

HON'BLE SRI JUSTICE S.V.BHATT

W.P.Nos.36581, 37714 & 38240 of 2013

COMMON ORDER:

Heard Mr.C.V.Mohan Reddy, holding for Mr.SKhader Mohiuddin, Mr.Venkateswarlu Posani, Mr.M.Ramgopal Rao for petitioners and Mr.K.Ramakanth Reddy for respondents.

The petitioners are different in these writ petitions but respondents are same. The circumstances leading to the filing of writ petitions and the orders impugned in these writ petitions are similar. The issues involved in these writ petitions are one and the same. Hence, they are heard together and disposed of by this common order.

Prayer in W.P.Nos.36581 and 38240 of 2013:

The petitioners pray for Mandamus declaring order No.MANUU/ER-1(A)(731)/F.No.170/2013-2014/1080 dated 02.12.2013 of respondent-University in terminating the services of petitioners, working as Assistant Professors, as illegal, opposed to principles of natural justice and unconstitutional. The petitioners pray for a consequential declaration that they are entitled to be retained and continued as Assistant Professors, CS & IT Departments without reference to the National Eligibility Test (NET) qualification with all consequential benefits.

Prayer in W.P.No.37714 of 2013

The petitioner prays for Mandamus declaring the action of respondents 1 and 2 in imposing condition on petitioner

to clear NET in the relevant subject within two years, in orders of selection and appointment vide No.MANUU/Admn.III/F.162/2011-2012 dated 25.11.2011 and No.MANUU/Admn.III/F.162/2011-2012/2036 dated 08.12.2011 and issuing the order of termination for non-complying with condition vide No.MANUU/ER-1(A) (730)/F.No.169/2013-14/1079 dated 02.12.2013, as illegal, arbitrary and without jurisdiction. The petitioner prays for a consequential direction to respondents 1 and 2 to reinstate him into service as Assistant Professor in Information Technology with all consequential benefits.

Averments in W.P.No.36581 of 2013:

Dr.K.Kahkashan Tabassum is the petitioner and she is a graduate in B.E (CSC) and an M.Tech in Computers from JNTU, Hyderabad. The petitioner claims to have teaching experience of 13 years. In the year 2007, the petitioner applied for Ph.D., in Philosophy, Computer Science and Engineering and she has been awarded Ph.D., by the JNTU. According to the petitioner, she is entitled to apply for the post of Assistant Professor, Computer Informatics, CS & IT Department. The petitioner pursuant to Employment Notification No.25/2011 dated 27.01.2011 applied for the post of Assistant Professor. According to petitioner, she satisfies all the qualifications prescribed for consideration and appointment. According to petitioner, the JNTU awarded Ph.D., to her in the month of February, 2013. The minimum qualifications stipulate either completion of NET/or possessing Ph.D. The condition, according to petitioner, is complied with before the expiry of two year period

granted by respondents because Ph.D., was awarded to petitioner by the JNTU in the month of March, 2013. On 11.02.2013, the petitioner submitted representation to incorporate acquisition of Ph.D by her in the SR. The 1st respondent through letter dated 01.03.2013 called upon the petitioner to explain whether the completion of Ph.D is under intimation to the authority or not. The petitioner states that the letter dated 01.03.2013 has been replied by stating that in the application submitted by petitioner for the post of Assistant Professor, all the details have been furnished and in the interview, it has been brought to the notice of selection committee members that the Ph.D thesis has been submitted and awaiting the award of Ph.D. Therefore, according to her, there is no suppression of any detail or the requirement of permission of college in a situation like this is not required. Now, reverting back to the condition imposed in the appointment order, it is stated that according to UGC guidelines, one is required to possess either Ph.D or complete NET/State Eligibility Test (SET). In the case on hand, with the completion of Ph.D in March, 2013, the petitioner is not required to complete NET/SET as well. The petitioner contends that the termination order dated 02.12.2013 is arbitrary, illegal and unconstitutional and prays for setting aside the termination order and also prays for continuing the petitioner as Assistant Professor in 1st respondent-University.

Averments in W.P.No.37714 of 2013:

Avula Satya Sai Kumar/petitioner states that he is a post graduate in M.Tech from JNTU. He, in response to Employment

Notification No.25/2011 dated 27.01.2011, applied for the post of Assistant Professor in Information Technology, CS & IT Department. The post is reserved for Scheduled Caste candidate. Briefly stated, the respondents after being satisfied with the qualifications of petitioner and subjecting him to selection process, issued appointment order No.MANUU/Admn.III/F.162/ 2011-2012/2036 dated 08.12.2011. The appointment order, in the case on hand, is same and similar to the other appointment orders issued by the respondents to petitioners in other writ petitions. The order is excerpted at the end of narration of averments in these writ petitions, hence for brevity, the contents of the order are not stated here. The petitioner claims to have appeared for the SET examination conducted on 24.11.2013. The results were due to be published in the month of January, 2014. Likewise, the petitioner appeared for NET held on 29.12.2013 and is expecting the results. It is alleged that the results of examinations taken up by the petitioner were overdue and without verifying the factual aspects, the respondents have issued the termination order alleging failure in complying with the condition within two years. According to him, the termination order impugned is violative of principles of natural justice, arbitrary and unconstitutional. The respondents, being aware of the fact of petitioner taking the examination conducted by SET/NET and is awaiting the result, ought not to have issued the termination order impugned in the writ petition. The order of termination of service is issued well before the completion of two year period stipulated in the appointment order dated 08.12.2011. The petitioner complains that the respondents have shown

discrimination, for in respect of a few appointees with similar condition, the respondents granted more than two years time to complete NET/SET and thereafter treated the period on probation and later regularized their service. According to petitioner, he was satisfactorily discharging his duties and terminating his service on the ground of not completing NET/SET, is arbitrary, illegal and unconstitutional. The petitioner prays for setting aside the order of termination. As already noticed, the petitioner challenges the condition imposed in the appointment order dated 08.12.2011 as illegal and arbitrary. At the time of hearing, the counsel for petitioner has made submissions on the alleged illegalities or infirmities in the termination order dated 02.12.2013 and has not advanced arguments on the illegality of the condition. Hence, the other averments are not adverted to.

Averments in W.P.No.38240 of 2013:

Md.Abdul Saifulla, petitioner is a graduate in B.Sc., from Sri Venkateswara University with distinction, M.Sc (Computer Science) with first class and Master of Science from IIT Madras. The petitioner claims to have worked in R & D Divisions of top Software Development Companies in the world for over 10 years. The 1st respondent issued Employment Notification No.25/11 dated 27.11.2011 for filling up teaching and research posts in various disciplines, including two posts of Assistant Professor - Information Technology (S.No.46). One post was reserved for open category and another for SC candidate. The qualifications prescribed for the post read thus:

(i) Good academic record as defined by the concerned university with at least 55% marks (or an equivalent grade in a point scale wherever grading systems is followed) at the Master's Degree level in Computer Science from an Indian University, or an equivalent degree from an accredited foreign university.

(ii) Besides fulfilling the above qualifications, the candidates must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET.

(iii) The candidates, who are, or have been awarded a Ph.D Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for award of Ph.D Degree) Regulation, 2009 shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor.

Specialization"

Assistant Profession in Information Technology

(1) Algorithms (2) Software Engineering.

The petitioner since is qualified and eligible for consideration he applied for the post of Assistant Professor (IT). The respondents, after being satisfied with the qualifications, performance of petitioner in the interview, through orders dated 08.12.2011, appointed the petitioner as Assistant Professor, CS & IT Department under open category for a period of two years in the pay scale of Rs.15600-39100 with a grade pay of Rs.6,000/- with usual allowances as admissible under the rules. The appointment was subject to the condition that the petitioner clears NET in the relevant subject within two years from 08.12.2011. The appointment order further reads that the petitioner in case clears NET within the said period, the period of working in the University will be treated on probation.

According to petitioner, the appointment is made for a permanent vacancy by following the procedure prescribed under the recruitment rules of the University and not for a temporary or casual vacancy. The petitioner relies on the Expert Committee Report headed by Prof.S.P.Thyagarajan to contend that the Expert Committee recommended grant of increments, seniority of service only from the date of qualifying NET/SLET/SET or acquiring Ph.D., but not termination of appointment. In other words, for not completing NET exam or acquiring Ph.D qualification, a candidate cannot be terminated from service, however, the non-completion results in extension of probation and postponement of seniority and increments till a candidate acquires the qualification. The petitioner alleges that he is on the verge of completing Ph.D and at that stage of the matter, on 02.12.2013, the respondents served order terminating the services of petitioner w.e.f., 26.12.2013 on the ground that the petitioner failed to acquire NET qualification within the stipulated period of two years. At this stage of narration, this Court finds it convenient to excerpt the orders dated 08.12.2011 and 02.12.2013 to appreciate the grievance canvassed by the petitioner:

“No.MANUU/Admn.III/F.162/2011-2012/2037 8th December, 2011

ORDERS

Sub: MANUU – Administration – Recruitment of Teaching Staff – Appointment of Assistant Professor in Information Technology, CS&IT Dept – Orders - Issued.

- Ref: 1) Selection Committee meeting held on 19.09.2011.
 2) Approval of Executive Council dated 22.11.2011.
 3) Vice-Chancellor's approval dated 08.12.2011.

Based on the recommendations of the Selection Committee, the Executive Council at its 37th meeting held on 22.11.2011 has

accorded approval for the appointment of Mr.Md.Abdul Saifulla as Assistant Professor in Information Technology, CS&IT Department under un-reserved category on temporary basis for a period of two years in the pay scale of Rs.15600-39100 with Grade Pay Rs.6,000/- on a starting pay to be fixed plus usual allowances as admissible under the rules of the Govt. of India/University. The appointment is subject to condition that he has to clear NET in the relevant subject within a period of two years. In case he clears NET within the period, the temporary period shall be considered as probation. He is posted at Department of CS & IT, University of Headquarters, Hyderabad.

(emphasis added)

He will be governed by the Rules and Regulations of Maulana Azad National Urdu University for Teaching Employees, Services Contract and orders issued by the University/UGC/Govt. of India from time to time. New pension scheme in accordance with the O.M.No.1(13)/EV/2001, Govt. of India, Ministry of Finance, Dept. of Expenditure dated 15.03.2004 will be applicable and subsequent amendments made or will be made from time to time".

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Sd/-Registrar i/c

"No.MANUU/ER-I(A)(731)/F.No.170/2013-2014/1080 November, 2013

02 DEC 2013

ORDER

Sub: MANUU -ER-I Section – Mr.Md.Abdul Saifulla, Asst.Professor, CS&IT Dept – Condition of appointment to qualify NET not fulfilled – Termination of services – Intimation of – Reg.

Ref: Appointment Order No.MANUU/Admn.III/F.162/2011-2012/2037 Dated 08.12.2011.

Mr.Md.Abdul Saifulla was appointed as Assistant Professor in Information Technology, CS&IT Dept. on temporary basis for a period of two years vide orders cited. His appointment was subject to the condition that he has to clear NET in the relevant subject within a period of two years. He joined duty on 27.12.2011. Since Mr.Md.Abdul Saifulla has not cleared NET qualification within the stipulated period of two years, his appointment as Assistant

Professor-IT, CS&IT Dept. shall stand terminated on 26.12.2013 (AN).

(emphasis added)

The Head, Dept. of CS&IT shall relieve Mr.Md.Abdul Saifulla on 26.12.2013 (AN) and ensure that no dues are outstanding against him”.

Sd/-Registrar

The petitioner challenges the order of termination dated 02.12.2013 on the ground that the termination order is arbitrary, illegal and made for extraneous considerations and also unconstitutional. According to petitioner, he accepted the appointment to acquire NET qualification within two years from the date of appointment. The appointment order does not stipulate to termination as consequence in the event of not completing or acquiring NET qualification. According to petitioner, in case NET qualification is not acquired, the probation is extended, but does not result in termination of petitioner's service. The respondents ought to have extended the probation as the petitioner is otherwise qualified, eligible and discharging the duty to the full and complete satisfaction of respondent-University. The petitioner is due to submit the thesis and complete Ph.D., and at that stage of the matter, terminating his services is arbitrary and illegal. As a matter of fact, it is stated that the petitioner on 24.11.2013 appeared for the A.P. State Eligibility Test for Subject IV Computer Science and Application with hall ticket No.110402145 i.e., much earlier to the completion of two year period granted by the respondent-University. On 04.02.2014 and 07.02.2014, results have been declared and the petitioner was declared as qualified. The petitioner again in the examination held on 29.12.2013 by the

UGC appeared and on 21.04.2014, the petitioner alleges that the result is declared and the petitioner has been declared provisionally qualified in the exam. The petitioner refers to discrimination in implementing the condition of possessing Ph.D., or acquiring NET qualification by respondent-University. The petitioner refers to the instances of Devulapally Viswa Prasad and Mr. Shaikh Kareemuddin to whom two year period was extended for completing the NET exam. Thus, there is discrimination and amounts to violation of Article 14 of the Constitution of India. The order terminating the petitioner's service, hence, is illegal, opposed to principles of natural justice and unconstitutional.

Vacate stay petition in W.P.Nos.36581 of 2013

The Registrar of 2nd respondent-University filed vacate stay petition. The respondents question the maintainability of writ petition under Article 226 of the Constitution of India and pray for dismissing the writ petition on this ground. It is averred that the selection committee found that none of the candidates applied for these posts possessed NET qualification. Therefore, the selection committee recommended the petitioner for appointment as Assistant Professors, Computer Informatics on temporary basis. The order of appointment is clear that the instant offer is on temporary basis for a period of two years, subject to the condition that the petitioner clears NET within two years. The petitioner accepted the appointment on temporary basis and could not complete the condition imposed in the appointment order, and, therefore, cannot challenge the termination order. The petitioner

cannot contend that Ph.D comes under exempted category from passing NET. The respondent avers that the University does not require the petitioner anymore as she failed to acquire the mandatory qualification of NET. The petitioner does not have right for reinstatement in any view of the matter. The petitioner since failed to fulfill the condition of clearing NET in the relevant subject, she was relieved from duty on 13.12.2013. It is incorrect to state that the petitioner has furnished the information of acquiring Ph.D in her application form. She, in fact, had furnished information regarding pre-Ph.D., from JNTU, Hyderabad and enclosed a copy thereof to the application form at enclosure No.5. The selection committee has specifically mentioned in its recommendations that the petitioner has to clear NET within two years and the question of considering Ph.D qualification in the place of NET does not arise. Further, the petitioner has neither obtained permission for pursuing Ph.D nor has she mentioned in her application that she was pursuing Ph.D. The action of termination is justified by referring to the recommendation of selection committee and the termination is in accordance with the rules and regulations of the University. The claim of petitioner is false and untenable.

Counter in W.P.Nos.37714 of 2013 & Vacate stay petition in W.P.No.38240 of 2013

The Registrar of 1st respondent-University filed counter affidavit in W.P.No.37714 of 2013 and vacate stay petition in W.P.No.38240 of 2013. The respondents question the maintainability of writ petition under Article 226 of the Constitution of India and pray for

dismissing the writ petitions on this ground. It is stated that the selection committee found that none of the candidates applied possessed NET qualification. Therefore, the selection committee recommended the petitioners for appointment as Assistant Professors, Information Technology CS & IT Department on temporary basis and the order of appointment is clear that the instant offer is on temporary basis for two years, subject to the condition that the petitioner has to clear NET within two years. The petitioners accepted the appointment on temporary basis, but could not fulfill the condition imposed in the appointment order and cannot now challenge the termination order. The 1st respondent avers that the University does not require the petitioners anymore as they failed to acquire the mandatory qualification of NET. The petitioners do not have right for reinstatement in any view of the matter. According to respondents, the question of issuing show cause notice to petitioners does not arise as the petitioners were relieved on 26.12.2013 as per the conditional appointment order dated 08.12.2011. The action of termination is justified by referring to the recommendation of selection committee and the termination is in accordance with the rules and regulations of the University. The claim of petitioners is false and untenable.

The sum and substance of respondents' vacate stay petition is that the appointment as Assistant Professor is a temporary appointment and subject to the condition that the appointee has to complete NET and in the event of completion, the two years worked by the petitioner is treated as on probation and thereafter

the services are regularized. As the petitioners failed to fulfill the condition *ex post facto*, the termination of service is justified.

The counsel for petitioners contend that termination orders are arbitrary, illegal and unconstitutional. The termination of service is against the tenor of appointment orders issued to petitioners. The appointment of petitioners as Assistant Professors is against regular vacancies made pursuant to regular selection process by respondent-University vide Notification dated 27.11.2011. The appointment as Assistant Professor cannot be treated as temporary and sever relationship of employer and employee as respondent-University desires. As a matter of fact, it is contended that treating the appointment as Assistant Professors on temporary basis by respondents is erroneous and such illegal understanding resulted in issuing the termination orders impugned in the writ petitions. Further, the order of appointment does not refer to termination of contract in the event of not completing Ph.D., or acquiring NET qualification within the stipulated time of two years and the reading of such condition into appointment order is impermissible in law or fact.

Mr.C.V.Mohan Reddy contends that the objection on maintainability of writ petition is completely misconceived, for the objection on maintainability is raised as if the petitioners are challenging a pure and simple academic issue where some primacy of opinion is conceded to experts in academics. According to him, the respondent being an instrumentality of State must satisfy that its decisions are free from arbitrariness, conform to the principles of natural justice and the requirement of Article 14 of

the Constitution of India. The objection on maintainability of writ petition for all purposes is intended to deny a remedy to aggrieved party against arbitrary decision or action of respondents. According to him, the subject matter of writ petition begins with appointment and ends with termination of petitioner by the respondent-University, a simple dispute on service of petitioners and the writ is maintainable and the grounds raised fall within the scope of judicial review.

Mr. Posani Venkateswarlu contends that Notification No.25/11 dated 27.11.2011 provides for relaxation of qualification and in the case on hand as no applicant with NET/SET qualification applied, the case of petitioner was scrutinized and forwarded to selection committee and executive council and appointment orders were issued. If the power to relax the condition is exercised, the respondents cannot terminate the services of petitioner by referring to the condition in appointment order dated 08.12.2011. Without prejudice to other grounds, he contends that the respondents are not consistent in applying the conditions, because on pernicious instances time was extended for fulfilling the eligibility condition.

Mr.M.Ramgopal Rao contends that petitioner in W.P.No.36581 of 2013 has completed Ph.D well within the two years and the completion of Ph.D was informed to respondents. The respondents instead of entering the acquired additional qualifications in service register which satisfies the minimum eligibility criterion, issued notice to petitioner alleging that completion or continuation of Ph.D,

without intimation to University is contrary to rules. The petitioner replied suitably and without deciding the notice issued by respondent-University, the termination order is issued by referring to non-completion of NET/SET. According to him, the minimum qualification in the notification reads either NET/SET or Ph.D and with the acquisition of Ph.D., it cannot be said that the petitioner failed to comply with the conditions incorporated in the appointment order. He further contends that the selection committee and executive council have recommended for regular appointment, subject to the condition stipulated in the order of appointment dated 08.12.2011 and the respondent-University cannot unilaterally terminate her services or restrict the minimum qualification condition to NET by omitting Ph.D. Because of the arbitrary, irrational and impermissible action of respondents, the petitioner lost employment for no fault of her. He contends that the respondents have shown discrimination in operating the condition of completing NET within two years and there are earlier instances where time was extended for completing NET.

Mr. Ramakanth Reddy, *per contra*, contends that the writ petitions are not maintainable as no statutory or fundamental right of petitioners is infringed by the respondents. Without prejudice to the first contention, he formulates the submission that the scope of judicial review is very limited, for the respondent-University being an educational body has taken informed decision and this Court ought not to sit as a Court of appeal and re-examine the legality or otherwise of the orders impugned in the writ petitions.

The termination of service is automatic, for the petitioners have accepted the appointment subject to the condition stipulated by the University. It is not in dispute that the petitioners did not fulfill the condition within time. The acquisition of NET subsequent to two years is of no avail. The contentions that principles of natural justice are violated or the action of respondents suffers from arbitrariness and are unconstitutional, are abstract contentions and do not warrant consideration under Article 226 of the Constitution of India. He contends that none of the grounds urged by the petitioners fall within the scope of judicial review and the writs are liable to be dismissed.

I have heard learned counsel appearing for the parties and perused the record. The following points arise for consideration:

- (1) whether the writ petitions are maintainable against the termination orders impugned in the writ petitions?
- (2) whether the termination orders impugned in the writ petitions are valid and legal?

POINT No.1:

The contention of respondents on the maintainability of writ petition is that by issuing the orders of termination, the respondents have neither violated fundamental nor statutory rights of petitioners. The respondent is a University primarily concerned with education and academics. The Courts are slow in interfering with the policy or orders passed in implementation of UGC guidelines/rules/regulations by Universities. The order of termination, in the case on hand, in fact, is passed to keep the appointments in respondent-

University in line with UGC guidelines and not as alleged by petitioners. Therefore, the challenge to termination order is unavailable under Article 226 of the Constitution of India. On the other hand, the contention of respondents is that respondent-University satisfies the tests under Article 12 of the Constitution of India and the challenge in the instant writ petitions is not on standards/circulars/academics undertaken by the University, where due deference to the view of experts in the field is shown by the Courts, unless in specified circumstances the decision of academic bodies is also subjected to judicial review. But in the case on hand, according to respondents, the issues centre round two circumstances viz., appointment and termination of petitioners as Assistant Professors, which is a pure and simple dispute hinging on petitioners' rights and deprivation. In other words, according to petitioners, if termination orders are treated on par with academic matters of Universities, then the valuable remedies in these cases are denied contrary to well established precedents on the point.

The objection on maintainability though is raised by respondents, the contention is not brought to logical conclusion by relying on a precedent dealing with similar situation. While answering this point, this Court is of the view that the availability of prerogative writs to challenge statutory or administrative orders need not be stated, except to burden this order with well established precedents. By keeping in view the position of law and analysis of law or principles on the maintainability of writ petitions

against University, the point is answered in favour of petitioners and against the respondents.

POINT No.2:

The petitioners challenge the termination orders as violative of principles of natural justice, *ex facie* illegal, arbitrary and violative of Article 14 of the Constitution of India. The appointment of petitioners pursuant to regular selection process cannot and could not be treated as temporary. The order of appointment does not stipulate termination of service for non-complying with the condition of acquiring Ph.D/NET, but treats the period on probation, if the qualifications are acquired. As a matter of fact, the petitioners either possess Ph.D as on the date of termination or likewise have taken up NET exam and were expecting results. The declaration of result is not in their hands. On the other hand, the case of respondents is that the conditional appointment order due to admitted circumstances resulted in termination and giving effect to an agreed condition cannot be challenged on untenable grounds. The contention of Mr. Ramakanth Reddy is that undisputed circumstances leading to termination are neither arbitrary nor unconstitutional etc. Therefore, the challenge to termination orders does not come within the scope of judicial review of this Court under Article 226 of the Constitution of India. In other words, according to him, the termination orders do not violate principles of natural justice, not arbitrary/illegal or violative of Article 14 of the Constitution of India.

“The Law itself is on trial quite as much as the cause which is to be decided” (“The Common Laws in the United States” 50 Harv. L.Rev.4, 10 (1936)). Where the objections in fact and law seemingly go to the root of the case and also as contended by respondents appear to be superfluous, the Court achieves a perfect balance in examining these facts-in-issue and the legal objections in its exercise of judicial review. In such situations, there is more than one path to travel and assimilate/apply the admitted circumstances to the grounds of challenge raised by petitioners. The Courts seek to cull out the answer from legal precedents and judicial consciousness. At times, the Judge senses the desired result even before he takes the appropriate path for getting the appropriate result. But the Court, if summarily accepts one or the other submission, then the acceptance amounts to going by intuition not on the well established principles of judicial power and review.

The Court to determine the legality of action impugned before it does not step into the shoes of an appellate authority or Court, but exercises the power of judicial review and examines whether the decision making process conforms to the well established legal grounds, arbitrariness etc.

The origin, scope and limitation of judicial review are decided by a catena of decisions. Therefore, what is axiomatic need not be reasoned out except to precisely state what this Court does in judicial review. Judicial review is concerned with reviewing not the merits of the decision in respect of which the application for judicial review is made, but with ensuring that the bodies exercising public

function observe the substantive principles of public law and that the decision making process itself is lawful. Further, the purpose of remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected. It is no part of that purpose to substitute the opinion of the judiciary or of individual Judges for that of the authority constituted by law to decide the matters in question.

The legal grounds viz., arbitrariness, violative of principles of natural justice etc., applied in judicial review are not equipped with a list of several situations to which these grounds are instantly applied and a decision rendered. The determination as to the situations to which the legal grounds will apply is in the hands of the Judge. In judicial review, the Judge is faced with a number of possibilities, both narrow and broad. In determining the applicable situations, the Judge exercises discretion of a Court. The discretion is not exercised either arbitrarily or for the sake of asking.

Maulana Azad National Urdu University satisfies the tests of Article 12 of the Constitution of India, for it is a University brought into existence through an act of Parliament, receives grants from Central Government to run the University, apart from having pervasive and administrative control of UGC and Central Government.

Arbitrary and *Arbitrarily*, according to P.Ramanatha Aiyar's Law Lexicon, read thus:

Arbitrary : Depending on will or pleasure, based on mere opinion or preference, hence capricious.

Arbitrarily : In an arbitrary manner; according to one's pleasure or caprice; capriciously; without fair, solid, and substantial cause and without reason given. Judicial discretion ought not to be used arbitrarily.

The action of respondent, in order to survive judicial scrutiny, must not be susceptible to the vice of arbitrariness, one of the facets of Article 14 of the Constitution of India and also basic to the rule of law, which governs actions of State or its instrumentalities. Arbitrariness is the very negation of the rule of law. The satisfaction of this basic test is *sine quo non* to the validity of termination orders. Arbitrariness is anathema to the action of a State or the instrumentality of State in every sphere and wherever the vice percolates the State's action, the Courts are not impeded by technicalities to trace it and strike down. For, this is the surest way to ensure the majesty of rule of law guaranteed by the Constitution of India.

Illegality signifies and means that which is contrary to the principles of law and denotes a complete defect in the proceeding.

The Apex Court in *DHARMAPAL SATYAPAL LTD., V CCE*¹ discussed in great detail the conspectus of principles of natural justice and applying the requirements of principles of natural justice on the subsistence of prejudice and held as follows:

¹ (2015) 8 SCC 519

“Natural justice is an expression of English Common Law. Natural justice is not a single theory – it is a family of views. In one sense administering justice itself is treated as natural virtue and, therefore, a part of natural justice. It is also called 'naturalist' approach to the phrase 'natural justice' and is related to 'moral naturalism'. Moral naturalism captures the essence of commonsense morality – that good and evil, right and wrong, are the real features of the natural world that human reason can comprehend. In this sense, it may comprehend virtue ethics and virtue jurisprudence in relation to justice as all these are attributes of natural justice. We are not addressing ourselves with this connotation of natural justice here.

In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision making by judicial and quasi-judicial bodies, has assumed different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must give (*sic* an opportunity) to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as **natural** or fundamental, it is known as 'natural justice'. The principles of natural justice developed over a period of time and which is **still** in vogue and valid even today are: (i) rule against bias, i.e. *nemo debet esse judex in propria sua cause*; and (ii) opportunity of being heard to the concerned party, i.e. *audi alteram partem*. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is duty to give reasons in support of decision, namely, passing of a 'reasoned order'.

Though the aforesaid principles of natural justice are known to have their origin in Common Law, even in India the principle is prevalent from ancient times, which was even invoked in Kautilya's 'Arthashastra'. This Court in *Mohinder Singh Gill v. Chief Election Commissioner* (1978) 1 SCC 405 explained the Indian origin of these principles in the following words:

“Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has

many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of authority. It is the bone of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed from the legendary days of Adam – and of Kautilya's Arthashastra – the rule of law has had this stamp of natural justice, which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system”.

Aristotle, before the era of Christ, spoke of such principles calling it as universal law. Justinian in the fifth and sixth Centuries A.D. called it 'jura naturalia', i.e. natural law.

The principles have sound jurisprudential basis. Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide great humanising factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision making that decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong.

This aspect of procedural fairness, namely, right to a fair hearing, would mandate what is literally known as 'hearing the other side'. Prof. D.J. Galligan (On “Procedural Fairness’ in Briks (Ed.), The Frontiers of Liability, Vol.1 (Oxford 1994) attempts to provide what he calls 'a general theory of fair treatment' by exploring what it is that legal rules requiring procedural fairness might seek to achieve. He underlines the importance of arriving at correct decisions, which is not possible without adopting the aforesaid procedural fairness, by emphasizing that taking of

correct decisions would demonstrate that the system is working well. On the other hand, if mistakes are committed leading to incorrect decisions, it would mean that the system is not working well and the social good is to that extent diminished. The rule of procedure is to see that the law is applied accurately and, as a consequence, that the social good is realised. For taking this view, Galligan took support from Bentham[A Treatise of Judicial Evidence (London) 1825), who wrote at length about the need to follow such principles of natural justice in civil and criminal trials and insisted that the said theory developed by Bentham can be transposed to other forms of decision making as well. This jurisprudence of advancing social good by adhering to the principles of natural justice and arriving at correct decisions is explained by Galligan in the following words:

“On this approach, the value of legal procedures is judged according to their contribution to general social goals. The object is to advance certain social goals, whether through administrative processes, or through the civil or criminal trial. The law and its processes are simply instruments for achieving some social good as determined from time to time by the law makers of the society. Each case is an instance in achieving the general goal, and a mistaken decision, whether to the benefit or the detriment of a particular person, is simply a failure to achieve the general good in that case. At this level of understanding, judgments of fairness have no place, for all that matters is whether the social good, as expressed through laws, is effectively achieved.”

Galligan also takes the idea of fair treatment to a second level of understanding, namely, pursuit of common good involves the distribution of benefits and burdens, advantages and disadvantages to individuals (or groups). According to him, principles of justice are the subject matter of fair treatment. However, that aspect need not be dilated upon.

Allan (“Procedural Fairness and the Duty of Respect” (1998) 18 OJLS 497), on the other hand, justifies the procedural fairness by following the aforesaid principles of natural justice as rooted in rule of law leading to good governance. He supports Galligan in this respect and goes to the extent by saying that it is

same as ensuring dignity of individuals, in respect of whom or against whom the decision is taken, in the following words:

“The instrumental value of procedures should not be underestimated; the accurate application of authoritative standards is, as Galligan clearly explains, an important aspect of treating someone with respect. But procedures also have intrinsic value in acknowledging a person's right to understand his treatment, and thereby to determine his response as a conscientious citizen, willing to make reasonable sacrifices for the public good. If obedience to law ideally entails a recognition of its morally obligatory character, there must be suitable opportunities to test its moral credentials. Procedures may also be thought to have intrinsic value in so far as they constitute a fair balance between the demands of accuracy and other social needs: where the moral harm entailed by erroneous decisions is reasonably assessed and fairly distributed, procedures express society's commitment to equal concern and respect for all.”

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In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles of natural justice, the Courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that order passed is always null and void. The validity of the order has to be decided on the touchstone of 'prejudice'. The ultimate test is always the same, viz., the test of prejudice or the test of fair hearing”.

The above discussion is necessitated having regard to the contentions/objections raised by the respondents. The answer to the point under consideration depends on appreciation of admitted circumstances and applicable principles of law.

Let me first take note of the admitted facts and circumstances and thereafter the disputed facts and applicability of the grounds to the analysis. The employment notification dated 27.01.2011 called for applications from eligible candidates for different vacant posts in respondent-University. The notification was issued for appointing Assistant Professors etc., in regular posts, but not on temporary basis or as *ad hoc* arrangement and one of the conditions in the notification reads thus:

“The University will have the right to relax any of the qualifications, experience and age, except those relating to the knowledge of Urdu, in deserving cases for all the posts”.

From the above it is clear that University can relax the qualifications, experience and age, except those relating to the candidates possessing the knowledge of Urdu. The petitioners have applied for the post of Assistant Professor in different departments and furnished the qualifications possessed by them and experience gained in respective subjects over years.

The case of petitioners is that candidates not possessing NET qualification, are hence eligible to apply, however, the consideration of such application is in the discretionary power conferred on respondents. The University did not receive applications from candidates with NET qualification and the applications of petitioners, were, therefore, scrutinized by the selection committee for the posts to which the petitioners have applied. In other words, to the post for which the petitioners have applied, no candidate with NET qualification or Ph.D had applied

and, therefore, the applications of petitioners were short listed by scrutiny committee were interviewed by the selection committee and selection committee recommended petitioners for appointment as Assistant Professors. The Executive Council and the University accepted the recommendations and issued to petitioners the orders of appointment dated 08.12.2011. The orders of appointment refer to Selection Committee meeting held on 19.09.2011, approval of Executive Council dated 22.11.2011 and Vice Chancellor's approval dated 08.12.2011. The orders of appointment contained the condition to complete NET or acquire Ph.D within two years from the date of appointment. The references in the appointment letter dated 08.12.2011 do not support the stand of respondents that the appointment of petitioners is on temporary basis and can be terminated unilaterally without notice or seeking information from petitioners. On the other hand, the order of appointment reads viz., "Based on the recommendations of selection committee, the Executive Council at its 37th meeting held on 22.11.2011 has accorded approval for the appointment of Mr. Abdul Saifulla as Assistant Professor". The appointment insists on clearing NET in two years and the consequence of acquiring the NET is stated as treating the period of said work on probation. The letter dated 08.12.2011 does not stipulate termination of service forthwith if NET is not completed within two years. The petitioners rely on general condition that the respondent has power to extend the time depending on case to case basis. Be that as it may, this Court is of the view that action of respondent in treating the appointment of petitioner on temporary

basis is incorrect and also that the further decision taken on such understanding has certainly resulted in issuing the snap order terminating petitioners' service as Assistant Professors. The petitioners have participated in the selection process and were appointed against permanent posts, subject to complying with the condition imposed by the University. The details given by the petitioners show that they have either taken up the examination or completed Ph.D within the two year period. The order of termination was issued without putting the petitioners on notice or even finding out the stage of complying with the condition which is now treated as mandatory, resulting in termination. It is in this background the applicability of principles of natural justice and the test of prejudice are considered and applied by this Court. It is not the case of respondents that the petitioners have not taken up NET exam or acquired Ph.D. The respondents, if have put petitioners on notice, the relevant details are posted for consideration and an informed decision could have been taken. The respondent did not issue notice to any of the petitioners before terminating their services. The orders impugned in the writ petitions evidence that the respondent assumed that the petitioners suffer same inadequacy in December, 2013.

The total consideration of issue by respondents is not free from arbitrariness and is very subjective. The petitioners are considered and appointed against regular vacancies. Therefore, firstly termination without show cause notice is illegal and unsustainable, and secondly the petitioners have suffered prejudice for want of

notice before any decision is taken. The prejudice to petitioners is evident from non-consideration of fact that Dr. Kahkashan Tabassum acquired Ph.D and thus complies with the requirement stipulated in employment notification and the order of appointment dated 08.12.2011. The other petitioners have completed NET written examination within two years and were expecting results and as a matter of fact have completed the examination as noted above. The completion of NET dates back to the date of writing examination and the benefit of treating the period of two years cannot be denied, much less terminate the service. Thus, the challenge to termination order as without notice to petitioner is successfully established and for this reason as well, the order impugned is vitiated as violative of principles of natural justice. Further, it is not the case of University that it does not have power to extend time for complying with the condition imposed in the order of appointment and never extended time to any of the candidates appointed with similar conditions. The writ affidavit refers to the cases of two individuals and there is no reply to this allegation. The test of legality or otherwise of the orders impugned in the writ petitions depends on the approach of respondents in exercising its jurisdiction to relax and whether in the past in similar circumstances, such relaxation has been granted or not. The respondent ought to maintain consistence in exercising its powers or avoid discrimination. In the case on hand, the petitioners have shown and established discriminatory attitude in adhering to the condition relied for terminating the services of petitioners. This Court is of the view that the respondent in the decision making process under challenge

acted arbitrarily, violated principles of natural justice and did not maintain equality among similarly situated candidates, conforming to the requirement of Art 14 of the Constitution of India. The employment in respondent-University is governed by the Rules and Regulations of the University. The respondent-University cannot act on whimsical or momentary considerations, in the sense if the respondent-University was particular to consider the candidates with NET or Ph.D qualification and appoint for posts of Assistant Professors, it should not have subjected the petitioners to further selection process or select them. The option to relax the qualification was reserved for decision subject to the response the notification gets. Supposing the applicants with NET/Ph.D applied, the respondent-University may or may not have exercised the power of relaxation. It shortlisted the petitioners, subjected them to selection process after accepting their merit, relaxed the condition of having the qualification of either NET or Ph.D and appointed the petitioners as Assistant Professors. As already noted, the petitioners have substantially complied with the condition in the appointment order dated 08.12.2011. The petitioners have either written the examinations within the period of two years or were awaiting the result. Dr.Kahkashan Tabassum completed Ph.D and still her services have been terminated as not possessing NET qualification. Terminating the petitioners from service by referring to condition in the appointment order is arbitrary, illegal and unconstitutional. The termination orders are set aside.

The writ petitions are, accordingly, ordered. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, stand closed.

22nd September, 2017

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S.V.BHATT, J

