

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

WRIT PETITION NO. 29 OF 2017

1. Kishor S/o Punjahari Bhakre,
Age : 38 years, Occu. Service,
R/o. Agril Research Station,
Savlevihir Farm, Tq. Rahata,
Dist. Ahmednagar.
2. Raosaheb Sukhdev Chavan,
Age : 40 years, Occu. Service,
R/o. S-28, Dnyaneshwar Colony,
MPKV, Rahuri, Dist. Ahmednagar.
3. Sanjay Sukhdev Vetel,
Age : 39 years, Occu. Service,
R/o. Dnyaneshwar Colony,
MPKV, Rahuri, Dist. Ahmednagar.
4. Pandharinath Yadav Dhage,
Age : 39 years, Occu. Service,
R/o. PGI, MPKV, Rahuri, Dist. Ahmednagar.
5. Sheshrao Chandrakant Deshmukh,
Age : 41 years, Occu. Service,
R/o. PGI, MPKV, Rahuri, Dist. Ahmednagar.
6. Adinath Jalindhar Suryawanshi,
Age : 29 years, Occu. Service,
R/o. PGI, MPKV, Rahuri, Dist. Ahmednagar.
7. Ganesh Mahadeo Ghadge,
Age : 27 years, Occu. Service,
R/o. Department of Entomology,
MPKV, Rahuri, Dist. Ahmednagar.
8. Prasad Chandrakant Adhav,
Age : 30 years, Occu. Service,
R/o. Department of Soil Sci. & Agril.,
Chem., MPKV, Rahuri, Dist. Ahmednagar.

9. Smt. Manisha Machindra Khaire,
Age : 29 years, Occu. Service,
R/o. PGI, MPKV, Rahuri, Dist. Ahmednagar.
10. Sitaram Pandurang Bachkar,
Age : 33 years, Occu. Service,
R/o. PGI, MPKV, Rahuri, Dist. Ahmednagar.
11. Sunil Bhausahab Todmal,
Age : 33 years, Occu. Service,
R/o. PGI, MPKV, Rahuri, Dist. Ahmednagar.
12. Sharad Shivaji Belhekar,
Age : 28 years, Occu. Service,
R/o. PGI, MPKV, Rahuri, Dist. Ahmednagar.
13. Shivaji Baban Khedkar,
Age : 39 years, Occu. Service,
R/o. CPMCC Scheme, Agril. Econ.
MPKV, Rahuri, Dist. Ahmednagar.
14. Swapnil Shivaji Jadhav,
Age : 33 years, Occu. Service,
R/o. CPMCC Scheme, Agril. Econ.
MPKV, Rahuri, Dist. Ahmednagar.
15. Yogesh Sadashiv Dhumane,
Age : 34 years, Occu. Service,
R/o. CPMCC Scheme, Agril. Econ.
MPKV, Rahuri, Dist. Ahmednagar.
16. Babanrao Vasant Nalawade,
Age : 35 years, Occu. Service,
R/o. CPMCC Scheme, Agril. Econ.
MPKV, Rahuri, Dist. Ahmednagar.
17. Shivaji Kashinath Mane,
Age : 41 years, Occu. Service,
R/o. CPMCC Scheme, Agril. Econ.
MPKV, Rahuri, Dist. Ahmednagar.
18. Sandip Shivaji Shinde,
Age : 33 years, Occu. Service,

R/o. CPMCC Scheme, Agril. Econ.
MPKV, Rahuri, Dist. Ahmednagar.

19. Shivaji Baban Mahulkar,
Age : 36 years, Occu. Service,
R/o. CPMCC Scheme, Agril. Econ.
MPKV, Rahuri, Dist. Ahmednagar.
20. Sandip Dilip Halde,
Age : 34 years, Occu. Service,
R/o. CPMCC Scheme, Agril. Econ.
MPKV, Rahuri, Dist. Ahmednagar.
21. Haribhau Sakharam Ayanar,
Age : 30 years, Occu. Service,
R/o. CPMCC Scheme, Agril. Econ.
MPKV, Rahuri, Dist. Ahmednagar.
22. Bhausaheb Dnyaneshwar Deshmukh,
Age : 34 years, Occu. Service,
R/o. CPMCC Scheme, Agril. Econ.
MPKV, Rahuri, Dist. Ahmednagar.
23. Ashok Muktaji Ayanar,
Age : 30 years, Occu. Service,
R/o. CPMCC Scheme, Agril. Econ.
MPKV, Rahuri, Dist. Ahmednagar.
24. Sunil Hanumant Gadhave,
Age : 36 years, Occu. Service,
R/o. CPMCC Scheme, Agril. Econ.
MPKV, Rahuri, Dist. Ahmednagar.
25. Ganga Manjabapu Mane,
Age : 32 years, Occu. Service,
R/o. CPMCC Scheme, Agril. Econ.
MPKV, Rahuri, Dist. Ahmednagar.
26. Bharat Subhash Harischandre,
Age : 35 years, Occu. Service,
R/o. CPMCC Scheme, Agril. Econ.
MPKV, Rahuri, Dist. Ahmednagar.

27. Dattatraya Motiram Chavan,
Age : 36 years, Occu. Service,
R/o. G-36, Sharad Colony,
MPKV, Rahuri, Dist. Ahmednagar.
28. Jaydeep Raosaheb Khalekar,
Age : 30 years, Occu. Service,
R/o. Comprehensive Scheme,
Agri. Econ. MPKV, Rahuri, Dist. Ahmednagar.
29. Pandurang Girmaji Mukade,
Age : 32 years, Occu. Service,
R/o. Comprehensive Scheme,
Agri. Econ. MPKV, Rahuri, Dist. Ahmednagar.
30. Shrikant Avinash Tambe,
Age : 28 years, Occu. Service,
R/o. Comprehensive Scheme,
Agri. Econ. MPKV, Rahuri, Dist. Ahmednagar.
31. Kiran Yohan Pawar,
Age : 30 years, Occu. Service,
R/o. Comprehensive Scheme,
Agril. Econ. MPKV, Rahuri, Dist. Ahmednagar.
32. Prabhat Maruti Bare,
Age : 28 years, Occu. Service,
R/o. Comprehensive Scheme,
Agri. Econ. MPKV, Rahuri, Dist. Ahmednagar.
33. Sagar Suresh Landage,
Age : 27 years, Occu. Service,
R/o. Comprehensive Scheme,
Agri. Econ. MPKV, Rahuri, Dist. Ahmednagar.
34. Vinod Purushottam Kulkarni,
Age : 41 years, Occu. Service,
R/o. Comprehensive Scheme,
Agri. Econ. MPKV, Rahuri, Dist. Ahmednagar.
35. Dipak Vikas Auti,
Age : 29 years, Occu. Service,
R/o. Sorghum Improve Project,
Agri. Econ. MPKV, Rahuri, Dist. Ahmednagar.

36. Machindra Fakkad Wagh,
Age : 35 years, Occu. Service,
R/o. Sorghum Improve Project,
Agri. Econ. MPKV, Rahuri, Dist. Ahmednagar.
37. Sudhakar Narayanrao Kolhe,
Age : 34 years, Occu. Service,
R/o. Comprehensive Scheme,
Agri. Econ. MPKV, Rahuri, Dist. Ahmednagar.
38. Raghunath Keshav Shinde,
Age : 40 years, Occu. Service,
R/o. Comprehensive Scheme,
Agri. Econ. MPKV, Rahuri, Dist. Ahmednagar.
39. Vaishali Sunil Todmal,
Age : 29 years, Occu. Service,
R/o. Department of Entomology,
MPKV, Rahuri, Dist. Ahmednagar.
40. Mangal Shantaram Landge,
Age : 31 years, Occu. Service,
R/o. Department of Botany,
MPKV, Rahuri, Dist. Ahmednagar.
41. Mangal Shantaram Landge,
Age : 31 years, Occu. Service,
R/o. Dnyaneshwar Colony,
MPKV, Rahuri, Dist. Ahmednagar.
42. Mohini Dnyandeo Chemate,
Age : 29 years, Occu. Service,
R/o. Department of Entomology,
MPKV, Rahuri, Dist. Ahmednagar.
43. Sunita Balasaheb Sul,
Age : 37 years, Occu. Service,
R/o. Sorghum Improvement Project,
MPKV, Rahuri, Dist. Ahmednagar.
44. Sandhya Sadashiv Deshmukh,
Age : 37 years, Occu. Service,
R/o. Sorghum Improvement Project,
MPKV, Rahuri, Dist. Ahmednagar.

45. Vaishali Sachin Ponde,
Age : 32 years, Occu. Service,
R/o. Tomato Improvement Project,
MPKV, Rahuri, Dist. Ahmednagar.
46. Madhri Dattatraya Autade,
Age : 32 years, Occu. Service,
R/o. ICRP of Vegetable,
MPKV, Rahuri, Dist. Ahmednagar.
47. Rupali Prasad Adhav,
Age : 28 years, Occu. Service,
R/o. Onion Storage Scheme,
MPKV, Rahuri, Dist. Ahmednagar.
48. Manisha Nivrutti Nangare,
Age : 28 years, Occu. Service,
R/o. Department of Pl. Pathology,
MPKV, Rahuri, Dist. Ahmednagar.
49. Sujata Ashok Patil,
Age : 27 years, Occu. Service,
R/o. G-36, Dnyaneshwar Colony,
MPKV, Rahuri, Dist. Ahmednagar.
50. Kailas Ambu Pawbake,
Age : 33 years, Occu. Service & Education,
R/o. PGI, MPKV, Rahuri, Dist. Ahmednagar.
51. Ganesh Machhindranath Mehetre,
Age : 38 years, Occu. Service & Education,
R/o. Department of Entomology,
MPKV, Rahuri, Dist. Ahmednagar.
52. Pradipkumar Amrutrao Koli,
Age : 30 years, Occu. Service & Education,
R/o. Comprehensive Scheme, Agril., Econ.,
MPKV, Rahuri, Dist. Ahmednagar.
53. Rajendra Bhagirath Pawar,
Age : 35 years, Occu. Service & Education,
R/o. AICP on fruits,
MPKV, Rahuri, Dist. Ahmednagar.

54. Vilaspuri Bhatupuri Buwa,
Age : 30 years, Occu. Service & Education,
R/o. Comprehensive Scheme, Agril., Econ.,
MPKV, Rahuri, Dist. Ahmednagar.
55. Popat Ramesh Khalekar,
Age : 30 years, Occu. Service & Education,
R/o. Comprehensive Scheme, Agril., Econ.,
MPKV, Rahuri, Dist. Ahmednagar.
56. Amrut Parashram Kalkute,
Age : 31 years, Occu. Service & Education,
R/o. Comprehensive Scheme, Agril., Econ.,
MPKV, Rahuri, Dist. Ahmednagar.
57. Shital Shyamgir Gosavi,
Age : 30 years, Occu. Service & Education,
R/o. Comprehensive Scheme, Agril., Econ.,
MPKV, Rahuri, Dist. Ahmednagar.
58. Prakash Babasaheb Lambe,
Age : 30 years, Occu. Service & Education,
R/o. Comprehensive Scheme, Agril., Econ.,
MPKV, Rahuri, Dist. Ahmednagar.
59. Bapu Raosaheb Adsure,
Age : 33 years, Occu. Service & Education,
R/o. Comprehensive Scheme, Agril., Econ.,
MPKV, Rahuri, Dist. Ahmednagar.
60. Vasant Vinod Bhusare,
Age : 28 years, Occu. Service & Education,
R/o. Comprehensive Scheme, Agril., Econ.,
MPKV, Rahuri, Dist. Ahmednagar.
61. Shital Amol Jagdale,
Age : 28 years, Occu. Service & Education,
R/o. G-86, Sharad Colony,
MPKV, Rahuri, Dist. Ahmednagar.
62. Sangita Rajendra Mane,
Age : 42 years, Occu. Service & Education,
R/o. F-81, Swapnapurti Colony,
MPKV, Rahuri, Dist. Ahmednagar.

....Petitioners

VERSUS

1. The State of Maharashtra,
through the Principal Secretary,
Agricultural, Animal Husbandry,
Dairy Development and Fisheries Department,
Mantralaya, Mumbai.
 2. The Secretary,
General Administration Department,
Mantralaya, Mumbai.
 3. The Registrar,
Mahatma Phule Krishi Vidyapeeth, Rahuri,
(MPKV), Dist. Ahmednagar.
 4. The Registrar,
Yashwantrao Chavan Maharashtra Open University,
Dnyangangotri Near Gangapur Dam,
Nashik.
- ...Respondents**

.....

Mr N. B. Khandare, Advocate h/f Mr R. R. Karpe, Advocate for the
petitioners

Mrs M. A. Deshpande, AGP for respondent/Stte

Mr P. L. Shahane, Advocate for respondent No. 3

Mr R. R. Mane, Advocate for respondent No. 4

Mr Abhay Ostwal, Advocate for Intervenor

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WITH

CIVIL APPLICATION NO. 12482 OF 2017
IN
WRIT PETITION NO. 29 OF 2017

The Registrar,
Age : Major, Occupation : Service,
Mahatma Phule Krishi Vidyapeeth, Rahuri
(MPKV), Dist. Ahmednagar.

Applicant...

Versus

1. Kishor S/o Punjahari Bhakre,
Age : 38 years, Occu. Service,
Resident of Agril Research Station,
Savli Vihir Farm, Tal. Rahata, Dist. Ahmednagar,
Maharashtra.
 2. The State of Maharashtra,
Through the Principal Secretary,
Agriculture, Animal Husbandry,
Dairy Development & Fisheries Department,
Mantralaya, Mumbai.
 3. The Secretary,
General Administration Department,
Mantralaya, Mumbai.
 4. The Registrar,
Yashwantrao Chavan Maharashtra Open University,
Dnyangangotri, Near Gangapur Dam,
Nashik, Maharashtra.
- ...Respondents**

.....
Mr P. L. Shahane, Advocate for applicant
Mr N. B. Khandare, Advocate h/f Mr R. R. Karpe, Advocate for
respondent No. 1
Mrs M. A. Deshpande, AGP for respondent/State
Mr R. R. Mane, Advocate for respondent No. 4
Mr Abhay Ostwal, Advocate for Intervenor
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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATE OF RESERVING THE JUDGMENT : 05.04.2018
DATE OF PRONOUNCING THE JUDGMENT : 04.05.2018

JUDGMENT (PER A. M. DHAVALA, J.) :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at the stage of admission.

2. The petitioners seek quashing of communications of respondent No.3 – Mahatma Phule Krishi Vidyapeeth, Rahuri (hereinafter referred to as “MPKV, Rahuri”) dt. 05.12.2016 and Government Letter dt. 22.06.2016, whereby the petitioners were held to be ineligible for promotion to the post of Jr. Research Assistant. Petitioners No. 1 to 49 are holding Bachelor's Degrees in Agriculture or Horticulture awarded by the Yashwantrao Chavan Open University (hereinafter referred to as “YCMOU”), Nashik and are working as Agriculture Assistants with respondent No. 3 - MPKV, Rahuri. Whereas; petitioners No. 60 to 62 are studying degree course in the Open University. The impugned communications held that the employees possessing degree of B.Sc. Agriculture and Horticulture from Open University will not be considered for promotional post of Jr. Research Assistant being academic post. The petitioners claim a declaration that, B.Sc. Agriculture Degree of Open University is equivalent to the degree obtained from any Traditional Agriculture University and seek mandamus for direction to the respondents to consider the same as equivalent for appointments to the post of Junior Research Assistant and Senior Research Assistant.

3. Mr. N. B. Khandare, the learned counsel for the petitioners relied on Government Resolutions dt. 24.10.2000 (P.110),

29.09.2006 (P.112) and 23.08.2011 (P.119) and the resolutions passed by Maharashtra Agriculture Education and Research Council (MAERC) dt. 25.07.2011 and 07.06.2014 to submit that, the Government as well as the MAERC have given equivalence to the degrees of open university. The Government Resolutions relied on by the respondents giving equivalence but making distinction in respect of academic posts are anomalous and cannot be implemented. The post of Junior Research Assistant is not academic post. The University Grants Commission (UGC) and the YCMOU have consistently taken a stand in support of equivalence. The same was binding on the Government and the letter dt,22.06.2016 issued by Dy. Secretary will not override the Government Resolutions. The respondent No. 3 is creating artificial classification which is violative of Articles 14 and 16 of the Constitution.

4. Per contra, Mr Abhay Ostwal, the learned counsel for respondents No. 5 to 16, Shri. P. L. Shahane for respondent No. 3, Mr Mane, learned counsel for respondent No. 4 and Mrs M. A. Deshpande, the learned Asst. Government Pleader for respondents No. 1 and 2 supported the impugned communication and argued that, there is consistent policy of not considering the degree of B.Sc. agriculture from Open University as equivalent to B.Sc. agriculture from general agriculture universities in view of the material

difference in the course and curriculum contents and absence of any practical training in the open universities. Besides, there was difference of medium of communication. Open Universities teach agriculture in Marathi medium whereas the conventional Universities teach subjects in English which is essential knowledge for the promotional posts of Jr. Research Assistant. They pointed out the provisions showing the post of Jr. Research Assistant as academic post and there are decisions of the Government as well as Executive Council of Agriculture Universities Council, that B.Sc. Agriculture from Open University is not equivalent with the same degree of Traditional Agriculture Universities. They argued that, the authority to decide this point in respect of appointments and promotions of the employees is with the employer and respondent No. 3 as employer has taken a decision based on the consistent stand of the Government and several other institutions and therefore no interference is called for. The learned counsel for the respective parties have relied on rulings and documents which will be discussed in due course.

5. The only issue for our consideration is whether the persons holding degree of B.Sc. Agriculture or B.Sc. Horticulture obtained from Open University (YCMOU) is equivalent to similar degree obtained from other Agriculture Universities for the purpose of

considering the petitioners for the promotional post of Jr. Research Assistant and Senior Research Assistant in Agriculture University.

6. Essential qualifications with regard to the appointments and promotions of staff in Agriculture Universities and terms and conditions are governed by Maharashtra Agriculture Universities Krishi Vidyapeeth Statute, 1990. Statute 71 (ix & xi) lays down that, Senior Research Assistant and Junior Research Assistant are the posts of academic staff. There is no dispute that petitioners No. 1 to 49 are holding the feeder post of Agriculture Assistant in Mahatma Phule Krishi Vidyapeeth, Rahuri (in short "MPKV") (R-3) for whom the post of Jr. Research Assistant is promotional post and petitioners No. 50 to 62 are taking education in B.Sc. agriculture degree course in Open University. There is no substance in the contention that the writ petition on their behalf is not tenable. Petitioners No. 1 to 49 are directly concerned and petitioners No. 50 to 62 are proper parties in view of their future involved. The record shows that, there are 138 posts of Agriculture Assistants with respondent No. 3, out of which 87 are holding degree of Open University. The record shows that, initially 25% posts of Jr. Research Assistants were meant for in-service candidates by way of promotion by resolution dt. 04.08.2014 (Pg. 309). Subsequently, the percentage was reduced to 10%.

7. Statute 73 r/w Appendix III shows the minimum qualification for the post of Jr. Research Assistant is Bachelor's degree in respective faculty. The Maharashtra Agriculture Universities Statute, 1990 was amended on 15.03.2014 but the qualification for Jr. Research Assistant has not been changed. The qualification for the post of Sr. Research Assistant is however changed to Masters Degree in respective discipline.

8. Section 74 deals with manner of appointment of academic staff members. The power is vested with Vice-Chancellor. The appointments are strictly on the basis of the merits. The recommendations of Executive Council and Academic Staff Members are relevant as per sub-clause II. Statute 77 prescribes procedure for appointment of academic staff members. Sub-clause IV again provides that, appointment shall be on merits.

9. The record shows that, post of Agriculture Assistant as well as Jr. Research Assistant are clerical posts. The pay scale is also not much different as follows:

Agriculture Assistant : Rs. 1230-1440-30-1800

Jr. Research Assistant : Rs. 1400-400-40-1650-2300 EB 60-2600

10. It is relevant here to state that, Jr. Research Assistant are supposed to teach some students of agriculture School and assist the seniors and to perform other ministerial work. They are not supposed to teach any subject to the college courses conducted by the University.

11. There are four agriculture universities namely; Dr. Panjabrao Deshmukh Krishi Vidyapeeth, Akola (hereinafter referred to as “PDKV, Akola”), Mahatma Phule Krishi Vidyapeeth, Rahuri (hereinafter referred to as “MPKV, Rahuri”), Dr. Balasaheb Sawant Konkan Krishi Vidyapeeth, Dapoli (hereinafter referred to as “BSKKV, Dapoli”) and Vasantrao Naik Marathwada Krishi Vidyapeeth, Parbhani (hereinafter referred to as “VNMKV, Parbhani”) established under the Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983. Yashwantrao Chavan Maharashtra Open University, Nashik, is established subsequently but it is recognized for education in agriculture. All the universities are recognized by UGC for conferring degrees. The Government Resolution of GAD dt. 08.03.1995 and subsequent GR dt. 10.12.1998 disclose all these universities at par. The Agriculture Universities are having degree course in agriculture and horticulture of four years whereas; the Open University is having a degree course in the same subjects of six years.

12. Learned advocates for respondents argued that, there is material difference in the curriculum in the degree courses held by Open University as against the degree courses of Agriculture Universities. Respondent No. 3 - MPKV, Rahuri has taken a consistent stand that the difference in the educational pattern in the Open University is such that the degrees of open university cannot be treated as equivalent. Similar stand is taken by respondent No. 1 in its affidavit, though as discussed later, it is contrary to GRs issued by respondent No. 1.

13. Though there are pleadings, documents and affidavits to justify the stand of equivalence or non-equivalence, we hold that, in exercise of jurisdiction under Article 226, we will not enter into these disputed facts. It is for the Expert Bodies or the concerned Board having competence to determine whether the degree of Open University is equivalent to the degree of Traditional Universities or not. In this regard, Mr. Ostwal, learned advocate for respondents No. 5 to 16 rightly placed reliance on the following rulings.

[I] *Rajendra Prasad Mathur v Karnataka University and another* reported in *AIR 1986 SC 1448*.

The examination passed by the students from Rajasthan was not recognized as equivalent to examination

passing of which constitutes the basis of admission. It was observed, it is for each University to decide the question of equivalence and it would not be right for the Court to sit in judgment over the decision of the University because it is not a matter on which the Court possesses any expertise. The University is best fitted to decide whether any examination held by a University outside the State is equivalent to an examination held within the State having regard to the courses, the syllabus, the quality of teaching or instruction and the standard of examination. It is an academic question in which the court should not disturb the decision taken by the University. Since the period of four years lapsed and colleges were responsible for wrongful admission, the students were permitted to pursue the studies.

[II] *The University of Mysore Vs. C. D. Govinda Rao and another* reported in *AIR 1965 SC 491*.

Boards of Appointments to the post of teacher are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the opinions expressed by the experts. If there is no allegation about mala fides against the experts who constituted the Board, it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. The Board is not in the position of an executive authority, issuing an executive fiat, nor does it act like a quasi judicial tribunal deciding disputes referred to it for its decision. In dealing with complaints made by citizens in regard to appointments made by academic bodies, like the universities, such an approach would not be reasonable or appropriate. Tests which would legitimately be applied in the case of writs of certiorari cannot be applied. The question of manifest error is a consideration which is more germane and relevant in a procedure for a writ of certiorari. What the High Court should consider is whether the appointment made by the Chancellor or the recommendation of the Board had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should show due regard to the opinion expressed by the Board and its recommendations on which the Chancellor has acted.

[III] **P. Suseela and others Vs University Grants Commission and others** reported in 2015 (8) SCC 129.

It is permissible to set up eligibility criteria for academic staff or teachers of university to ensure selection of most meritorious candidates to teach so as to maintain excellence in standard of education.

When Expert Committee had recommended that Ph.D. degree should be sufficient to qualify such person for appointment as Lecturer without further qualification to pass any test. The said recommendation was found contrary to regulation 3.3.1 and was not accepted by UGC. It was held that, the High Court erred in giving effect to the recommendation of the Expert Committee in the teeth of statutory resolutions as it was impermissible. It is held that, Commission can make regulations u/s 26 of University Grants Commission Act only if they are consistent with the Act i.e. they must conform to Section 20 of the UGC Act which means the Central Government must have issued directions to the Commission on question of policy relating to national purposes.

14. Mr Ostwal, learned counsel for respondents No. 5 to 16 relied on following rulings wherein the degree course from Open Distance Learning has not been treated as equivalent and the same was upheld by the courts.

[i] T.L. Muthukumar and Ors. Vs. Registrar General, High Court and Anr reported in (2011) 2 MLJ 785

[ii] Dr. Dinesh Khandikar v The State of Maharashtra (WP 8237/2011), decided by Aurangabad Bench dt. 19.01.2012 (Coram : B.R. Gavai & M.T. Joshi, JJ.).

[iii] The University of Mysore Vs. C. D. Govinda Rao and another reported in AIR 1965 SC 491.

[iv] **Guru Nanak Dev University Vs Sanjay Kumar Katwal & Anr** reported in (2009) 1 SCC 610.

In this case, qualification prescribed by the appellant/university for LL.B. degree course admission was bachelor degree with not less than 45% marks or masters degree. The respondents were holding masters degree granted without obtaining bachelors degree. The same was not accepted by the university as it was not recognized by the appellant. The act of the appellant was approved however due to time lapse, no action was taken on the respondents who had completed the course.

[v] *R. Kumar v. State of Tamil Nadu* reported in *AIR 2005 Madras 278*,

The petitioners had claimed the MS degree obtained from distance learning programme should be treated as equivalent to ME/M.Tech degree of other universities. It was held that, **no** University or a deemed University or its graduates can compel or demand any other university to recognize degrees of other universities for any purpose much less for purpose of appointment, promotion, higher studies for doing PhD. etc. The relief claimed by the petitioners could not be granted.

[vi] *Orissa Lift Irrigation v Ravishankar* reported in *2017 SCC Online SC 1281*,

The issue was whether B.Tech Civil Degree from a deemed University at Udaypur through distance education was equivalent or not to the degree in engineering required for promotion to the post of Asst. Engineer. The High Court had allowed the petition on the premise that the petitioner claimed that he was in service Graduate Engineer. The Apex Court set aside the decision of Orissa High Court and issued directions restraining all deemed universities to carry on any courses from academic session 2018-19 onwards unless and until it is permissible to conduct such courses in distance education mode and specific permissions are granted by the concerned statutory regulatory authorities.

15. While in *Mirza Ashraf Baig s/o Mirza Anwar Baig Vs. The Maulana Azad National Urdu University, Hyderabad and others* (WP No. 9955 of 2016) Division Bench of this Court at

Aurangabad, recognized equivalence to the degree of Open University in the matter of further studies.

16. Therefore, we are not taking up the job of determining the existence of equivalence or otherwise. We are considering the stand taken by the competent authorities and by various authorities concerned regarding the equivalence or otherwise.

17. We find that, the respondent No. 3 in para 2 of reply has taken a stand that the Government Resolutions are binding on it in the matter of promotion. Similarly, we find that, the stand of Council of Maharashtra Agriculture Education and Research and UGC is also relevant, though may not be decisive.

18. Though the Government has taken contrary stands at different stages, the Government Resolution dt. 24.09.2000, 29.09.2006 and 23.08.2001 unequivocally grant equivalence to the degrees of Open University.

19. In the Government Resolution of Agriculture Department dt. 24.09.2000 (P.110), the degree from open university having a

course of six years was treated as equivalent to degree of other agriculture universities of 4 years both in Agriculture & Horticulture. It was with respect to the purpose of educational studies and different purposes of educational studies. Again on 29.09.2006, similar GR has been issued (Pg. 112) for the purpose of agriculture services (Group A, B, C & D). It was held that, the rules regarding educational qualification as laid down in letter dt. 05.08.1983 shall be accordingly modified. On 23.08.2011, the State of Maharashtra (GAD) passed a resolution (Pg. 119) wherein the decision of Central Government granting equivalence was considered and held that the same shall be equally applicable to the recruitments in Government Services. This was in reference to the degrees conferred by Universities listed in GR dt. 10.02.1998 and 12.12.2006. These Government Resolutions are admittedly binding on respondent No. 3-MPKV, Rahuri.

20. In letter dt. 05.12.2014 issued by Dy. Secretary (Agriculture Department), it was recorded that the letter of Secretary of the Governor was showing mistake due to oversight in referring to the post of Jr. Research Assistant for granting promotion to the degree holders from Open Agriculture University.

21. Maharashtra Agriculture Education and Research Council (MAERC) is a recognized institute functioning under the Ministry of Agriculture. In its meeting dt. 24.02.2011, Resolution No. 48/84/2011 was passed by referring to the earlier Government decisions of Agriculture Department. It was resolved that, the Agriculture Assistants holding degree of B.Sc. Agriculture from Open University should be treated as eligible for promotion (Pg. 128 & 129) dt. 25.07.2011. Again in the further meeting held under the Chairmanship of Agriculture Minister on 07.06.2014, similar resolution was passed which is at Pg. 132, 133 & 134.

22. UGC, New Delhi grants recommendation to the Universities for conferring degrees and diplomas. It also grants affiliation to the colleges and it has power to de-recognize or to withdraw the affiliation. UGC in letter to all Registrar and Directors of Universities dt. 05.05.2004 and letter dt. 14.10.2013 (Pg. 117) have taken a stand of equivalence of the degrees supporting the petitioners. However, in letter dt. 05.07.2016 (Pg. 291) has taken a stand that it has no authority to declare equivalence of degrees. The authority is vested with the concerned educational institutes for higher studies and with concerned employer with regard to employment and promotion. This stand is not consistent with the legal provisions.

The preamble of amended Maharashtra Agriculture Universities Statute dt. 15.03.2014 reads as under :

“And whereas, the University Grants Commission and Indian Council of Agricultural Research, New Delhi have prescribed the qualification and method of appointments and evaluation of Academic Officers, Head of Departments and other equivalent posts and qualifications of Academic Staff Members of the University.”

23. In Annamalai University represented by Registrar Vs.

Secretary to Government, Information and Tourism Department.

and others reported in (2009) 4 SCC 590, it is held as under:

The UGC Act was enacted by Parliament in exercise of its power under Entry 66 of List I of Schedule VII to the Constitution whereas the Open University Act was enacted by Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the Statement of Objects and Reasons of the Open University Act shows that the formal system of education had not been able to provide an effective means to equalise educational opportunities. The system was rigid inter alia in respect of attendance in classrooms. Combinations of subjects were also inflexible. However, in the matter of ensuring the standard of education, the alternative system envisaged under the Open University Act was not in substitution of the formal system. The distinction between a formal system and an informal system is in the mode and manner in which education is imparted. The UGC Act was enacted for effectuating coordination and determination of standards in universities. The purport and object for which it was enacted must be given full effect.

The provisions of the UGC Act are binding on all universities whether conventional or open. Its powers are very broad. The Regulations framed by UGC in terms of Sections 26(1)(e), (f), (g) and (h) of the UGC Act are of wide amplitude. They apply equally to open universities as also to formal conventional

universities. In the matter of higher education, it is necessary to maintain minimum standards of instruction. Such minimum standards of instruction are required to be defined by UGC. The standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. Subordinate legislation when validly made becomes part of the Act. The functions of UGC are all – pervasive in respect of the matters specified in Sections 12-A(1)(d) and 12-A(2)(a) & (c) of the UGC Act.

24. In Arjun Mahajan vs Panjabrao Deshmukh Krishi Vidyapeeth reported in 1996(2) Bom.C.R. 120, the Division bench of this Court while considering the plea of raising age of retirement to 60 years of employees in agriculture universities held that, the recommendations of UGC are applicable to the extent they are accepted by the Government. It was held that, there is material difference in the work of teacher in the agriculture university and the college affiliated to it and teacher in non-agriculture university and the college affiliated to it. It was held that, UGC regulations are applicable to the faculties of Arts, Commerce and Science and not to the Agriculture University, the Court shall not interfere with the policy matters regarding age of retirement which is to be fixed by the Experts from the said field.

25. It is obvious that the stand of YCMOU is always in favour of treating its degrees equivalent to the degrees of other agriculture universities. This stand is reflected in letter dt. 29.10.2013 addressed

to the Addl. Principal Secretary, Agriculture Live Stock Development Dairy and Fisheries Department, Maharashtra State, in the affidavits in reply filed by Purshottam Kulkarni on 18.01.2017 and 12.02.2018 (Page 257 & 267).

26. Similar letter was again issued by YCMOU on 14.10.2013 (Pg.117) and letter dt. 05.07.2016 (Pg. 291). There is specific reference that this equivalence has to be considered for employment as well as for the purpose of promotion and pursuing higher education.

27. Communication dt. 14.10.2013 was circulated by the State of Maharashtra to all Vice-Chancellors vide letter dt. 02.01.2018 (P.281) and they were informed to treat the degrees issued by Open Universities as equivalent to the degrees granted by Traditional Universities as communicated by UGC with direction that the same should be strictly complied with. It is for both for employment and promotion.

28. As against this, the respondents have relied on GRs dt.31.08.1969, 08.03.1995 and 10.12.1998. These three GRs grant equivalence to the degrees of Open University with the degrees of

Traditional Universities subject to exception that the equivalence will not be applicable to the academic posts in Government colleges. There is GR dt. 12.12.2006 (Pg. 105) again recognizing equivalence of the degrees. As far as the above GRs are concerned, the Government has accepted that those are anomalous and cannot be implemented. Those do not make any difference between Traditional University and Open University. Those make difference between Universities established under the Statute and Universities recognized by UGC. All four agriculture universities and YCMOU are recognized by UGC and they have the same status in the above referred GRs. If, by virtue of above GRs degree holders from Open University cannot be appointed on academic posts, same rule will apply to degree holders of Agriculture University as well. In view of this anomaly, the above referred bar for promotion to the post of academic post cannot be taken into consideration.

29. Secondly, these GRs speak of academic post in Government Colleges. Those are strictly not applicable to the academic post in University. The Maharashtra Agriculture Universities Act makes distinct provisions in appointments of academic staff in universities and those in colleges though the provisions are similar. The issue in the present case is academic post of respondent No. 3 - MPKV, Rahuri. Since the University and the Government colleges are

performing the job of imparting the education, these GRs can be applied to the posts in agriculture universities as well but subject to condition that academic posts are related to teaching in college courses. We find that, Jr. Research Assistants are not required to teach in college courses of the University. They are required to teach only to the students of agriculture school. These GRs will not be therefore applicable to the post of Jr. Research Assistant in Agriculture University.

30. The respondents have relied on some Government letters which are contrary to the Government Resolutions relied on herein above. Mr. Khandare, the learned counsel for the petitioners rightly relied on *State of Uttaranchal v Alok Sharma* reported in (2009) 7 SCC 647, to submit that, the circulars or letters cannot override the effect of Government Resolutions.

31. Mr Ostwal relied on Indian Council of Agriculture Research, New Delhi, which gives no accreditation for the degrees from Distance Education Programme. However, the Maharashtra Agriculture Universities Act does not prescribe any minimum accreditation to the college or course for considering for the post of Jr. Research Assistant.

32. The Maharashtra Agriculture Universities Act simply prescribes qualification as degree with no reference whether it will include degree of Open University or not. While exercising our powers under Article 226 with restraint without going into the question whether the degree of open university is equivalent to the degree of B.Sc. Agriculture or Horticulture of Agriculture University, we find that the Government as well as Maharashtra Agriculture Education and Research Council have taken consistent stand giving equivalence to the degrees of Open University and Traditional Agriculture University. It is binding on all Agriculture Universities. As per letter of YCMOU dt. 29.10.2013 (Pg. 123), PDKV, Akola, has accepted it and granted equivalence. There must be equalities in respect of all employees of Agriculture Universities in the matter of opportunities of appointment and promotion. UGC and YCMOU have taken consistent stand in support of the petitioners stand of equivalence. As against this, there is no specific stand of any competent authority holding that the degree of open university is not equivalent to the degree of agriculture university. Therefore, the impugned communication of the Government dt. 22.06.2016 and that of respondent No. 3 dt. 05.12.2016 deserve to be quashed and it is necessary to declare the degree of B.Sc. Agriculture & B.Sc. Horticulture of Open University is equivalent to the similar degree of

Agriculture Universities for the purpose of promotion to the post of Jr. Research Assistant.

33. However, the claim of the petitioners that, the said equivalence should be considered for the post of Senior Research Assistant is certainly not maintainable. As per amendment of 2014 to the Maharashtra Agriculture Universities Statute, now the degree of M.Sc. of respective faculty has been made compulsory and, therefore, the prayer of the petitioners in this regard deserves to be rejected and same is accordingly rejected.

34. Though we hold that the degree of B.Sc. Agriculture and B.Sc. Horticulture from Open University is eligible qualification for consideration for promotion to the post of Jr. Research Assistant, we make it clear that as per Statute 74, the said post is promotional post on the basis of merits and the respondent No. 3 is free to consider the merits while granting promotions. In view of this, the writ petition deserves to be partly allowed. We pass the following order.

ORDER

- (i) Writ Petition No. 29 of 2017 is partly allowed.
- (ii) It is declared that, degree of B.Sc. Agriculture and B.Sc. Horticulture awarded by YCMOU are equivalent to the similar

degrees awarded by agriculture universities in the State for the purpose of promotion to the post of Junior Research Assistant.

(iii) The respondents are directed to consider the degree of B.Sc. Agriculture and B.Sc. Horticulture obtained from open university as equivalent to the similar degrees awarded by agriculture universities in the State for appointment to the post of Jr. Research Assistant.

(iv) Since masters degree is required for the post of Sr. Research Assistant, the prayer regarding the said post is rejected.

(v) The communication of respondent No. 3 - MPKV, Rahuri, dt. 05.12.2016 and Government Letter dt.22.06.2016 are hereby quashed.

(vi) In view of disposal of writ petition, nothing is left for consideration in the connected Civil Application No. 12482 of 2017 and same stands disposed of.

(vii) Rule made absolute in above terms with no order as to costs.

[A. M. DHAVAL]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

1. At this stage, Mr P. L. Shahane, learned counsel for respondent No. 3 and Intervenor seek stay of this judgment for a period of eight weeks. Mr N. B. Khandare, learned counsel for the petitioners opposes the said request.

2. Considering the request, operation of this judgment is stayed for a period of eight weeks from today. However, till the said date, the interim orders passed in the writ petition shall continue.

[A. M. DHAVAL]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde