

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.11049 of 2017

Date of Decision:-06.06.2019

Karamjeet Kaur.

.....Petitioner.

Versus

State of Punjab & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Ranjit Singh Kalra, Advocate for the Petitioner.

Mrs. Anu Chatrath Kapur, Additional Advocate General,
Punjab &
Mr. Rajesh Bhardwaj, Senior Deputy Advocate General,
Punjab.

JASWANT SINGH, J.

1. That the present petition has been filed seeking regularisation of service from 2.04.2016 along with all consequential benefits. The facts of the present case are that an advertisement was issued in the year 2011 (Annexure P-1) by the Department of School Education, State of Punjab for filling up of 3442 vacancies in the Master Cadre in different subjects. The petitioner in the present case was offered appointment vide order dated 31.12.2012 as Punjabi mistress, after proper selection. The appointment order was issued in terms of the advertisement as per which the recruitment was made on contract basis for a lump sum pay for initial period of three-years. Upon completion of three years the candidate shall be considered for

regular appointment, subject to his work and conduct being satisfactory. The said condition has been duly incorporated as Clause 20 of the appointment letter dated 31.12.2012 (Annexure P-2). The Department of School Education, State of Punjab issued an order dated 3.8.2015 (Annexure P-3) vide which decision was taken to regularize the services of all employees appointed in pursuance to advertisement Annexure P-1, subject to the satisfactory work and conduct and after verification of certificate and documents submitted by them at the time of recruitment. In pursuance thereof regularisation order dated 2.4.2016 (Annexure P-4) was issued by the respondents. However the case of the present petitioner had not been considered for regularisation. The petitioner approached this Hon'ble Court apprehending that her claim for regularization has not been considered only on the ground that she had completed her M.Ed. qualification through Non- Conventional mode/ distance education mode from Vinayaka Mission University in the session 2009-2011. The petitioner had also submitted a representation dated 10.2.2017 (Annexure P-5) seeking regularization of services, however there was no reply from the respondents.

2. At the time of issuance of notice of motion, this Hon'ble Court on 19.05.2017 granted interim protection to the petitioner, to the effect that in the meantime no adverse orders be passed against the petitioner, resultantly the petitioner is still continuing in service on contract basis. The respondents upon notice had filed a short affidavit dated 14.11.2017 as per which the stand taken by the state was that, as per policy of UGC Universities/Deemed universities cannot conduct courses through Distance Education without approval of specific courses and that these Universities

are not authorized to conduct courses through study centres beyond territorial jurisdiction.

The respondents thereafter filed a short affidavit dated 17.12.2018 wherein reliance was placed upon the UGC (Institution Deemed to be University) Regulations, 2010 as well as upon public notice dated 27.6.2013 and 23.8.2013 letter issued by UGC to the effect that universities cannot be permitted to impart education through study centres/off-campus centres outside the territorial jurisdiction. In rebuttal, petitioner filed replication alongwith Annexure P-30 to P-57, which was taken on record. The documents appended have been discussed in the following paragraphs.

3. The counsel for the petitioner at the very outset stated that the petitioner was permitted to join on duty after verification of all the educational qualification submitted by the petitioner, which is also evident from the appointment letter dated 31.12.2012 (Annexure P-2) as per which the concerned District Education Officer was directed to check all the original educational qualifications submitted by the petitioner, before permitting to join, thus having being served successfully for a period of more than 5 years it will be unjust to not regularize the services of the petitioner. Further it has been argued by the Counsel for the petitioner that the petitioner possess essential qualification as required under Punjab State Education Class-III (School Cadre) Service Rules, 1978 (rules governing the post in dispute) and in terms of the advertisement Annexure P-1, for appointment to the post of mistress in Punjabi. It is not disputed by the Counsel of the state as the petitioner had completed qualification of B.A., M.A. and B.Ed. through regular mode and it is only the qualification of M.Ed. which has been attained from Vinayaka Mission University which

was submitted by the petitioner at the time of recruitment for getting additional marks at the time of selection, to secure her appointment. It is not the case that the petitioner is not eligible to be appointed to the post of Punjabi Mistress.

4. That the issue in the present writ petition is with regard to Non-Technical qualification attained through distance education mode. This Court has been apprised by the Counsel for the respondent/ State of Punjab that the above said issue has not arisen for the first time but bunch of writ petitions are pending and numerous petitions are being filed regularly as there is no clarity with regard to validity of non-technical qualifications awarded by various universities via distance education mode. Therefore this Court feels that the issue with regard to Distance Education Qualification pertaining to Non-Technical Degrees awarded by various Universities requires to be settled for once and for all, for which the background of the Distance Education has to be dealt.

I. STATUTORY BACKGROUND

5. University Grants Commission Act 1956 (Annexure P-32) (hereinafter referred as UGC Act) was enacted to make provisions for coordination and determination of standards of universities and for that purpose to establish a University Grants commission. The term University has been defined under **Section 2 (f)**, which includes University established or incorporated by or under Central Act, Provincial Act or State Act and includes any such Institution as may in consultation with the University concerned be recognized by the Commission. Section 2(f) is as under:-

“ “University” means as University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in

consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act. ”

5.1 Deemed to be University is defined under Section 3 of the UGC Act, which reads as under :-

*“ The Central Government may, on the advice of the Commission, declare by notification in the official Gazette, that any institution for higher education, other than a University, shall be Deemed to be a University for the purpose of this Act, and on such a declaration being made **all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of Section 2.** ”*

The Deemed to be University status is granted in terms of Section 3 of the UGC act in a field of excellence attained by an Institution. It is evident from above, that as per UGC Act Deemed Universities and other Universities as defined under Section 2(f) are same and there is no difference between the two. The right to confer degrees has been provided under Section 22 of the UGC Act. Section 22 also does not create any difference between the Universities established under Section2 (f) and Section 3 of the 1956 Act, which reads as under:-

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

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

(3) For the purposes of this Section, “degree’ means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by

notification in the official Gazette.

”

5.2 In the year 1985, the Indira Gandhi National Open University Act 1985, Annexure P-33 (hereinafter referred as IGNOU Act) was promulgated. The Act was promulgated to establish and incorporate Open University at the National Level and for the introduction and promotion of Open University & Distance Education Systems in the educational pattern of the country and for the co-ordination and determination of standards in such systems. The Distance Education System has been defined under Section 2 (e) of the IGNOU Act:-

“ Distance Education System” means the system of imparting education through any means of communication, such as broadcasting, telecasting, correspondence course, seminars contact programmes or the combination of any two more of such means.

”

The term study center has been defined under the IGNOU Act in Section 2 (o) which is reproduced hereunder for immediate reference:-

“ Study center” means a center established, maintained or recognized by the University for the purpose of revising, counseling or for rendering any other assistance required by the students.

”

The term study centre as defined under Section 2 (o) of the IGNOU Act is referring to the study centre of the IGNOU University only. The object of the IGNOU has been defined under Section 4 of the IGNOU Act which is as under:-

“ 4. The objects of the University shall be to advance and disseminate learning and knowledge by a diversity of means, including the use of any communication technology, to provide opportunities for higher education to a larger segment of the population and to promote the educational well being of the community generally, to encourage the Open University and

Distance Education Systems in the educational pattern of the country and to coordinate and determine the standards in such systems, and the University shall, in organizing its activities, have due regard to the objects specified in the first Schedule. ”

As per the First Schedule in terms of Section 4 the University viz IGNOU shall strive to fulfil objects by way of diversity of means of Distance and continuing education and the University shall function in cooperation with the existing Universities and Institutions of higher learning and make full use of the latest scientific knowledge and new educational technology to offer a high quality of education which matches contemporary needs.

5.3 The IGNOU Act empowers to formulate statutes, the First statutes are appended as Second schedule to the IGNOU Act and the process to amend the statutes has been provided under Section 25 of IGNOU Act. The statutes can be formulated dealing with the issues mentioned in Section 24 of the IGNOU Act which includes coordination and determination of standards in the open University and Distance Education Systems and the allocation & disbursement of grants to colleges and other universities and institutions. The relevant clauses of Section 24 of the IGNOU Act which need to be noted are:-

“ 24. Subject to the provisions of this Act, the Statues may provide for all or any of the following matters, namely:

(i) The conferment of autonomous status on Colleges and Study Centres;

(j) The co-ordination and determination of standards in the open University and Distance Education Systems and the allocation and disbursement of grants to Colleges and other universities and institutions;

5.4 Statute 28 was enacted by the Board of Management of the

IGNOU in its meeting held on 19.7.1991 which received the approval of the Visitor (Hon'ble President of India) vide MHRD letter No. F.5-29/91-U.I. (Desk) dated 16.9.91 (as noted in the 1st statutes). Statute 28 created Distance Education Council. The Distance Education Council (in short DEC) was established for promotion of Open University and Distance Education System in the educational pattern of the country and for the co-ordination and determination of standards of teaching, evaluation and research. The Council was further established under the IGNOU Act, so as to encourage greater facilities, diversity, accessibility, mobility and innovation in education sector at the University level by making full use of latest scientific knowledge and new educational technology and to further establish cooperation between the existing university. Statute 28 (1) is as follows:-

“ (1) Consistent with the duty of the University to take all such steps as it may deem fit for the promotion of the Open University and Distance Education Systems in the educational pattern of the country and for the coordination and determination of standards of teaching, evaluation & research in such systems; and in pursuance of the objects of the University to encourage greater flexibility, diversity, accessibility, mobility and innovation in education at the University level by making full use of the latest scientific knowledge and new educational technology, and to further cooperation between the existing Universities, it is considered necessary and expedient to establish a Distance Education Council as an authority of the University under Section 16 of the Act. ”

It is evident from above that the term used in the above Section is to maintain cooperation between the existing Universities, it is not referring to term University as defined under Section 2(q) of the IGNOU

UGC. As per statute 28 the Distance Education Council(DEC) consists of:-

“ (3) (a) *The Distance Education Council shall consist of the following members;*

- i) *The Vice-Chancellor, IGNOU, who shall be its Chairman;*
- ii) ***The Secretary, Incharge of Education in the Dept. of Education, Ministry of Human Resource Development or his nominee;***
- iii) ***A member of the University Grants Commission to be nominated by the Chairman, UGC;***
- iv) ***Secretary, UGC;***
- iv) (a) ***Director, NAAC***
- v) *Two members of the Board of Management, who are not employees of the IGNOU, to be nominated by the Board of Management;*
- vi) *Two Vice-Chancellors of Statute Open Universities which have been declared fit to receive assistance under Section 12B of the UGC Act, to be nominated by the Chairman, DEC, by rotation.*
- vii) *Two Heads of institutions of Correspondence/ Distance Education from Universities other than open Universities which have been declared fit to receive assistance under Section 12B of the UGC Act, to be nominated by the Board of Management;*
- viii) *Three persons to be nominated by the Visitor or whom one may be a Vice Chancellor of a University other than an open university, one, an expert in vocational/Technical Education, and one, an expert in mass media/communication.*
- ix) *One teacher from the open university/Distance Education system to be nominated by the Board of Management on the recommendation of the Chairman, DEC.*
- (b) *A Registrar/Director, of the IGNOU designated by the Board of Management shall be the Secretary of the Distance Education Council.*

(c) (i) *The members of the Distance Education Council nominated under sub-clauses (3) (a) (iii), (viii) and (ix) shall hold office for a term of three years from the date on which they are nominated;*

(ii) *The members nominated under sub-clause (3)(a)(v), (vi) and (vii) shall hold office for a period of two years from the date on which they are nominated; provided that one-half of the members nominated under these sub-clauses at the time of the initial constitution of the DEC, shall retire on completion on one year from the date of their nomination according to the alphabetical order of their names;*

(d) *Six members of the Distance Education Council shall form the quorum for the meeting of the Council.*

It is evident, that the Distance Education Council consisted members from various departments/ statutory bodies established in the country having duty of maintaining education system viz Secretary, MHRD, Member of the UGC, Secretary UGC, Director NAAC etc. etc., meaning thereby all the decision taken by DEC were in the knowledge of the statutory authorities and the decisions were taken by the DEC in their presence.

5.5 The DEC was established to develop a network of Open Universities/ Distance Education Institutes in the country in consultation with the State Govt. Universities and other concerned agencies. The scope of DEC which was a duly constituted statutory authority, has been misunderstood in a manner that the same is restrained only to the IGNOU University whereas in actual it has a very wide scope as the same was having duty upon its shoulder to promote innovative system of University level education and methods to promote different Open Universities and Distance Education Institutes, which is evident from the powers and

functions of the DEC as enshrined under Statute 28 (4) of the ibid Act:-

“ (4) Powers & Functions of the Distance Education Council

(a) It shall be the general duty of the Distance Education Council to take all such steps as are consistent with the provisions of this Act, the Statutes and the Ordinances for the promotion of the open university/Distance Education system, its coordinated development, and the determination of its standards, and in particular.

i) to develop a network of open Universities/Distance Education institutions in the country in consultation with the State Governments, Universities, and other concerned agencies.

ii) to identify priority areas in which Distance Education programmes should be organized and to provide such support as may be considered necessary for organizing such programmes;

iii) to identify the specific client groups and the types of programmes to be organized for them, and to promote and encourage the organisation of such programmes through the network of open Universities/distance, education institutions;

iv) to promote an innovative system of University level education, flexible and open, in regard to methods and pace of learning, combination of courses, eligibility for enrolment, age of entry, conduct of examination and organize various courses and programmes.

v) to promote the organisation of programmes of human resource development for the open university/Distance Education system;

vi) to initiate and organize measures for joint development of courses and programmes and research in Distance Education technology and practices;

vii) to recommend to the Board of management the pattern and nature of financial assistance that may be sanctioned to open Universities/Distance Education institutions and the conditions that may have to be fulfilled by them to receive such assistance;

viii) to take such steps as are necessary to ensure the coordinated development of the open university/Distance Education system in the country;

ix) to establish and develop arrangements for coordinating and sharing the instructional materials prepared by different open Universities/Distance Education institutions, and the student support systems with a view to avoiding duplication of efforts;

x) to evolve procedures for sharing of courses and programmes and for the payment of royalty or other charges to the members of the network whose courses and programmes are used by other members;

xi) to prescribe broad norms for charging fees from students who join various programmes offered by the network of open Universities/Distance Education institutions;

xii) to collect, compile and disseminate information relating to the courses and programmes offered by various open Universities/Distance Education institutions;

xiii) to advise State Government, Universities and other concerned agencies on their proposals to set up open Universities, or to introduce programmes of distance education;

xiv) to appoint Review Committees from time to time to study and assess the performance-of the open Universities/Distance Education institutions participating in the network on any aspect relevant to the functioning of the network;

xv) to prescribe a broad framework for courses and programmes including their pattern and structure; Indira Gandhi National Open University 43

xvi) to evolve norms, procedures and practices in respect of admission, evaluation, completion of course requirements, transfer of credits, etc. of students admitted to the programmes of the open university/Distance Education network and for the award of certificates, diplomas and degrees to them;

xvii) to evolve guidelines for the organisation of student support services for the open university/Distance Education programmes;

xviii) to take such measures as are necessary, consistent with the objects of the University to provide an innovative, flexible and open system of University education, for the promotion, including introduction and continuation, of courses and

programmes which conform to the standards prescribed by the DEC, to maintain such standards in the institutions offering Distance Education programmes and to prevent, through such measures as are considered appropriate, institutions from offering courses and programmes which do not conform to the standards laid down by the Council;

xix) to appoint Committee for advising and assisting the DEC in the performance of any of its functions or exercise of any of its powers.

”

5.6 That the Distance Education Council dealt with distance education/open and distance learning mode of education throughout the territory of India by maintaining coordination and determination of standards of teaching, evaluation and research amongst different universities. The DEC dealt with open universities established under an Act of State Legislature, as well as other universities as defined under Section 2 (f) of the UGC Act and as well as Deemed to be university as defined under Section 3 of the UGC Act. The same is also evident from Statute 28 (4) (c) as per which the DEC sanctioned financial assistance to the following category of institutions:-

“ i) An Open University established by or under an Act of, a State Legislature, and declared fit to receive assistance from central sources under Section 12-B of the UGC Act;

ii) Any other university as defined in Section 2(f) of the UGC Act provided that such a university is also declared fit, wherever applicable, under Section 12-B of that Act;

iii) An institution Deemed to be a university under Section 3 of the UGC Act.

”

II. POLICIES/ NOTIFICATIONS/ GUIDELINES ETC. PERTAINING TO DISTANCE EDUCATION

6. That apart from above, the statutory authorities UGC, DEC and

guidelines touching upon the issues involved in the present case, which are referred hereunder :-

6.1 In 1968 National policy on education was published by the Government of India as per which it was felt that the radical reconstruction of education is essential for economic and cultural development of the country, for national integration and for realising the ideal of socialistic pattern of society. As per the National Policy of Education, 1968, Clause 13 it was considered that part-time education and correspondence courses should be developed on large-scale at the University stage and such facility should also be developed for secondary school students, for teachers and for agricultural, industrial and other workers. It was also considered that education through part-time and correspondence courses should be given the same status as full time education. Clause 13 is as under:-

“ (13) Part-time Education and Correspondence Courses: Part time education and correspondence courses should be developed on a large scale at the university stage. Such facilities should also be developed for secondary school students, for teachers and for agricultural, industrial and other workers. Education through part-time and correspondence courses should be given the same status as full-time education. Such facilities will smoothen transition from school to work, promote the cause of education and provide opportunities to the large number of people who have the desire to educate themselves further but cannot do so on a full-time basis

6.2 The UGC on 25.11.1985 promulgated regulations titled as University Grants Commission (The Minimum Standards of Instructions for the grant of the First Degree through Non Formal/Distance Education in the Faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences) Regulation 1985

(Annexure P-34). The 1985 Regulations were made applicable to every University established in terms of Section 2 (f) and Section 3 of the UGC Act. The relevant is as under:-

“ Regulation 1 (2) . They shall apply to every university established or incorporated by or under a Central Act, Provincial Act or of a Section 2 of the University Grants Commission Act, 1956 and every institution deemed to be University under Section 3 of the said Act. ”

The programmes of study have also been defined under Regulation 3 of the 1985 Regulations, relevant of which is reproduced hereunder:-

“ Programme of study:

1. Each lesson shall constitute approximately one weeks reading and there shall be at least 25 lessons in each main subject of study. The lessons shall be despatched to the student at regular intervals.

*2. **The University shall set up study centres (outside the headquarters) in areas where there is a reasonable concentration of students.** Each study centre shall have adequate library facilities (text books, reference materials and lessons and supporting materials). They shall also have qualified part time instruction/counselling staff to advise and assist the students in the studies and remove individual difficulties.*

3. A contact programme of 810 days shall be organised in different places where there is a reasonably good number of students, to include lectures and discussions in support of the studies. Classes may be arranged on Sundays and other holidays at the headquarters.

4. Adequate number of practicals shall be provided in all courses involving such work and if necessary, these may be arranged in the evening,during holidays or vacations in the existing institutions.

5. Every student at the undergraduate level shall be required to do at least five home assignments in each subject

which shall be made available to him at regular intervals, received back, corrected, graded and returned to the student at regular intervals. The University shall maintain a record of the progress of studies of each student.

6. *The minimum number of assignments performed by a student for each subject shall be 3 in order to be eligible for appearing in the examination in the concerned subject. ”*

It is evident that in terms of 1985 Regulations, the Universities were permitted to set up study centers outside its headquarters in areas where there is reasonable concentration of students. The study centres were to facilitate the students by arranging classes on Sundays and other holidays and to provide support to students in their studies by arranging personal contact programmes (hereinafter referred to as PCP's). The 1985 Regulations were promulgated on 25.11.1985 and came into force on 01.06.1986, meaning thereby, the regulations were formulated prior to establishment of the Distance Education Council, which was established in year 1991.

6.3 The education has continued to evolve, diversify and extend its reach and coverage since the dawn of human history, **in 1986 National Policy on Education was published by Govt. of India(Annexure P-35)** with an aim to attain economic and technical development, the road of which is education. **The non-formal education is dealt in 1986 policy, which aimed for launching education system for children habiting in areas without schools and for children and girls who cannot attend whole day schools. The aim was to establish non-formal education centers.** The Open University and distance learning is also been dealt in the 1986 Policy, **as per which the open University system was initiated to augment opportunities for higher education and as instrument of**

democratizing education. As per National policy, IGNOU will be strengthened for fulfillment of objective of promoting democratization of education. Relevant Paras of the policy are as under:-

“ 5.8 The Non-formal Education Programme, meant for school dropouts, for children from habitations without schools, working children and girls who cannot attend whole-day schools, will be strengthened and enlarged.

5.9 Modern technological aids will be used to improve the learning environment of NFE Centres. Talented and dedicated young men and women from the local community will be chosen to serve as instructors, and particular attention paid to their training. All necessary measures will be taken to ensure that the quality of non-formal education is comparable with the formal education. Steps will be taken to facilitate lateral entry into the formal system of children passing out of the non-formal system.

5.35 The open learning system has been initiated in order to augment opportunities for higher education, as an instrument of democratising education and to make it a lifelong process. The flexibility and innovativeness of the open learning system are particularly suited to the diverse requirements of the citizens of our country, including those who had joined the vocational stream.

5.36 The Indira Gandhi National Open University, established in 1985 in fulfilment of these objectives, will be strengthened. It would also provide support to establishment of open universities in the States. ”

6.4 On **28.07.1993** (Annexure P-56) UGC issued a letter stating that it is most unfair in view of the importance attached to the open University & distance learning in the National Policy on education, 1986 if degree of open universities is not recognised by other universities. The aim was to promote the mobility of students from open universities to the traditional universities which can only be possible if there is workable

recognition of each other degrees on reciprocal basis. The UGC issued the letter to all the Vice Chancellors so that universities may put in efforts in the direction of recognising ODL degrees with traditional degrees.

6.5 On **01.03.1995** (Annexure P-13), a notification was issued by MHRD, Govt. of India, as per which degrees, through distance education mode, conferred by Universities established under Section 2(f) and Section 3, would stand automatically recognized for the purpose of employment to posts and services, provided the University is approved by DEC and wherever necessary by AICTE, meaning thereby that as per MHRD all non-technical qualification acquired through distance mode had to be approved by DEC being statutory authority governing ODL (Open and Distance Learning) and in case of technical education to be approved by AICTE. The notification dated 01.03.1995 is as under:-

*“ On the recommendation of the Board of Assessment for Education Qualifications, the Government of India has decided that **all the qualifications awarded through Distance Education by the Universities established by an Act of Parliament or State Legislature , Institutions Deemed to be Universities under Section 3 of the UGC Act 1956 and institutions of national importance declared under an Act of parliament stand automatically recognized for the purpose of employment to posts and services under the Central Government provided it has been approved by Distance Education Council, Indira Gandhi National Open University, K-76, Hauz Khas, New Delhi-110016 and wherever necessary by All India Council for Technical Education, I.G. Sports Complex, I.P. Estate, New Delhi-110002.*** ”

6.6 In case of Deemed universities there was no provision under the UGC Act which required an institution once conferred the status of Deemed University to seek prior approval of UGC to start new course/

programme. Section 22 of the UGC Act further empowered Deemed Universities to award degrees. UGC had formulated 1992 guidelines and 2000 guidelines with regard to declaration of institution as Deemed University but there was no direct restrain upon Deemed Universities from starting programmes/ courses /departments without prior approval.

6.7 On 16.03.2004 (Annexure P-36) the UGC issued guidelines mandating prior approval for establishing new departments within the campus, setting up of off-campus center(s)/ institution (s) / off- shore campus and starting Distance Education programme by the Deemed Universities. Further before starting an off-shore campus due permission would be required from the Government (Central Government). However, even in the 2004 guidelines there was provision for taking *ex-post facto* approval for the universities which have already been running courses through distance education mode. The provision of ex-post facto is as under:-

“ 5. *Ex-Post Facto Approval:*

The Deemed Universities shall obtain the ex-post facto approval of the GOI/ UGC/DEC which ever, applicable within a period of six months in the following cases:-

I. Continuation of all the departments opened on the campus of the Deemed Universities and off-campus study Centre (s)/ institutions/off-shore campus started without the prior approval of UGC.

II. Distance Education Programme (s)/ study Centre (s) started without the specific approval of the DEC/UGC. ”

6.8 Deemed Universities in pursuance to 2004 Guidelines issued by UGC, protested to MHRD as once they had been granted a status of University under the UGC Act, there was no cause of action for UGC to

MHRD vide its letter dated 7.4.2006 circulated Notification dated 5.04.2006 (Annexure P-37) clarifying the role of the UGC and AICTE and stated that institutions notified under Section 3 of the UGC Act as Deemed to be University are empowered to award degrees as specified & notified under Section 22 of the UGC Act, 1956 and it is not prerequisite for an institution notified as Deemed to be university to obtain approval prior to start of any programme. The Deemed to be universities were though directed to ensure that maintenance of standards as prescribed by the statutory bodies are maintained. Relevant portion of the MHRD notification dated 5.04.2006:-

“ Whereas, the Central Government is of the opinion that the role and powers of the AICTE established under the All India Council for Technical Education Act, 1987 and of the UGC established under the University Grants Commission UGC Act, 1956 are required to be clarified in the public interest, insofar as their application to maintaining the standards of education institutions notified as ‘Deemed to be Universities’ under Section 3 of the UGC Act is concerned;

And whereas, the Central Government is also of the opinion that such clarification is a question of policy;

Now, therefore, an exercise of its powers vested under Section 20 (1) of the University Grants Commission Act, 1956 and Section 20 (1) of the All India Council for Technical Education Act, 1987, the Central Government do hereby direct the UGC and the AICTE, to publicize the following clarification for the information of the general public by appropriate means including through their respective institutional web-sites [www.ugc.ac.in & www.aicte.ernet.in]:

Ø Institutions notified by the Central Government under Section 3 of the UGC Act as ‘Deemed to be University’ are empowered to award degrees as specified in notified under Section 22 of the UGC Act, 1956. ”

issued guidelines in the year 2006 (Annexure P-39). As per **2006 guidelines**, the types of Universities that offer or intent to offer education through distance mode were to take approval from DEC. The types of Universities covered under 2006 Guidelines is as follows:

“ 2.1 “ *State Open Universities .*

2.2 *DEIs in conventional Universities established by an Act of Parliament or State Legislature/ Deemed to be Universities declared by the Central Government Under Section 3 of the University Grants Commission Act, 1956 and Institutions of National Importance declared under an Act of Parliament.*

2.3 *Other ODL institutions registered as Societies/ Trusts and or privately provided manage institutions / colleges, which are affiliated to a University for award of degrees. Such institutions are required to submit No Objection Certificate (NOC) from the affiliating University for starting Distance Education at the time of submitting proposal for approval for the DEC.”*

Further as per 2006 regulations of the DEC, Parent Institution which intends to start or which has already started Distance Education should have provision in its Act / MOA for running Distance Education Programme. It was also stated that Universities which have already started Distance Education shall amend their Act/ MOA to that extent. The relevant clause to this extent is as follows:-

“ 3.2 *That the parent institution which intends to start or which has already started distance education institutions (DEIs) should have a provision in its Act/MOA for running distance education programme (s).*

Provided that the universities which have already started DEIs in absence of such provision in the Act, shall amend their Act to that extent. ”

6.10 That with regard to study centres/regional centres as per 2006 guidelines of DEC, parent institution could establish its study Centre only

as per the jurisdiction defined by the parent institution in its Act/MOA. In case of Deemed universities offering programmes through distance education mode only programmes that are culturally and linguistically relevant even outside the state could be operated outside the state in which main campus of the parent institution is located. The study centres were to be operated by parent institutes in terms of the jurisdiction defined in their acts and should have adequate student support facilities, including academic staff, coordinator and counsellors. In the guidelines study centres were given huge importance as they play a vital role. The guideline for Distance Education Institutes for identification of study centres as prescribed in 2006 guidelines by DEC is as under:

“ STUDY CENTRE means a centre established and maintained or recognised by the parent institution for the purpose of advising, counselling or for entering any other assistance required by the students used in the context of distance education. The parent institution shall make adequate provisions for student centres within its jurisdiction having adequate student support facilities, including academic staff, coordinator and counsellors/tutors.

In the ODL system, study centres play important role since they Act as focal contact points for distance learners. The study centres provide academic and administrative support services to the distance learners. In the study centres, the learners are provided with collegiate environment through information dissemination, monitoring and academic counselling, vocational guidance, hands-on experience (in case of practical), multimedia support, student evaluation, library services and peer group interaction. ”

6.11 That further under the 2006 guidelines open and distance education institutions are to offer programmes as per the objectives of the Institution/University and keeping in view the National and Regional needs.

The Distance Education Institutions will offer those programme only for which DEC has given the approval. It is a matter of record that DEC for a considerable period instead of giving programme wise recognition granted institutional recognition. This aspect is dealt in later paragraphs.

6.12 That for recognition process for Distance Education Institution a hand book (Annexure P-40) was also issued by the DEC wherein powers and functions of the DEC as defined under clause (iv) of the Statute 28 of the IGNOU Act were mentioned. Further in pursuance to the functions mentioned in the IGNOU Act, the Board of Management of IGNOU constituted **Open and Distance Education Assessment Accreditation Board** with an objective and responsibility as under:-

“ Accreditation is essentially a procedure for quality assurance and assessment. In the process of accreditation, an approved institution and its programmes are critically appraised at intervals say of 5 years, to see whether the institution or its programmes meet the prescribed norms and standards set by DEC from time to time.

Accreditation shall help to achieve the following objectives:-

(i) To help respective students, parents, ODL institutions and other institutions, Government agencies, employers etc. in identifying institutions and their programmes which conform and make the norms and standards prescribed by DEC.

(ii) To help ODL institutions to improve quality of programmes and delivering mechanism to help to identify, introduced and develop new programmes to meet emerging demands. ”

Further the structure of the board was defined which comprised of two tier structure viz Governing Council and Management Council which included :-

“ i) “The Governing counsel shall have seven members representing MHRD, UGC, DEC, SOUs/CCIs and Distance Education Experts, VC of IGNOU shall be the Ex-officio, Chairman of the Council,

ii) The Management Council shall have 5 members with the VC, IGNOU or his nominee as Chairman, One VC of SOU/ Director CCI, two D.E and Media experts and one DEC member.”

All the decision which were taken by the Board included due representation from MHRD, UGC and other statutory bodies.

III. CHANGE IN POLICIES PERTAINING TO TERRITORIAL JURISDICTION, STUDY CENTRES AND DISSOLUTION OF DEC

7. That with regard to the territorial jurisdiction, study centres, recognition of degrees and coordination between UGC-AICTE-DEC various other notification, letters etc. issued from time to time are as under:-

7.1 On 4.08.2001 (Annexure P-41) UGC issued a letter stating that as per UGC guidelines, the universities are permitted to impart education and award its degrees through their own campuses located elsewhere in the country. With regard to offshore campuses (campuses outside the territory of India) approval of UGC was required. Further universities were directed to stop franchising the degree education through private agencies/establishments with immediate effect so as to curb the widespread menace of franchising the university education through private institutions. However the interest of the students were safeguarded and it was decided to approve the degrees who were practicing programmes through franchisees.

7.2 On 10.05.2007 (Annexure P-42) Memorandum Of Understanding (MOU) was entered between DEC , AICTE&UGC. The

MOU was signed between the three statutory bodies so as to ensure

improvement and development of Open Distance Learning in the field of General as well as Technical Education Programmes and with the aim to avoid duplication of efforts and streamlining of activities.

7.3 On 22.05.2007 (Annexure P-43) in the meeting of the Board of Management of IGNOU, the development with regard to MOU between three AICTE- UGC – DEC was considered and thereafter, the decision was taken that the DEC being statutory authority, in the matter of recognition of Distance Education Institutes, it shall be the sole prerogative of the DEC.

Further it was held in the meeting that the Council decided that DEC shall not insist on territorial jurisdiction in offering programmes under distance mode and the universities shall be governed by their own acts and statutes. With regard to existing university/institutes offering distance education programmes without approval of DEC, the universities were directed to submit the proposals to the DEC for *ex-post facto* approval by 31/05/2007 and in no case any institution will be allowed to offer distance education programmes from the academic session in July 2007 without the approval of DEC. Relevant decision of the board are as under:-

“ B.M. 90.9.1

d) in the matter of territorial jurisdiction, the Council decided that the DEC shall not insist on territorial jurisdiction in offering programmes under distance mode and the universities should be governed by their own acts and statutes.

e) all the existing Universities/ Institutions offering Distance Education Programmes must submit their proposal to the DEC for ex-post facto approval by 31st May 2007 and no institution be allowed to offer Distance Education Programmes without Council's recognition from the coming academic session, i.e. July 2007 onwards. Further, the Distance Education Programmes of the existing Universities/ Institutions cannot be considered approved till they are formally cleared by the

Distance Education Council.

f) The Council decided that there should not be any time frame for any institution to seek recognition from DEC for offering programmes through distance mode. However, in deciding such proposals or requests, the Council shall take note of the credentials and credibility of the institutions.

*g) **it was reiterated that Distance Education Council being the statutory authority, decision in the matter of recognition is prerogative of the Council.*** ”

7.4 On 05.10.2007 (Annexure P-44) UGC issued a letter, issuing instructions to the Deemed Universities to the effect that:-

“ 1. The courses run under distance mode by the Deemed to be universities should have proper approval of both Distance Education Council and University Grants commission. Any course started in violation of this should be stopped immediately.

2. The Deemed to be universities are not permitted to affiliate any college/Institute.

*3. **Private franchising of higher education is not permissible.***

4. The study Centre should be for the purpose of advising, counselling or for rendering any other assistance required by the students used in the context of distance education.

*5. **The study centres play an important role in delivery of programmes through distance mode as such the study Centre should have proper infrastructure and fully owned by Deemed university with its own staff.***

6. In case any unauthorised centre is already in existence, it should be closed forthwith. ”

7.5 On May 2008 (Annexure P-45) UGC issued a letter to 18 Deemed Universities to the effect that the approval granted by the DEC must be reviewed and approval should be granted to the courses instead of approval to institute. In view of the MOU entered between DEC-AICTE-

DEC. However DEC continued with Institutional Recognition.

7.6 On 11.12.2008 (Annexure P-46) , it was clarified by the DEC that the Council does not separately accord approval to any specific programmes offered by any University/Institute. DEC does not separately accord approval to any study centres of any University as they are set up by the concerned University as per their own acts and statutes. DEC does not even insist upon territorial jurisdiction to be followed by institutions/ Universities while offering programmes through distance mode and universities are governed by their own Acts & Statutes in the case of territorial jurisdiction as well.

7.7 On 16.4.2009 (Annexure P-47) the UGC issued a letter with regard to territorial jurisdiction of state universities/state private universities as per which following directions for immediate action were issued:-

“1. To take suitable steps for amending the existing acts made so as to bring the same in conformity with the observations made by the Hon’ble Supreme Court of India in the case of Prof. Yashpal and state of Chhattisgarh. This should be adhered in all future cases.

2. To stop all the state/state private universities in the state from operating beyond the territorial jurisdiction of your state in any manner either in the form of off-campus/study Centre/affiliated college and the centres operating through franchises.”

7.8 On 15.6.2009 (Annexure P-48) UGC in light of the observations made by the Hon’ble Supreme Court of India in the case of Professor Yashpal issued directions to the state universities/state private universities:-

“ 1. To ensure that no off-campus centre(s)/study Centre/affiliating college and the centres operating through franchises is opened by a university outside the territorial

jurisdiction of the state in view of the judgement of the Hon'ble Supreme Court of India in case of Prof. Yashpal versus Government of Chhattisgarh.

2. *In case university has already started any off-campus/study Centre/affiliating college and the centre operating through franchisees outside the state, it must be closed immediately.*

3. *No distance education programmes shall be started without the prior approval of the joint committee of UGC-AICTE-DEC for which DEC is the coordinator.* ”

7.9 On 23.2.2010 (Annexure P-49) DEC issued a recognition policy as per which the Distance Education Council decided not to insist on territorial jurisdiction and the programmes offered through distance and online modes on that matter will be governed by the Acts & Statutes of universities. Further with regard to study centres also it was held that the same is an internal policy matter of the institution/university and the same will be governed by their own Acts & Statutes. Relevant clauses are as under:-

“ **V. Territorial Jurisdiction:**

The Distance Education Council has decided not to insist on territorial jurisdiction to be followed by institutions in offering programmes through Distance and Online Modes and on that matter the Universities should be governed by their own Acts and Statutes.

vi) Approvals to Study Centers:

The DEC does not consider giving approvals to Study Centers of any Distance Education Institution as opening of Study Centers and Regional Centers is an internal policy matter of the Institution/ University concerned, as per the provision in their own Act/ Statues. ”

7.10 On 10.3.2010 (Annexure P-50) 35th meeting of DEC was held wherein it was noticed that the MOU signed between the AICTE-UGC-

DEC was placed before the Board of Management of IGNOU in its 90th meeting dated 22.05.2007. The UGC has communicated its acceptance of MOU but AICTE has not communicated any acceptance of MOU by its council. It was also noticed that with regard to distance education is concerned, DEC is the sole statutory authority to regulate distance education in the country in terms of IGNOU Act, 1985, passed by the Parliament of India. It was reiterated that IGNOU may take steps as Deemed necessary for promotion, coordination and maintenance of standards through DEC. The Council also noted difficulties arising because of non-workable clauses of the MOU signed between the 3 bodies. Along with that decision was taken with regard to territorial jurisdiction and offering programmes through distance mode. It was noted that distance education Council in its 28th meeting held on 23.3.2007 decided that jurisdiction of offering programmes to distance mode will be as per the Acts & Statutes of the concerned University, however the distance education council decided that in case of Deemed university the territorial jurisdiction will be as per the UGC which mandates prior approval of UGC for opening centres outside its headquarters& in case of State and Central Universities, Territorial Jurisdiction will be as per their Acts & Statutes for offering programmes through distance mode. Relevant decision of the 35th meeting of DEC dated 10.3.2010 is as follows:-

“ Item No. 35.2: Legal opinion on the Joint Committee of UGC-AICTE-DEC

The Council noted the legal opinion received from Advocate, Mr. N. Murali Kumaran on the roles, powers and statutory authority of the Joint Committee of the UGC, AICTE& DEC. It noted the stand taken by the UGC in its counter affidavit filed before the Andhra Pradesh High Court. It was

ALSO noted by the Council that the Joint Committee is a Committee of UGC-AICTE& DEC to streamline the process of recognition and to avoid the duplication of efforts by these three apex bodies, and the DEC has not delegated any of its statutory authority to the Joint Committee. The MoU was signed with UGC and AICTE to foster single window processing for recognition of general, technical and professional programmes offered through distance mode by an Institution. The MoU was placed before the 90th Board of Management meeting of IGNOU held on 22.05.07 and was also noted in the 29th meeting of the Distance Education Council held on 20th June, 2007. The UGC has already communicated the acceptance of the MoU by the Commission. The AICTE till date has not communicated any acceptance of the MoU by its Council. It was also noted that in so far as the regulation of distance education is concerned, the Distance Education Council is the sole Statutory authority to regulate the distance education in the country as per the IGNOU Act 1985, passed by the Parliament of India. It was reiterated that the IGNOU may take steps as deemed necessary for promotion, coordination and maintenance of standards, through DEC. The council also noted the Powers and Functions of DEC as per IGNOU Act 1985.

The Council noted the difficulties arising because of the non-workable clauses of the MoU signed by the three bodies namely UGC, AICTE and DEC. The Council also noted the duration of the Joint Committee which is ending on 9th May 2010.

Item No. 35.3: Territorial Jurisdiction in offering programmes through distance mode

The Council in its 28th meeting held on 23rd March, 2007, had decided that jurisdiction for offering programmes through distance mode will be as per the Acts and Statutes of the concerned university. However, in the ninth Joint Committee of UGC-AICTE& DEC held on 17.08.2009 regarding territorial jurisdiction for offering programmes through distance mode, it was decided that the latest UGC notifications will prevail over all previous notifications and circulars of the DEC.

The Council considered the roles and responsibility and the authority of the Joint Committee and decided that the Joint Committee can not supercede the Statutory Authority of the Distance Education Council. The Council noted that the distance education and online education cannot have the Territorial Jurisdiction and it was decided that in case of Central Universities and the State Universities, the Territorial Jurisdiction will be as per their Acts and Statutes for offering programmes through distance mode. The Territorial Jurisdiction in case of Deemed Universities will be as per UGC which mandates the prior approval of the UGC for opening Centres / off Campus Centres outside the Headquarters. The Territorial Jurisdiction in case of Private Institutions (other than Universities) will be as decided by the Joint Committee. ”

7.11 On 29.3.2010 (Annexure P-51) DEC issued a notification stating that in case of Central and State Universities (Government Funded or Private), the Territorial Jurisdiction will be as per the Act and statutes for offering programmes through distance mode and in case of Deemed Universities the same will be as per UGC which mandates prior approval for opening centres outside its headquarters. In case of private institutions (other than Universities) territorial jurisdiction will be decided by the Joint Committee.

7.12 On 31.1.2012 (Annexure P-52) DEC issued a notification with regard to offering of programmes through study centres by institutions and universities. As per the notification the DEC prohibited franchising of study centres and directed that at study Centre, admissions, examinations, conduct of personal conduct programmes should be directly by the University and in no case sub- letting is permissible. Further as per the 35th meeting of the DEC, in case of Central universities and state universities territorial jurisdiction was restrained as per the Acts & Statutes for offering

programmes through distance mode and in case of Deemed universities territorial jurisdiction was to be governed as per the UGC. For private institutions other than universities territorial jurisdiction will be decided by the joint committee.

7.13 On 1.11.2012 (Annexure P-53) DEC again issued the notification with regard to policy on territorial jurisdiction as per which in case of Central universities the territorial jurisdiction for offering distance mode programmes will be as per the statute and in case of State Universities both Government Funded and Private territorial jurisdiction will be as per their statutes but in no case beyond the boundaries of the respective states. In case of Deemed to be universities territorial jurisdiction will be as per notification of Government of India till such time policy decision is taken by UGC. Thus even in the case of State Universities, government or private funded territorial restraint was imposed by DEC.

7.14 The Madhav Menon committee submitted its report and the actionable points (Annexure P-22) were duly accepted by MHRD. In pursuance thereof decision was taken to dissolve the DEC.

7.15 On 29.12.2012 (Annexure P-23) MHRD issued an order vide which UGC was empowered to regulate higher education(excluding technical education)imparted through ODL mode and AICTE was empowered to regulate technical education through ODL mode of education. Further UGC/ AICTE was directed to develop appropriate regulations for maintaining standards and ODL(Open and Distance Learning) courses strictly as per recommendations of Madhav Menon committee which have been accepted by MHRD. The action plan was to be prepared within three months for growth and development of distance

education.

7.16 On 01.05.2013 (Annexure P-24) IGNOU issued a notification repealing Statute 28 of the IGNOU Act and thereby dissolving DEC.

7.17 On 16.5.2013 MHRD issued office memorandum as per which UGC and AICTE were directed to take all the responsibilities of the ODL education system in the respective jurisdiction in light of the fact that Statute 28 of the IGNOU Act has been repealed and the DEC has been dissolved.

7.18 On 28.5.2013 (Annexure P-25) UGC issued a letter directing that universities will ensure that no further affiliation is granted to any new centres for ODL(Open and Distance Learning) courses till the time regulations are formulated.

7.19 On 31.5.2013 (Annexure P-26) all liabilities, assets, manpower and files of DEC were taken over by the UGC.

7.20 On 17.6.2013 (Annexure P-27) the UGC adopted guidelines of DEC with regard to ODL institutions till such time the regulations with regard to distance education are formulated.

7.21 On 27.6.2013 (Annexure R-1) UGC issued a public notice as per which it was clarified that a Deemed university can operate only within its headquarters or from its off shore campuses which are approved by Government of India through notification. Further in case of distance education programmes Deemed universities declared prior to 26.5.2010 were restrained from conducting courses and distance mode from the off-campus centres approved after 26.5.2010. In case of Central universities and state Government universities distance education programmes could be conducted in accordance with the provisions of the respective Act and after

the approval of UGC.

7.22 On 23.8.2013 (Annexure R-2) also restrictions were imposed with regard to territorial jurisdiction and offering of programmes through of campuses and study centres by institutions/universities.

IV. GOVERNMENT OF INDIA, MHRD NOTIFICATIONS REGARDING EQUIVALENCY OF DISTANCE EDUCATION DEGREES

8. That MHRD has issued notifications granting equivalency of degrees awarded through ODL(Open and Distance Learning) institutes at par with conventional Universities, such as :-

i) Notification dated 01.03.1995 issued by MHRD has been referred which has already been dealt above, whereby MHRD has directed that degrees award by Universities established under 2 (f) and 3 of the UGC Act awarded through ODL(Open and Distance Learning) mode, approved by DEC shall be recognized for the purposes of employment and service.

ii) That another notification dated 25.07.2015 (Annexure P-14) has been issued by MHRD whereby the MHRD reiterated its earlier notification of 01.03.1995 stating that all degrees/ diploma/ certificates awarded through ODL(Open and Distance Learning)mode of education by the Universities established under Section 2(f) and (3) of UGC Act stands automatically recognized for the purpose of employment and service, if recognised by DEC. However on account of dissolution of the DEC, it was mentioned that now all the degrees pertaining to distance education will be recognised for the purposes of employment and service subject to approval from UGC.

9. This Court has gone through the contents of the documents with more than able assistance of counsel for the petitioner and has heard the counsel for the parties at length and has culled out the issues, which are

being dealt hereunder.

A. INITIATION OF DISTANCE EDUCATION

10. In the year 1968, National Policy of Education was issued by the Government of India as in the post-independence period, major concern of the Government of India and of the states was to give increasing attention to education as a factor vital to national progress and security. It was felt that reconstruction of education was essential for economic and cultural development of the country and for national integration and for realising the ideal of socialistic pattern of study. It was also felt that the educational system must produce young men and women of character and ability committed to national service and development and only then will education be able to play vital role in promoting national progress, creating a sense of common citizenship and culture and strengthening the national integration. With regard to part-time education and correspondence courses it was held that time has come to develop part-time education courses on large scale at university stage and that education of part-time and correspondence courses should be given the same status as full-time education so that ample opportunities are provided to large Number of people who have the desire to educate themselves but cannot afford to do so on a full-time basis.

11. In the year 1985 IGNOU was established at the National Level for introduction and promotion of Open University and Distance Education Systems in the educational pattern of the country and for the coordination and determination of standards in such systems.

12. On 25.11.1985 UGC formulated regulations regarding minimum standards of instructions for the grant of the 1st degree through

non-formal/distance education as per which degrees in the field of arts, manatees, fine arts, music, social sciences, commerce and sciences could be imparted to distance mode and that also through study centres in areas where there is reasonable consideration of students.

13. In the National Policy of Education, 1986 issued by Government of India under clause 5.8 role for strengthening and enlarging non-formal education programmes was held and for that modern technology aids were to be used to improve the learning environment at non-formal education centres. It was also mentioned in the policy that the Government will take over all the responsibility of vital sectors along with that voluntary agencies and Panchayati Raj institutions will take much of the responsibility of running non-formal education programmes. For promoting open learning system the Government of India in the national policy considered for strengthening the IGNOU so as to provide support to establishment of open universities in the states (clause 5.36 of the national policy).

14. Thereafter in the year 1991 Distance Education Council was established so as to fulfil the objectives enshrined in the IGNOU Act. The Distance Education Council was formulated to promote and develop a network of open universities/distance education institutions in the country and to establish and development arrangements for conducting and sharing the materials prepared by different open universities/distance education institutions and to provide support system to the students.

B. STATUTORY BODY FOR DISTANCE EDUCATION

15. The UGC Act was enacted to make provisions for coordination and determination of standards of universities and the IGNOU Act was

promulgated to establish and incorporate open University at the national level and for introduction & promotion of Distance Education System in the educational pattern of the country. The Distance Education Council was established in the year 1991 in terms of the approval granted by the Visitor of IGNOU Act viz the Hon'ble President of India. The DEC comprised of various members including Secretary, MHRD, Member of UGC nominated by Chairman, UGC, Secretary UGC and Director NAAC meaning thereby that the DEC comprised of members from different statutory bodies and other renowned educationists/scholars. As per the powers and functions of the DEC enshrined in Statute 28 (4) of the IGNOU statutes the DEC was given responsibility to develop a network of open universities/distance education institutions in the country and to provide support system to the students with a view to avoid duplication of efforts.

16. In 1986 National Policy of Education published by Government of India, need for promoting non-formal education programmes was felt so that working persons and others who cannot attend whole-day schools could be provided education with flexibility and innovativeness of the open learning system and for achieving the said goal as mentioned in para 5.8, 5.9, 5.35 (mentioned in preceding paragraphs) the Government of India felt the need to strengthen the IGNOU established in 1985. The MHRD even in its notification dated 1.3.1995 directed that all the qualifications awarded through distance mode by universities established by an Act of Parliament or state legislature, or Institutions Deemed to be universities under Section 3 of the UGC Act, 1956 and Institutions of National Importance declared under an Act of Parliament will stand automatically recognised for the purpose of employment to posts

and services under the Central Government, provided it has been approved by the DEC, IGNOU and wherever necessary by AICTE meaning thereby that in case of non-technical qualification, all degrees/diploma will berecognised if the university is approved by DEC. Thus it can be construed from above that in the field of distance education DEC being the sole statutory authority was having the power to grant recognition to the universities/institutions.

17. In case of Deemed Universities UGC formulated guidelines on 16.3.2004 with regard to establishing new departments within the campus and setting up of off-shore campuses/ off-campus centres and starting distance education programmes. As per 2004 guidelines Deemed universities were required to take prior permission before starting any new course or starting any new study Centre. However even as per 2004 guidelines provision for ex-post facto approval was there with a Deemed universities who had already started courses without the approval. As per the provision of ex post facto, reproduced above, *ex-post facto* approval had to be taken with regard to distance education programmes started without specific approval of DEC/UGC. The above said imposition of restriction on Deemed universities was protested. The MHRD issued a notification dated 5.04.2006 (Annexure P-37) as per which it was stated that in cases of deemed to be universities once granted the university status, can start courses/ award degrees as specified under Section 22 of the UGC Act without any pre-approval. Relevant portion of the MHRD notification dated 5.04.2006:-

“ Whereas, the Central Government is of the opinion that the role and powers of the AICTE established under the All India Council for Technical Education Act, 1987 and of the UGC

established under the University Grants Commission UGC Act, 1956 are required to be clarified in the public interest, insofar as their application to maintaining the standards of education institutions notified as 'Deemed to be Universities' under Section 3 of the UGC Act is concerned;

And whereas, the Central Government is also of the opinion that such clarification is a question of policy;

Now, therefore, an exercise of its powers vested under Section 20 (1) of the University Grants Commission Act, 1956 and Section 20 (1) of the All India Council for Technical Education Act, 1987, the Central Government do hereby direct the UGC and the AICTE, to publicize the following clarification for the information of the general public by appropriate means including through their respective institutional web-sites [www.ugc.ac.in & www.aicte.ernet.in]:

Ø *Institutions notified by the Central Government under Section 3 of the UGC Act as 'Deemed to be University' are empowered to award degrees as specified in notified under Section 22 of the UGC Act, 1956.* ”

Even otherwise the UGC had already formulated regulations regarding Minimum Standards of instructions for grant of first-degree through Non-Formal/Distance Education, 1985 (Annexure P-34) meaning thereby that even prior to the above said letter issuing clarification, the universities including the Deemed universities were permitted to impart education through non-formal/distance education mode by setting up of study centres outside its headquarters in areas where there is reasonable concentration of students (as per regulation 3 (2) of 1985 regulations). Thus it is evident that in case of Deemed universities, once a Deemed to be status is granted to university it can impart education and is empowered to start degree courses as notified in Section 22 of UGC Act, in the field for which it was granted Deemed to be status and for that no permission was required from UGC. The State Universities were permitted to impart education in

terms of their statutes and in accordance with the degrees notified in section 22 of the UGC Act.

18. The DEC in its handbook issued in the year 2006 (Annexure P-40) reiterates that the distance education Council was established in the year 1991 under section 5 (2) of the IGNOU Act, passed by the Parliament and that the DEC has a mandate to function as an apex body for promotion, determination and maintenance of standards and coordination of open and distance education in India. The role of the university viz IGNOU has been clearly spell out in IGNOU Act and has been highlighted from time to time in national policy on education, 1986, programme of action, 1992). Further as per the handbook DEC for quality assurance and assessment of education imparted through distance mode, formed Assessment and Accreditation board which has 2 tier structure: Governing Council and Management Council. The Governing Council comprises of 7 members representing MHRD, UGC, DEC, SOU's/ CCIs and distance education experts, VC of IGNOU shall be the Ex-official Chairman of the council. It is thus evident that in all the decisions pertaining to distance education as well as with regard to assessment of institutions and Accreditation, members of UGC and MHRD were made part. The 2006 handbook talks of including members of MHRD and UGC, however requires universities/institutions to take approval only from the DEC.

19. The Distance Education Council issued a handbook in the year 2009 (Annexure P-55) for recognition of open and distance learning institutions which comprised of representatives of the UGC as well as of AICTE viz Deputy Secretary of UGC and Assistant Director of AICTE. As per the handbook the DEC as an Apex Agency was held responsible for

recognizing ODL(Open and Distance Learning) institutions in India and it was made mandatory for all the institutions to seek prior approval of the DEC for all existing and new programmes offered through distance mode. Further ODL institutions were permitted to offer programmes as per the objectives of the University/Institutions meaning thereby that all Universities (as defined under Section 2 (f) and Section 3 of the UGC Act by Government) recognised by the DEC could offer programmes as per their objectives mentioned in Acts & Statutes.

20. It is also relevant to note that the UGC-AICTE and DEC entered into a Memorandum of Understanding on 10.5.2007 (Annexure P-42) for an initial period of 3 years with an objective to work in close cooperation in pursuit of excellence in technical and general education through distance and mixed mode in the country. However in the 90th meeting of the Board of Management of IGNOU held on 22.5.2007 (Annexure P-43) comprising of all the members along with Joint Secretary, Bureau of Distance Learning MHRD it was reiterated that the Distance Education Council being the statutory authority, decision in the matter of recognition of distance courses will be the prerogative of the Council. Even thereafter in 35th meeting of the DEC (which includes Member of UGC, Secretary UGC& Secretary MHRD) held on 10.3.2010 (Annexure P-50), the decisions and developments that took place in the 90th meeting of the Board of Management of IGNOU were also discussed and it was noted that the DEC is the sole statutory authority to regulate the Distance Education in the country as per the IGNOU Act, 1985 passed by the Parliament of India and that the Joint Committee cannot supersede the statutory authority of the

DEC are mentioned in preceding para no. 7.03 & 7.10 respectively.

21. From above it is evident that in the field of Distance Education, DEC was the sole authority for granting recognition to Universities.

22. Thereafter in terms of the Madhav Menon committee set up to regularise the ODL system and higher education, the MHRD having being accepted the report of Madhav Menon committee issued order dated 29.12.2012 vide which the field of higher education excluding technical education, pertaining to ODL mode of education was brought under the purview of UGC and the ODL mode of education pertaining to technical education was brought under the purview of AICTE. In terms thereof Statute 28 of the IGNOU Act was repealed and the DEC was dissolved by the IGNOU vide its notification issued in the month of May, 2013. Thereafter the UGC took over the responsibility of the DEC pertaining to non-technical courses.

From the series of developments & decisions over the years, as demonstrated above, it can be safely/ legally be concluded that till such time MHRD did not bring the Distance education under the purview of UGC (with regard to Non-technical Education) vide notification dated 29.12.2012 (Annexure P-23) and the DEC was not dissolved vide Annexure P-24, DEC (Distance Education Council) was the sole statutory authority governing the field of distance education in Universities (as defined in Section 2 (f)& Section 3 of the UGC Act) especially in light of the decisions of the DEC & IGNOU in its meetings dated 22.5.2007 (Annexure P-43) and 10.3.2010 (Annexure P-50) (already discussed in paragraph 20 hereinabove).

C. STUDY CENTRES & TERRITORIAL JURISDICTION

23. That the term study Centre was defined in the IGNOU Act, 1985 meaning a centre established, maintained & recognised by the University for the purpose of advising, counselling or for rendering any other assistance required by the students. However the definition under Section 2 (o) of study Centre seems to be referring with regard to study Centre of IGNOU only. The setting up of study centres was provided under the UGC regulations, 1985 (supra) even prior to the establishment of the DEC in the year 1991, as per which the University (any University defined under Section 2 (f) & Section 3 of the UGC Act) shall set up study centres outside its headquarters in areas where there is reasonable concentration of students and each study Centre will have adequate facilities and qualified part-time instructors to advise and assist the students. The study centres were to be established so as to impart education in the facilities of arts, humanities, fine arts, music, social sciences, commerce and sciences through distance mode/non-formal mode of education.

24. That simultaneously during the period when study centres were being promoted, at the same time franchising of the study centres was being curbed. The same is apparent from various letters issued from time to time viz 4.08.2001 (Annexure P-41) issued by UGC directing the Universities that franchising of Degree education through Private Agencies/establishments be stopped with immediate effect. Another letter dated 5.10.2007 (Annexure P-44) was issued to all 116 Deemed Universities as per which the need for study Centres was emphasized as the study centres play an important role in delivery of programmes to distance mode, however franchising of the study centres was held to be

impermissible.

25. In the meeting held on 22.5.2007 (Annexure P-43) of the IGNOU it was held that in the matter of territorial jurisdiction the DEC shall not insist on territorial jurisdiction and with regard to programmes being offered under distance mode, Universities will be governed by their own *Acts & Statutes*. The relevant minutes are mentioned below:-

“ B.M. 90.9.1

d) *in the matter of territorial jurisdiction, the Council decided that the DEC shall not insist on territorial jurisdiction in offering programmes under distance mode and the universities should be governed by their own acts and statutes.*

g) *it was reiterated that Distance Education Council being the statutory authority, decision in the matter of recognition is prerogative of the Council.* ”

26. DEC was the sole statutory body governing the field of distance education and DEC did not separately accord approval to any study centres of any university and they were to be governed by their own acts and statutes. The same is evident from letter dated 11.12.2008 issued by the DEC wherein it was categorically stated that DEC does not accord separate approvals to any study centres of any university, as they are setup by the concerned university as per their Acts & Statutes. Further DEC did not insist upon territorial jurisdiction of Institutions/Universities while offering programmes through distance mode and Universities are governed by their own Acts & Statutes. Even in the recognition policy of DEC on 23.2.2010 (Annexure P-49) it was stated that approval of study centres is an internal policy matter of universities and they will operate as per their own Acts & Statutes. DEC in the case of territorial jurisdiction also did not consider giving approvals and the Universities in this regard also were governed by

their own Acts & Statutes.

27. On 16.4.2009 UGC issued a letter to all the state Governments that state Governments establishing state universities and private universities cannot allow operating beyond the territorial jurisdiction of the concerned state in the form of study centres, affiliated colleges and the centres operating through franchisees. The decision was made applicable on all future cases which is evident from the directions issued therein. On 28.4.2009 as well as on 15.6.2009 (Annexure P-48) similar letters were issued by the UGC to all the State Universities and Private Universities.

28. On 10.3.2010 (Annexure P-50), 35th meeting of DEC was held wherein it was noticed that the Council in its 28th meeting held on 23.3.2007 had decided that the jurisdiction for offering programmes through distance mode will be as per the Acts and Statutes of the concerned university. However in the 19th Joint Committee meeting held on 17.8.2009 of the UGC-AICTE-DEC, it was held that UGC notifications will prevail over all previous notifications and circulars of DEC. The Council also noted that Distance Education and Online Education cannot have Territorial Jurisdiction, but in case of Central Universities and State Universities the territorial jurisdiction will be as per the Acts & Statutes for offering programmes through distance mode. In case of Deemed Universities the territorial jurisdiction will be as per UGC which requires prior approval before opening centres/study centres outside its headquarters, from the UGC. In case of territorial jurisdiction of Private Institutions other than universities will be as decided by the Joint Committee. The relevant decision of the meeting is as follows:-

programmes through distance mode

The Council in its 28th meeting held on 23rd March, 2007, had decided that jurisdiction for offering programmes through distance mode will be as per the Acts and Statutes of the concerned university. However, in the ninth Joint Committee of UGC-AICTE& DEC held on 17.08.2009 regarding territorial jurisdiction for offering programmes through distance mode, it was decided that the latest UGC notifications will prevail over all previous notifications and circulars of the DEC.

The Council considered the roles and responsibility and the authority of the Joint Committee and decided that the Joint Committee can not supercede the Statutory Authority of the Distance Education Council. The Council noted that the distance education and online education cannot have the Territorial Jurisdiction and it was decided that in case of Central Universities and the State Universities, the Territorial Jurisdiction will be as per their Acts and Statutes for offering programmes through distance mode. The Territorial Jurisdiction in case of Deemed Universities will be as per UGC which mandates the prior approval of the UGC for opening Centres / off Campus Centres outside the Headquarters. The Territorial Jurisdiction in case of Private Institutions (other than Universities) will be as decided by the Joint Committee.

”

29. The decision taken with regard to jurisdiction of offering programmes through distance mode led into issuance of notification dated 29.3.2010 (Annexure P-51) by the DEC. At this stage, counsel for the respondents relied upon UGC (Institution Deemed to be University) Regulations, 2010 which provided under Regulation 12.05, that Deemed University can operate from an off-campus Centre with the approval of the Central Government on the recommendations of the Commission. The 2010 regulations in terms of Regulation 1.3 came into effect from the date of the notification was 21.5.2010. As DEC was the sole statutory body governing

29.3.2010 restraining the jurisdiction of deemed universities, UGC regulations have been issued thereafter in consequence thereof. Therefore once the DEC had issued a notification dated 29.3.2010 , no deemed to be University could operate through off-campus centres without the approval of the UGC.

30. Thereafter DEC vide notification dated 31.1.2012 (Annexure P-52) stated that in terms of the 35th meeting, Central universities and State universities with regard to territorial jurisdiction will be governed as per their acts and statutes for offering programmes through distance mode. The territorial jurisdiction in the case of Deemed Universities will be as per UGC which mandates the prior approval of the UGC for opening centres outside the headquarters. On 1.11.2012 (Annexure P-53) the DEC even in the case of State Universities both Government funded and Private held that the territorial jurisdiction will be as per the acts and statutes but not beyond the boundaries of their respective states. It is only on 1.11.2012 that restrictions with regard to territorial jurisdiction were imposed upon State Universities and Private Universities, as Distance Education Council was the sole statutory authority having prerogative of recognising the distance education courses run in universities/institutions. Therefore any regulation/circular/guidelines issued by UGC to the contrary will not hold the field till the time Distance Education Council did not change its policies with regard to territorial jurisdiction and study centres. Once the distance education Council did not insist upon territorial jurisdiction with regard to Private Universities, State Universities student cannot be put to any disadvantage. If UGC was issuing different policies on the same subject, how could that be applicable to a student who is only expected to check the

policies of DEC which was the statutory body governing the field of distance education in the country, till its dissolution much later.

31. After dissolution of the DEC,UGC issued a public notice dated 27.6.2013 (Annexure R-1) and Notification dated 23.8.2013 (Annexure R-2) as per which the University established under the state Act shall operate only within its territorial jurisdiction and in no case beyond the state of its location. The private universities and Deemed universities cannot affiliate any college or institution for conducting courses leading to award of degrees and the Deemed universities also cannot operate from off-campus centres without permission/approval of UGC. No university whether the Central, State, Private, Deemed can offer programmes through franchisee arrangement. Though the notification putting restrain by UGC on the Universities was imposed in the year 2013, the State Governments started operating the same upon the candidates who had completed their Education even before the applicable date. It is already settled that no regulations/notices/notifications can operate retrospectively and unsettle the settled right viz unrecognize the qualifications already acquired at the time when as per DEC territorial jurisdiction and study centres were governed by Universities as per their own Acts & Statutes. In this regard information sought under RTI Act, 2005 issued by UGC on 23.2.2016 (Annexure P-31) is also applicable vide which it has been stated that the public notice vide which territorial jurisdiction of universities was defined by the UGC is to be implemented/comes into operation on 27.6.2013 viz the date of its issuance, meaning thereby that the same is not applicable retrospectively.

32. With regard to examination centres reference had also been made by the counsel for the petitioner to letter under RTI Act dated

12.4.2016 (Annexure P-54) wherein it has been stated that the public notice dated 27.6.2013 is not applicable on examination centres outside the state meaning thereby that there was no restriction on opening up of examination centres outside the state and that restrain on examination centres for distance education programmes was imposed for the 1st time by the UGC vide its public notice dated 19.7.2016. The counsel for the respondents at this stage states that once the universities could not operate beyond the territorial jurisdiction no university would operate its examination centre outside its territorial jurisdiction directly. Further it has been argued by counsel for the respondents that the study centres were to facilitate the students and to provide PCPs, once the study centres were closed it cannot be the case that the students travelled from far-away places to the University headquarters for PCPs and gave examinations in the examination centres.

This Court after considering the facts and ground reality is not convinced with the argument raised on behalf of petitioner with regard to operation of examination centres beyond the territorial jurisdiction as once there was restriction on opening up of study centres and working of university was restricted to its particular state it could not have operated outside the territorial jurisdiction of its state even for conducting of examinations. In distance education mode the universities were not only to conduct examinations but were also to provide personal contact programmes so as to support students in the studies. Further study centres were to arrange classes on holidays or vacations, in order to facilitate students in their studies. This has also been provided in 1985 regulations, mentioned in para 6.2 above. Once study centres were restricted,

universities could not have even operated “Examination Centres” for providing above said facilities, as simply by changing the name universities cannot wriggle out of the restriction imposed by the DEC. Therefore the deadline for operation of examination centres beyond the territorial jurisdiction will be the same as applicable in the case of study centres, however if a particular centre has been specifically recognised by UGC then in that particular case, same shall be considered as a valid centre for examination and qualifications attained will also be considered is duly recognised.

On the basis of the series of development and facts dealt hereinabove it can be safely/ legally concluded that the Distance Education Council was neither insisting upon the territorial jurisdiction of the University nor governing or managing the study centres, as the DEC considered the same to be internal policy of the University and the Universities with regard to Territorial Jurisdiction & Study Centers were to be governed as per their own Acts and Statutes. Though the UGC had issued letter dated 16.4.2009 and 15.6.2009 (Annexure P-48) imposing restrictions upon the territorial jurisdiction of State Universities and Private Universities, however as Distance Education Council was the statutory authority governing the Distance Education Mode, as held above, the Distance Education Council decided to put restriction upon Territorial Jurisdiction only in its meeting dated 10.3.2010 (Annexure P-50). However 1st notification by the Distance Education Council imposing restriction on Territorial Jurisdiction was issued on 29.3.2010 (Annexure P-51) wherein the Council stated that in case of Central and State universities the territorial jurisdiction will be as per their own Acts and Statutes for offering

programmes through distance mode. The territorial jurisdiction in case of Deemed Universities will be as per the UGC, which mandates the prior approval of the UGC for opening study centres/off campus centres outside its headquarters. The territorial jurisdiction in case of Private Institutions (other than Universities) will be decided by the Joint Committee. Thus for the 1st time Distance Education Council vide notification dated 29.3.2010 imposed direct restriction upon Deemed University and Private Institutions (other than University) however no restriction was imposed upon State Universities whether Private or State Funded. Similar notification was issued by the DEC on 31.1.2012 (Annexure P-52) reiterating its earlier notification dated 29.3.2010 and the decision taken in 35th meeting (Annexure P-50). The Distance Education Council thereafter on 1.11.2012 (Annexure P-53) issued a notification on the basis of the decision taken in 40th meeting of Distance Education Council dated 8.6.2012, thereby putting restriction even on State Universities (both Government Funded & Private) thereby restricting the Territorial Jurisdiction of the State Universities & Private Universities within the territory of the respective states.

Thus in terms of the notifications (vide which only general public can be considered to be made aware) it can be safely concluded that for Deemed Universities and Private Institutions (other than universities) the cut-off date with regard to territorial jurisdiction and study centre will be 29.3.2010. All admissions made prior to the above said date will stand recognised as the same were in consonance with the policy of the Distance Education Council, prevailing at that stage. With regard to State Universities whether Private or Government funded the cut-off date will be

Universities). For Private Universities or Government Universities any admissions made prior to 1.11.2012 will be recognised, as prior to the above said date there was no restriction imposed by the DEC upon State Universities whether Private or Government funded.

D. RECOGNITION OF COURSES AND INSTITUTIONS

33. The UGC in terms of its 1985 Regulations (Annexure P-34) even prior to the establishment of the Distance Education Council in the year 1991 had already permitted all universities established or incorporated by Central Act, Provincial Act or of a Section 2 of the University Grants Commission Act, 1956 and every Institution Deemed to be University under Section 3 of the said Act for imparting of education through non-formal/distance education mode in the faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences for grant of first-degree through study centres.

34. In the year 2004 (Annexure P-36) with regard to Deemed universities only guidelines were issued which required prior permission for a Deemed university to open up study centre or open up a new department, along with that the Deemed to be universities were already operating in the field of distance education were granted 6 months' time to apply for *ex-post facto* approval from the DEC/UGC. Though the MHRD later on had clarified vide its notification dated 5.4.2006 (Annexure P-37) (relevant of which has already been reproduced in para 6.8 above) that institutions which have been granted Deemed to be university status are empowered to award degree as specified & notified under Section 22 of the UGC Act and it is not prerequisite for an institution notified as Deemed to be university to obtain prior approval.

35. The DEC being the sole statutory authority governing ODL(Open and Distance Learning) mode of education in the country issued guidelines in the year 2006 as per which parent institutions were permitted to start a course only in the fields in terms of their Act/MOA. For the universities which had already started distance education in the absence of such provision in the Act were directed to amend their statutes to that extent. Further the parent institutions could only establish study centres in terms of the jurisdiction specified in the parent institutions Act/MOA. As the DEC granted Institutional Recognition, the Universities could award degrees and conduct courses in terms of the specialization as mentioned in their statutes/MOA. Further the degree should be notified under section 22 of the UGC Act.

36. The Distance Education Programmes were to be recognised by the DEC and the DEC granted institutional recognition instead of programme -wise recognition and the Universities were permitted to run the programmes in terms of their MOA and subject to the degree being specified in the notification under Section 22 of the UGC Act. The DEC had also clarified the same in its letter dated 11.12.2008 wherein it had stated that council does not separately accord approval to any specific programmes offered by any University/Institute and University may decide the programmes to be offered and it should seek approval from concerned Statutory Councils like AICTE, NCTE etc. etc., if required. Universities having Institutional Recognition could impart education and award degrees without any pre-requisite approval from any other Statutory body/ Council subject to Institute/ University is operating in its zone of field as mentioned in its Statute/MOA and was conducting courses through regular mode

which are being offered through distance mode.

37. The DEC had also sought applications for *ex-post facto* approval as various universities and institutes had started distance education courses without the permission of DEC. The *ex-post facto* approvals were granted by the DEC to various universities. However even at the time of granting *ex-post facto* approvals only institutional recognition was granted.

38. That the above said position is also clear from the list uploaded by the Distance Education Bureau, UGC(Annexure P-57) (which had taken over the responsibility of distance education after the dissolution of DEC) on its website wherein information of 212 universities along with the period during which the universities were having Institutional Recognition by DEC, has been compiled. The UGC after the dissolution of DEC had adopted guidelines of the Distance Education Council vide letter dated 17.6.2013 (Annexure P-27) till such time the regulations with regard to distance education are formulated by UGC, resultantly the last policy decisions of the DEC, with regard to Institutional Recognition, Territorial Jurisdiction, Study Centres and Technical/Professional Programmes have been mentioned by the Distance Education Bureau-UGC, at the time of compiling information with regard to approvals granted by DEC. In the list Annexure P-57, decisions taken by DEC post 2012 has been mentioned and earlier decisions of the DEC have not been considered or mentioned. This Court has considered the policies, decisions and notifications of DEC as well as of Joint Committee (UGC-AICTE-DEC) pre 2012 as well as post 2012, therefore the list uploaded by the Distance Education Bureau, UGC on its website, which is on record as Annexure P-57 will ONLY facilitate to utilize the information (with regard to approvals granted by DEC) compiled

by UGC, while determining the status of the degrees awarded by Universities through ODL mode, in light of the parameters/conclusions laid by this Court in following paragraphs. It is hereby declared that Annexure P-57 (list depicting recognition accorded to Universities/Institutions for offering Programmes through Distance Mode) shall stand modified and clarified to that extent.

This Court having considered the above said facts is of the opinion that from the series of developments and documents it is clear that DEC was not following the standard procedure of granting programme wise recognition and was granting institutional recognition at one stage and programme wise recognition at other. Therefore the courses being run by Institutions/Universities (Central Universities/State Universities/Deemed Universities / Private Universities) at the time Institutional Recognition was granted by DEC will be treated as recognised subject to that they were offering programmes in consonance with the field of specialization (like Arts, humanities, Commerce, Social Science, Science etc) as mentioned in the MOA (Memorandum of Association)/Statutes and the degree was notified under Section 22 of the UGC Act (List of degrees specified under Section 22 of UGC Act are on record as Annexure P-38).

The degrees awarded by the universities which were not in consonance with their MOA (Memorandum of Association)/ Statutes during the period of Institutional Recognition shall stand as invalid and cancelled. For the period the Institute/University (Central University / State University /Deemed University/Private University) has been granted programme wise recognition only the particular programmes approved by the DEC will be treated as valid and all other programmes/degrees awarded by the respective

universities shall stand as invalid and cancelled. The State Government in this regard can refer to the list of recognition (viz Institutional or Programme wise) accorded to Universities/Institutions for offering programmes through distance mode uploaded by the Distance Education Bureau, UGC on its website and is also on record as Annexure P-57 dealt in para no. 38 hereinabove. If in a particular case it is pointed out that the list is not exhaustive and there is any other course or time period at which the university was recognised, the State Government can always seek clarification from the respective statutory bodies.

E. EQUIVALENCY OF DEGREES OF DISTANCE MODE WITH THE REGULAR MODE

39. With regard to equivalency of degrees the UGC in the year 1993 vide its letter dated 28.7.1993 (Annexure P-56) stated that it will be most unfair if the degrees of open universities and distance learning or not recognised by the traditional universities especially in view of the importance attached to the open University and distance education learning and national policy on education, 1986 (Annexure P-35). Therefore it was written to all the Vice Chancellors of the universities to devise a module that the mobility of students from open University to traditional universities is insured without any difficulty.

40. The MHRD on 1.03.1995 (Annexure P-13) (mentioned above in para 6.5) issued a notification to the effect that qualification awarded through distance mode by the universities by an Act of Parliament of state legislature, institutions Deemed to be universities under Section 3 of the UGC Act, 1956 will stand automatically recognised for the purpose of employment to posts and services under central Government, provided it

Meaning thereby that in case of non-technical qualification, all degrees awarded through distance mode will stand automatically recognised subject to the same is approved by the distance education Council.

41. On 25.7.2015 (Annexure P-14) another notification was issued by MHRD after dissolution of the DEC wherein the notification dated 1.3.1995 was reproduced/reiterated and it was stated that after dissolution of the DEC, all qualifications acquired through ODL(Open and Distance Learning) mode from the universities established by an Act of Parliament or state legislature, institutions Deemed to be universities under Section 3 of the UGC Act, 1956 and institutions of national importance declared under an Act of Parliament stand automatically recognised for the purpose of employment to post and services and to central Government provided they have been approved by UGC.

42. The counsel for the petitioner has also brought to the notice of this Court that UGC vide its letter dated 24.11.2015 (Annexure P-28) had certified that as per the notification dated 1.3.1995 qualifications acquired through ODL(Open and Distance Learning) mode of education, approved by DEC and duly recognised. However it has been stated that it is the prerogative of the concerned employer/universities/institution to take a view in respect of qualification acquired through distance mode. Another letter to this effect under the RTI Act has been issued by the UGC dated 2.12.2015 (Annexure P-29) wherein it has been stated that the degrees awarded to distance mode duly recognised for the purpose of employment, however it is the prerogative of the concerned employer/ universities/ institution to take a view in respect of qualification acquired through distance mode. A bare perusal of the stand of the State of Punjab makes it

evident that at no stage any bar has been imposed by the state government with regard to non-recognition of degrees of distance education. Further it has been pointed out by the counsel for the petitioner that the State Government is acting in a discriminatory manner as various persons having similar qualifications are being continued and permitted to join as well as being recruited/ regularized in service whereas persons like the petitioners and other similarly situated persons are not been granted benefit of the qualification obtained through distance education mode. The counsel for the respondents does not dispute the said position. The counsel of the respondents however states that the discriminatory action could have occurred on account of non-clarity with regard to recognition of distance education degrees pertaining to non-technical courses, obtained through study centres beyond territorial jurisdiction, of the University concerned.

That going through the above developments with regard to equivalency of degrees issued from time to time, this Court is of the view that till such time the DEC was in operation viz till the time MHRD did not bring the Distance education under the purview of UGC (with regard to Non-technical Education) vide notification dated 29.12.2012 (Annexure P-23) and the DEC was not dissolved vide Annexure P-24, all Distance Education qualifications were valid subject to the fact that the Universities were recognised by DEC and after the dissolution of the DEC the same had to be approved by the UGC. This is evident from the notification of 1.3.1995 (Annexure P-13) wherein reference has been made only to the DEC and in cases of technical education reference has been made to AICTE but there is no reference to UGC. After the dissolution of DEC, MHRD issued a notification dated 25.7.2015 (Annexure P-14) vide which for ODL

degree to be valid university is to be recognised by UGC. Therefore all qualifications acquired through distance education mode from universities (Central/ State/ Deemed/ Private) recognised by DEC, till its dissolution will be treated as equivalent to corresponding degrees awarded through traditional mode.

F. DIFFERENT FIELD& LEVELS OF EDUCATION

43. That the award of First-Degree through distance education in the faculties of arts, humanities, fine arts, music, social sciences, commerce and sciences are already governed in terms of the regulations of the UGC issued in the year 1985 (Annexure P-34) which permits imparting of education in the above said fields through study centres outside the headquarters in areas where there is reasonable consideration of students. Thus awarding of 1st degree in the above said fields, the Universities (as defined under Section 2(f) & Section 3 of the UGC Act) were duly empowered to impart education through distance mode subject to the recognition of University, granted by DEC after its establishment in the year 1991.

44. That with regard to the Post-Graduation Degree through distance mode the Universities in case of Institutional Recognition by DEC could impart education in the field, which were mentioned in the Statutes/MOA and were having due specialization in that field. The recognition of post-graduation degree equivalent to traditional course has been accorded by UGC vide its letter dated 28.7.1993 (Annexure P-56) wherein with regard to the qualification of Master of Arts from Open University being debarred by University from registration for PhD study, it was directed that workable understanding between open universities &

traditional universities for recognition of each other degrees on reciprocal basis be done as it will be most unfair in view of the importance attached to open University and distance learning in terms of National Policy of Education, 1986. The universities at the time of programme-wise recognition being granted by DEC, could only award degrees which were mentioned in the list of approved programmes. Therefore the courses which are included in the programme -wise recognition granted to the universities by the DEC is valid, however where institutional recognition has been granted in such cases only those courses which were being imparted by the universities in the zone of specialisation as mentioned in their statutes/MOA will be recognised, subject to the degrees being mentioned in the list of degrees notified under Section 22 of the UGC Act and the qualifications which have been imparted outside the zone of specialisation will be treated as cancelled and invalid.

45. That the counsel for the petitioner had also brought to the notice of this Court that with regard to M.Phil /PhD degree the UGC had formulated specific regulations viz UGC (minimum standards and procedure for the words of M.Phil./Ph.D. Degree) Regulation, 2009 as per which in terms of regulation 5 no University/institution/Deemed to be University and College of national importance were permitted to conduct M.Phil. and Ph.D. programmes through distance education mode. Further as per the 2009 regulations the same shall come into force with effect from the date of the publication in the Gazette of India. The regulations were published in the Gazette on 11.7.2009 meaning thereby that they came into force from 11.7.2009. This Court is of the view that the 2009 regulations will come into force only from the date they are published in the Gazette

and will not operate retrospectively. In 2009 regulations it has nowhere mentioned that they will operate retrospectively, thus 2009 regulations will hold the field prospectively. Therefore the universities/institutions which had awarded qualification of M Phil prior to coming into force of the 2009 regulations viz the students who got admitted the session 2009, the degrees will stand validated subject to the University being imparting education in the field of specialisation which is duly mentioned in the statutes/MOA and the degrees were duly notified in the list of degree under Section 22 of the UGC Act.

46. That the counsel for the petitioner also pointed out that the UGC has promulgated University Grants commission (open and distance learning) regulations, 2017, in supersession of 1985 regulations (Annexure P-34) however this Court is of the view that the regulations promulgated in the year 2017 will have no impact on the degrees awarded prior to its enactment especially in light of the savings Clause under Regulation 19 (1) of 2017 regulations as per which nothing in the regulations will prejudice or effect the higher educational institutions in regard to the programme in ODL(Open and Distance Learning) mode offered under permission of the DEC and the students admitted in such programmes prior to coming into force of the 2017 regulations. Therefore with regard to first-degree awarded to ODL mode in the faculties of arts, humanities, fine arts, music, social sciences, commerce and sciences are concerned the same will remain to be governed in terms of the regulations of the UGC issued in the year 1985 till coming into force of the 2017 regulations. Hence degrees awarded in terms of 1985 regulations will continue to be recognized for all purposes.

G. TECHNICAL EDUCATION DEGREES

47. That with regard to technical education governed by the AICTE under the All India Council for Technical Education ACT, 1987 it has been brought to the notice of this Hon'ble Court that the Hon'ble Supreme Court of India in the case titled **Orissa Lift Irrigation Corp. Ltd V. Rabi Sankar Patro** 2017 (4) SCT 683 has already dealt with the issue pertaining to technical education degrees awarded through distance education mode by Deemed Universities. The decision rendered in the above said case pertains to technical degrees (Engineering) and does not include Technical diploma or Management Courses governed by AICTE. This has also been clarified by the Hon'ble Supreme Court of India in various miscellaneous applications filed in the Orissa Lift case (*Supra*) which have been reported as 2018(2) SCC 298. The Hon'ble Supreme Court in paragraphs 3 of the application has categorically stated that the judgment was with regard to validity of degrees in engineering conferred by Deemed to be Universities in distance mode.

48. That the learned counsel for the petitioner also pointed out that the judgment rendered by Hon'ble Supreme Court of India in case Orissa Lift Irrigation Corporation Vs. Rabi Sankar Patro & Ors dealt only with Technical Education as in paragraph 18 also while dealing with the National Policy on Education, 1986 the Hon'ble Apex Court has only dealt Technical Management and education whereas the National Policy comprised of all the modes of education as well as all streams of education which have already been referred above. The counsel for the petitioner further stated that the UGC Regulation 1985 referred in paragraph 18 (a) of judgment by the Hon'ble Supreme Court, pertains to formal education

whereas the UGC has formulated another set of rules dated 25.11.1985 pertaining to non-formal education which permits opening up of study centers. This Court is not going into the issue as the judgement rendered by the Hon'ble Supreme Court of India pertained to technical education whereas the present case this Court is concerned with the non-technical qualifications awarded through distance mode by various universities/institutions.

49. The counsel for the petitioner pointed out that the Hon'ble Apex Court in the judgment Orissa Lift (*Supra*) while dealing with the Deemed Universities divided the Deemed Universities in two categories:-

Firstly the Deemed to be Universities which were conferred such status for its excellence in the field of subject and is desirous of introducing courses or programmes, dealing with the area in respect of which it has been conferred Deemed to be university status.

Secondly the Deemed to be Universities which have been conferred status for its excellence in some subjects and are running courses or wish to start courses which are completely unrelated to the field for which they were granted Deemed to be status.

50. Further it was stated by the Counsel for the petitioner that the Hon'ble Supreme Court of India in the judgment Orissa Lift (*Supra*) had only dealt with the second category of Deemed to be universities, which were granted Deemed to be status in a particular field, however started courses unrelated to the field for which they were granted Deemed status.

With regard to validity of degrees of technical education by universities

which were established and granted status of University on the basis of specialisation in technical education has not been dealt. This Court is not going into the above said controversy/proposition or advocating upon the same as the present case pertains to the non-technical qualifications.

51. That while dealing the case of technical education degrees such as B.Tech, M.Tech Etc. awarded through ODL mode, the Hon'ble Supreme Court of India had held that the member of AICTE was not a member of the DEC and as such it cannot be stated that all the decisions of the DEC were in consonance and with permission of the member of the AICTE.

Whereas in the present case pertaining to Non-technical education, Member of UGC, Secretary of UGC and Member of MHRD were part of the Distance Education Council and it was only under their supervision and presence that decisions were taken by DEC, with regard to having overriding effect over Joint Committee (UGC-AICTE-DEC) and DEC being the sole body having prerogative of granting recognition in the field of distance education. Therefore with regard to non-technical education, once in the presence of UGC and MHRD, Distance Education Council became the sole authority for governing ODL mode of education, now once the qualification has been attained in terms of the policies of DEC, contrary stand/ letters/ notifications of UGC, for the period DEC was in existence, could not be accepted.

PARAMETERS / DIRECTIONS WITH REGARD TO DEGREES (NON-TECHNICAL) THROUGH DISTANCE EDUCATION MODE

52. Upon consideration of facts, developments and change in distance education policies over the time and the findings recorded under different heads from HEAD "A" To "G" following parameters/directions

are issued:-

(i) In case of Deemed Universities and Private Institutions (other than Universities) the cut-off date with regard to territorial jurisdiction and study centre will be 29.3.2010, all admissions made prior to 29.3.2010 to obtain degrees awarded through use of study centres, off-campus centres of Deemed Universities and Private Institutions (other than Universities) will be valid, subject to the statutes/ MOA (Memorandum of Association) of University permitting opening up of Centres in the territory from which it was operating or permits opening up of centres at any place where there are reasonable concentration of students (as permitted by UGC in 1985 Regulations, Annexure P-34).

(ii) In case of State Universities (both Government funded or Private funded) the cut-off date will be 1.11.2012, therefore all admissions made prior to 1.11.2012 to obtain degrees awarded through use study centres/off campus centres of State Universities or Private Universities will be valid, subject to the statutes/ MOA of University permitting opening up of Centre in the territory from which it is operating or permits opening up of centres at any place where there are reasonable concentration of students (as permitted by UGC in 1985 Regulations, Annexure P-34).

(iii) The qualifications attained after the cut-off date mentioned above will stand de-recognised for all purposes. However as opening up of study centers was permitted after prior approval from UGC, it is clarified that even after the cut-off date if the qualification attained through distance education mode from Institutions (other than

University) / Universities (Central University, State University, Deemed University or Private University) is in consonance with the regulations/ notifications/policies of DEC/ UGC with regard to territorial jurisdiction and study centres prevailing at the relevant time and the study centre is approved by the UGC, then the qualification will be recognised and valid. This observation has been made due to lack of complete Information before this Court, as no list of approved study centres has been brought before this Hon'ble Court.

(iv) With regard to First degrees awarded by Universities [including Central Universities, State Universities, Private Universities, Deemed Universities] by way of Distance Education in the faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences are concerned, the same shall be valid in light of the 1985 regulations (Annexure P-34) permitting imparting education though distance mode via study centres, subject to being admitted in the University prior to the cut-off date mentioned above in para no. (i) & (ii) of parameters laid above, as the case may be.

(v) With regard to Post graduation degrees awarded by way of distance education in non-technical field (such as Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences etc.) in cases where Institutional Recognition has been granted, if the qualification is in terms of MOA (Memorandum of Association) / Acts/ Statute of the University viz the field of specialization and the degree is notified under Section 22 of the UGC Act (List of degrees specified under Section 22 of UGC Act is on record as Annexure P-38) the same shall stand validated, subject to being admitted in the

University prior to the cut-off date mentioned above in para no. (i) & (ii) of parameters laid above, as the case may be.

(vi) With regard to post graduation degrees awarded by way of distance education in Non-Technical Field (such as Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences etc.) where programme wise recognition has been granted, only those qualifications will be valid which have been mentioned in the list of approved/recognised qualifications, subject to being admitted in the University prior to the cut-off date mentioned above in para no. (i) & (ii) of parameters laid above, as the case may be.

(vii) The qualifications which have been held to be valid above be treated as at par with the degrees awarded by way of conventional mode/ regular mode of education.

(viii) The State Government is directed to take necessary action in terms of the above findings within a period of 6 months from the date of receipt of certified copy of the order. The State government can verify the recognition list [whether University (Central, State, Deemed or Private) /Institution (other than University) had “Institutional Recognition”at particular time or “Programme-wise Recognition”] uploaded by the Distance Education Bureau, UGC on its website, which is also on record as Annexure P-57. Further the State government can also verify as to whether degree has been mentioned in the list of degree specified under Section 22 of UGC Act or not from the list uploaded on the website of UGC which is also on record as Annexure P-38. With regard to Memorandum of Association, Act and Statutes of the universities, the State

government can obtain the same from the students whose cases are pending at the level of the government or from the concerned universities or from the UGC.

(ix) The State government after completing the exercise in terms of Para No.(viii) hereinabove would start a portal/webpage/ website wherein information with regard to recognition of different types of degrees from various universities is uploaded, so that not only general public is aware with regard to recognition of degrees, but also uniformity & transparency can be maintained with regard to implementation of the aforesaid directions, in all the departments of the State Government right down till the field level.

For clarity an illustration is being given hereunder:-

To verify the qualification of a candidate who has attained qualification of M.A. through distance education mode from a University in Rajasthan having centre in Punjab, the state will firstly check the status of the University viz if the university is a Deemed University then cut-off date mentioned above in para no. (i) of parameters laid above will be applicable and in case of state universities and private universities cut-off date mentioned above in para no. (ii) of parameters laid above will be applicable.

In case the candidate has got admission in the course after the cut-off date, the same shall be invalid, however if he was admitted in the course prior to the cut-off date in that case the state will then verify the statutes/MOA of the University and if the degree is in the field mentioned in the statutes/ MOA and is also mentioned in the list of degree specified under Section 22 of the UGC, then the qualification will be considered as valid subject to the territory from which University is

operating is in consonance with the Acts/ Statutes / MOA of the University. As in the present Illustration if in the statutes/MOA of University field of Arts is mentioned and the degree of M.A. is also mentioned in the list of degree specified under Section 22 and in the Statute/ MOA of University it is mentioned that territorial jurisdiction of University is throughout the territory of India or that it can open centres where ever there are reasonable concentration of students, then the qualification attained from centre at Punjab shall be considered as valid.

(x) In view to reduce litigation and hardship of the candidates/ students liberty is being granted to all the students/candidates who will be affected on account of non-compliance of the aforesaid directions, by the State Government, to adopt appropriate recourse of law including filing of the contempt petition.

(xi) It is clarified for all purposes, that the candidates whose degree will stand invalidated in view of the parameters mentioned above, all benefits secured by such candidates/ employees shall stand withdrawn, however if any monetary benefit has been drawn such as salary etc. the same shall not be recovered. In such cases the employees /candidates will be at the liberty to take appropriate action, as available under law, so as to recover the amount paid towards tuition fees, expenditure incurred, damages etc. etc. from the University/ Institution concerned. The above said direction is being given on the lines of directions, in similar situation issued by the Hon'ble Supreme Court of India in paragraph 53 (vii) of the

judgment reported as 2017 (4) SCT 683: 2017 AIR (SC) 5179
titled as **Orissa Lift Irrigation Corp. Ltd V. Rabi Sankar Patro.**

However this Court considering the hardships to be faced by the employee for no fault of his and who on the basis of the above said qualification which is not in terms of the aforesaid parameters, had secured jobs (on regular basis/permanent basis as per Recruitment Rules) and had settled in their life and have attained ample experience while performing the duties on the post which he/ she is holding for a substantial period of time, considers it appropriate that a one-time concession be granted to the effect, that the persons who are already in job on the basis of the qualification which might be invalidated on account of above said directions, be permitted to continue in job, but in the cases where the qualification if invalidated was essential qualification to hold the post, they shall not be granted any further benefits, viz promotion etc. etc. In the cases where qualification which does not fulfil the above said parameters is not an essential qualification and has been utilized only for securing higher marks at the time of selection, their case be treated separately as they fulfill the requisite qualification in terms of the statutory rules governing the post, therefore they will be entitled for all further benefits subject to that even in case of promotion the qualification so invalidated is not an essential qualification.

Similarly in cases where an employee was recruited on

temporary basis after due selection process based upon distance education degrees (now invalidated in view of the parameters laid above) but has been denied regularization of services on account of such distance education degrees despite otherwise being eligible, suitable for regularization, while other persons recruited along with such employee have been regularized in service, in such cases benefit of regularization be extended if the qualification (attained through distance education mode) so invalidated is not an essential qualification to hold the post in terms of statutory rules and is an additional qualification which may have been used for attaining additional marks at the time of initial selection. All benefits of service will be extended as have been granted to other employees recruited in the same selection or appointment made at the same time. However, if the qualification from distance education mode (which now stands invalidated in view of above parameters) is essential qualification to hold the post, in that case NO benefit will be granted including benefit of regularization. It is so being laid down as temporary employee has no vested right to hold the post.

Note:-

(a) It is clarified that, in case where the respondent State did not consider any person for appointment by way of direct recruitment or by promotion on account of possessing qualification through distance education mode, but has been

issued orders pursuant to interim orders issued by the Hon'ble Court or has been issued conditionally subject to outcome of any petition pending before the Hon'ble Court, in that case concession granted hereinabove will not be extended. The concession has been given on the rationale that there was complete disclosure on part of employee and state having found eligible, permitted employee to work for a considerable period, irrespective of holding a distance education degree.

(b) In a situation where the graduation or post-graduation has been attained through distance education mode and higher qualification has been attained through normal mode/conventional mode but his graduation or post-graduation degree attained through distance education mode stands invalidated in view of the aforesaid parameters, then the higher qualification attained on the basis of the degree so invalidated will also stand invalidated, as illegality at the original/ foundation stage being a nullity cannot be cured by subsequent acquisition of valid higher degree based upon such invalid degree. It is well settled that in case of foundation being a nullity the whole edifice constructed thereupon has to fall. This view finds support from the law laid down by the Hon'ble Apex Court in the case of **M.P. State Coop. Bank Ltd., Bhopal v. Nanuram Yadav** 2007 (4) SCT 464 and by this Court in **Jagir Singh v. State of Haryana** reported as 2006 (7) SCT 386.

(c) Needless to say, that in case where candidate has

obtained a degree by attending the PCPs and has undertaken exams in the main campus or within the State where the University (as defined under Section 2 (f) and Section 3 of UGC Act) is situated, in that case their degree shall be valid, as no question of territorial jurisdiction arises. This is subject to the University, having recognition to impart education in such field (at the time of institutional recognition, MOA/Statutes of University permits imparting education in such field and at the time of programme-wise recognition such course had been permitted).

CONCLUSION IN THE PRESENT CASE

53. That coming back the facts of the present case as per the qualification required to be appointed to the post of Punjabi master in terms of the advertisement Annexure P-1 required is graduation from any recognised university with Punjabi subject in all 3 years of graduation and must have passed B.Ed. Teaching of Punjabi subject. The petitioner in the present case possesses the essential qualification through conventional mode of education as stated in paragraph 9 of the petition to the effect that she had completed her graduation viz B.A. , her post-graduation M.A. and B.Ed. from regular mode and it is only the additional qualification of M.Ed. which has been attained by the petitioner from Vinayaka Mission University in which she got admitted in the year 2009. The counsel for the petitioner had argued that the claim for regularisation has been rejected solely on the ground that she had attained her additional qualification of M.Ed. from Vinayaka Mission University, which was presented by her at

the time of selection so as to score additional marks. The counsel for the petitioner has also argued with regard to the present case the Vinayaka Mission University was granted post facto recognition for the enrolment in 2005 and thereafter was recorded institutional recognition with effect from 2007 to 2012. Thereafter programme-wise recognition was granted to the Vinayaka Mission University for a period of 3 years. Reference has been made to the information sought under the RTI, from IGNOU dated 25.8.2011 (Annexure P-9). The above said fact is also evident from the list uploaded by the Distance Education Bureau, UGC on its website (Annexure P-12) that at the time petitioner got admitted in the course, the Vinayaka Mission University was granted Institutional Recognition.

54. In the present case as per MOU and rules of VMRF / VMU, following are the objectives:-

“ 3. *OBJECTIVES*

The objective for which the foundation is established are:

3.1 To provide for instruction and training in such branches of learning as it may deem fit.

3.1.a To provide for instruction and training in Medical, Dental, Homeopathy, Nursing, Paramedical, Engineering, management, Arts and Science and allies courses leading to certificate, Diploma, Degree, Postgraduate, Doctorate, Post Doctorate and Honoris causa Doctorate degree conducted at or through main campus, on campus centre, of campus centre, off shore campus, distance education, Correspondence education, Twinning programme with other Universities in India and Abroad, Virtual Education (On-line internet), T.V. Broadcast, video Conference, radio and through Satellite Education.

3.1.b To provide for instruction and training in medical, dental, homeopathy, nursing, paramedical, engineering, management, arts and science and allied courses with Student exchange, faculty exchange and research

programmes.

3.2 To provide for research and for the advancement of and dissemination of knowledge.

3.3 To do all other acts and things as may be necessary or desirable to further the objectives of the Foundation. ”

55. The case of the present petitioner is that she was directly enrolled with the University and the examination centres were only within the State of Punjab which were being directly maintained by the University and at the time petitioner got admitted there was no bar on conducting of examinations outside the territorial jurisdiction. Vinayaka Mission University had duly mentioned in its MOA of campus centre, off shore campus, distance education and was imparting education in the field of its specialisation, therefore the qualification attained by the petitioner for which she got admitted in the year 2009 is duly valid.

56. That irrespective of the degree of the petitioner, the claim of the petitioner is still covered as it is not the case of the respondents that the petitioner is not having essential qualification for being appointed to the post of Punjabi mistress. It is admitted position that the petitioner possesses requisite qualification for appointment to the post of Punjabi mistress by way of conventional mode which has not been disputed by the respondents and the petitioner has also cleared Punjab State Teacher Eligibility Test, it is only the qualification of M.Ed. which has been disputed by the respondent State. The qualification of M.Ed. was only presented by the petitioner for additional marks to be awarded at the time of selection and not as an essential qualification. The same is also evident from the short affidavit dated 17.12.2018 filed on behalf of respondent No. 1 and 2 wherein in paragraph 2 it is the stand of the respondents themselves that the

qualification of M.Ed. only helped petitioner to get more marks so as to

secure appointment as if the additional marks awarded for the degree of M.Ed. is deducted her score will come to 53.14 whereas the cut of matters 53.635 in the general category.

57. As per the appointment order Annexure P-2 the District Education Officer was to check all the original educational qualifications and also that the candidate fulfills all the conditions of appointment before the candidate submits the joining report. Therefore the qualification attained by the petitioner was duly within the knowledge of the respondents and she must have been permitted to join after due verification and if there is any lapse in verification the same is attributable towards the respondents for which they are to blame themselves as there has been no fraud on the part of the petitioner.

58. This Court is of the view that since it is not in dispute that the petitioner possesses the requisite qualifications to hold the post in dispute. The initial additional educational qualification prescribed for the post is to be reckoned at the time of initial entry into the service and once the appointment has been made and the petitioner has been permitted to work for a considerable length of time, it would be harsh and hard to deny her the confirmation on the respective post on the ground that the additional qualification of the petitioner is not recognised by the state Government. In my view the petitioner has been working since the date of appointment viz 31.12.2012 and practical experience would always aid the person to efficiently discharge its duties.

59. Further it is not the case of respondents that there has been any deliberate effort to conceal material information or facts at the time of initial appointment. Employer is not expected to appoint an employee and

permit to continue in service without verifying the certificates of his qualification and having been permitted to continue for a long time, the petitioner has gained much experience on the post therefore denying of benefit of regularisation would be unjust and illegal. The judgement referred by the counsel for the petitioner 1994 (4) SCT 158 titled as **Krishan Kumar Rao v. Haryana Warehousing Corporation** has been considered by this Hon'ble Court, relevant of which is as under:-

“ Assuming that the stand of the respondent-Corporation that Matriculation done by the petitioner is not from an institution which was recognised by the Government, this Court still is of the view that the petitioner should not be asked to quit at this stage when he is in the service of the respondent-Corporation from 1985 for all practical purposes but, in any case, has experience of the post for more than six years' actual service. This coupled with the fact that the petitioner has not concealed any material fact from the respondent-Corporation while seeking employment and that it is not a case of fake/forged certificate, as is the case of the Corporation, but is at the most, a case of obtaining a certificate from an institution which is not recognised by the Government, the petitioner deserves to continue in service. The Apex Court in **Bhagwati Prasad v. Delhi State Mineral Development Corporation, AIR 1990 Supreme Court 371** held as under :

" Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is not so at the time of the initial entry into the service. Once appointments of petitioners were made as daily rated workers and they were allowed to work for a considerable length of time, it would be

hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. It can be said that three years' experience, ignoring artificial break in service for short period/periods created by the Management, in circumstances, would be sufficient for confirmation."

For the reasons stated above, this writ petition is allowed. The Show Cause Notice annexure P-9 and the order appointing the Enquiry Officer as also the report of the Enquiry Officer which has also been placed on record during the course of arguments, are all set aside and a direction is issued to the respondents to permit the petitioner to carry on with the job that he is doing. The respondent-Management shall, however, always be entitled to proceed against the petitioner if there be any other charge, i.e. the charge other than one disclosed in the article of charges, but on the basis of the charge-sheet subject matter of the present case, the petitioner's services cannot be terminated. The petition is thus allowed in the manner indicated above but there shall be no order as to costs. ”

60. Courts have time and again held, in cases where the selection of a person is bad for various reasons, but due to passage of time and having being served in the Department for substantial period of time, courts have refused to interfere the selection irrespective of the illegality only on account of efflux of time. This view has been taken by the Hon'ble Apex Court in the case reported as 1998 (4) SCT 337: 1998 (8) SCC 59 titled as **Roshni Devi v. State of Haryana**, relevant of which is as follows:-

“We would have ordinarily persuaded to accept the contention raised by the learned counsel for the applicants in view of the finality that has been attached to the judgment of Punjab and Haryana High Court in Sudesh Kumari's case, no appeal having been preferred by the State against the said judgment and

would have permitted the directions given therein to be worked out, but in view of the illegality and irregularities perpetrated by the said judgment and in view of the enormity of the impact which the judgment would have on the future generation of candidates aspiring for a job in the post of clerk we would modify the directions given by the Full Bench and while modifying the said directions and replacing them with our directions we bear in mind the fact that persons who have been appointed from out of the list prepared on 15.10.1989 have already served for more than 9 years. From the relevant circulars in the form of Administrative directions issued by the Government it can be safely said that life of a list remains valid for one year and, therefore, after expiry of the list normally a Court would not be justified in issuing direction to give appointments from the list whose life has already expired unless it is established that notwithstanding existence of vacancies the appointing authority mala fide did not make appointment from the list. We have also no hesitation to come to the conclusion that as against the requisition for 662 posts of clerk received by the Service Selection Board the Board committed gross illegality in selecting and preparing a list of 5373 candidates. Further mistake committed by the Board was in sending the names of persons from the list not in order of their merit but at random as a result of which persons with higher merit securing higher position in the list stood excluded whereas persons securing lower merit got appointed. Having given our anxious consideration to all the facts and circumstances narrated above and having considered the fact that persons who may not have been appointed strictly in accordance with law have been appointed and continued in service for more than 9 years and further the fact that the direction in Sudesh Kumari's case not to get the list lapsed unless and until all persons from the list who are above the last man who has already been appointed are appointed which really seriously prejudice the interest of the future candidates and also jeopardises the administration to a great extent, we think it appropriate to issue the following directions in disposing of these appeals. We may at this stage notice the fact which was brought before us at the fag and of the hearing that in the year 1995 there has been a fresh test by the same Service Selection Board and again a large number

persons have been included in the list and the High Court has given almost a similar direction as was one given in Sudesh Kumari's case. We, however, express no opinion on the legality of the said judgment particularly when we have not examined the same and the State also intends to challenge the same. The only purpose for noticing the aforesaid fact was to highlight that notwithstanding the judgment in Sudesh Kumari's case there had been a fresh advertisement and a fresh list has been prepared by the Service Selection Board and parties have claimed their rights on the basis of the inclusion of their names in the said lists. However, as stated earlier, bearing in mind all the relevant facts and circumstances and bearing in mind the equity in favour of those who have already been appointed from out of the list prepared on 15.10.1989 and have served for more than 9 years we issue the following directions in substitution of the directions made by the High Court in the impugned judgment :-

(1) The appointments already made from out of the list prepared on 15.10.1969 will not be annulled.

(2) The last person who is stated to have been appointed being at serial No. 4645, persons occupying higher position than him could be considered for appointment to the post of clerk if there exists any vacancy for them.

(3) The vacancy in this context would mean the vacancies which were available in the State of Haryana prior to the advertisement issued for selecting persons for the said post for the year 1995. It is to be made clear that if no vacancies exist on the aforesaid date then no further appointment would be made from out of the list prepared on 15.10.1989 notwithstanding the directions of the Punjab and Haryana High Court in Sudesh Kumari's case.

(4) If vacancies did exist on the date as aforementioned then the appointments from out of the list prepared on 15.10.1989 could be made strictly on the basis of their merit position in the list.

(5) We strongly deprecate the practice of selecting and preparing an unusual large list compared to the vacancy position and the State Government should either amend the Recruitment Rules in that respect and till then should issue positive administrative instructions giving the right to the Selection Board

to select only some persons in excess than the requisition for which the Board is going to select people.

(6) We also do not approve of the inaction on the part of the State Govt. in not assailing the judgment of the Punjab and Haryana High Court in Sudesh Kumari's case and now coming up before us making submissions that the judgment is practically incapable of being implemented. ”

61. Similar view had also been taken by the Hon’ble Apex Court in **Gujarat State Dy. Executive Engineers Association v. State of Gujarat** 1994(3) SCT 325 : 1994 Supp (2) SCC 591 where in it has been held that:-

“ 11. The entire appointment of direct recruits, therefore, from the waiting list was not proper. But these persons have been appointed and are working now at least for five years. It would, therefore, be unjust and harsh to quash their selection at this stage. Therefore, while refraining from quashing the appointment made in pursuance of the direction issued by the High Court, we are of the opinion that the waiting list for one year cannot furnish source of recruitment for future years, except in very exceptional cases..... ”

Similarly in **Buddhi Nath Cahudhary & Ors. v. Akhil Kumar & Ors.**, (2001)3 SCC 328, where appointments were held to be improper, Hon’ble Apex Court did not disturb the appointments on the ground that the incumbents had worked for several years and had gained good experience. "We have extended equitable considerations to such selected candidates who have worked on the posts for a long period", said the Hon’ble Apex Court.

Further in **M.S. Mudhol (Dr.) & Anr. v. S.D. Halegkar & Ors.**, 1993(4) SCT 226 : (1993)3 SCC 591, where the petitioner sought a writ of quo warranto and prayed for removal of a principal of a school on

the ground that he did not possess the requisite qualification and was

wrongly selected by the Selection Committee. Keeping in view the fact, , that the incumbent was occupying the office of Principal since more than ten years, the Hon'ble Apex Court refused to disturb him at that stage. Similar view has also been taken Hon'ble Division Bench of this Court in L.P.A. No.18 of 2008 decided on 12.5.2010 titled as Satbir Kaur V. Shobha Rani Dhiman and Ors.

62. As noted above, the case of the petitioner is at a better footing, as not only does she possesses the prescribed basic/essential qualifications as laid down in the Punjab State Education Class-III (School Cadre) Services Rules 1978 and in terms of advertisement (P-1) for the post of Punjabi Mistress, but has also been appointed after due verification of the documents and also served the department of Education, Punjab for more than 05 years with, concededly unblemished record. She was extended the benefit of few extra marks in the light of additional qualification of M.Ed attained through Distance Education Mode, which fact would now pale into insignificance in view of the totality of circumstances.

Accordingly, the writ petition is **allowed** and it is directed that the services of the petitioner be regularised from 02.04.2016 as Punjabi Mistress viz from the date similarly situated persons/junior persons have been regularised in service along with all consequential benefits such as seniority, arrears in pay etc within a period of two months from receipt of the certified copy of the order, failing which Interest @ 9% on the amount of entire arrears shall be awarded to the petitioner from the date of entitlement till the date of payment, with the liberty to the State Government to recover the above said additional amount (paid on account of non-compliance in time) from the competent/sanctioning authority.

Apart from the above, the respondents will be liable in contempt proceedings as well.

Before parting, I express my sincere appreciation for the hard work put in by Mr. Ranjit Singh Kalra, Advocate and Mrs. Anu Chatrath Kapur, Additional Advocate General, Punjab in helping the Court to streamline the issue with regard to Degrees (Non-technical) awarded through Distance Education Mode by use of study centres/off campus centres beyond territorial jurisdiction of the Universities concerned.

NOTE :-

For the purpose of facilitating the due compliance of the directions passed by this Court in para no.52, it is hereby ordered that Photocopies of Annexure **P-38** (List of Degrees Specified/Notified under Section 22 of UGC) & Annexure **P-57** (List depicting recognition accorded to Universities/Institutions for offering Programmes through Distance Mode) be appended as Annexure A-1 & A-2 respectively with the judgment.

Registry is directed to forward the copy of this judgment along with Annexures **A-1 & A-2** to the Chief Secretary, Punjab for ensuring the compliance of the aforesaid directions.

(JASWANT SINGH)
JUDGE

June 06, 2019
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>