

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7905 of 2019

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Nitu Kumari wife of Dilip Kumar, daughter of R. Bhagat at present resident of Flat No. 602, B- Block, Patliputra Rail Parisar, Digha, Police Station-Digha, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Bihar Public Service Commission through its Secretary, Patna.
3. The Chairman, Bihar Public Service Commission, Patna.
4. The Secretary, Bihar Public Service Commission, Patna.
5. The Joint Secretary cum Examination Controller, Bihar Public Service Commission, Patna.
6. Ranchi University, Ranchi Jharkhand through its Registrar.
7. The Registrar, Ranchi University, Ranchi, Jharkhand.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anand Ojha, Advocate Mr. Rajeev Shekhar, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, Advocate General Mr. Sanjay Pandey, (BPSC) Mr. Jitendra Ranjan Pandey (Sc13)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT
Date : 14-08-2020

The present writ petition has been filed for quashing the decision qua the petitioner herein whereby and whereunder candidature of 9 candidates have been rejected and thereafter, directing the respondents to declare and treat the Ph.D. Degree submitted by the petitioner to be in consonance with the UGC Regulation- 2009 as well as to accept the same, treating it to be in conformity with the stipulations laid down in the



advertisement and then considering the candidature of the petitioner for her appointment for which she has applied, by publishing a fresh merit list. The petitioner has further prayed for quashing the newly inserted conditions in the notice dated 15.5.2018 and in the interview letter regarding demand for certificate and mark-sheet of Pre Ph.D. Degree and details of criteria fulfilled during the course of obtaining Ph.D. Degree and to further declare the same as redundant and inapplicable qua the petitioner herein.

2. The brief facts of the case are that pursuant to the advertisement no. 50 of 2014 issued by the Bihar Public Service Commission (hereinafter referred to as the 'Commission'), inviting applications in the prescribed proforma for filling up the vacancies for appointment on the post of Assistant Professors for different subjects, the petitioner had applied for being appointed on the post of Assistant Professor in Hindi subject, which is at serial no. 7 of the said advertisement.

3. The educational qualifications for the said posts were prescribed in the advertisement, which are as follows:-

(i) A candidate should have throughout good academic record with minimum 55% marks at the Master degree or equivalent (or equivalent grade), relaxation of 5% marks for SC/ST candidate of the



State, while physically challenged persons from any part of the country will be given relaxation of 5% marks at Master's degree. But both benefits shall not be admissible to any such candidate.

(ii) A candidate must have passed NET/SET or equivalent test accredited by UGC.

(iii) The candidates who have obtained Ph.D. degree on the basis of Minimum Standard and Procedure Regulation, 2009 framed by the University Grants Commission for M. Phil / Ph.D. degree, shall be exempted from passing the National Eligibility Test.

(iv) NET/SET shall also not be required for such Master's Programme in discipline for which NET/SET is not conducted."

4. The petitioner is stated to have passed Ph. D in Hindi literature from Ranchi University and the said degree was awarded in the year 2012. The University had issued a certificate dated 21.10.2014, in consonance with the Minimum Standard and Procedure Regulation, 2009, stating therein that the Ph.D Decree granted to the petitioner is in accordance with the Ph.D. Regulation of Ranchi University, which is further in consonance with the UGC's (minimum standard and procedure for award of Ph.D Degree) Regulation, 2009.

5. The Respondent-Commission had published a list of 3393 candidates under the aforesaid advertisement no. 50 of 2014 in



the month of December, 2014 and the name of the petitioner appears at serial no. 2849, having roll no. 50015929, however, under the column 'status', it has been mentioned "No NET, Ph.D in Hindi with UGC Regulation, 2009, P.G. in Hindi" and under the heading remarks, the petitioner has been shown to be "eligible".

6. It is the case of the petitioner that the Respondent-Commission vide notice dated 15.5.2018 changed the earlier condition as stipulated in the advertisement no. 50 of 2014 and directed the eligible candidates, who had claimed to have passed Ph.D / M.Phil under the UGC Regulation, 2009 to produce, at the time of interview, Pre Ph.D certificate and mark-sheet, as also certificates mentioning details of criteria on which the candidates have passed the Ph.D /M.Phil examination. It was further stipulated in the said notice dated 15.5.2018 that in case, the aforesaid certificates were not produced, the Ph.D / M.Phil qualification of such candidates shall be considered to be without UGC Regulation, 2009 and accordingly, marking would be done. The petitioner was sent an interview letter and she was asked to appear on 20.6.2018 along with all the relevant documents.

7. The learned counsel for the petitioner has further



submitted that subsequently, Ranchi University, Ranchi issued a certificate dated 04.06.2018 wherein it was stated that the petitioner herein has been awarded Ph.D Degree in Hindi subject in the month of August, 2012 and fulfils the following points:-

- a. Mode of award of Ph.D degree :REGULAR
- b. Evaluation of Ph.D thesis by TWO external examiners.
- c. Conduction of Ph.D. viva-voce : OPEN
- d. Number of research papers published from his/her thesis TWO out of which ONE published in referred journal.
- e. Number of research papers based on his / her Ph.D. work presented in conference / seminar : Two

8. The learned counsel for the petitioner has also referred to the notification issued by the University-Grants-Commission (hereinafter referred to as 'the UGC') dated 11.7.2016 wherein it is mentioned in Clause no. 3 that, "the proviso prescribed under Regulation 3.3.1, 4.4.1, 4.4.2, 4.4, 2.2, 4.4, 2.3 4.5.3 and 4.63 in the University Grants Commission (Minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges and other measures for the maintenance of standards in higher education) (3th Amendment) Regulations, 2016 regarding exemption to the candidates



registered for Ph.D. programme prior to July, 11, 2009 shall stand amended and be read as under:-

“Provided further, the award of degree to candidates registered for the M.Phil / Ph.D. Programme prior to July 11, 2009, shall be governed by the provisions of the then existing Ordinances/ Bylaws / Regulations of the Institutions awarding the degree and the Ph.D. candidates shall be exempted from the requirement of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities / Colleges/ Institutions subject to the fulfilment of the following conditions:-

- (a) Ph.D. degree of the candidate awarded in regular mode only.
 - (b) Evaluation of the Ph.D. thesis by at least two external examiners.
 - (c) Open Ph.D. viva voice of the candidate had been conducted.
 - (d) Candidate has published two research papers from his/her Ph.D. work out of which at least one must be in a referred journal.
 - (e) Candidate has made at least two presentations in conferences / seminars, based on his / her Ph.D. work.
- (a) to (e) as above are to be certified by the Vice-Chancellor/Pro-Vice-Chancellor/Dean/Academic Affairs/



Dean (University instructions)".

9. It is submitted by the learned counsel for the petitioner that from a bare perusal of the aforesaid UGC notification dated 11.7.2016, it is evident that the conditions mentioned therein have been fulfilled by the petitioner but the Respondent-Commission, without considering the effect of the said notification dated 11.7.2016, has rejected the candidature of the petitioner herein, which is apparent from the fact that the result of successful candidates published by the Respondent-Commission on 12.2.2019 does not contain the name of the petitioner herein.

10. The learned counsel for the petitioner has submitted that the BPSC cannot introduce cut off and invalidate Ph.D. which otherwise qualifies the test under UGC Regulation (4th Amendment) dated 11.7.2016 requiring fulfilment of five conditions with respect to award of Ph.D. Degree in regular mode for being exempted from the requirement of NET/SLET/SET for recruitment and appointment as Assistant Professor or equivalent positions in Universities / Colleges/ Institutions. It is stated that the Regulation dated 11.7.2016 creates a homogenous class of Ph.D. holders and all Ph.D. registered before 11.7.2009 would be entitled for exemption from NET/SLET/SET on fulfilment of five conditions, as aforesaid). The Homogeneity



conferred by Regulation 2016 cannot be destroyed or taken away by the BPSC by introducing the new cut off to invalidate the Ph.D. as it amounts to violating the mandatory and binding guidelines of UGC. The status of UGC as a statutory body under Central Govt. is supreme in the matter of co-ordination and determination of standard in the institution for higher education. List-1 Entry 66 and List-III, Item No. 25(after 42nd Amendment, 1976), if jointly read, creates Prime position of UGC.

11. The Ld. counsel for the petitioner has further submitted that the role of UGC and its recommendation for the State Government is reflected from the Judgment rendered by this Court in the case of ***Prof. (Dr.) Jagdish Pd. Sharma***, reported in ***2009(4)PLJR 680***, though in the context of age of retirement, relevant extract whereof is reproduced herein below:-

“It is an admitted fact that UGC never makes any recommendation to the State Government and always recommendation is made to the Central Government. Recommendation of the UGC has never been different for Central and State Universities as its object is to maintain conformity in the standard of teaching and research and all matters relating to enhancement of the standard of education in the University, all over India. UGC, considering scarcity of teachers in Central Universities and to improve the standard of teaching in the Universities, made recommendation to revise pay



scales and to enhance age of superannuation. Recommendation was made to attract more qualified persons to teaching profession. Age of superannuation was enhanced, so that experienced teachers may continue in service for longer time. Even provision was made for their re-employment up to 70 years of age, in case of existing vacancies.”

“The recommendation of the U.G.C, has to be given effect by the State and it has no discretion, even to decide its date of implementation. It will be same as made applicable by the U.G.C. However, since there recommendation of the UGC made to the Central Government, as it is usually done and there being provision under the Universities Act that in case of any recommendation by UGC in future, if the age of retirement is recommended by the UGC the State Government has no other option but to implement it. Effect of a beneficial legislation cannot be changed by executive directions.”

12. It is further stated that applicability of UGC norms is reflected from the Advertisement as the BPSC seeks appointment of Assistant Professor on the pay scale recommended by UGC and it also seeks Ph.D. qualification on the basis of Regulation, 2009 of UGC, thus the Role of UGC guidelines in the instant appointment process is self-evident. Hence, BPSC is also bound by the qualifying criteria provided for in the UGC Regulation dated 11.7.2016. It is submitted that



though the advertisement was issued in the year 2014 and the petitioner had already submitted a certificate dated 18.10.2014 (Annexure-3), issued by the Registrar of the Ranchi University, declaring that the Ph.D. Degree of the petitioner is in consonance with the UGC Regulation, 2009, the petitioner had yet again submitted a Certificate dated 04.06.2018 (Annexure-7), issued on by the Vice Chancellor/Pro VC of the Ranchi University, Ranchi, both of which amply demonstrates that the UGC criteria have been fulfilled as per the requirements envisaged under the UGC notification dated 11.7.2016 and the Ph.D. Degree awarded to the petitioner is valid, thus the BPSC cannot invalidate the said Ph.D. Degree by applying artificial classification irrationally.

13. The learned counsel for the petitioner has relied on the following judgments, which are being enumerated herein below along with their relevant paragraphs:-

(a). ***AIR 1983 SC 130 (D.S.Nakara & Others vs. Union of India)***, paragraph nos. 14, 15 and 16 whereof are reproduced herein below:-

14. Justice Iyer has in his inimitable style dissected Article 14 as under :

"The article has a pervasive processual potency and versatile quality, equalitarian in its soul and



allergic to discriminatory diktats. Equality is the antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knight-errants of 'executive excesses', if we may use current cliché, can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it is that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law; Be you ever so high, the law is above you." ((1978) 2 SCR 621 at p. 728; AIR 1978 SC 597 at p. 661). Affirming and explaining this view, the Constitution Bench in *Ajay Hasia etc. v. Khalid Mujib Sahravardi*, (1981) 2 SCR 79 : (AIR 1981 SC 487) held that it must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14. After a review of large number of decisions bearing on the subject, in *Air India etc. v. Nargesh Meerza*, (1982) 1 SCR 438: (AIR 1981 SC 1829) the Court formulated propositions emerging from an analysis and examination of earlier decisions. One such proposition held well established is that Article 14 is certainly attracted where equals are treated



differently without any reasonable basis.

15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

16. As a corollary to this well established proposition, the next question is, on whom the burden lies to affirmatively establish the rational principle on which the classification is founded correlated to the object sought to be achieved? The thrust of Article 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of things the society being composed of unequals a welfare State will have to strive by both executive and legislative action to help the less fortunate in society to ameliorate their condition so that the social and economic inequality in the society may be bridged. This would necessitate a legislation applicable to a group of citizens otherwise unequal and amelioration of whose lot is the object of state affirmative action. In the absence of the doctrine of classification such legislation is likely to flounder on the bed rock of equality



*enshrined in Article 14. The Court realistically appraising the social stratification and economic inequality and keeping in view the guidelines on which the State action must move as constitutionally laid down in Part IV of the Constitution, evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succour. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlates it to the objects sought to be achieved. This approach is noticed in *Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 SCR 1014 at p. 1034 : (AIR 1979 SC 1628 at pp. 1637-38) when at page 1034, the Court observed that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.*

(b) AIR 1981 SC 487 (*Ajay Hasia vs. Khalid Mujib*



Sehravardi & Others), paragraph no.16 whereof is reproduced herein below:-

*16. If the Society is an "authority" and therefore "State" within the meaning of Article 12, it must follow that it is subject to the constitutional obligation under Article 14. The true scope and ambit of Article 14 has been the subject matter of numerous decisions and it is not necessary to make any detailed reference to them. It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification. Unfortunately, in the early stages of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that that Article forbids discrimination and there would be no discrimination where the classification making the differentia fulfils two conditions, namely. (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action. It was for the first time in *E. P. Ayyappa v. State of Tamil Nadu*, (1974) 2 SCR 348 : (AIR 1974 SC 555), that this Court laid bare a new dimension of Article 14 and pointed out that that Article has highly activist magnitude and it embodies a guarantee against*



arbitrariness. This Court speaking through one of us (Bhatgwati, J.) said: "The basic principle which therefore informs both Articles 14 and 16 is equality and inhibition against discrimination. Now what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment".

This vital and dynamic aspect which was till then lying latent and submerged in the few simple but pregnant words of Article 14 was explored and



brought to light in Royappa's case and it was reaffirmed and elaborated by this Court in Maneka Gandhi v. Union of India, (1978) 2 SCR 621 : (AIR 1978 SC 597), where this Court again speaking through one of us (Bhagwati, J.) observed :-

"Now the question immediately arises as to what is the requirement of Art. 14: what is the content and reach of the great equalising principle enunciated in this article, There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence" This was again reiterated by this Court In International Airport Authority's case ((1979) 3 SCR 1014) at p. 1042: (AIR 1979 SC



1628) (supra) of the Report. It must therefore now be taken to be well settled that what Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the Courts is not paraphrase of Article 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an "authority" under Article 12, Art. 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution.

(c) AIR 1978 SC 597 (Smt. Maneka Ghandhi vs. Union of India & Anr.), paragraph no. 56 whereof is reproduced herein below:-



*56. Now, the question immediately arises as to what is the requirement of Article 14: What is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in *E. P. Royappa v. State of Tamil Nadu* (1974) 2 SCR 348: (AIR 1974 SCS 555) namely, that "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14". Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades*



Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be 'right and just and fair' and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

(d) **AIR 1979 SC 478**, paragraph nos. 3, 4, 5, 6 and 7 whereof are reproduced herein below:-

3. After receipt of the reference on August 1, a notice was issued to the Attorney General on the 2nd to appear before the Court on the 4th for taking directions in the matter. On the 4th August, upon hearing the Attorney General the Court directed, inter alia, that : (1) Notice of the reference be given to the Union of India and the Advocates General of the States requiring them to submit their written briefs before September 4, 1978; (2) Notices be published in five newspapers at Bombay, New Delhi, Calcutta, Madras and Bangalore inviting all persons likely to be affected by the passage of the Bill to apply for permission to appear or intervene in the proceedings; (3) Intervenors will be permitted to submit their written arguments but will not be entitled to be heard orally unless the Court considers it fit and proper to do so; (4) Parties concerned shall appear before the Court on August 21 for taking further directions; and (5) that the hearing of the reference will commence on



September 11, 1978 subject to the reasonable convenience of all concerned.

4. Notices were issued by the Registry of this Court on the 4th August itself to the Union of India and Advocates General of 22 States. The newspaper notices were published soon thereafter. By August 21, a large number of applications were received by the Court asking that the applicants should either be impleaded to the reference as parties or in the alternative that they should be allowed to intervene in the proceedings. On August 21, the Court passed an order after hearing all the interested parties that it did not consider it necessary to implead anyone as a formal party to the reference. The Court, however, granted permission to 18 persons and 2 State Governments to intervene in the proceedings. Those eighteen are : Sarvashree V. C. Shukla, Gyani Zail Singh, Dhirendra Brahmachari, Bansi Lal, Harideo Joshi, Pranab Mukherjee, R. K. Dhawan, Jagmohan, P. S. Bhinder, Shiv Kumar Aggarwal, Surinder Singh, Dev Raj Urs, Narain Dutt Tiwari, Jaganath Misra, Ram La, Ram Jethmalani, C. M. Stephen and Kamlapati Tripathi. The two State Governments which were allowed to intervene are the State of Karnataka and the State of Andhra Pradesh. The applications of all others for being impleaded as parties or for intervention were rejected.

5. Written briefs were filed by the Union of India,



the Advocates General, the two State Governments and the interventionists. The State of Jammu and Kashmir complained on the date of hearing that its Advocate General had taken a stand in his written brief which did not reflect the view of the State Government on the question referred to the Court by the President. Thereupon, the State of Jammu and Kashmir was permitted to file its written brief, such as it was advised, and through such advocate as it desired. The State Government filed its brief through another advocate.

6. At the commencement of the hearing of the reference on September 19, counsel appearing for some of the interventionists as also some of the Advocates General raised a preliminary objection to the maintainability of the reference contending that for various reasons which were mentioned by them in their written briefs, the reference was incompetent and invalid and therefore the Court should refuse to answer the question submitted by the President for its consideration and report. As the preliminary objection required for its appreciation and determination an understanding of the case of the Union of India, we postponed the consideration of that objection until after the arguments in support of the reference, were over. Accordingly we first heard the learned Attorney General, the learned Solicitor General who appeared on behalf of the Union of India, the



Advocates general who supported the reference and Shri Ram Jethmalani, one of the interventionists on all conceivable aspects of the reference. Thereafter we heard the other side on all its contentions including the preliminary objection that the reference was not maintainable. We are indebted to the learned counsel on both sides for the able assistance rendered by them through their written briefs and oral arguments. The written briefs facilitated a clearer perception and understanding of their respective points of view and enabled counsel, without much persuasion, to reduce their oral submissions to reasonable proportions.

7. We will dispose of the preliminary objection before taking up the other points for consideration. The preliminary objection to the maintainability of the reference is founded on a variety of reasons and circumstances which may be stated as follows:-

Shri A. K. Sen who appears for the State of Karnataka and for Shri Dhirendra Brahmchari contends that we will be well-advised to refuse to answer the reference because it is of a hypothetical and speculative character and is also vague. The reference was made by the president on 1-8-1978 which was even before the Special Courts Bill was introduced in the Lok Sabha by a private Member, Shri Ram Jethmalani, on August, 4, 1978. The Bill may or may not become a law and even if it is passed by



both the Houses of Legislature, its provisions may undergo fundamental changes during the parliamentary debate. As regards vagueness, Shri Sen contends that the President has posed a broad and omnibus question as to whether the Bill, if enacted, will be constitutionally invalid without particularising the reasons or the grounds on which it may become invalid. A law can be constitutionally invalid either for want of legislative competence or for the reason that it violates any of the fundamental rights conferred by the Constitution. Not only does the reference according to the learned counsel, not specify which of these two reasons may invalidate the bill if it becomes an Act, but the reference does not even mention the fundamental right or rights which are likely to be violated if the Bill is passed by the Parliament. Reliance was placed in support of these contentions on the judgments of the privy Council in Attorney General for the Dominion of Canada. v. Attorneys General for the Provinces of Ontario, Quebec and Nova Scotia, 1898 AC 700; Attorney-General for Ontario v. Hamilton Street Rly. Co., 1903 AC 524; Attorney-General for the province of Alberta v. Attorney-General for the Dominion of Canada, 1915 AC 363, In re Regulation and Control of Aeronautics in Canada, 1932 AC 54 and Attorney-Genral for Ontario v. Attorney-General for Canada, 1947 AC 127. Counsel also



relied on the decision of the Federal Court in the Estate Duty Bill case 1944 FCR 317 : (AIR 1944 FC 73) and on the decisions of this Court in the references relating to Kerala Education Bill (1957), 1959 SCR 995 : (AIR 1958 SC 956); Berubari Union and Exchange of Enclaves, (1960) 3 SCR 250 : (AIR 1960 SC 845). Sea Customs Act Bill, (1964) 3 SCR 787: (AIR 1963 SC 1760); U. P. Legislative Assembly, (1965)1 SCR 413 : (AIR 1965 SC 745) and the Gujarat Legislative Assembly, (1975) 1 SCR 504 : (AIR 1974 SC 1682) as showing that whenever a reference is made by the President under Art. 143 (1) of the Constitution, a specific question or questions are referred for the opinion of this Court. Our attention was finally drawn to a judgment of the Canadian Supreme Court, 1938 Canada LR 100 (SC) in a reference made by the Governor-General in Council to the Supreme Court of Canada under S. 55 of the Supreme Court Act, 1927 regarding the validity of three Bills passed by the Legislative Assembly of the Province of Alberta which were reserved for signification of the Governor General's Pleasure.

(e) 2013(2) SCC 772 (Kallakurichi Taluk Retired Officials Association & Officer vs. State of Tamil Nadu), paragraphs no. 38 and 39 whereof are reproduced herein below:-



38. The instant controversy should not be misunderstood as a determination of the total carry-home pension of an employee. All the government orders referred to above, deal with the quantum of “dearness allowance” to be treated as “dearness pay” for the calculation of pension. “Dearness pay” is one of the many components, which go into the eventual determination of pension. Therefore, the focus in the adjudication of the present controversy must be on “dearness pay”, rather than on the eventual carry-home pension. The relevance and purpose of treating “dearness allowance” as “dearness pay”, has been brought out in the foregoing paragraphs. Therefore, clearly, the object sought to be achieved by adding “dearness pay” to the wage of a retiree, while determining pension payable to him, is to remedy the adverse effects of inflation. The aforesaid object has to be necessarily kept in mind, while examining the present controversy. Any classification without reference to the object sought to be achieved, would be arbitrary and violative of the protection afforded under Article 14 of the Constitution of India, it would also be discriminatory and violative of the protection afforded under Article 16 of the Constitution of India.

39. Having given our thoughtful consideration to the controversy in hand, it is not possible for us to find a valid justification for the State Government to



have classified pensioners similarly situated as the appellants herein (who had retired after 1-6-1988), from those who had retired prior thereto. Inflation, in case of all such pensioners, whether retired prior to 1-6-1988 or thereafter, would have had the same effect on all of them. The purpose of adding the component of “dearness pay” to wages for calculating pension is to offset the effect of inflation. In our considered view, therefore, the instant classification made by the State Government in the impugned Government Order dated 9-8-1989 placing employees who had retired after 1-6-1988 at a disadvantage, vis-à-vis the employees who had retired prior thereto, by allowing them a lower component of “dearness pay”, is clearly arbitrary and discriminatory, and as such, is liable to be set aside as violative of Articles 14 and 16 of the Constitution of India.

(f) 2017 (4) SCC 449 (Secretary Mahatma Gandhi Mission & Anr. vs. Bhartiya Kamgar Sena & Others), paragraph no. 80 whereof is reproduced hereinbelow:-

80. *Therefore, we see no justification in excluding the non-teaching employees of the unaided educational institutions while extending the benefit of the revised pay scales to the non-teaching employees of the aided educational institutions. Such a classification, in our opinion, is clearly violative of Article 14 of the Constitution of India.*



(g) **1991(2) SCC 104 (Indian Ex-Services League & Others vs. Union of India)**, paragraph nos. 12 and 14 whereof are reproduced herein below:-

12. The liberalised pension scheme in the context of which the decision was rendered in Nakara provided for computation of pension according to a more liberal formula under which “average emoluments” were determined with reference to the last ten months’ salary instead of 36 months’ salary provided earlier yielding a higher average, coupled with a slab system and raising the ceiling limit for pension. This Court held that where the mode of computation of pension is liberalised from a specified date, its benefit must be given not merely to retirees subsequent to that date but also to earlier existing retirees irrespective of their date of retirement even though the earlier retirees would not be entitled to any arrears prior to the specified date on the basis of the revised computation made according to the liberalised formula. For the purpose of such a scheme all existing retirees irrespective of the date of their retirement, were held to constitute one class, any further division within that class being impermissible. According to that decision, the pension of all earlier retirees was to be recomputed as on the specified date in accordance with the liberalised formula of computation on the basis of the average emoluments of each retiree payable on his date of



retirement. For this purpose there was no revision of the emoluments of the earlier retirees under the scheme. It was clearly stated that 'if the pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later'. This according to us is the decision in Nakara and no more.

14. Nakara decision came up for consideration before another Constitution Bench recently in Krishena Kumar v. Union of India. The petitioners in that case were retired Railway employees who were covered by or opted for the Railway Contributory Provident Fund Scheme. It was held that PF retirees and pension retirees constitute different classes and it was never held in Nakara that pension retirees and PF retirees formed a homogeneous class, even though pension retirees alone did constitute a homogeneous class within which any further classification for the purpose of a liberalised pension scheme was impermissible. It was pointed out that in Nakara, it was never required to be decided that all the retirees for all purposes formed one class and no further classification was permissible. We have referred to this decision merely to indicate that another Constitution Bench of this Court also has read Nakara decision as one of limited application



and there is no scope for enlarging the ambit of that decision to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different.

(h) 2009(4) PLJR 680 (Prof. (Dr.) Jagdish Pd. Sharma & Ors vs. The State of Bihar & Anr.), paragraphs no. 19 and 30 whereof are reproduced herein below:-

19. The subject “Education” is in the Concurrent List of the Constitution. “Education” was kept in the Concurrent List for maintaining co-ordination in the standards of teaching in all Universities of India. To fulfill this object, an institution like UGC was established by the Government of India, through the enactment of Parliament and UGC Act, 1956 came into force. Section 12 of the UGC Act deals with the University and other concerned bodies, with regard to which UGC can take steps as it may think fit for promotion and co-ordination of University Education and also for maintenance of standard of teaching, examination and research in the University. The power and function of UGC, as envisaged under the Act, makes it clear that it is a supreme central authority for determination of standard of teaching and coordination of higher



education in all Universities of India. Since the education is a subject which has been placed in the Concurrent List as such policy decision of Government of India, for improvement in standard of teaching is to be followed by the Universities of the State. It is an admitted fact that UGC never makes any recommendation to the State Government and always recommendation is made to the Central Government. Recommendation of the UGC has never been different for Central and State Universities as its object is to maintain conformity in the standard of teaching and research and all matters relating to enhancement of the standard of education in the University, all over India. UGC, considering scarcity of teachers in Central Universities and to improve the standard of teaching in the Universities, made recommendation to revise pay scales and to enhance age of superannuation. Recommendation was made to attract more qualified persons to teaching profession. Age of superannuation was enhanced, so that experienced teachers may continue in service for longer time. Even provision was made for their re-employment up to 70 years of age, in case of existing vacancies. 30. On consideration of the pleadings and submissions of the parties, I find that when by legislative mandate a benefit has been prescribed, and by virtue of such prescription, a right has already accrued on account of decision of U.G.C. then as provided under Section 64 of Patna



University Act and Section 67(a) of Bihar State Universities Act, there cannot be any denial, in its implementation, The recommendation of the U.G.C. has to be given effect by the State and it has no discretion, even to decide its date of implementation It will be same as made applicable by the U.G.C. However, since there is recommendation of the UGC made to the Central Government, as it is usually done and there being provision under the Universities Act that in case of any recommendation by UGC in future, if the age of retirement is recommended by the UGC; the State Government has no other option but to implement it. Effect of a beneficial legislation cannot be changed by executive directions.

14. Thus, it is submitted by the learned counsel for the petitioner that no artificial classification can be permitted to destroy a homogenous class unless there is real and valid nexus. It is further submitted that the legal maxim and proposition of law is well settled that what cannot be done per directum is not permissible to be done per obliquum”, meaning thereby, that whatever is prohibited by law to be done, cannot legally be affected by an indirect and circuitous contrivance on the principle of “quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud.”



15. The learned counsel for the petitioner has also submitted that in the case of ***Jagir Singh & Anr. v. Ranbir Singh***, reported in ***AIR 1979 SC 381***, the Apex Court has observed that an authority cannot be permitted to evade a law by “shift or contrivance.” While deciding the said case, the Hon’ble Supreme Court placed reliance on the judgment in ***Fox v. Bishop of Chester, (1824)2 B & C 635***, wherein it has been observed as under:-

“To carry out effectually the object of a statute, it must be considered as to defeat all attempts to do, or avoid doing in an indirect or circuitous manner that which it has prohibited or enjoined.”

16. Thus, it is submitted that after the petitioner has been declared to be eligible by a list published by the Respondent-Commission under the aforesaid advertisement no. 50 of 2014 in the month of December, 2014 itself, it is not open for the Respondent-Commission to turn volte face and seek fresh documents, deviating from the requirement under the original advertisement no. 50 of 2014, thus the requirement of submitting the Pre-Ph.D. certificate and mark-sheet as also declaration regarding the criteria on which the candidate has passed in Ph.D/M.Phil, as sought to be done after four years vide notice dated 15.5.2018, is not only arbitrary but also



amounts to changing the rules of the game midway, hence, is illegal. It is therefore, submitted that the case of the petitioner is required to be considered on merits, considering and treating her Ph.D degree in Hindi subject to be in consonance with the UGC Regulations, 2009.

17. Per contra, the learned Advocate General appearing for the Respondent-BPSC, by referring to the counter affidavit filed on behalf of the Respondent-BPSC, has submitted that the Respondent-Commission is a recommending body and in the matter of appointment or otherwise, it abides by the rules and regulations framed by the State Government and it publishes advertisement for appointment to different posts as per the requisition received from the concerned department of the Government. It is stated that in the present case, the Department of Education, Government of Bihar had sent requisition, mentioning therein, necessary qualifications required for the appointment on the post of Assistant Professors in different universities of the State vide letter dated 21.5.2014, on the basis of which, advertisement for various posts of Assistant Professors in different universities were published by the Commission and the educational qualifications were specified in the advertisement itself. It is submitted that as far as status of



the petitioner is concerned, she had applied for appointment on the post of Assistant Professor under advertisement no. 50 of 2014 in the subject Hindi and after her application was scrutinized, it was found that the petitioner had not passed the NET exam, however, she had claimed to have obtained Ph.D Degree under the 2009 Regulation, hence, her case was kept in the eligible category. Thereafter, a merit list was prepared and as far as Hindi subject is concerned, since the petitioner's educational weightage marks were more than the cut off in her category, she was called for interview and at the time of interview, the petitioner had submitted the Ph.D. criteria certificate in light of the Respondent-Commission's notice dated 15.5.2018 wherein it was disclosed that the petitioner was registered on 6.3.2009 for the Ph.D course i.e. prior to the enforcement of the UGC Regulation, 2009 on 11.7.2009. The petitioner is stated to be not fulfilling the minimum required educational qualification, hence, her candidature was rejected at the time of preparation of the final results. It is the case of the Respondent-Commission that the petitioner has neither passed the NET exam nor has passed the Ph.D as per the UGC Regulation, 2009, hence, she does not have any case for being considered for appointment to the post of Assistant Professor.



18. The learned Advocate General appearing for the Respondent-Commission has further submitted that there is no averment in the writ petition that the petitioner has completed Ph.D as per 2009 Regulations and it is doubtful as to whether the Ph.D Degree obtained by the petitioner is as per the UGC 2009 regulations.

19. The learned Advocate General for the Respondent-Commission has relied upon the following judgments, which are enumerated herein below along with their relevant paragraphs:-

(a) Judgment rendered by the Hon'ble Division Bench of this Court dated 6.10.2018, passed in LPA No. 1340 of 2017 (***Sweta @ Sweta Raj vs. The Patna University & Anr.***), paragraph nos. 4, 6, 7 and 8 whereof are reproduced herein below:-

4. Considering the material on record and the relevant provisions of Regulation, 2009 and having found that the original writ petitioner did not comply with and/or fulfil and/or satisfy the procedure to be followed as per the Regulation, 2009 of the U.G.C., the learned Single Judge refused to grant any relief and, consequently, has dismissed the writ petition.

6. However, merely because the University might have committed some wrong and/or on the basis of some instruction, the original writ petitioner might have proceeded further with the studies, that can not be a



ground to grant Ph.D. degree in favour of the original writ petitioner, if the procedure, as required under Regulation, 2009 of the U.G.C., has not been followed and/or complied with.

7. At this stage, it is required to be noticed that even the learned Single Judge in the impugned order has deprecated the attitude of the University in not following the requirements laid down under Regulation, 2009 of the U.G.C. for award of Ph.D. degree. However, unless and until all the requirements laid down under Regulation, 2009 for award of Ph.D. degree are satisfied, the candidates shall not be entitled to the award of Ph.D. degree.

8. We are in complete agreement with the view taken by the learned Single Judge.

(b) Judgment dated 19.11.2018 rendered by the Hon'ble Division Bench of this Court in LPA No. 991 of 2016 (***Randhir Kumar Singh vs. The State of Bihar & Anr.***), relevant paragraphs whereof are reproduced herein below:-

“The appellant had applied for a Ph.D course for which a pre test was held in the year 2008. The appellant had submitted a synopsis on 05.06.2010 which was accepted by the University on 07.06.2012 w.e.f. 05.06.2010. Admittedly, the pretest was conducted before the existence of UGC Regulation, 2009. From a plain reading of UGC



Regulation, 2009, it appears that a candidate aspirant for Ph.D degree has to be first recognized as a Research Professor. As per clause 6 to 18 of the UGC Regulation, 2009 a candidate aspirant for Ph.D. has first to undergo an entrance test and would have to pass the M.Phil programme for Ph.D entrance test which would be followed by an interview and candidates at the time of interview are expected to discuss the research entrance/area. After having been admitted as a Ph.D student the candidate would have to undertake course work for a minimum period of one semester and must include a course on research methodology and also involve reviewing of published research in the relevant field. Thereafter, the University would decide the minimum qualifying requirement for allowing student to proceed further with the writing of dissertation. It is thereafter on satisfactory completion of course work and research methodology, the scholar shall undertake research work and produce draft thesis prior to submission of the thesis. The student shall make a pre Ph.D. presentation in the department open to all faculty members and research students for getting feedback and comments. The Ph.D candidate would then publish one research paper in a referred journal before submission of thesis/monograph for adjudication and produce evidence for the same in the form of acceptance letter or the reprint. The thesis produced by a Ph.D student would then be evaluated by at least two experts one from outside the State. It is thereafter, after completion of evaluation process, a



Ph.D thesis would be submitted to the UGC by the University for grant of degree. From the comparative reading of Annexure-2 and Annexure-5 of the writ application, it appears that a synopsis was submitted to the University for a Ph.D degree by the appellant on 05.06.2010. The appellant was then provisionally selected for his Ph.D course on 07.06.2012 w.e.f. 05.06.2010. Apart from this letter, the appellant was not subjected to the rigors of the pre evaluation entrance test and either eligibility criteria for entrance in the Ph.D. course as envisaged in UGC Regulation, 2009. A notification of having passed the Ph.D examination as contained in Annexure-5 of the writ application dated 04.01.2014, only specifies the date of registration, submission of thesis, date of interview and date of publication of the result. The rigors envisaged in UGC Regulation, 2009 and the procedure which was required under the UGC Regulation, 2009 has not been followed. Unless and until all the requirements laid down under UGC Regulation, 2009 for award of Ph.D degree are specified and fulfilled, the candidates could not be entitled to the award of Ph.D. degree under UGC Regulation, 2009. So far as the contention of the petitioner that the UGC Regulation, 2016 clause 12 and 12.1 envisages that all candidates who have registered for the M.Phil/Ph.D programme on or after July, 2009 till the notification of Regulation, 2016 shall be governed by the UGC Regulation, 2009 and Ph.D degree having been awarded after the UGC Regulation, 2009 and before the coming into force of



2016 Regulation, the appellant is entitled for award of Ph.D degree under UGC Regulation, 2009 is without any substance as the UGC Regulation, 2016 was in supersession of UGC Regulation, 2009 and clause 12 and 12.1 was a saving clause for candidates who were registered under UGC Regulation, 2009. The petitioner not having been registered under Regulation, 2009, the procedure required under UGC Regulation, 2009 not having been undertaken by the appellant as held in the case of Sweta @ Sweta Raj (supra) the appellant is not entitled to be granted a Ph.D degree under UGC Regulation, 2009. The appellant is not entitled to the relief as claimed in the appeal. The order of the learned Single Judge passed in C.W.J.C. No. 20409 of 2014 dated 17.03.2016 does not suffer from any infirmity.”

(c) Judgment dated 22.1.2019, rendered by a Ld. Division Bench of this Court, in LPA No. 697 of 2018 (**Dr. Digambar Jha & Others vs. The State of Bihar & Anr.**), paragraph nos. 9, 10, 11, 12, 13 and 14 whereof are reproduced herein below:-

“9. The main plank of the argument of the learned counsel is that the Ph.D. awarded to the appellants has been certified to be available as per the certificate of the University given them exemption from NET/SLET for recruitment and appointment of Assistant Professor.

10. Learned counsel for the appellants has invited the attention of the Court to the supplementary affidavit



filed on behalf of the appellants containing the certificates pertaining to the appellants as also the judgment of the Division Bench in L.P.A. No.354 of 2016 (Dr. Ram Pravesh Singh & Ors.Vs. the State of Bihar and Ors.) decided on 16.01.2017.

11. Having considered the submissions raised, we find that the appellants claimed themselves to be the applicants against Advertisement No.46 of 2014 and Advertisement No.53 of 2014 for the post of Assistant Professors in respective subjects. They were found to be ineligible by the Commission as they had admittedly not passed the UGC NET examination and, further, that they had been awarded their Ph.D. degree not as per the UGC Regulations, 2009. The UGC Regulations, 2009 came into effect on 06.11.2012 in the State of Bihar but, at the same time, the UGC, vide its Regulations dated 11th July, 2009 and 18th September, 2010, as intimated through the letter of 10.10.2010, clarified that only those Ph.D. degree-holders are exempted who have been awarded Ph.D. in accordance with the 2009 Regulations.

12. The UGC further clarified that their solutions in the 471st and 472nd meetings are merely part of the process of deliberations and not a final decision for implementation. The Central Government also did not concur with the same and it is for this reason that the Department of Education, Government of Bihar has instructed all the Registrars of the Universities through the letter dated 30th June, 2015 to withdraw such



certificates, which have been wrongly issued by the Universities. It is further to be noted that the Bhim Rao Ambedkar Bihar University, Muzaffarpur adopted the UGC Regulations, 2009 on 17th January, 2013. Any Ph.D. completed thereafter would be after 17th January, 2015. Accordingly, that date is consequent to the last date of submission of application forms which is 05th January, 2015. In the said background, the Ph.D. degree of the appellants is not in accordance with the 2009 Regulations.

13. For all the reasons aforesaid, we find that neither the certificates issued to the appellants come to their aid nor do they in any way confer a right on them to claim such exemption. The judgment in the case of Dr. Ram Pravesh Singh (supra), therefore, does not come to the aid of the appellants.

14. There is no merit in the appeal, which is, accordingly, dismissed.”

20. I have heard the learned counsel for the parties and perused the materials on record.

21. From the facts and circumstances of the case, as sought to be canvassed by the learned counsel for the parties, the issue which arises for consideration by this Court is as to whether the petitioner is required to be NET/SET pass and whether the petitioner has obtained Ph.D Degree as per the UGC Regulations, 2009 or not. In this regard, this Court finds that



the petitioner has produced a certificate / decree of the Ranchi University (Annexure-2 to the writ petition) whereby and whereunder the Vice Chancellor, Ranchi University has certified that the petitioner has passed the Doctor of Philosophy (Humanities) Examination held in the month of August, 2012 and she is being admitted to the Decree. Another certificate, issued by the Registrar, Ranchi University Ranchi, dated 21.10.2014 (Annexure-3 to the writ petition), has been produced by the petitioner wherein it has been certified that the petitioner has obtained the Ph.D. Degree in Hindi subject under the faculty of Humanities, which has been awarded to her vide memo no. Ex/9104-14 dated 11.9.2012, as per the Ph.D. Regulation of Ranchi University which is in consonance with UGC's (minimum standards and procedure for award of Ph.D. Degree) Regulation, 2009. The petitioner has also produced a certificate dated 04.06.2018 (Annexure-7 to the writ petition), issued by the Vice Chancellor / Pro Vice-Chancellor, Ranchi University, Ranchi certifying that the petitioner was registered on 6.3.2009 for the Ph.D Programme in Hindi, was awarded degree in the month of August, 2012 and fulfils the following points:-

a. Mode of award of Ph.D degree : Regular



- b. Evaluation of Ph.D thesis by Two external examiners.
- c. Conduction of Ph.D. viva-voce : Open
- d. Number of research papers published from his / her thesis
TWO out of which ONE published in referred journal.
- e. Number of research papers based on his/ her Ph.D. work
presented in conference / seminar : Two

22. The aforesaid degree / certificates contained in Annexure-2, Annexure-3 and Annexure-7 to the writ petition have not been controverted by the respondents and during the course of arguments, it has been merely stated by the learned Advocate General appearing on behalf of the Respondent-Commission that there is no averment in the writ petition that the petitioner has completed Ph.D. as per the 2009 Regulations of the UGC, which is also apparently not correct inasmuch as the petitioner in paragraph no. 7 of the writ petition has categorically stated as follows:-

“7. That the petitioner has done Ph.D. in Hindi Literature from Ranchi University and said degree was awarded in the year 2012. It is pertinent to mention here that the University issued a certificate which is in consonance with Minimum Standard and Procedure Regulation-2009. The petitioner is bringing on record the testimonials regarding Ph.D.



Degree.

Consequently, this Court finds that there is no material on record of the case to show that the Ph.D. Degree awarded to the petitioner, as aforesaid, is not in consonance with the UGC's (minimum standard and procedure for award of Ph.D Degree) Regulation, 2009, hence it is held that the petitioner has obtained Ph.D Degree as per the UGC Regulations, 2009, which is apparent from the certificate, issued by the Registrar, Ranchi University Ranchi, dated 21.10.2014 (Annexure-3 to the writ petition), wherein it has been certified that the petitioner has obtained the Ph.D. Degree in Hindi subject under the faculty of Humanities, which has been awarded to her vide memo no. Ex/9104-14 dated 11.9.2012, as per the Ph.D. Regulation of Ranchi University which is in consonance with UGC's (minimum standards and procedure for award of Ph.D. Degree) Regulation, 2009 and the said fact has not been refuted or controverted by the Respondent-Commission.

23. Now coming to the next issue, as to whether the petitioner is required to pass NET/SET, it would suffice to state that since this Court has already held in the preceding paragraph that the petitioner has obtained Ph.D Degree as per the UGC's (minimum standard and procedure for award of Ph.D Degree)



Regulation, 2009, she automatically stands exempted from passing the National Eligibility Test /SET or equivalent test accredited by UGC, in terms of the prescribed educational qualifications in the advertisement No. 50 of 2014, issued by the respondent Commission. Nonetheless, even otherwise, the petitioner is exempted from passing the National Eligibility Test /SET or equivalent test accredited by UGC and in this regard, it would be pertinent to reproduce proviso to Regulation 3 of the UGC (minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges and other measures for the maintenance of standards in higher education) (4th Amendment) Regulations, 2016 herein below:-

“Provided further, the award of degree to candidates registered for the M.Phil/Ph.D programme prior to July 11, 2009, shall be governed by the provisions of the then existing Ordinances /Bylaws/Regulations of the Institutions awarding the degree and the Ph.D candidates shall be exempted from the requirement of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities / Colleges/ Institutions subject to the fulfilment of the following conditions:-



- a) Ph.D. degree of the candidate awarded in regular mode only;
 - b) Evaluation of the Ph.D. thesis by at least two external examiners;
 - c) Open Ph.D. viva voce of the candidate had been conducted;
 - d) Candidate has published two research papers from his / her Ph.D. work out of which at least one must be in a referred journal;
 - e) Candidate has made at least two presentations in conferences/seminars, based on his/her Ph.D. work.
- (a) to (e) as above are to be certified by the Vice-Chancellor / Pro-Vice-Chancellor/Dean (Academic Affairs) / Dean (University instructions).”

This Court thus finds that as per the requirements of the aforesaid proviso to Regulation 3 of the 4th amendment, Regulations 2016, the Vice-Chancellor / Pro-Vice-Chancellor Ranchi University, Ranchi has issued a certificate dated 04.06.2018, certifying that the petitioner herein fulfils various points/conditions, which are the same as mentioned in the aforesaid Regulation 3. Hence, this Court holds that since the petitioner herein had got herself registered on 06.03.2009 for the Ph.D course i.e. prior to the enforcement of the UGC



Regulation, 2009, she is eligible for exemption from the requirement of NET/SLET/SET for recruitment and appointment as Assistant Professor or on equivalent positions in Universities / Colleges / Institutions, since the Ph.D Degree awarded to the petitioner fulfils the requisite conditions required to be fulfilled as per proviso to Regulation 3 of the UGC (minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges and other measures for the maintenance of standards in higher education) (4th Amendment) Regulations, 2016. Therefore, the stand of the Respondent-Commission that since the petitioner has neither passed the NET exam nor has obtained Ph.D Degree as per the UGC 2009 regulations, she does not have any case for being considered for appointment on the post of Assistant Professor, is not only misconceived but also de hors the prevailing law on the issue under consideration, as discussed at length in the preceding paragraphs and is also bereft of any merit, thus is rejected.

24. It would be unfair to the respondents if the cases referred to by the learned Advocate General are not adverted to and dealt with. As far as the judgment referred to in the case of ***Randhir Kumar Singh*** (supra) is concerned, the same



postulates a situation wherein the University itself has stated that the appellant of the said case is not entitled to certificate / Ph.D. Degree under the UGC Regulation, 2009 since no procedure as envisaged therein has been followed, however, in the present case, there is no such averment on behalf of the Respondent-University, hence, the facts and circumstances of the present case are clearly distinguishable from the facts and circumstances of the said case and the judgment rendered by the learned Division Bench in the case of **Randhir Kumar Singh** (supra). As far as the judgment rendered in the case of **Sweta** (supra) is concerned, the same pertains to a case wherein the original writ petitioner had been refused the certificate of completion of Ph.D. under the UGC Regulation, 2009 and his prayer therein was to direct the Respondent-University to issue certificate of completion of Ph.D., to which the stand and contention of the University was that the original writ petitioner does not comply with and / or fulfil and / or satisfy the procedure to be followed as per the Regulation, 2009 of the UGC, hence, the original writ petitioner of the said case was not granted any relief, however, in the present case, the petitioner has already been awarded Ph.D. Degree and the University has supported the same by stating that the same is in



consonance with the procedure laid down in the UGC Regulations, 2009, hence, the judgment rendered in the case of **Sweta** (supra) is also distinguishable in the facts and circumstances of the present case. Now coming to the judgment rendered by the learned Division Bench in the case of **Dr. Digambar Jha & Others** (supra), it is apparent from the factual position of the said case that the Bhim Rao Ambedkar Bihar University, Muzaffarpur adopted the UGC Regulations, 2009 on 17th January, 2013, thus any Ph.D. course would have been completed only after 17th January, 2015, hence, that date being consequent to the last date of submission of application forms which is 05th January, 2015, it was held that the Ph.D. degree of the appellant is not in accordance with the 2009 Regulations, however, the said situation is not prevalent in the present case inasmuch as no such deficiency / discrepancy has been shown to be existing herein. In such view of the matter, the judgment rendered by the Ld. Division Bench of this Court in the case of **Dr. Digambar Jha & Others** (supra) is also not applicable to the facts and circumstances of the present case.

25. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the writ petition stands allowed and the Respondent-Commission is directed to



consider the case of the petitioner for appointment on the post of Assistant Professor in Hindi subject under advertisement no. 50 of 2014, considering the Ph.D. Degree of the petitioner in Hindi to be as per the UGC Regulations, 2009 as also taking into account the fact that the petitioner stands exempted from passing the National Eligibility Test/SET and considering the fact that the petitioner has already been held to be eligible by the Respondent-Commission, which is apparent from the list of eligible candidates published in the month of December, 2014 (Annexure-4 to the writ petition), pertaining to advertisement no. 50 of 2014. This Court further holds that since the advertisement no. 50 of 2014 does not postulate or prescribe for production of Ph.D. certificate and mark-sheet of Pre Ph.D. Degree and details of criteria fulfilled during the course of obtaining Ph.D. Degree, the Respondent-Commission cannot change the criteria (rule of the game) midway, as has been done vide notification dated 15.5.2018 by inserting new conditions, hence, the said new conditions required to be fulfilled, are held to be redundant, inapplicable and not necessary to be complied with qua the petitioner herein for the purposes of consideration of her case for appointment on the post of Assistant Professor in Hindi pursuant to the advertisement no. 50 of 2014. In this



regard reference be had to the Judgments rendered by the Hon'ble Apex Court in the cases of *P.K. Ramachandra Iyer v. Union of India*, reported in (1984) 2 SCC 141, *Umesh Chandra Shukla v. Union of India*, reported in (1985) 3 SCC 721, *Durgacharan Misra v. State of Orissa*, reported in (1987) 4 SCC 646 and in the case of *K. Manjusree v. State of A.P.*, reported in (2008) 3 SCC 512.

(Mohit Kumar Shah, J)

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