacher fulfilling all other*

These different classes with and/or without NET/SET need to be treated differently, including for the grant of benefits of CAS and other related aspects. (See Para 24 of the Judgment)

prescribed qualifications and conditions except NET/SET was approved by the University.

d) The concerned teacher's proposal for approval from the University Grants Commission has been forwarded through the University.

16 The Joint Director of the concerned Region shall constitute a committee under their Chairmanship to examine on merits the cases under their jurisdiction for the period 23.10.1992 to 3.4.2000. This screening committee will submit a self-explanatory proposal to the Director of Education, Higher Education, Maharashtra State, Pune for approval at the level of the Directorate after examining whether or not the entire procedure between the advertisement for the post of the concerned teacher up to the issuance of appointment order, has been in accordance with rules, and close scrutiny of all matters such as the post being a vacant one, social reservation being followed; thereafter approval be given at Director's level.

17 Similarly such of the affected non-NET/SET teachers who have been appointed as Principal or equivalent post, by holding admissible past service rendered by them, will not be disturbed and also the increments and pay drawn as per existing provisions will not be disturbed. Separate government resolutions will be issued on both these subjects.

18 Since the services of these teachers are being regularized for all purposes from the date of issuance of this Government Resolution, the defined contribution pension scheme will be applicable to them."

85 Considering the above provisions, including the Government Resolutions/circulars, we are not inclined to accept the submissions of the Petitioners who have acquired the qualification of NET/SET that the UGC has no power to grant exemption in the matters of appointments upto 2000. **The challenge to letters 16.08.2011 and 26.08.2011 is also disposed off for above reasons. No case is made out of any contempt, as prayed.**

Earlier Supreme Court/High Court judgments not considered by High Court in Asha Bidkar

86 We have also noted that in the judgment of Asha Bidkar (supra), the judgment of Raj Singh (supra) was not considered and so also the judgment of Beena Inamdar (supra) and also Division Bench judgment dated 23.01.2006 in Writ Petition No.10216/2004-Savant Ramesh Dattu v. The State of Maharashtra, [Raj Singh (supra), Annamalai University v. Secretary to Government, Information and Tourism Department and ors - (2009) 4 SCC 590 and State of Orissa (supra). These judgments have dealt specifically with the UGC Act and 1991 UGC Regulations revolving around power to relax and the importance of essential qualifications and the standards of education in question. **The Universities never stated that Regulations are not binding.**

87 There is no question to refer the matter to the larger Bench, as, in view of order of Supreme Court (supra), including in State of Maharashtra v. Asha Bidkar (Supra) and Suseela (supra) and Kalyani (supra) and other Supreme Court judgments referred above and/or earlier orders of this Court, were not in the field when Asha Bidkar (High Court) (supra) and other similar matters were decided. The specific Central Government's reply, the UGC's reply and the State's reply filed before

मा. उच्च व सर्वोच्च न्यायालय व कायद्यांच्या कलमांचा अर्थ

मा. उच्च न्यायालय तसेच सर्वोच्च न्यायालय व कायद्यांच्या कलमांचा अर्थ यांबाबत एक मजेशीर आठवण नागपूर विद्यापीठाचे माजी कुलगुरू डॉ. वि. भि. उपाख्य भाऊसाहेब कोलते यांनी आपल्या "अजुनि चालतोची वाट" या आत्मचरित्रामध्ये सांगितली आहे. सन १९९४ मध्ये प्रकाशित झालेल्या या आत्मचरित्राच्या पृष्ठ ४५२ ते ४५७ वर नमूद असलेली ही आठवण सर्वांनी आवर्जून नजरेखालून घालावी अशी आहे. - संपादक

this Court recently, were not before the High Courts earlier. Therefore, considering the totality of matters, we have decided to deal with the issues afresh by giving the supporting reasons and keeping in mind that Appeals/SLPs are pending in Supreme Court.

88 In many writ petitions, there are interim orders passed based upon the interim orders passed by the Supreme Court and the earlier judgments/orders of this High Court. All the Writ Petitions, are dismissed by this common Judgment and so also the claims for want of NET/SET qualification, therefore, the interim orders of High Court, if any, in individual matters are also stand vacated. However, in view of the fact that the matters are pending in Supreme Court and as we have decided these matters based upon the orders passed by the Supreme Court, pending the Appeals and the Special Leave Petitions, we are inclined to observe that **this judgment shall not be given effect, so far as the order of vacating interim orders are concerned, till the Supreme Court passes an appropriate order.** The Respondents/parties, if required, to take any steps based upon this judgment, shall be after further order of the Supreme Court. In this view of the matter, we are also directing the Registry of this Court to forward the copy of this judgment to the Supreme Court in Civil Appeal No.10759/2013 – State of Maharashtra v. Asha Ramdas Bidkar along with connected matters, if any, at the earliest.

89 We have, in view of above and for the reasons so recorded, disposed of the present Petitions by this common judgment. It is made clear that this judgment will be applicable to all the similarly placed writ Petitioners also, who did not appear inspite of due notices of hearing.

90 We record our appreciation of the role of all senior Counsel and Advocates, who have rendered able assistance to the Court and placed on records common synopsis, submissions and written notes, along with common judgments compilation, after necessary research.

91 Therefore, the following order :

ORDER

(1) **It is declared that the teachers/professors/lecturers/candidates who have not acquired NET/SET/TEST qualification and who are appointed during 24.10.1992 to 3.4.2000 (except 19.9.1991 to 23.10.1992) (see Government Resolution dated 27.06.2013) are not entitled for CAS (Career Advancement Scheme) and other related benefits except the benefits including the pay scale and increments and other related benefits, as announced by the State, but on conditions so reproduced.**

(2) Upon acquiring NET/SET qualification, the teachers shall be entitled for the CAS and other related benefits in accordance with law from the date of acquisition of qualification of NET/SET as announced.

(3) The challenge to the validity of the impugned State Government Resolution dated 27 June 2013 is rejected. The action of the State of Maharashtra is upheld. The State/Universities/Colleges to take steps accordingly.

(4) In view of above, all the Writ Petitions, Contempt Petitions and Civil Applications are dismissed accordingly.

(5) Rule in all the above matters is discharged and/or disposed of accordingly.

(6) Ad/interim reliefs, if any, stand vacated, subject to para 88 hereof.

(7) There shall be no order as to costs.

(8) The Registry to forward copy of this judgment to Hon'ble Supreme Court, at the earliest, for record of Civil Appeal No.10759 of 2013 and other connected Appeals and Special Leave Petitions.

(A.A.SAYED, J.)

(ANOOP V.MOHTA, J.)

**IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH
CWP No. 2371 of 2010**

Harbans Lal...Petitioner **VERSUS** The State of Punjab and others...Respondents

Coram : Hon'ble Mr.Justice M.M.Kumar Hon'ble Ms.Justice Ritu Bahri

Date of decision : 31.8.2010

Present : Mr.Shalender Mohan, Advocate for the petitioner.
Mr.Suvir Sehgal, Additional Advocate General Punjab

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Ritu Bahri, J.

The petitioner has filed this petition under Articles 226/227 of the Constitution of India praying for issuance of a writ of mandamus for refixation of the date of his regular appointment **by counting daily wage service towards qualifying service for pension.** By doing so, the petitioner may be permitted to continue with the GPF Scheme and entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Government Service prior to 01.01.2004.

The petitioner was initially appointed as daily wages employee against the post of Pump Operator. His initial date of joining is 1.8.1988 and his services were regularized by the department on 28.3.2005. Prior to 01.01.2004, Punjab Government employees were covered under the General Provident Scheme (in short the 'GPF'). These employees were entitled to pensionary benefits in accordance with the Punjab Government Rules. On 2nd March, 2004, Govt. of Punjab amended the Punjab Civil Services Rules, Vol.1 Part 1 as follows :-

"(i) These rules may be called the Punjab Civil Services (First Amendment) Rules, 2004.

(ii) These shall be deemed to have come into force with effect from the 1st day of January, 2004.

2. In the Punjab Civil Services Rules, Volume-I, Part-I, in rule 1, 2, the following proviso shall be added at the end of sub rule (1);

Provided that the rules in Part I- Pensions in Volume II of these rules called the Punjab Civil Service Rules, Volume II shall not apply to the Government employees who are appointed to the posts. They shall be covered by new 'Defined Contributory Pension Scheme' to be notified to the State Government in due course."

In pursuance to these amendments, a new Re-structured Defined Contribution Pension Scheme has been introduced for the new entrants in the Punjab Government Service w.e.f. 01.01.2004 vide Punjab Government Department of Finances Instructions dated 12.12.2006 (Annexure P-1). The Punjab Government Vide letter dated 30.5.2008 (Annexure P-3), clarified regarding the implementation of the new Re-structured Defined Contribution Pension Scheme in respect of all its employees. The Government clarified that those daily wagers who were working under Punjab Government prior to 1.1.2004 but their services have been regularized after 1.1.2004, the new defined contributory pension scheme shall be applicable to them w.e.f. 1.1.2004.

The Chief Engineer, Punjab, Waster Supply and Sanitation Department, Patiala vide Annexure P-4 dated 25.6.2008 (Annexure P-4), issued instructions that deduction of GP Fund of the workers be stopped who were in Govt. service prior to 1.1.2004 but their services were regularized after 1.1.2004. This direction was to be implemented w.e.f. the month of June, 2008. **The petitioner was being forced to give an undertaking that he would opt for a new Re-structured Defined Contribution Pension Scheme.** The salary of the petitioner for the months of June and July, 2010 had been withheld for not giving an option for the said new scheme.

Written statement has been filed by the respondents. It has been mentioned in the short affidavit dated 29.3.2010 by Executive Engineer, Water Supply and Sanitation Division, Rajpura that salary up to the month of January, 2010 has been given after deducting the amount which was to be deposited with the treasury under the new Contributory Pension Scheme. This payment has been made as per Annexure R-1. The payment

of salary has been accepted by the petitioner vide receipt dated 23.02.2010 (Annexure R1/2). The respondents in their reply dated 07.08.2010, have relied upon the **Finance Department's instructions dated 19.5.2008 wherein it has been directed that the daily wagers, who were in Government service before 01.01.2004 and whose services have been regularized on or after 01.01.2004, a new "Defined Contributory Pension Scheme" shall be applicable to them.** This view of the Finance Department was reiterated vide their I.D. letter dated 22.1.2010. Reliance has been placed by the respondents on a Single Bench judgment in case of Ramesh Singh and others Vs. State of Punjab (CWP No.5092 of 2010 decided on 22.3.2010).

We have heard Mr.Shalender Mohan, Advocate appearing on behalf of the petitioner and Mr.Suvir Sehgal, Additional Advocate General Punjab.

Mr.Shalender Mohan, Advocate for the petitioner has vehemently argued that by virtue of the date of regularization of the petitioners i.e. 28.3.2005, they fall beyond 1.1.2004 which is cutoff date for the pension scheme so enforced. He argues that a bare perusal of the Rule 3.17-A of the Punjab Civil Services Rules Vol II prescribes that all services rendered on establishment interrupted or continuous shall count as qualifying service for pension. Rule 3.17-A of the Punjab Civil Services Rules is reproduced as under :-

"3.17-A (1) subject to all the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service:-

(i) Service rendered in work-charged establishment.

(ii) Service paid from contingencies:

Provided that after 1 st January, 1973 half of the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions:-

ITEM NO.6 COURT NO.2 SECTION IVB
SUPREME COURT OF INDIA

Record of Proceedings

Petition(s) for Special Leave to Appeal (Civil)...../
2011 CC 17901/2011

(From the judgement and order dated 31/08/2010 in CWP No.2371/2010 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

**STATE OF PUNJAB & ORS. Petitioner(s)
VERSUS**

HARBANS LAL Respondent(s)

(With appln(s) for c/delay in filing SLP, c/delay in refiling SLP and office report) **WITH S.L.P.(C)...CC NO.11570 of 2012** (With appln(s) for c/delay in filing SLP and office report)

Date : 30/07/2012

These Petitions were called on for hearing today.

CORAM

**HON'BLE MR. JUSTICE ALTAMAS KABIR HON'BLE
MR. JUSTICE J. CHELAMESWAR**

For Petitioner(s) : Mr. Rakesh Khanna, Adv.,* AAG Mr.Kuldip Singh, For Respondent(s) : AOR Mr. Jagjit Singh Chhabra

UPON hearing counsel the Court made the following
ORDER

Delay condoned.

Having heard learned counsel for the petitioner, we are not inclined to interfere with the judgment of the High Court. The special leave petitions are, accordingly, dismissed.

(Chetan Kumar) : (Juginder Kaur)

Court Master

Assistant Registrar

(a) Service paid from contingencies should have been in a job involving whole-time employment (and not part-time or for a portion of the day).

(b) Service paid from contingencies should have been in a type of work or job for which regular post could have been sanctioned e.g. malis, chowkidars, khalasis, etc.

(c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which through not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishment.

(d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.

(iii) Casual or daily rated service.

(iv) Suspension adjudged as a specific penalty.”

However, the above rule also provides that after 1.1.1973, half of the service paid from contingencies will also be allowed to count towards pension at the time of absorption in regular employment, but in any case casual or daily rated service, amongst others cannot be counted towards qualifying service for pension.

Mr. Shalender Mohan, Advocate for the petitioner has further argued that this issue has been considered in a number of judgments while interpreting Rule 3.17 A of the CSR Vol.2. Reference can be made to the judgments of this Court in case of Kashmir Chand Vs. Punjab State Electricity Board and others 2005(4) RSJ, 581 and Ram Dia and others Vs. Uttar Haryana Bijli Vitran Nigam Ltd. and another 2005(4) RSJ, 689, Hari Chand Vs. Bhakra Beas Management Board and others, 2005(2) RSJ, 373 and Balbir Singh Vs. State of Haryana and others 2004(4) RSJ, 71. Full Bench while dealing with a similar controversy in the case of Kesar Chand Vs. State of Punjab 1998 (2) PLR 223 has held as under:-

“Once the services of a work-charged employee have been regularized, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under Rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work-charged established before his regularization has not been taken into consideration for determining the qualifying service. The classification which is sought to be made among Government servants who are eligible for pension and those who started as work-charged employees and their services regularized subsequently, and the others is not based on any intelligible criteria

and, therefore, is not sustainable at law. After the services of a work charged employee have been regularized, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness and for these reasons the provisions of sub 5 CWP No.2371 of 2010 rule (ii) of Rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution.”

9. The aforesaid view was further reiterated by this Court in the cases of Joginder Singh, Hazura Singh and Nasib Singh (supra). A conjoint reading of the rules, quoted above and the observations of the Full Bench would reveal that it is by now well established that period of service rendered on daily wage/work charges prior to regularization of services is liable to be counted for the purposes of gratuity and pension.”

The consistent view of the judgment is that work charge service rendered before regularization, is liable to be counted as qualifying service for the purpose of pension. A Division Bench of this Court was seized of a case in which vires of Rule 3.17 A was challenged whereby half of the service paid out of contingency fund was to be counted as qualifying service. This rule has been struck down in a judgment of this Court in case of Joginder Singh v. State of Haryana, 1998 Vol.1, SCT 795. Once the entire service paid out of contingency, is liable to be counted for the purpose of qualifying service, a casual/daily rated service is also bound to be counted as qualifying service.

A Division Bench judgment in case of Smt. Ramesh Tuli Vs. State of Punjab and others, 2007(3) SCT, 791 examined the proposition as to what would be the qualifying service for pension as per Clause 6(6) of the 1992 Pension Scheme applicable to the Punjab Privately Management Recognized Schools Employees. In paragraph 6 of the judgment, the following observation has been made :-

“There is another aspect of the matter. Hon’ble the Supreme Court in the case of Vansant Gangaramsa Chandan v. State of Maharashtra, 1996(4) SCT 403: JT 1996 (Supp.) SC 544, has considered clause 23 of Chapter VI of a Pension Scheme of the Hyderabad Agricultural Committee, which is as under:-

“4. Clause 23 of Chapter VI in the scheme reads as under:

“Qualifying service of a Market Committee employee shall commence from the date he takes charge of the post to which he is first appointed or from the date the employer started deducting the P.F. contribution for the employee which ever later.”

It was held that the clauses of the Scheme have to be read by keeping in view the fact that pension is not a bounty of the State and it is earned by employees after rendering long service to fall back upon after their retirement. The same cannot be arbitrarily denied. The clause was subjected to the principle of ‘reading down’ a well known tool of interpretation to sustain the constitutionality of a statutory provision and accordingly it was read down to mean that the qualifying

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION REVIEW PETITION (C) NO.2038 OF 2013 In SPECIAL LEAVE PETITION (C) NO.23578 of 2012 STATE OF PUNJAB AND ORS. ..PETITIONER(S) VERSUS HARBANS LAL..RESPONDENT(S)

WITH SPECIAL LEAVE PETITION(C)No.36645 OF 2013 SPECIAL LEAVE PETITION(C)No.36646 OF 2013 SPECIAL LEAVE PETITION(C)No.336 OF 2014 Special Leave Petition (C)No.491 OF 2014 Special Leave Petition (C)No.3408 OF 2014 Special Leave Petition (C)No.3409 OF 2014 Special Leave Petition (C) No.3411 OF 2014 Special Leave Petition(C)No.3511 OF 2014 Special Leave Petition(C) No.3512 OF 2014 Special Leave Petition (C) No.3513 OF 2014 Special Leave Petition (C) No.4769 OF 2014 Special Leave Petition (C) No.4770 OF 2014 Special Leave Petition (C) No.4771 OF 2014 Special Leave Petition (C) No.5788 OF 2014 Special Leave Petition (C) No.8324 OF 2014 Special Leave Petition (C) No.8386 OF 2014 Special Leave Petition (C) No.8427 OF 2014 Special Leave Petition (C) No.8428 OF 2014 Special Leave Petition (C) No.9830 OF 2014 Special Leave Petition (C) No.9831 OF 2014 Special Leave Petition (C) No.9832 OF 2014 Special Leave Petition (C) No.9833 OF 2014 Special Leave Petition (C) No.9836 OF 2014 Special Leave Petition (C) No.9837 OF 2014 Special Leave Petition (C) No.9838 OF 2014 Special Leave Petition (C) No.9839 OF 2014 Special Leave Petition (C) No.9842 OF 2014 Special Leave Petition (C) No.11957 OF 2014 Special Leave Petition (C) No.13991 OF 2014 Special Leave Petition (C) No.13993 OF 2014 Special Leave Petition (C) No.13995 OF 2014 Special Leave Petition (C) No.13996 OF 2014 Special Leave Petition (C) No.13997 OF 2014 Special Leave Petition (C) No.14034 OF 2014 Special Leave Petition (C) No.14035 OF 2014 Special Leave Petition (C) No.16336 OF 2014 Special Leave Petition (C) No.17267 OF 2014 Special Leave Petition (C) No.18544 OF 2014 Special Leave Petition (C) No.9463 OF 2015 Special Leave Petition (C) No.16273 OF 2015 Special Leave Petition (C) No.21459 OF 2014 Special Leave Petition (C) No.27783 OF 2014 Special Leave Petition (C) No.9829 OF 2014 Special Leave Petition (C) No.20 OF 2015 Special Leave Petition (C) No.9243 OF 2015 Special Leave Petition (C) No.9168 OF 2015 Special Leave Petition (C) No.9242 OF 2015 Special Leave Petition (C) No.9462 OF 2015 Special Leave Petition (C) No.5270 OF 2015 Special Leave Petition (C) No.10405 OF 2015 Special Leave Petition (C) No.10880 OF 2015 Special Leave Petition (C) No.16272 OF 2015 Special Leave Petition (C) No.5962 OF 2015 Special Leave Petition (C) No. 23878 OF 2013 Special Leave

Petition (C) No.18099 OF 2015 Special Leave Petition (C) No.30112 OF 2015 Special Leave Petition (C)...CC No.17372 OF 2015

ORDER

REVIEW PETITION (C) NO.2038 of 2013 IN SPECIAL LEAVE PETITION (C) NO.23578 OF 2012

After hearing Shri V.K. Bali, learned senior counsel appearing for the petitioner(s), we are of the opinion that no case for review of order dated 30.07.2012 is made out.

The Review Petition is **DISMISSED** accordingly.

IN ALL THE SPECIAL LEAVE PETITIONS

Delay condoned, if any.

Heard Shri V.K. Bali and Shri P.P. Rao, learned senior counsel appearing for the petitioner(s).

We are of the opinion that the High Court has not committed any error which would call for our interference in exercise of our jurisdiction under Article 136 of the Constitution of India.

Accordingly, all the Special Leave Petitions are dismissed.

We direct the State of Punjab not to file any more special leave petitions against the similar issues as considered by the High Court in the impugned judgment(s) and Order(s).

(H.L. DATTU) C.J. (ARUN MISHRA) J.
NEW DELHI, NOVEMBER 04, 2015.

service could commence either from the date of taking charge of the post to which the employee was first appointed or from the date he started contributing to the Contributory Provident Fund whichever was earlier. The ratio of the above mentioned judgment would apply to the facts of the instant case, inasmuch as, the provision made in clause 6(6) of the 1992 Scheme has to be read down to mean that qualifying service would commence from the date of continuous appointment, which is 17.8.1965 in the present case, or from an earlier date if the employer had started contributing to the Contributory Provident Fund whichever is earlier. Therefore, the petitioner would be entitled to count her service with effect from the date of her appointment and approval i.e. 17.8.1965.”

The writ petition was allowed and the petitioners were held entitled to count their entire service w.e.f. 17.8.1965 to 30.9.2001 as qualifying service for the purposes of pension. However, the Contributory Provident Fund was required to be adjusted and deducted from the arrears of her pension. **We come to the conclusion that the petitioners’ initial date of appointment after regularization will be the date on which employee takes charge of the post.** Once the entire service of a daily wagger is to be counted as qualifying service then his date of appointment will relegate back to his initial date of appointment i.e. 1988 and he cannot be ousted from pension scheme by applying the date of regularization i.e. 28.3.2005 which is evidently after the new scheme or new restructured defined Contribution Pension Scheme came into force w.e.f. 1.1.2004.

Reliance has been placed by the respondents on a Single Bench judgment in case of Ramesh Singh and others Vs. State of Punjab (CWP No.5092 of 2010 decided on 22.3.2010). No benefit can be derived by the State on behalf of the judgment because Rule 3.17 of the Punjab Civil Service Rules Vol.II has not been discussed in the judgment. A request for extension of pension scheme has been repelled in the judgment on the ground that petitioners who were working in the Board on work charge basis were regularized by the Board. **Since, there was no scheme of pension in the Board, their claim of pension was rejected.** On the other hand, the employees who had come from the department of Health on deputation to the Board, and who on repatriation to the parent department were held entitled to a pension by virtue of pension scheme applicable in the parent department. **This judgment is not applicable on the facts in the present case.**

The next question for consideration is whether the clarification issued by the State of Punjab, vide instructions dated 30.5.2008 (Annexure P- 3) which runs against amendment made vide Annexure P-2. A similar issue has come up before the Hon’ble Division Bench of this Court in case of Harjinder Singh Vs. State of Punjab 2004(3) SCT 1. The Division Bench while interpreting the executive instructions vis-a-vis statutory rules namely, pension rules held as follow:-

“The above instructions issued by the Director Local Government purporting to interpret the Pension Rules are in fact contrary to the same. Besides, the said instructions cannot substitute or supplant the substantive provisions of the Pension Rules. However, as already notice above, there is nothing in the Pension rules which requires the ‘qualifying service’ to be computed from the date of the employee makes contribution towards C.P.Fund or from the date of his confirmation. Rather the position is that the ‘qualifying service’ is to be counted in terms of Rule 2(j) for the period of service rendered by the employee for which he is paid from the Municipal Funds which is the fund constituted under Section 51 of the Punjab Municipal Act. The emphasis on the words “appointed on regular basis” in the above memo on the basis of Rule 1 (3) (ii) of the Pension Rules is also misplaced. Rule 1(3)(ii) of the Pension Rules, in fact provides that the Pension Rules shall apply to the employees of the Committee who are

appointed on or after the first day of April, 1990 on whole time regular basis and opt for the said rules.....”.

The Bench, thereafter, concluded as follows:-

“17. Keeping in view the above facts and circumstances, it is evident that the stand of the respondents that the ‘qualifying service’ of the petitioner is to be counted from the date he started making contributions to the C.P. Fund is absolutely misconceived and baseless. The same is not supported by the Pension Rules applicable in respect of the petitioner. The petitioner, therefore, has been unnecessarily denied the benefit of pension, which as per the settled law, is not a bounty or a matter of grace nor an ex gratia payment payable at the sweet will and pleasure of the Municipal Council (respondent No.4). It is a payment for the past service rendered and is a social welfare measure to those who in the hey day of their life rendered service on an assurance that in their old age they would not be left in the lurch. The payment of pension is governed by the Pension Rules governing the grant of pension to the employees of the Municipal Council. It is the liability undertaken by the Municipal Council under the Pension Rules and whenever it becomes due and payable it is to be paid.”

This view has been followed by a Division Bench of this Court in case of Hans Raj Vs. State of Punjab and others, 2005(3) RSJ, 262. In this case the Division Bench examined the Punjab Municipal Employees Pension and General Provident Fund Rules, 1994. Vide instructions dated 8.1.1999, the State of Punjab had provided that since the Pension Rules has been made applicable in lieu of CPF, the period to be considered as qualifying for pension has to be restricted to the period for which the employee was contributing to his CPF. These instructions were held contrary to the Pension Rules by the Division Bench. The Division Bench held that the said instructions cannot substitute or supplant the substantive provisions of the Pension Rules. **The petitioner was held entitled to count his entire service from 1962 to 1998 as qualifying service for the purpose of pension.** The condition that qualifying service would commence from the date of contribution to the CPF, has been rejected by the Division Bench.

From the above discussion, we have come to the conclusion that the entire daily wage service of the petitioner from 1988 till the date of his regularization is to be counted as qualifying service for the purpose of pension. He will be deemed to be in govt. service prior to 1.1.2004. The new Re-structured Defined Contribution Pension Scheme (Annexure P-1) has been introduced for the new entrants in the Punjab Government Service w.e.f. 01.01.2004, will not be applicable to the petitioner. The amendment made vide Annexure P-2 amending the Punjab Civil Services Rules, cannot be further amended by issuing clarification/instructions dated 30.5.2008 (Annexure P-3). The petitioner will continue to be governed by the GPF Scheme and is held entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Govt. Services prior to 1.1.2004.

In view of the above, the writ petition is allowed. Accordingly respondents are directed to treat the whole period of work charge service as qualified service for pension because accordingly to clarification issued on 30.5.2008 (Annexure P-3), the new defined Contributory Pension Scheme would be applicable to all those employees who have been working prior to 1.1.2004 but have been regularized thereafter. Let his pension and arrears be calculated and paid to him expeditiously, preferably within a period of three months from the date of receipt of copy of this order.

No order as to costs.

(M.M.Kumar) Judge **31.08.2010** (Ritu Bahri) Judge

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