

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2015

RESERVED ON : 27.07.2015

CORAM

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.No.35127 to 35129 of 2014,
885 of 2015, 1177, 1525, 1526, 2118, 2586
and 7082 of 2015

and M.P.Nos.2, 2, 3 and 3 of 2014,
and 1 to 1 of 2015 in W.P.No.35127 to 35129 of 2014,

M.P.Nos.1 to 4 of 2015 in W.P.No.885 of 2015,

M.P.Nos.2 and 3 of 2015 in W.P.No.1177 of 2015,

M.P.Nos.2, 2, 3, 3, 4 and 4 of 2015
in W.P.No.1525 and 1526 of 2015,

M.P.Nos.2 to 4 of 2015 in W.P.No.2118 of 2015,

M.P.Nos.1 to 4 of 2015 in W.P.No.2586 of 2015
AND

M.P.Nos.1 to 3 of 2015 in W.P.No.7082 of 2015

D.Gayathri

... Petitioner in W.P.No.35127/2014

Dr.C.Vijayarani

... Petitioner in W.P.No.35128/2014

Dr.C.Madhesh

सत्यमेव जयते ... Petitioner in W.P.No.35129/2014

Dr.Tmt.S.Sathya

... Petitioner in W.P.No.885/2015

1. M.Sasikumar
2. V.Velvizhi
3. S.Anu
4. S.Malarvizhi
5. C.Gayathri
6. N.Priyadarshini

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7. G.Nanthakumar ... Petitioners in W.P.Nos.1177/2015
Dr.A.Venkatesan ... Petitioner in W.P.No.1525/2015
T.Lakshmi Narayanan ... Petitioner in W.P.No.1526/2015
T.Chandra ... Petitioner in W.P.No.2118/2015
R.Srinivasan ... Petitioner in W.P.No.2586/2015
R.Madeswari ... Petitioner in W.P.No.7082/2015

Vs.

1. The State of Tamil Nadu
Rep. by its Principal Secretary to Government,
Higher Education Department,
Secretariat, Chennai - 600 009.
2. The Periyar University,
Rep. by its Registrar,
University Campus,
Periyar Palkalai Nagar,
Salem-636 011. ... Respondents 1 and 2 in all W.Ps
3. The Vice Chancellor,
Periyar University,
Peiryar Palkalai Nagar,
Salem - 636 011. ... Respondent No.3 in W.P.No.
2586 of 2015
3. The Principal,
Periyar University College of
Arts and Science (PRUCAS),
Mettur Dam - 636 401,
Salem District. ... Respondent No.3 in W.P.No.
7082 of 2015

Prayer in W.P.No.35127 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned notification dated 09.12.2014 issued by the second respondent herein and quash the same as far as Serial No.14, Computer Science as illegal and against livelihood of the petitioner, consequently direct the second respondent to

regularise the service of the petitioner as Lecturer/Assistant Professor in Computer Science at Periyar University College of Arts and Science, Mettur.

Prayer in W.P.No.35128 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned notification dated 09.12.2014 issued by the second respondent herein and quash the same as far as Serial No.13, Commerce as illegal and against livelihood of the petitioner, consequently direct the second respondent to regularise the service of the petitioner as Lecturer/Assistant Professor in Commerce at Periyar University College of Arts and Science, Mettur.

Prayer in W.P.No.35129 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned notification dated 09.12.2014 issued by the second respondent herein and quash the same as illegal and against livelihood of the petitioner, consequently direct the second respondent to regularise the service of the petitioner as Lecturer/Assistant Professor in Commerce at Periyar University College of Arts and Science, Mettur.

Prayer in W.P.No.885 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the second respondent in their Notification No.Nil, dated 09.12.2014 and quash the same, insofar as the post of Assistant Professor, Commerce Department, in Periyar University College of Arts and Science, Mettur, and direct the respondents to regularise the services of the petitioner and confer all the consequential benefits.

Prayer in W.P.No.1177 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned notification dated 09.12.2014 issued by the second respondent herein and quash the same, consequently direct the second respondent to regularise the service of the petitioners as Lecturer/Assistant Professors in Commerce, Economics, Computer Science, Tamil, Commerce, English and Geology respectively at Periyar University College of Arts and Science, Mettur.

Prayer in W.P.No.1525 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned notification dated 09.12.2014 issued by the second respondent herein through Newspaper Publication and quash the same as illegal and against livelihood of the petitioner, consequently direct the second respondent to regularise the service of the petitioner as Lecturer/Assistant Professor in Geology at Periyar University College of Arts and Science, Mettur.

Prayer in W.P.No.1526 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned notification dated 09.12.2014 issued by the second respondent herein through Newspaper Publication and quash the same as illegal and against livelihood of the petitioner, consequently direct the second respondent to regularise the service of the petitioner as Lecturer/Assistant Professor in Computer Science at Periyar University College of Arts and Science, Mettur.

Prayer in W.P.No.2118 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned notification dated 09.12.2014 issued by the second respondent herein through Newspaper Publication and quash the same as illegal and against livelihood of the petitioner, consequently direct the second respondent to regularise the service of the petitioner as Lecturer/Assistant Professor in Tamil at Periyar University College of Arts and Science, Mettur.

Prayer in W.P.No.2586 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned notification dated 09.12.2014 issued by the second respondent herein through Paper Publication and quash the same as illegal and against livelihood of the petitioner, consequently direct the second respondent to regularise the service of the petitioner as Lecturer/Assistant Professor in Physics at Periyar University College of Arts and Science, Mettur.

Prayer in W.P.No.7082 of 2015 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned notification dated 09.12.2014 issued by the second respondent herein and quash the same as illegal and against livelihood of the petitioner, consequently direct the second respondent to regularise the service of the petitioner as Lecturer/Assistant Professor in Chemistry at Periyar University College of Arts and Science, Mettur.

For Petitioner in W.P. : Mr.C.Selvaraj, Senior Counsel
No.885/2015 for M/s.C.S. Associates

For Petitioners in W.P. : Mr.M.R.Jothimanian
Nos.35127 to 35129
of 2014, 1525/2015,
1526, 2118 7082/2015

For Petitioners in W.P. : Mr.L.Chandrakumar
No.1177/2015

For Petitioner in W.P. : Mr.R.Marudhachalamurthy
No.2586/2015

For Respondents : Mr.V.Jayaprakash Narayanan,
Special Government Pleader
for R1 in all W.Ps.

Mr.Issac Mohanlal for R2
in all W.Ps and R3 in
W.P.Nos.2586 and 7082 of 2015

COMMON ORDER

The petitioners are Lecturers in various subjects in the Periyar University College of Arts and Science at Metturdam, a constituent college, established by the Periyar University. Five of them were appointed on 17.11.2006 and ten were appointed on 30.07.2009 and one person was appointed on 03.08.2009.

2. The names of those persons, the details of the writ petition filed by them, subjects to which they were appointed, qualification they possess and the details of length of service put in by them upto the date of filing of the writ petitions are

given in two separate columns hereunder for those five persons and eleven persons respectively :

Sl. No.	Writ Petition No.	Subject	Date of Appointment	Qualification		Total Service Upto WP
				At the time of Appointment	At Present	
1	D.Gayathri 35127/2014	Computer Science	17.11.2006	M.C.A., M.Phil.,	M.C.A., M.Phil.,	8 Years 1 Month
2	C.Vijayarani 35128/2014	Commerce	17.11.2006	M.Com., M.Phil.,	M.Com., M.Phil., Ph.D.	8 Years 1 Month
3	C.Madesh 35129/2015	Commerce	17.11.2006	M.Com., M.B.A., M.Phil.,	M.Com., M.B.A., M.Phil., Ph.D.,	8 Years 1 Month
4	T.Chandra 2118/2015	Tamil	17.11.2006	M.A., M.Phil.,	M.A., M.Phil.,	8 Years 2 Months
5	S.Sathya 885/2015	Commerce	20.11.2006	M.Com., B.Ed., M.Phil., Ph.D., SLET	M.Com., B.Ed., M.Phil., Ph.D., SLET	8 Years 2 Months

Sl. No.	Writ Petition No.	Subject	Date of Appointment	Qualification		Total Service Upto WP
				At Appointment	At Present	
1	A.Venkatesan 1525/2015	Geology	30.07.2009	M.Sc., M.Phil.,	M.Sc., M.Phil., Ph.D.,	5 Years 6 Months
2	T.Lakshmi Narayanan 1526/2015	Computer Science	30.07.2009	M.C.A., M.Phil.,	M.C.A., M.Phil.,	5 Years 6 Months
3	M.Sasikumar 1177/2015	Commerce	30.07.2009	M.C.S., M.Com., M.Phil.,	M.C.S., M.Com., M.Phil.,	5 Years 6 Months
4	V.Velvizhi 1177/2015	Economics	30.07.2009	M.A., M.Phil.,	M.A., M.Phil.,	5 Years 6 Months
5	S.Anu 1177/2015	Computer Science	30.07.2009	M.Sc., M.Phil.,	M.Sc., M.Phil.,	5 Years 6 Months
6	S.Malarvizhi 1177/2015	Tamil	30.07.2009	M.A., M.Phil.,	M.A., M.Phil.,	5 Years 6 Months
7	C.Gayathri 1177/2015	Commerce	30.07.2009	M.Com., M.Phil.,	M.Com., M.Phil.,	5 Years 6 Months

Sl. No.	Writ Petition No.	Subject	Date of Appointment	Qualification		Total Service Upto WP
				At Appointment	At Present	
8	N.Priyadarshini 1177/2015	English	30.07.2009	M.A., M.Phil.,	M.A., M.Phil.,	5 Years 6 Months
9	G.Nandhakumar 1177/2015	Geology	30.07.2009	M.Sc., M.Phil.,	M.Sc., M.Phil.,	5 Years 6 Months
10	R.Madeswari 7082/2015	Chemistry	30.07.2009	M.Sc., M.Phil.,	M.Sc., M.Phil.,	5 Years 6 Months
11	R.Srinivasan 2586/2015	Physics	03.08.2009	M.Sc., M.Phil.,	M.Sc., M.Phil.,	5 Years 6 Months

3. The short facts, that are necessary for the disposal of these writ petitions, run thus :

(i) The Periyar University (shortly "the University") was established in the year 1997 vide the Tamil Nadu Periyar University Act, 1997 (shortly "the Act"). The University has jurisdiction over the Salem, Dharmapuri, Namakkal and Krishnagiri Districts.

(ii). The University established its first constituent college at Mettur dam during the academic year 2006-2007 vide G.O.Ms.No.308, Higher Education (G1) Department, dated 15.09.2006.

(iii). The Government in the G.O.Ms.No.308, Higher Education (G1) Department, dated 15.09.2006, permitted the college to offer three courses, namely, Bachelor of Corporate Secretaryship (B.C.S.), Bachelor of Commerce (B.Com.) and Bachelor of Business Management (B.B.M.) and sanctioned one post of Principal and six posts of Lecturers, besides sanctioning other posts.

(iv). Based on the said G.O.Ms.No.308, Higher Education Department, dated 15.09.2006, the University issued a paper publication dated 14.10.2006 inviting applications for the faculty positions in five subjects, namely, Tamil, English, Commerce, Computer Science and Economics, on consolidated pay, as per Government norms. The last date for receipt of the applications for faculty position was fixed as 17.10.2006. The notification prescribed the qualification as hereunder :

"Interest candidates with Ph.D./M.Phil/PG Degree (with 55% marks) in the concerned discipline can apply with Bio-Data to the Principal, Periyar University Arts and Science College, C/o.Government Higher Secondary School, Mettur. Preference will be given to those who have qualified with

SLET/NET/M.Phil/Ph.D. Relaxation of 5% in the eligibility marks will be given to SC/ST candidates."

(v) Based on the aforesaid notification, the petitioners, who were appointed in the year 2006, along with others made applications and vide the communication dated 04.11.2006, they were called to appear for interview before the Selection Committee on 12.11.2006. Based on the selection, the order of appointment dated 17.11.2006 was issued to six persons, and five out of the six are mentioned in the above referred table, in various subjects.

(vi). In the order of appointment dated 17.11.2006, it is mentioned that they are appointed on contract as Lecturers in the concerned Department. It is also stated that they would be paid a consolidated pay of Rs.8,000/- per month.

(vii). While so, in the minutes of the 19th Finance Committee Meeting held on 25.6.2008, approval was granted to 21 teaching posts in various subjects. The details of 21 posts that were sanctioned by the Finance Committee are as hereunder :

Tamil	5
English	5
Commerce	3
Computer Science	3
Maths	1
Chemistry	1
Geology	1
Economics	1
Statistics	1
Total	21

(viii). The same was approved by the Syndicate in its 66th Meeting held on 11.07.2008.

(ix) Based on the sanction of the posts by the Syndicate, as stated above, the University issued a paper publication on 26.08.2008, calling for applications to fill up the posts of Lecturers in the following subjects,

- (1) Tamil
- (2) English
- (3) Commerce
- (4) Computer Science
- (5) Mathematics
- (6) Chemistry

- (7) Geology
- (8) Economics
- (9) Statistics and
- (10) Physics

(x). The educational qualification required for making the application to the posts is as follows :

“கல்வித் தகுதி 55% மதிப்பெண் கொண்ட முதுநிலைப் பட்டம் மற்றும் SLET/NET/M.Phil/Ph.D. ஆகியவற்றில் ஏதேனும் ஒன்று பெற்றிருக்க வேண்டும். தாழ்த்தப்பட்ட மற்றும் பழங்குடியினருக்கு (SC/ST) 5% மதிப்பெண் சலுகை வழங்கப்படும்.”

That is, the educational qualification prescribed for submitting the application is a pass in Post-Graduation Degree with 55% marks along with a pass in SLET or NET or M.Phil. or Ph.D. and 5% relaxation in marks would be given to SC/ST candidates. The last date for submitting the application was fixed as 12.09.2008.

(xi). It is worthwhile to also take note of the fact that while approving the sanction of additional posts, the Syndicate in its meeting held on 11.07.2008 has also stated about the roster position of those posts as per reservation. It is useful to extract the roster position of those 21 posts as hereunder :

S. No.	Name of the University Departments	Assistant Professors	
		Total No. of Vacancy	Roster
1	Tamil	5	1 (GT) 1 (SC [A]) 1 (MBC/DNC) 1 (BC) 1 (GT)
2	English	5	1 (SC) 1 (MBC/DNC) 1 (BC) 1 (GT) 1 (BC)

S. No.	Name of the University Departments	Assistant Professors	
		Total No. of Vacancy	Roster
3	Commerce	3	1 (GT) 1 (SC) 1 (MBC/DNC)
4	Computer Science	3	1 (BC) 1 (BC M) 1 (SC)
5	Mathematics	1	1 (MBC/DNC)
6	Geology	1	1 (BC)
7	Chemistry	1	1 (GT)
8	Economics	1	1 (BC)
9	Statistics	1	1 (GT)
	Total	21	21

(xii). Based on the advertisement issued on 26.08.2008, the petitioners herein, who were appointed in the year 2009, along with others, applied for the posts. They were, by the communication dated 11.06.2009, asked to appear for interview on various dates during July 2009. Accordingly, they appeared for the interview before the Selection Committee duly constituted by the University as per the Periyar University Act, 1997 read with statutes and Regulations framed thereunder. They were appointed as Lecturers by the order dated 30.07.2009 and 03.08.2009, as stated above.

(xiii). In their appointment orders, it is stated that they were appointed on consolidated pay.

(xiv). While so, the University issued the impugned notification dated 09.12.2014, calling for applications to fill up 21 posts of Lecturers, sanctioned by the Syndicate in the meeting held on 11.07.2008, though the petitioners herein are appointed in those posts.

(xv). Hence, the petitioners have filed these writ petitions seeking to quash the impugned notification and to issue a direction to the second respondent to regularise their service by granting them appropriate scale of pay applicable to their posts.

(xvi). It is also an admitted fact that subsequent to the establishment of the said college, the University also established four more constituent colleges and in total, there are five colleges established by the University offering various courses and these petitioners are liable to be transferred to those colleges.

4. The University filed counter-affidavits seeking to sustain the impugned notification. The crux of the averments made in the counter-affidavits is that the University did not follow the selection norms prescribed by the University Grants Commission (for short "UGC") and the University also did not follow the Rules of Reservation specified by the State Government in appointing the petitioners. It is also averred that some of the appointees are not even fully qualified as per the UGC norms. The counter also proceeds to state that the appointments were not made against any sanctioned posts. It is also averred that the petitioners were appointed on ad hoc basis and on consolidated pay.

5. Heard both sides.

6.1. The learned counsels for the petitioners submitted that the petitioners were selected by the duly constituted Selection Committee and appointed against the sanctioned posts and also that the petitioners possessed the requisite qualification, as per the UGC Regulations that were in force on the last date for submitting the applications pursuant to the notification calling for applications to appoint them. Thus, according to the learned counsels, (i) the petitioners were appointed against sanctioned posts; (ii) they were duly selected for appointment by the Selection Committee constituted by the University as per the Act and the Statutes and the Regulations framed thereunder ; and (iii) they were possessing the requisite qualification as per the UGC norms and Regulations prevailing at the time of issuance of notification calling for application and selections were made. It was submitted that the petitioners did not come through back door entry.

6.2. They have relied on the following decisions, in support of their claim :

(i).V.Radhakrishnan V. The Registrar, Central Administrative Tribunal, reported in 2007 (3) CTC 672;

(ii).S.Jalajakumari V. Personal Assistant

(General) to the Collector and Others, reported in 2008 (5) MLJ 1073 ;
(iii).The Order dated 30.10.2012 in W.P.No.2260 of 2012 (A.Bharathi V. The University of Madras rep. by its Registrar and others) ; and
(iv).Nihal Singh V. State of Punjab, reported in 2013 (14) SCC 65 ;

7.1. On the other hand, the learned counsel for the respondent-University has reiterated the stand taken in the counter-affidavits and submitted that the petitioners were not appointed in the sanctioned post and they did not possess the requisite qualification and they were appointed only on ad hoc and contractual basis and on consolidated pay. It was also submitted that the Rules of Reservation was not followed. The learned counsel submitted that hence, the University has decided to fill those 21 sanctioned posts by way of regular process by issuing notification on 09.12.2014. He sought for dismissal of the writ petitions. He submitted that the petitioners shall vacate the office on regular selection being made pursuant to the impugned notification dated 09.12.2014.

7.2. The learned counsel for the respondent University relied on the following decisions :

- (i).Secretary, State of Karnataka V. Uma Devi (3) and Others, reported in 2006 (4) SCC 1 ;
- (ii).M.Nagaraj V. Union of India, reported in 2006 (8) SCC 212 ;
- (iii).State of Karnataka V. M.L.Kesari, reported in 2010 (9) SCC 247 ;
- (iv).K.R.Shanthi V. The Secretary to Government, reported in 2012 (2) CWC 750 ;
- (v).Nihal Singh V. State of Punjab, reported in 2013 (14) SCC 65 ; and
- (vi).P.Suseela V. University Grants Commission, reported in 2015 (3) MLJ 734 (SC) ;

8. I have considered the submissions made by either side.

9.1. The issues, that arise for consideration in these writ petitions, in my view, are whether (i) the petitioners were appointed against sanctioned posts; (ii) they possessed the requisite qualification prescribed for the post ; and (iii) they were appointed by following the duly established selection procedure. If the answer is positive, then, the University

cannot seek to replace them by resorting to issuing the impugned notification for recruitment to those posts. If the answer is negative, then, the University can very well proceed with the notification and recruit the persons to replace the petitioners.

9.2. At this juncture, it is useful to refer to the stand of the respondent - University in paragraph 12 of its counter-affidavits, which is extracted hereunder :

"12. I state that these Assistant Professors were appointed purely on ad hoc basis to address the emergent academic need on contractual terms and on consolidated pay. Neither the Selection Norms prescribed by the University Grants Commission nor the Rules of reservation specified by the State Government were followed in these appointments. Some of the appointees are not even fully qualified as per the UGC Norms. The appointments were also not against any sanctioned posts."

10.0. Now, let me take up the issues one by one for discussion.

I. Whether the petitioners were appointed against the sanctioned posts or not ?

10.1. The factual details are not disputed by the University. In G.O.Ms.No.308, Higher Education (G1) Department, dated 15.09.2006, six posts were sanctioned at the time of constitution of the College. That is, the petitioners in W.P.Nos.35127 to 35129 of 2014, 885 of 2015 were appointed on 17.11.2006 and the petitioner in W.P.No.2118 of 2015 was appointed on 20.11.2006 only in those sanctioned posts.

10.2. Thereafter, the 19th Finance Committee in its meeting held on 25.06.2008 granted approval for 21 teaching posts in various subjects. The details of those 21 posts, that were approved by the Finance Committee, are already extracted in paragraph 3(vii) of this judgment. The Syndicate, in its 66th Meeting held on 11.07.2008 granted sanction for those posts. The petitioners were appointed in those posts.

10.3. Therefore, I have no hesitation to hold that the petitioners have been appointed in sanctioned posts. Accordingly, this issue is answered in favour of the petitioners.

II. Whether the petitioners possessed the prescribed qualification for the post or not ?

11.1. The five petitioners (in W.P.Nos.35127 to 35127 of 2014, 885 of 2015 and 2118 of 2015) were appointed on 17.11.2006 and 20.11.2006, by the University in various subjects to teach U.G. Courses. Admittedly, they possessed M.Phil., qualification and one among them (the petitioner in W.P.No.885/2015) possessed Ph.D., as well as a pass in SLET, at the time of appointment.

11.2. The learned counsel for the University has not disputed that the M.Phil., was the required qualification, as per the UGC Regulations to teach U.G. Course, at the time of their appointment. When the college was constituted in 2006, only U.G. Courses, namely, B.C.S., B.Com., B.B.M., were offered. The same was also dealt with in paragraph 3(iii) of this judgment. Six posts were sanctioned in G.O.Ms.No.308, Higher Education Department, dated 15.09.2006, to teach those courses. The five petitioners were appointed among the six sanctioned posts. They possessed the requisite qualification, as per UGC Regulations.

11.3. The other 10 petitioners were appointed on 30.07.2009 and the other petitioner was appointed on 03.08.2009. But they were appointed pursuant to the paper publication issued by the University on 26.08.2008 calling for applications to fill up the post of Lecturer in various subjects, namely, (1) Tamil ; (2) English ; (3) Commerce ; (4) Computer Science ; (5) Mathematics ; (6) Chemistry ; (7) Geology ; (8) Economics ; (9) Statistics and (10) Physics. The same is extracted in paragraph 3(ix) of this judgment. The last date for the receipt of the applications is 12.09.2008.

11.4. While issuing the paper publication, the University stated therein that the required qualification is SLET or NET or M.Phil., or Ph.D., with 55% marks in P.G. Course. It is also stated that as far as SC/ST candidates are concerned, 5% relaxation in the marks would be given. Thus, as per the notification M.Phil., is the one of the qualifications prescribed for selection to the post of Lecturers.

11.5. Admittedly, all these 11 petitioners, who were selected pursuant to the aforesaid notification, possessed M.Phil., qualification. The same is not in dispute.

11.6. However, the learned counsel for the University submitted that in view of UGC (Minimum Qualifications Required For The Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to it) (3rd Amendment),

Regulation, 2009 (hereinafter referred to as "2009 UGC Regulations"), a pass in NET or SLET is the minimum eligibility condition, however, the candidates, who have been awarded Ph.D. Degree as per the UGC Regulations shall be exempted from the minimum eligibility qualification of NET or SLET for appointment to the post of Assistant Professor or equivalent positions in Universities / Colleges / Institutions. The said notification was published in the Gazette of India on 11.07.2009 by the Government of India. Hence, on the date of appointment, the petitioners, admittedly, did not possess NET or SLET or Ph.D., and hence, they are not qualified to hold the post. This is the sum and substance of the submissions made by the learned counsel for the University.

11.7. I am not in agreement with the said submission made by the learned counsel for the University, since the crucial date to decide as to whether the person appointed possessed the qualification is not the date of appointment, namely, 30.07.2009 and 03.08.2009, but the last date for submitting application pursuant to the paper publication issued by the University calling for applications to fill up the posts, unless the rules governing the appointment provided to the contrary. In my view, it is well-settled position.

11.8. The Apex Court in the following judgments categorically held that the crucial date as to the suitability and the eligibility is the last date for receipt of the applications as per the notification calling for applications or any other date, that is specified in the notification :

1. Dr.M.V.Nair Vs. Union of India and others, reported in (1993) 2 SCC 429 ;
2. Bhupinderpal Singh and Others Vs. State of Punjab and others, reported in (2000) 5 SCC 262 ;
3. Ashok Kumar Sonakr Vs. Union of India and others, reported in (2007) 4 SCC 54 ; and
4. Alka Ojha Vs. Rajasthan Public Service Commission and another, reported in (2011) 9 SCC 438 ;

11.9. I had an occasion to consider the said question in the order dated 30.10.2012 in W.P.No.2260 of 2012 (A.Bharathi V. University of Madras rep. by its Registrar and Others), wherein, I have considered the aforesaid judgments also. It is relevant to extract paragraphs 17 to 23 of the order in Bharathi's case are extracted as hereunder:

"17. It is well settled that the qualification of the candidate shall be with reference to the last date of the submission of the application for the concerned post unless the rules otherwise required. The four judgments, viz., (1993) 2 SCC 429 (Dr.M.V.Nair ..vs.. Union of India and others); (2000) 5 SCC 262 (Bhupinderpal Singh and Others ..vs.. State of Punjab and others); (2007) 4 SCC 54 (Ashok Kumar Sonakr ..vs.. Union of India and others); and (2011) 9 SCC 438 (Alka Ojha ..vs.. Rajasthan Public Service Commission and another), relied on by the learned counsel for the petitioner has also made this position clear. The Hon'ble Apex Court also held that the relevant date is the last date of submission of the application. The relevant passages in the judgment reported in (1993) 2 SCC 429 (Dr.M.V.Nair ..vs.. Union of India and others) would run as follows:-

"9. In the above situation, it was necessary for the Tribunal to have recorded a finding on the correctness or otherwise of the above submission of the Union of India and Dr. Nair. Without doing so, the Tribunal could not have set aside the appointment of Dr. Nair to the said post. The Tribunal was also not justified in holding that Dr. Bhatnagar was also equally qualified and eligible for the said post like Dr. Nair when Dr. Bhatnagar had himself come forward with the plea that he was not eligible and asked for grant of relaxation to make him eligible. The Tribunal, in our opinion, was also not justified in stating, in the direction granted by it, that inasmuch as Dr. Bhatnagar "has by now become eligible in all respects under the recruitment rules, his suitability should be considered along with other eligible candidates and if he is found suitable for the appointment he should be appointed to the said post." It is well settled that suitability and eligibility

has to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date."

18. The relevant passage in the judgment reported in (2000) 5 SCC 262 (Bhupinderpal Singh and Others ..vs.. State of Punjab and others) would be as follows:-

"12. All the appeals and the writ petitions have been taken up for hearing analogously. The only question arising for decision in this case is by reference to which date the eligibility of the several candidates is to be judged and the consequences flowing from failure to satisfy the eligibility test in the facts & circumstances of the case.

13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma Vs. Chander Shekhar & Anr. JT 1997 (4) SC 99; A.P. Public Service Commission Vs. B. Sarat Chandra & Ors. 1990 (4) SLR 235; The Distt. Collector and Chairman, Vizianagaram (Social Welfare Residential School Society) Vizianagaram and Anr. Vs. M. Tripura Sundari Devi 1990 (4) SLR 237; Mrs. Rekha Chaturvedi Vs. University of Rajasthan & Ors. JT 1993 (1) SCC 220; Dr. M.V. Nair Vs. Union of India & Ors. 1993 (2) SCC 429; and U.P. Public Service Commission, U.P., Allahabad & Anr. Vs. Alpna JT 1994 (1) SC 94, the High Court has held (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; ii) that if there be no

such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice."

19. The relevant portion in the judgment reported (2007) 4 SCC 54 (Ashok Kumar Sonakr .. vs.. Union of India and others) would run as follows:-

"11. The question as to what should be the cut-off date in absence of any date specified in this behalf either in the advertisement or in the reference is no longer res integra. It would be last date for filing application as would appear from the discussions made hereinafter."

20. The relevant portion in the judgment reported in (2011) 9 SCC 438 (Alka Ojha ..vs.. Rajasthan Public Service Commission and another) would run as follows:-

"15. The question whether the candidate must have the prescribed educational and other qualifications as on the particular date specified in the Rule or the advertisement is no longer res integra. In Bhupinderpal Singh v. State of Punjab (2000) 5 SCC 262, this Court referred to the earlier judgments in A.P. Public Service Commission v. B. Sarat Chandra (1990) 2 SCC 669, District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi (1990) 3 SCC

655, M.V. Nair (Dr.) v. Union of India (1993) 2 SCC 429, Rekha Chaturvedi v. University of Rajasthan 1993 Supp. (3) SCC 168, U.P. Public Service Commission, U.P., Allahabad v. Alpana (supra) and Ashok Kumar Sharma v. Chander Shekhar (supra) and approved the following proposition laid down by the Punjab and Haryana High Court:

"13. (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications and that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority."

16. The same view was reiterated in M.A. Murthy v. State of Karnataka (2003) 7 SCC 517 and Ashok Kumar Sonkar v. Union of India (2007) 4 SCC 54. Therefore, the Full Bench of the High Court rightly held that a candidate who does not possess driving licence on the last date fixed for submission of the application is not eligible to be considered for selection."

21. Therefore, it has to be seen whether the petitioner was in possession of the required qualification as on 27.05.2009, the date of submission of her application for the appointment to the post of lecturer in the Zoology Department of the fourth respondent college.

22. The learned counsel for the first respondent has relied on G.O.Ms.No.111 Higher Education Department dated 24.03.1999. In fact the Government Order supports the case of the

petitioner. As per the Government Order, the candidates having M.Phil., degree in the concerned subject are exempted from SLET/NET Examination. This Government Order is given effect from 14.06.2006. As on the date of advertisement and the last date of making application, the Government Order prescribed the required qualification. Therefore, I am of the view that the petitioner was in possession of requisite qualification at the time of making application.

23. In fact, the petitioner was also in possession of the required qualification when she was appointed by the fourth respondent college by an order dated 29.04.2010. Only thereafter, the University Grants Commission Regulations, 2010, came into force that has required a pass in SLET/NET Examination for appointment to the post of Lecturer. In the said circumstances, I am of the view that the impugned order is liable to be quashed and accordingly, the same is quashed and the Writ Petition is allowed."

11.10. Therefore, in view of the law laid down by the Apex Court in the decisions referred to above, I am of the view that these petitioners, who were appointed in the year 2009, possessed the requisite qualification.

11.11. It is a different matter, if the University issued notification calling for applications to fill the post after 11.07.2009 or the last date of receipt of application is after 11.07.2009, then, the candidates, who possessed mere M.Phil., could not apply to teach U.G. Courses. Since in these cases, the crucial date for receipt of applications is 12.09.2008, it is to be seen as to whether they possessed the requisite qualification as on 12.09.2008, as prescribed by the UGC Regulations. As on 12.09.2008, M.Phil., was the prescribed qualification to teach U.G. Courses. The same is not in dispute. The change came only by the 2009 UGC Regulations, which was Gazetted on 11.07.2009. The recruitment process started long before the issuance of 2009 UGC Regulations and the crucial date to decide the eligibility of the candidates is 12.09.2008, though they were appointed on 30.07.2009 and 03.08.2009. The learned counsel for the University cannot rely on the qualifications prescribed in the 2009 UGC Regulations, in support of his submissions, and the qualification that was

prevailing as on 12.09.2008 as per the UGC Regulations is only relevant and these petitioners possessed the requisite qualification, as per the UGC Regulations that were applicable to them as on 12.09.2008.

11.12. As per the NOTE to the Appendix-I, as prescribed in the Statutes of the University, which is extracted in paragraph 12.8 hereunder, the crucial date to decide the eligibility / qualification is as on 1st July of the year in which the vacancies are notified. That is, the crucial date is 01.07.2008. Thus, the crucial date would be either 01.07.2008 or 12.09.2008.

11.13. Therefore, I have no hesitation to hold that the petitioners possessed the requisite qualification at the relevant point of time, as per UGC Regulations and accordingly, this issue is also answered in favour of the petitioners.

III. Whether the petitioners were appointed by duly following the selection procedure :

12.1. According to the petitioners, they were selected by the Selection Committee duly constituted by the University as per the Act and the Statutes and Regulations framed thereunder. On the contrary, it is the submission of the learned counsel for the University that the Selection Committee was not constituted as per the UGC Regulations.

12.2.(i). The learned counsel for the University produced a tabular column relating to Selection Committee for appointment. The tabular column contains three columns. First column is the Selection Committee as per the UGC Regulations 2000 for the post of Assistant Professors. In fact paragraph 17 of the counter-affidavit also refers to the column 1.

12.2.(ii). According to the second column, the Selection Committee, as per the Act, is provided.

12.2.(iii). The third column is the Selection Committee that selected the petitioners.

12.2.(iv). It is useful to extract the said tabular column hereunder:

SELECTION COMMITTEE FOR APPOINTMENT		
UGC Regulations 2000	University Selection Committee	Appointed Selection Committee
1) The Vice-Chancellor to be the Chairperson of the Selection Committee. 2) Three experts in the concerned subject to be invited on the basis of the list recommended by the Vice-Chancellor and approved by the Executive Council/Syndicate. 3) Dean of the concerned Faculty/Head/Chairperson of the Department 4) An academican nominated by the Visitor/Chancellor. The quorum should be four ; out of which at least two outside subject experts must be present.	1) The Vice-Chancellor. 2) A nominee of the Chancellor. 3) A nominee of the Government. 4) The Head of the Department concerned, if he is a Professor 5) One Director or a Dean or a Professor to be nominated by the Vice-Chancellor. 6) Three persons not in the service of the University nominated by the Syndicate, from out of a panel of names recommended by the Standing Committee on Academic Affairs for their special knowledge of, or interest in, the subject with which the Professor, Assistant Professor or Reader will be concerned.	1) The Vice-Chancellor. 2) A nominee of the Government 3) The Principal-in-charge of the Constituent College ; 4) Three subject experts from the University or affiliated colleges. 5) A woman or SC/ST nominee.

12.3. According to the counter-affidavits filed by the respondent University, the Selection Committee was not constituted in terms of the UGC Regulations. The University constituted the Selection Committee for regular appointment to the post of teachers and also called for applications to fill up those posts.

12.4. At this juncture, it is relevant to take note of the fact that under the UGC Regulations, the name of the posts are Assistant Professor, Associate Professor and Professor in the ascending order. But the petitioners herein were appointed to the post of Lecturer and not to the post of Assistant Professor, as (i) G.O.Ms.No.308, Higher Education Department, dated 15.09.2006, (ii) Minutes of the Syndicate dated 11.07.2008; and (iii) the appointment orders dated 17.11.2006, 20.11.2006, 30.07.2009 and 03.08.2009 all refer the post as "விரிவ, ைரயாளர் " (Lecturer).

12.5. It is also useful to refer to Section 2(n) of Act that defines teachers which reads as hereunder :

"2.In this Act, unless the context otherwise requires-

(n) "teacher" means such Lecturers, Readers, Assistant Professors, Professors and other persons giving instruction in University Colleges or laboratories in affilitated or approved colleges, or in hostels, and Librarians as may be declared by the statutes to be teachers;"

12.6. Section 45 of the Act provides for Selection Committee for making recommendation to the Syndicate for appointment to the post of Professor, Assistant Professor, Reader, Lecturer and Librarians of the institutions maintained by the University. It is useful to extract Section 45(1) and (2) of the Act as hereunder :

"45 (1) There shall be Selection Committee for making recommendations to the Syndicate for appointment to the posts of Professor, Assistant Professor, Reader, Lecturer and Librarian of Institutions maintained by the University.

(2) The Selection Committee for appointment to the posts specified in column (1) of the Table below shall consist of the Vice-Chancellor, a nominee of the Chancellor, a nominee of the Government and the persons specified in the corresponding entry in column (2) of the said Table and in the case of appointment of a Professor, Assistant Professor, Reader or Lecturer in a Department, where there is no Head of the Department, shall also consist of a person nominated by the Standing Committee on Academic Affairs from among its members:-

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THE TABLE

(1)	(2)
Professor, Assistant Professor or Reader	(i) The Head of the Department concerned, if he is a Professor ; (ii) One Director or a Dean or a Professor to be nominated by the Vice-Chancellor; (iii) Three persons not in the service of the University nominated by the Syndicate, from out of a panel of names recommended by the Standing Committee on Academic Affairs for their special knowledge of, or interest in, the subject with which the Professor, Assistant Professor or Reader will be concerned.
<u>Lecturer</u>	<u>(i) The Head of the Department concerned ;</u> <u>(ii) One Professor to be nominated by the Vice-Chancellor ;</u> <u>(iii) Two persons not in the service of the University nominated by the Syndicate from out of a panel of names recommended by the Standing Committee on Academic Affairs for their special knowledge of, or interest in, the subject with which the lecturer will be concerned.</u>

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(1)	(2)
Librarian	i) Two persons not in the service of the University, who have special knowledge of the subject of, Library Science or Library Administration, to be nominated by the Syndicate ; (ii) One person, not in the service of the University, nominated by the Syndicate.

12.7. It is also useful to refer to Appendix I, referred to in the Statute. Statute 4 of the Statutes of the University are statutory in character, as the Statutes are framed in exercise of the power conferred under Section 33 read with sub-section (4) of Section 57 of the Act.

12.8. Chapter VIII of the Statutes relates to conditions of service and recruitment and those statutes are framed under Sections 43, 44 and 45 of the Act. We are concerned with Clause 4 of the Chapter VIII that deals with recruitment. Clause 4(1)(i) of Chapter VIII states that the qualification, method of recruitment and appointing authority in respect of various posts in the University shall be as specified in the Appendix I. The Appendix I relating to teaching staff are as follows :

APPENDIX - I

Method of Recruitment And Qualifications Prescribed For Various
Teaching and Non-teaching Posts in the University
Recruitment of Staff for Appointment in the University
(i) TEACHING

Sl. No.	Name of the Posts & Scales of pay	Qualifications	Constitution of Selection Committee	Appointing Authority
(1)	(2)	(3)	(4)	(5)
1.	Professor 16400-450- 20900-500- 22400	As prescribed by UGC from time to time any approved by Government of Tamil Nadu	As per Act	Syndicate

2.Reader	- do-	-do-	-do-
12000-420-			
18300			
3.Lecturer	- do -	-do-	-do-
8000-275-			
13500			

NOTE :

(i) For Teaching staff, the Syndicate shall prescribe the qualifications, age, etc., with due regard to the recommendations of the University Grants Commission and approved by the Government of Tamil Nadu.

(ii) The age, qualification noted in this appendix will have to be taken as the age as on 1st July in the year in which the vacancy is notified.

(iii) The age, qualification is relaxable by five years in respect of candidates belonging to SC/ST for all posts."

12.9. But neither the Second Column nor the Third Column provides for the Selection Committee as per the Act. The Table, that is provided under Section 45 of the Act, provides for various teaching posts and we are concerned with the post of Lecturer. As per the third tabular column produced by the learned counsel for the respondent University, the Selection Committee that selected the petitioners is wider than the one that is contemplated in the Act for recruitment of Lecturers.

12.10. In any event, the teachers cannot be found fault for the alleged improper constitution of the Selection Committee by the University. It is a different matter, if a non-selected candidate questions the appointment stating that the appointment was not made by a duly constituted Selection Committee. When the University constituted the Selection Committee, the University is estopped from stating that the Selection Committee constituted by them was not properly constituted as per the UGC Regulations, that too, after about eight years of the appointment of the petitioners.

12.11. Furthermore, it is useful to refer to Section 45 (7) of the Act that deals with the appointment to temporary posts. It is useful to extract Section 45(7) of the Act as hereunder :

"45(7) Appointments to temporary posts shall be made in the manner indicated below :-

(i) If the temporary vacancy is for a duration longer than one academic session, it shall be filled on the advice of the Selection Committee in accordance with the procedure indicated in the foregoing provisions:

Provided that if the Vice-Chancellor is satisfied that in the interest of work it is necessary to fill the vacancy, the appointment may be made on a temporary basis by a local Selection Committee referred to in sub-clause (ii) for a period not exceeding six months ;

(ii) If the temporary vacancy is for a period less than a year, an appointment to such vacancy shall be made on the recommendation of a local Selection Committee consisting of the Dean of the Faculty concerned, the Head of the Department and a nominee of the Vice Chancellor:

Provided that if the same person holds the offices of the Dean and the Head of the Department, the Selection Committee may consist of two nominees of the Vice-Chancellor.

Provided further that in case of sudden casual vacancies in teaching posts caused by death or any other reason, the Dean may, in consultation with the Head of the Department concerned, make a temporary appointment for a month and report to the Vice-Chancellor and the Registrar about such appointment:

(iii) No teacher appointed temporarily shall, if he is not recommended by a regular Selection Committee for appointment under this Act, be continued in service on such temporary employment unless he is subsequently selected by a local Selection Committee or a regular Selection Committee, for a temporary or permanent appointment, as the case may be."

12.12. The aforesaid extract of Section 45(7) of the Act makes it clear that the petitioners were not appointed to temporary posts or in sudden casual vacancies. But the

petitioners were appointed in the posts regularly sanctioned vide G.O.Ms.No.308, Higher Education Department, dated 15.09.2006, and also approved by the Syndicate, as stated above. Hence, I am of the view that it is not lying in the mouth of the University that the Selection Committee constituted by them was not in terms of the UGC Regulations.

12.13. I am of the considered view that the Selection Committee was constituted by the University as per the Act and the Statutes and the Regulations framed thereunder.

12.14. It is a different matter if the petitioners were appointed without any selection process and they came by back door method. Factually, it is admitted that there was a Selection Committee duly constituted by the University and the same was headed by the Vice Chancellor. Now the University cannot turn around and disown the said Selection Committee that it was not constituted in terms of the UGC Regulations and send out the teachers that too after they have been serving for about eight years.

12.15. Furthermore, in the notification calling for applications for appointment to the post of Lecturers, it was not stated that the recruitment was for temporary posts. On the other hand, as stated above, the University issued paper publication to fill up the sanctioned posts and also constituted the Selection Committee to select the teachers, as per the Act, Statutes and the Regulations framed thereunder. The Syndicate also approved the posts.

12.16. Hence, I have no hesitation to reject the contentions of the learned counsel for the University that the teachers were not selected by the Selection Committee as per the UGC Norms, particularly, when the teachers were selected by the duly constituted Selection Committee by the University as per the Act and the Statutes and the Regulations framed thereunder and the same was also presided over by the Vice Chancellor.

13.0. Let me now discuss various judgments relied on by either side.

13.1. Though it is the normal procedure to deal with the cases cited by the learned counsel for the petitioners first, for the sake of convenience, I intend to deal with the judgments cited by the learned counsel for the University first.

14.1. The learned counsel for the University heavily placed reliance on the judgment of the Constitution Bench of the Apex Court in Secretary, State of Karnataka V. Umadevi (3), (2006) 4 SCC 1 :

(i) I am of the considered view that the said judgment held that the State or its instrumentalities shall not resort to fill up the regular vacancy by way of irregular appointment without following the due process of selection as envisaged in the Act / Rules relating to appointments. That is, the Apex Court categorically held that appointing a person in public employment without sanction of post, without qualification and without following the due process of selection is illegal and violative of Articles 14 and 16 of the Constitution.

(ii) In fact, the Apex Court noted in paragraph 4 that the States have resorted to irregular appointments, especially in the lower rungs of the services, without following the recruitment procedure.

(iii) That the case arose out of appointment of temporary employees on daily wages in Commercial Taxes Department in the State of Karnataka without the sanctioned posts and without reference to qualification and without following the due process of selection and they were continued for years together.

(iv) Even in those cases, the Apex Court held in paragraph 53 that as a one-time measure, the temporary employees, who were appointed irregularly, could be regularized in those posts, if there are sanctioned posts and they possess requisite qualification for the posts, and if they rendered more than 10 years of service.

(v) In the cases on hand, I have categorically held that the petitioners were appointed against the sanctioned posts, they possessed the requisite qualification and they were selected by the duly constituted Selection Committee. Therefore, in my view, the judgment rendered by the Constitution Bench of the Apex Court in Umadevi's case would not render any assistance to the University.

14.2. The next judgment relied on by the learned counsel for the University is the judgment of the another Constitution Bench of the Apex Court in M.Nagaraj V. Union of India, (2006) 8 SCC 212 :

The said judgment has nothing to do with the issues that arise for consideration in these petitions. The said case pertains to the Constitutional validity of Articles 16 (4-A) and (4-B) of the Constitution. Articles 16(4-A) and (4-B) provides for reservation for SC and ST employees in the matter of promotion. I fail to understand as to how this judgment would render any help to the respondent University.

14.3. The next judgment, relied on by the learned counsel for the University, is State of Karnataka V. M.L.Kesari, 2010 (9) SCC 247 :

(i) This judgment relates to regularization sought for by the Daily Wage Employees such as Typist, Literate Assistant and Watchman in the office of the Executive Engineer, Zilla Panchayat Engineering Sub-Division, Ron, Gadag District in Karnataka State. They were appointed on daily wage basis between 1985 and 1987. They were continued for more than 15 years without the intervention of any Court orders. They sought for regularization. Their writ petitions with the said prayer were allowed by the Karnataka High Court and the writ appeal preferred by the State was also rejected.

(ii) While so, the Apex Court, placing reliance on Uma Devi's directed the State of Karnataka to undertake the exercise to find out as to whether the persons employed as Daily Wage / Casual / ad hoc basis employees fulfilled the requirement of paragraph 53 of Uma Devi's case within a period of six months and such employees are available, their service were directed to be regularised. That is, the Apex Court held that if there are sanctioned posts and the employees possess qualification, they shall be regularized in service. It is useful to extract paragraphs 7 and 13 of the said judgment :

"7. It is evident from the above that there is an exception to the general principles against 'regularization' enunciated in State of Karnataka V. Umadevi, if the following conditions are fulfilled :

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the

prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

.....

13. The Division Bench of the High Court has directed that the cases of respondents should be considered in accordance with law. The only further direction that needs be given, in view of State of Karnataka V. Umadevi, is that the Zila Panchayat, Gadag should now undertake an exercise within six months, a general one-time regularization exercise, to find out whether there are any daily wage/casual/ad-hoc employees serving the Zila Panchayat and if so whether such employees (including the respondents) fulfill the requirements mentioned in para 53 of Umadevi. If they fulfill them, their services have to be regularized. If such an exercise has already been undertaken by ignoring or omitting the cases of respondents 1 to 3 because of the pendency of these cases, then their cases shall have to be considered in continuation of the said one time exercise within three months. It is needless to say that if the respondents do not fulfill the requirements of Para 53 of Umadevi, their services need not be regularised. If the employees who have completed ten years service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularization in suitable lower posts."

(iii) In my view, this judgment cannot render any assistance to the University, since the petitioners were appointed against sanctioned posts, they possessed the requisite qualification and they were selected by the Selection Committee, that was duly constituted as per the Act and the Statutes and the Regulations framed thereunder.

14.4. The next judgment, relied on by the learned counsel for the University, is the judgment of the Apex Court in Nihal Singh V. State of Punjab, (2013) 14 SCC 65 :

(i) This judgment, far from supporting the plea of the University, supports the case of the petitioners.

(ii) In this case, the State of Punjab recruited the Ex-Servicemen, those who were having armed licence and enrolled with the employment exchange between 1986, as Special Police Officers under Section 17 of the Police Act, 1861 during the large scale disturbance during 1980s. They were recruited to guard the public sector banks and they were paid honorarium at the rate of Rs.15 per day and the same was periodically increased by the State and the said salary was paid by the public sector banks which utilized their service. But the appointment, discipline and control of these persons were with the State. Those Special Police Officers sought regularization of their services by approaching the Punjab High Court.

(iii) The High Court dismissed their writ petitions on the ground that they were not appointed against the sanctioned posts and those persons were not appointed by following the regular recruitment procedure.

(iv) The Apex Court held that the aforesaid procedure adopted by the State in appointing Special Police Officers cannot be said to be unreasonable or arbitrary. It is useful to extract paragraph 30 and 31 of this judgment as hereunder :

"30. It can also be noticed from the written statement of the Assistant Inspector General of Police (Welfare & Litigation) that preference was given to persons who are in possession of licensed weapons. The recruitment of the appellants and other similarly situated persons was made in the background of terrorism prevailing in the State of Punjab at that time as acknowledged in the order dated 23.4.2002 of the SSP. The procedure which is followed during the normal times of making recruitment by inviting applications and scrutinising the same to identify the suitable candidates would itself take considerable time. Even after such a selection the selected candidates are required to be provided with necessary arms and also be trained in the use of such arms. All this process is certainly time consuming. The requirement of the State was to take swift action in an extra-ordinary situation.

31. Therefore, we are of the opinion that the process of selection adopted in identifying the appellants herein cannot be said to be

unreasonable or arbitrary in the sense that it was devised to eliminate other eligible candidates. It may be worthwhile to note that in Umadevi's case, this Court was dealing with appointments made without following any rational procedure in the lower rungs of various services of the Union and the States."

(v) While considering the issue as to the appointment of those persons in the absence of sanctioned posts, taking note of the facts and circumstances of the case, the Apex Court directed the State to create the posts. In this regard, it is useful to extract paragraphs 32, 33 and 35 to 37 as hereunder :

"32. Coming to the other aspect of the matter pointed out by the High Court - that in the absence of sanctioned posts the State cannot be compelled to absorb the persons like the appellants into the services of the State, we can only say that posts are to be created by the State depending upon the need to employ people having regard to various functions the State undertakes to discharge.

"Every sovereign Government has within its own jurisdiction right and power to create whatever public offices it may regard as necessary to its proper functioning and its own internal administration." [42 American Jurisprudence 902].

33. It is no doubt that the assessment of the need to employ a certain number of people for discharging a particular responsibility of the State under the Constitution is always with the executive Government of the day subject to the overall control of the Legislature. That does not mean that an examination by a Constitutional Court regarding the accuracy of the assessment of the need is barred.

35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts

such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the Legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits at par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is - the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks.

37. We are of the opinion that neither the Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance with the Constitution. Umadevi's judgment cannot become a licence for exploitation by the State and its instrumentalities."

(Emphasis supplied)

(vi) Hence, this judgment would not render any assistance to the University.

14.6. The next judgment, relied on by the learned counsel for the University, is rendered by a learned Single Judge of this Court in K.R.Shanthi V. The Secretary to Government, Education Department, 2012 (2) CWC 750 :

(i) This judgment relates to appointment of P.G. Assistants / Physical Educational Directors Grade-I in the Tamil Nadu Higher Secondary Educational Service, pursuant to the notification dated 28.02.2012 issued by the Teachers Recruitment Board inviting applications from eligible candidates.

(ii) When the provisional selection list was issued, the same was questioned stating that the rules of reservation were not followed. The allegations of the petitioners therein were accepted by the learned Additional Advocate General, who appeared for the TRB. It is useful to extract the beginning sentence of paragraph 26 of the judgment as hereunder :

"26. When the above anomalies were pointed out, the learned Additional Advocate General submitted that the same would be corrected."

(iii) In the cases on hand, a feeble attempt was made by the University that the rules of reservation are not followed. I am not inclined to agree with the said contention of the University, since the Syndicate has passed its resolution to follow the rules of reservation, while sanctioning the posts and the same was extracted in paragraph 3(xi) of this judgment.

(iv) Furthermore, mere making a vague allegation that the Rules of reservation are not followed is not sufficient for interference by this Court in the orders of appointment of the petitioners, that too 8 years after their appointments. No factual details were furnished as to the roster point against which each of the petitioner was appointed, if the respective petitioner does not belong to the community allotted to the roster point. Even assuming that such violation was made by the University, the entire blame shall go to the University and no way the teachers are responsible for such violation. The University, being the violator, cannot seek to abrogate the order of appointment to the prejudice of the innocent teachers, particularly, after 8 years of their appointment. Hence, I am not inclined to interfere after 8 years of their appointment. Further, I am also of the view that the same could be rectified in future by appointing the persons from the community against which the respective petitioner was appointed.

(v) Hence, this judgment cannot be of any use to the University.

14.7. The last judgment, relied on by the learned counsel for the University, is P.Suseela V. University Grants Commission, (2015) 3 MLJ 734 (SC) :

(i) In that case, the issue that arose before the Apex Court is as to the constitutional validity of the University Grants Commission Regulations (Minimum Qualifications Required for the Appointment And Career Advancement of Teachers in Universities and Institutions affiliated to it) (the Third Amendment) Regulation 2009, under which, the NET/SLET is to be the minimum eligibility condition for recruitment and appointment of Lecturers in Universities / Colleges / Institutions.

(ii) The Apex Court upheld the validity of the said regulations. In the cases on hand, the petitioners have not questioned the UGC Regulations 2009.

(iii) In fact, paragraphs 14 and 15 of the said judgment support the case of the petitioners. It is held therein that the persons, who were appointed based on the UGC Regulations, that existed prior to UGC Regulations 2009, derive a vested right to continue in the employment and their employment shall not be disturbed. The following passage in paragraphs 14 and 15 of the said judgments :

"14. The other interesting argument made is that such regulations should not be given retrospective effect so as to prejudicially affect the interests of any person to whom such regulation may be applicable. In order to appreciate this contention, it is necessary to distinguish between an existing right and a vested right.

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."

(emphasis supplied)

14.8. In view of the said judgment, it is clear that the petitioners, who were appointed based on the UGC Regulations, that existed prior to the coming into force of the UGC Regulations 2009, acquired vested right and the University cannot seek to interfere in their continuance in employment.

15.0. Let me now consider the judgments cited by the learned counsel for the petitioners one by one :

15.1. Radhakrishnan, V. v. The Registrar, Central Administrative Tribunal, 2007 (3) CTC 672 :

(i) The petitioners in this case were employed by the State Forest Service College for more than 20 years. They repeatedly got directions from the Central Administrative Tribunal relating to creation of posts for regularization of their service. Though they were granted temporary status and also granted scala of pay, they were not regularized in service and unless they are regularized, they would not get pension and other benefits on their retirement.

(ii) In those circumstances, the matter came up for hearing before a Division Bench and the Division Bench held, after considering Umadevi's case, that was heavily relied on by the Union of India, that the petitioners therein are entitled to regularization in the facts and circumstances of that case.

(iii) In paragraph 12 of the judgement, the Division Bench, rejecting the plea of the Union of India, when they relied on Umadevi's case, particularly noted that it was not the case of the College that the petitioners were appointed de hors the rules. The Court issued a direction to the Union of India, particularly, based on the letters written by the Directorate of Forest, Ministry of Environment and Forest and also the State Forest College, to create Group D posts within a period of

twelve weeks and grant permanent status to the petitioners therein.

(iv) In the cases on hand, the petitioners stand in a better footing, as I have already held in categorical terms that they were appointed in sanctioned posts, they possessed the requisite qualification and they were selected by the duly constituted Selection Committee.

15.2. S.Jalajkumari V. Personal Assistant (General) to the Collector, reported in (2008) 5 MLJ 1073 :

(i) This judgment arose out of a batch of writ petitions, wherein, the persons, who were appointed on ad hoc basis under Rule 10(a)(1) of the Tamil Nadu General Rules and were not successful in the Special Qualifying Test conducted by the Tamil Nadu Public Service Commission, came up before the Court for regularization of their service. They rendered more than 20 years of service. Their plea for regularization was repelled by the Tribunal. Hence, the aggrieved persons filed the batch of writ petitions.

(ii) The Division Bench, taking note of the fact that they rendered more than 20 years of service, directed the State to regularise their service by granting relaxation in exercise of its power under Rule 48 of the Tamil Nadu General Rules.

(iii) The direction issued by the Division Bench is in terms of paragraph 53 of the judgment of the Apex Court in Uma Devi's case. The Division Bench held that the petitioners possessed the qualification and there were also vacancies and they rendered more than 20 years of service.

(iv) In fact, the petitioners herein, in these writ petitions, are in a better footing, since they were appointed in sanctioned posts, they possessed the requisite qualification and they were selected by the duly constituted Selection Committee.

15.3. The third judgment relied on by the petitioners is my judgment dated 30.10.2012 in W.P.No.2260 of 2012 (A.Bharathi V. The University of Madras, rep. by its Registrar and Others) :

I considered this judgment in paragraph 11.9. of this judgment and held that the petitioners possessed the requisite qualification on the crucial date.

15.4. Nihal Singh V. State of Punjab, AIR 2013 SC 3547 = 2013 (14) SCC 65 :

In fact, this judgment was relied on by the learned counsel for the University and I dealt with the same in paragraph 14.4. of this judgment and held that this judgment supports the case of the petitioners.

15.5. A judgment of the Division Bench of this Court dated 28.04.2014 in W.P.(MD)No.127 of 2011 (M.Umadevi V. The State of Tamil Nadu rep. by its Secretary, Department of Higher Education and Others) :

(i) Ironically, the appellant in that case also Umadevi. The appellant therein sought for regularization of her service as Lecturer in the Department of Tamil in the fifth respondent College therein. Her plea was rejected by a learned Single Judge. A Division Bench of this Court reversed the same and held that the appellant was appointed against sanctioned post, but on consolidated basis for five years. Not only the appellant was appointed in such a way, five other persons were also appointed in various Departments including Tamil Department. Those persons were regularised.

(ii) Recording the said finding, the Division Bench directed for regularization of the service of the appellant therein.

(iii) It is useful to extract paragraph 32 of the said judgment of the Division Bench as hereunder :

"32.At the cost of repetition, we should point out (i) that the appellant is admittedly fully qualified to hold the post; (ii) that there is only one method of recruitment for regular appointment to the post; (iii) that it was by the same method of recruitment that the appellant was selected and appointed; and (iv) that the appointment of the appellant was also by the very same authority, who is competent under the statutory provisions. In such circumstances, the official respondents cannot throw out the claim of the appellant for regularisation after 12 years of her appointment."

(iv) In my view this judgment also supports the case of the petitioners, since they were appointed in sanctioned posts, they possessed the requisite qualification and they were selected by the duly constituted Selection Committee.

16. For all the aforesaid reasons, these writ petitions are allowed to the extent of quashing the impugned notification dated 09.12.2014 insofar the petitioners alone and a direction is issued to the respondents not to disturb the services of the petitioners and to regularise their service by granting the scale of pay, since they were appointed in the sanctioned posts, they possessed the requisite qualification prevailing at that time and they were selected by the duly constituted Selection Committee. I make it clear that the University can proceed with the impugned notification to make appointment in any other vacancies and there is no bar for the University to fill up those posts based on UGC Regulations 2009, as contended by them.

However, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

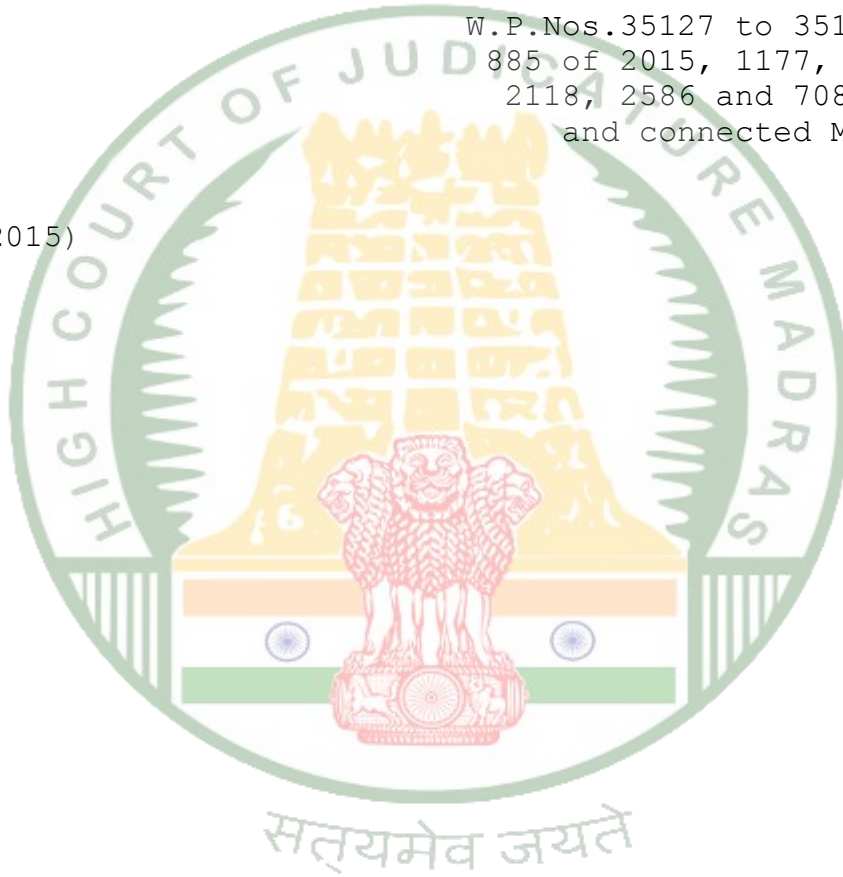
1. The Principal Secretary,
Higher Education Department,
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2. The Vice Chancellor,
Periyar University,
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3. The Registrar,
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4. The Principal,
Periyar University College of
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W.P.Nos.35127 to 35129 of 2014,
885 of 2015, 1177, 1525, 1526,
2118, 2586 and 7082 of 2015
and connected M.Ps.

KM(CO)
CA(26/10/2015)



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