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W.P.No.16634 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.16634 of 2016
and
W.M.P.Nos.14374 to 14376 of 2016

- 1.S.Jayakamaraj
- 2.D.Arumugam
- 3.S.Madhu Sudhanan
- 4.S.Hari
- 5.S.Kabir
- 6.S.Kanthimathinathan
- 7.P.Anandan
- 8.S.Balachandran
- 9.E.Ravichandran
- 10.S.Srinivasan
- 11.M.Ravichandran
- 12.A.M.Kathikeyan
- 13.N.Gnanamani
- 14.T.Saravanan
- 15.J.Prem Shankar
- 16.M.Sarbudeen
- 17.S.Ramesh



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18.K.Arul

19.S.Sigamani

20.R.Kumar

21.C.Manikandan

22.T.Vijyakumar

23.V.D.Purushothaman

24.P.Alamelu

25.D.Gomathi

26.R.Thanikkachalam

27.E.Ravi mani

28.G.Murthi

29.M.Balakrishnan

30.R.Anbukkarasi

31.B.Anand Rao

32.H.M.Iqbal

33.M.Ramasamy

34.T.Mahalakshmi

35.B.Jayashankar

36.A.Karthikeyan

37.S.Omprakash

38.S.Senthilnathan

... Petitioners

Vs.

The Secretary,
Personnel and Administrative Reforms Department,
Secretariat,
St. George Fort, Chennai – 600 009.

... Respondent



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Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for all relevant records relating to the impugned Government Orders in G.O.(4D) No.30 P & AR (U1) Department dated 19.05.2014, G.O.(4D) No.31 P & AR (U1) Department dated 19.05.2014, G.O.(4D) No.32 P & AR (U1) Department dated 19.05.2014 and G.O.(4D) No.33 P & AR (U1) Department, dated 19.05.2014, issued by the Respondent Government herein, in so far as it refuses to Regularise the Petitioner herein on the basis of Education Qualification, which was Regularised and accepted in the stage of Assistant after declaring the Probation, to quash the same as arbitrary, improper, illegal, unconstitutional and contrary to the basic Principle of Service Rules thereby directing the Respondent herein to regularise the service and consequently to provide with all service and monetary benefits.

For Petitioners	: Mr.A.Kalaivanan
For Respondent	: Mr.S.Silambanan Additional Advocate General Assisted by Mrs.S.Anitha Special Government Pleader



ORDER

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The writ on hand has been instituted to call for records relating to the to the impugned Government Orders in G.O.(4D) No.30 P & AR (U1) Department dated 19.05.2014, G.O.(4D) No.31 P & AR (U1) Department dated 19.05.2014, G.O.(4D) No.32 P & AR (U1) Department dated 19.05.2014 and G.O.(4D) No.33 P & AR (U1) Department, dated 19.05.2014, issued by the Respondent Government herein, in so far as it refuses to Regularise the Petitioner herein on the basis of Education Qualification, which was Regularised and accepted in the stage of Assistant after declaring the Probation, to quash the same as arbitrary, improper, illegal, unconstitutional and contrary to the basic Principle of Service Rules thereby directing the Respondent herein to regularise the service and consequently to provide with all service and monetary benefits.

2. The petitioners were appointed as Office Assistant in the year 1989 and thereafter, promoted to the post of Assistant in the year 2005. They were serving as Assistant Section Officer, while filing the writ petitioner at Secretariat. The petitioners were serving in a temporary post in the Department of MS & ME Department. The services of the writ petitioners



were regularised in the post of Assistant Section Officer and the request in this regard was not considered. Mean while, regular panel of Assistant fit for promotions to the post of Assistant Section Officer of the year 2007-2008 as on 01.08.2007 was approved by the respondents in G.O.Ms.No.30 dated 19.05.2014. The petitioners have questioned the panel mainly on the ground that their juniors were considered, depriving them from getting promotion to the regular post of Assistant Section Officer. The panel was subsequently approved and the petitioners were denied further promotion.

3. The petitioners have mainly contended that as per Rule 8 of the Special Rules for the Tamil Nadu Secretariat Service, the post of Assistant Section Officer has to be filled by the method of Direct Recruitment, Promotion from Assistant, Senior Personal Clerk, Senior Typist and Recruitment by transfer from Assistants in Tamil Nadu Ministerial Service and Tamil Nadu Judicial Service in the ratio of 1:4:1:1.

4. As per the Rule 14 of the Special Rules for the Tamil Nadu Secretariat Service, the Education qualification for promotion / transfer to the post of Assistant Section Officer are as follows:



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“(i) Minimum General Educational Qualification prescribed in the Schedule 1 to the General Rules in Part II on the Tamil Nadu State and Subordinate Service Rules or its equivalent qualification.

(ii) (a) A pass in Departmental tests for appointment as ASO in the Tamil Nadu Secretariat Service.

(iii) (b) Foundational Training for a period of two months and a pass in the examination at the end of the training conducted by the Personnel and Administrative Reforms (Training) Department.....”

5. The petitioners have stated that though they have possessed degree through Open University it was considered as equivalent and therefore, the name of the petitioners ought to have been included in the panel. The services of the writ petitioners were not regularised in the post of Assistant Section Officer. Therefore, their names were not considered for inclusion in the panel. It is contended that 68 temporary Assistant Section Officers were not conferred with the benefit of regularisation in the post of Assistant Section Officer. Under those circumstances, the petitioners have filed the



present writ petition.

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6. The learned Additional Advocate General appearing on behalf of the respondent made a submission that the petitioners did not possess the requisite educational qualification as per the rules in force. They have not possessed the educational qualification through regular pattern of education and the degrees secured by the petitioners were held invalid by the Hon'ble Supreme Court of India, which was implemented by the Government of Tamil Nadu in G.O.Ms.No.107, Personnel and Administrative Reforms Department dated 18.08.2009. Therefore, the petitioners are not eligible to hold the post of Assistant Section Officer and they were not regularly promoted / appointed to the post of Assistant Section Officer.

7. The following qualifications are prescribed for Office Assistant for appointment to the post of Assistant in the Tamil Nadu Secretariat Services, which is the feeder category to the post of Assistant Section Officer:

- (1) A Bachelor's Degree.
- (2) Service for a period of not less than five years as Office Assistant in the Secretariat.



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8. Since a Bachelor Degree is prescribed as a qualification for promotion to the post to the feeder category post i.e., Assistant, prescribing a Bachelor Degree at the higher level of promotion became redundant, which is also not required. The petitioners have quoted the Rule position relating to appointment to the post of Assistant Section Officer in the Secretariat and the orders issued about the pattern of duration of degree considered for promotion / appointment in Government Services.

9. Since the amendments issued to the Special Rules for the Tamil Nadu Secretariat Service for the post of Assistant Section Officer in G.O.Ms.No.237, Personnel and Administrative Reforms (U) Department dated 26.10.2007 were challenged by the President, Tamil Nadu Secretariat Typists and Steno-Typists Association in W.P.No.3593 of 2008, regular panel could not be drawn at that time. To overcome the administrative exigencies prevailed at that time, temporary promotion was given to the persons in the feeder posts (viz., Assistant, Senior Personal Clerk and Senior Typist) including the petitioners under Rule 39(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services with the following



conditions prescribed in Rule 39(e) of the General Rules for the Tamil Nadu

State and Subordinate Services:

“(i) The persons, who have temporarily promoted as Assistant Section Officer are not entitled by reason only of such promotion to any preferential claim to future promotion to the post of Assistant Section Officer as laid down in the Rule 39(e) of the General Rules for the Tamil Nadu State and Subordinate Service.

(ii) They cannot also claim any seniority in the regular panel to be drawn subsequently for the post of Assistant Section Officer based on the temporary promotion now given. The seniority fixed at the time of the drawal of the regular panel shall be final.

(iii) The services of the Assistant Section Officers so promoted temporarily shall be liable to be terminated at any time without notice and without any reason being assigned as laid down in rule 39(e) of the General Rules for the Tamil Nadu State and Subordinate Services.”

10. The petitioners were only given temporary promotion as Assistant Section Officers with the above conditions prescribed in Rule 39(e) of the



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General Rules for the Tamil Nadu State and Subordinate Services. It is also submitted that no probation is prescribed in the Special Rules for the Tamil Nadu Secretariat Service for the post of Assistant Section Officer under the method by promotion.

11. It is contended that a Bachelor Degree is prescribed as one of the qualification for promotion to the feeder category post i.e. Assistant. Therefore, prescribing a Bachelor Degree at the higher level promotion that is to the post of Assistant Section Officer became redundant, which is not required. Hence the services of the petitioners in the post of Assistant Section Officer cannot be regularised.

12. According to the amendments issued to the Government orders, wherever the degree qualification is prescribed in the Rules, it should be acquired after completion of 10th standard and +2 courses. The Educational qualifications of the petitioners are not in the pattern of 10+2+3. Therefore, the petitioners are not eligible for regular promotion to the post of Assistant Section Officer and fixation of seniority in that post.



13. The Hon'ble Supreme Court of India in the case of ***Annamalai University Vs. Secretary to Government, Information and Tourism Department and Others*** reported in ***[2009 (4) SCC 590]***, ruled that open university degree not obtained through regular pattern of education as approved by the University Grants Commission are invalid. Only if the qualification of degree is secured through recognised pattern of education, then alone such degrees are to be considered for public appointments. The judgment of the Apex Court was implemented by the Government.

14. This Court also elaborately considered the validity of the Open University degrees and the degrees not obtained through regular pattern of education in the case of ***M.Mani Vs. State of Tamil Nadu*** in ***W.P.No.7472 of 2018 dated 02.04.2018***, reported in ***[2018 (4)MLJ 108]*** and the relevant paragraphs are extracted here under:

“6.The pattern prescribed by the University Grants Commission for admission to M.A. Degree is 10+2+3+2. In this regard, the University issued University Grants Commission Regulations, 1985, regarding the minimum standards of instructions for the grant of the first degree through non formal/distance education. The regulations reads as under:

No.F1117/83(CP) In exercise of the powers



conferred by Clause (f) of subsection (1) of Section 26 of the University Grants Commission Act, 1956 (No.3 of 1956), the University Grants Commission makes the following regulations, namely:-

1.Short title, application and commencement:-

1.These regulations may be called the University Grants Commission (the minimum standards of Instructions for the grant of the first degree through nonformal/distance education in the faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences) Regulations, 1985.

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 institute deemed to be University under Section 3 of the said Act.

3.They shall come into force on June 1, 1986.

2.Admission/Students:

1.No students shall be eligible for admission to the 1st Degree Course through non-formal/distance education unless he has successfully completed 12 years schooling through an examination conducted by a Board/University. In case there is no previous academic record, he shall be eligible for admission if he has passed an entrance test conducted by the University provided



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that he is not below the age of 21 years on July 1 of the year of admission.

2. No student shall be eligible for the award of the first degree unless he has successfully completed a three year course; this degree may be called the B.A./B.Sc./B.Com. (General Honours/Special) degree as the case may be.

Provided that no student shall be eligible to seek admission to the Masters Course in these faculties, who has not successfully pursued the first Degree course of three years duration.

Provided further that, as a transitory measure where the universities are unable to change over to a three year degree course, may award a B.A./B.Sc./B.Com. (pass) degree on successful completion of two year course, but that no student of this stream shall be eligible for admission to the Masters course unless he has undergone a further one year bridge course and passed the same. The three year degree course after 10+2 stage should in no case be termed as B.A./B.Sc./B.Com. (pass) degree.

7.The learned counsel appearing for the respondent opposed the contention of the learned counsel for the writ petitioner by stating that the degree granted by the University must be as per the pattern notified by the University Grants Commission and the degree granted by the University is not in conformity with the



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University Grants Commission Act and the notification cannot be held valid. The learned counsel appearing for the respondent state that the writ petitioner, after completing the X standard directly got admission to B.A. Degree without passing +2 examination. The pattern prescribed by the University Grants Commission for admission to B.A. Degree is 10+2+3. In this regard, the University issued University Grants Commission Regulations, 1985, regarding the minimum standards of instructions for the grant of the first degree through non formal/distance education.

8.The learned counsel appearing for the respondent in support of the University Grants Commission regulations, cited the Judgment of the Hon'ble Supreme Court of India in the case of Annamalai University Vs. Secretary to Government, Information and Tourism Department and others reported in (2009) 4 SCC 590. The Hon'ble Supreme Court has held that the scheme of system of open university and the degree granted by the universities. The Apex Court has extensively dealt with the scope of the University Grants Commission and the regulations validity of the degree granted under the Open University System, more specifically in the particular case of Annamalai University and the relevant paragraphs are extracted here under:

40.The UGC Act was enacted by Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule of the Constitution of India whereas the Open University Act was enacted by parliament in exercise of its power under Entry 25 of List III thereof.



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The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the statement of objects and reasons of the Open University Act shows that the formal system of education had not been able to provide an effective means to equalise educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.

41. Was the alternative system envisaged under the Open University Act in substitution of the formal system, is the question. In our opinion, in the matter of ensuring the standard of education, it is not. The distinction between a formal system and an informal system is in the mode and manner in which education is imparted. The UGC Act was enacted for effectuating coordination and determination of standards in universities. The purport and object for which it was enacted must be given full effect.

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



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universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of UGC are all-pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12-A and clauses (a) and) of sub-section (2) thereof.

43.Indisputably, as has been contended by the learned counsel for the appellant as also the learned Solicitor General that the open University Act was enacted to achieve a specific object. It opens new vistas for imparting education in a novel manner. Students do not have to attend classes regularly. They have wide options with regard to the choice of subjects but the same, in our opinion, would not mean that despite a parliamentary Act having been enacted to give effect to the constitutional mandate contained in Entry 66 of List I of the Seventh Schedule to the Constitution of India, activities and functions of the



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private universities and open universities would be wholly unregulated.

44.It has not been denied or disputed before us that in the matter of laying down qualification of the teachers, running of the University and the matters provided for under the UGC Act (sic the Regulations) are applicable and binding on all concerned. The Regulations framed, as noticed hereinbefore, clearly aimed at the open universities. When the regulations are part of the statute, it is difficult to comprehend as to how the same which operate in a different field would be ultra vires the parliamentary Act. IGNOU has not made any regulation; it has not made any ordinance. It is guided by the Regulations framed by UGC. The validity of the provisions of the Regulations has not been questioned either by IGNOU or by the appellant University. From a letter dated 5-5-2004 issued by Mr.H.P.Dikshit, who was not only the Vice-Chancellor but also the Chairman of DEC of IGNOU it is evident that the appellant University has violated the mandatory provisions of the Regulations.

45.The amplitude of the provisions of the UGC Act vis-a-vis the universities constituted under the State Universities Acts which would include within its purview a university made by Parliament also is now



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no longer res integra.

46.In Prem Chand Jain v. R.K.Chhabra² this Court held: (SCC pp. 308-09, para 8)

8. ... The legal position is well settled that the entries incorporated in the lists covered by Schedule VII are not powers of legislation but 'fields' of legislation. (Harakchand Ratanchand Banthia v. Union of India³ SCR at p. 489.) In State of Bihar v. Kameshwar Singh⁴ this Court has indicated that such entries are mere legislative heads and are of an enabling character. This Court has clearly ruled that the language of the entries should be given the widest scope or amplitude. (Navinchandra Mafatlal v. CIT⁵ SCR at p.836). Each general word has been asked to be extended to all ancillary or subsidiary matters which can fairly and reasonably be comprehended. [See State of madras v. Gannon Dunkerley & Co. (Madras) Ltd.⁶ SCR at p.391.] It has also been held by this Court in Clerk Post Officer v. K.P.Abdulla and Bros.⁷ that an entry confers power upon the legislature to legislate for matters ancillary or incidental, including provision for avoiding the law. As long as the legislation is within the permissible field in pith and substance, objection would not be entertained merely on the ground that while enacting legislation, provision has been made for a matter which though



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germane for the purpose for which competent legislation is made it covers an aspect beyond it. In a series of decisions this Court has opined that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature enacting it it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature.”

47. In University of Delhi v. Raj Singh⁸ this Court held: (SCC pp. 526-27, para 13)

“13. ... By reason of Entry 66, Parliament was invested with the power to legislate on 'Coordination and determination of standards in institutions for higher education, or research and scientific and technical institutions'. Item 25 of List III conferred power upon Parliament and the State Legislatures to enact legislation with respect to 'vocational and technical training of labour'. A six-Judge Bench of this Court observed that the validity of the State legislation on the subjects of university education and education in technical and scientific institutions falling outside Entry 64 of List I as it then read (that is to say, institutions for scientific or technical education other than those financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance) had to be judged



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having regard to whether it impinged on the filed reserved for the Union under Entry 66. In other words, the validity of the State legislation depended upon whether it prejudicially affected the coordination and determination of standards. It did not depend upon the actual existence of the Union legislation in respect of coordination and determination of standards which had, in any event, paramount importance by virtue of the first part of Article 254(1).

48. In State of T.N. v. Adhiyaman Educational and Research Institute⁹ this Court laid down the law in the following terms: (SCC pp. 134-35, para 41)

41. What emerges from the above discussion is as follows:

(i) The expression 'coordination' used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make 'coordination' either impossible or difficult. This



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power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State Legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause (2) of Article 254, the State legislation being repugnant to the Central Legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or



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the Central authority to shortlist the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central Law.

(vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities derecognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally.”

49. In State of A.P. v. K. Purushotham Reddy¹⁰ this Court held: (SCC p.572, para 19)

19. The conflict in legislative competence of Parliament and the State Legislature having regard to Article 246 of the Constitution of India must be viewed in the light of the decisions of this Court which in no uncertain terms state that each entry has to be interpreted in a broad manner. Both the parliamentary legislation as also the State legislation must be considered in such a manner so as to uphold both of



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them and only in a case where it is found that both cannot coexist, the State Act may be declared ultra vires. Clause (1) of Article 246 of the Constitution of India does not provide for the competence of Parliament or the State Legislatures as is ordinarily understood but merely provides for the respective legislative fields. Furthermore, the courts should proceed to construe a statute with a view to uphold its constitutionality.

(emphasis supplied)

It was observed: (Purushotham Reddy case¹⁰, SCC p. 573, para 20)

“20.Entry 66 of List I provides for coordination and determination of standards inter alia for higher education. Entry 25 of List III deals with broader subject, namely, education. On a conjoint reading of both the entries there cannot be any doubt whatsoever that although the State has a wide legislative field to cover the same is subject to Entries 63, 64, 65 and 66 of List I. Once, thus, it is found that any State legislation does not entrench upon the legislative field set apart by Entry 66, List I of the Seventh Schedule of the Constitution of India, the State Act cannot be invalidated.”

“50.The UGC Act, thus, having been enacted by Parliament in terms of entry 66 of List I of the Seventh



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Schedule to the Constitution of India would prevail over the Open University Act.

51. With respect, it is difficult to accept the submission of the learned Solicitor General that the two Acts operate in different fields, namely conventional university and open university. The UGC Act, indisputably, governs open universities also. In fact, it has been accepted by IGNOU itself. It has also been accepted by the appellant University.

55. The submission of Mr.K.Parasaran that as in compliance with the provisions contained in Regulation 7, UGC had been provided with information in regard to instructions through non-formal/distance education relating to the observance thereof by itself, in our opinion, would not satisfy the legal requirement. It is one thing to say that informations have been furnished but only because no action has been taken by UGC in that behalf, the same would not mean that an illegality has been cured. The power of relaxation is a statutory power. It can be exercised in a case of this nature.

56. Grant of relaxation cannot be presumed by necessary implication only because UGC did not perform its duties. Regulation 2 of the 1985



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Regulations being imperative in character, non-compliance therewith would entail its consequences. The power of relaxation conferred on UGC being in regard to the date of implementation or for admission to the first or second degree courses or to give exemption for a specified period in regard to other clauses in the Regulations on the merit of each case do not lead to a conclusion that such relaxation can be granted automatically. The fact that exemption is required to be considered on the merit of each case is itself a pointer to show that grant of relaxation by necessary implication cannot be inferred. If mandatory provisions of the statute have not been complied with, the law will take its own course. The consequences will ensue.

57.Relaxation, in our opinion, furthermore cannot be granted in regard to the basic things necessary for conferment of a degree. When a mandatory provision of a statute has not been complied with by an administrative authority, it would be void. Such a void order cannot be validated by inaction.

58.The only point which survives for our consideration is as to whether the purported post facto approval granted to the appellant University of programmes offered through distance modes is valid.



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DEC may be an authority under the Act, but its orders ordinarily would only have a prospective effect. It having accepted in its letter dated 5-5-2004 that the appellant University had no jurisdiction to confer such degrees, in our opinion, could not have validated an invalid act. The degrees become invalidated in terms of the provisions of the UGC Act. When mandatory requirements have been violated in terms of the provisions of one Act, an authority under another Act could not have validated the same and that too with a retrospective effect.

59.The provisions of the UGC Act are not in conflict with the provisions of the Open University Act. It is beyond any cavil of doubt that the UGC Act shall prevail over the Open University Act. It has, however, been argued that the Open University Act is a later Act. But we have noticed hereinbefore that the nodal Ministry knew of the provisions of both the Acts. The Regulations were framed almost at the same time after passing of the Open University Act. The Regulations were framed at a later point of time. Indisputably, the Regulations embrace within its fold the matters covered under the Open University Act also.

60.Submission of Mr.K.Parasaran that in terms of sub-section (2) of Section 5 of the Open University



Act a non obstante clause has been created and thus, would prevail over the earlier Act cannot also be accepted. Apart from the fact that in this case repugnancy of the two Acts is not in question (in fact cannot be in question having (sic not) been enacted by Parliament and a State in terms of the provisions of the Concurrent List) the non obstante clause contained in the Open University Act will be attracted provided the statues operate in the same field. The UGC Act, as noticed hereinbefore, operates in different filed. It was enacted so as to make provision for the coordination and determination of standards in universities and for that purpose, to establish a University Grants Commission. Its directions being binding on IGNOU, sub-section (2) of Section 5 of the Open University Act would not make the legal position otherwise.”

9.This apart, the learned Single Judge of this Court also had an occasion to deal with the similar case in W.P.No.7120 of 2011 dated 07.09.2017 and the relevant paragraphs of the Judgment is extracted here under:

4.It is further stated that the Government had once again clarified vide letter dated 08.08.2013 that the pre-foundation and foundation courses were considered as not equivalent to SSLC and HSC. Since the petitioner had passed foundation course through Open University, which cannot be considered as



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equivalent to HSC and as such, his bachelor degree obtained without passing SSLC and HSC could not be considered as a valid one and hence, his application is liable to be rejected. However, the application was not rejected in view of the pendency of the writ petition. For these reasons, the first respondent sought for dismissal of the writ petition.

6.While so, the Hon'ble Supreme Court in Civil Appeal Nos.4173 of 2008 & 4189-4191, in its Judgment, has held that the recognition of decree from the Open University system could be only on the anvil that such degree must be in accordance with the Regulations of the UGC and not in direct conflict with such regulations. Therefore, the individual who have obtained a degree through Open University System after passing the pre-foundation course or two years foundation course without passing 10th and 12th standard examinations, do not satisfy the conditions laid down in G.O.Ms.No.107 dated 18.08.2009 which was issued in consonance with the orders of the Hon'ble Supreme Court.

7.It is further stated that as per the provision of 1986 UGC Regulations, no student shall be eligible for admission to 1st year degree course through non-formal/distance education unless he has successfully completed 12 years schooling through an examination



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conducted by a Board/University. Hence, a degree awarded by the Open University after passing pre-foundation course and two year foundation course through Open University cannot be recognized as a degree as per UGC norms for the purpose of employment/promotion in public services. Keeping in view of the same, the Government vide letter dated 03.12.2010 impugned in the writ petition, has rightly clarified the position, which requires no modification or re-consideration. Therefore, the second respondent sought for dismissal of the writ petition.

12.This Court cannot lose its sight to the fact that admittedly the petitioner pursued the School education in the old pattern up to XI Standard, but could not complete the same due to his sickness, which meant that the petitioner did not take any public examination under the old XI pattern. Subsequently, the pattern of higher school education has been changed from 1978 and 10+2 pattern was introduced. As far as the petitioner is concerned, he did not pass his X Standard in the new pattern and therefore, there was no occasion for him to undergo public examination under the old pattern because, under the old pattern, public examination was made applicable only at XI standard. In all, it must be seen that without undergoing public examination, either in class IX under the old pattern of X standard in the new



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pattern, mere undergoing foundation course by the petitioner cannot entitle him to get a valid degree from the correspondence course. The petitioner ought to have qualified himself in pre foundation course and thereafter, he ought to have qualified in foundation course before he could get a degree through Open University System of Madurai Kamaraj University. This peculiar fact has been lost sight both by the petitioner and also the respondents and all the points which were canvassed by the respective senior counsels only with regard to whether the foundation course is valid enough for the purpose of obtaining degree through Open University System and such degree obtained through the said system is whether valid for earning public employment.

13.Since this Court is of the view that the petitioner, first of all, is not qualified directly to be admitted in the foundation course in view of his non appearance in any of the public examinations conducted by the Director of School Examinations either under the old pattern XI standard or new pattern X standard and now he cannot claim to have undergone the foundation course with valid participating and passing in the public examination, atleast once i.e. at higher secondary school level. In the said circumstances, this Court does not wish to be



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drawn into the legal controversy whether pre foundation/foundation course is valid enough to earn a valid degree through the Open University System for the purpose of public employment or not. Since the foundation courser undergone by the petitioner without undergoing the pre foundation course in the facts of the case, itself is not valid, his subsequent degree obtained through the Open University system from Madurai Kamaraj University, cannot be held to be valid for any purpose.

15. According to the above decision of the Government, it is very clear that the Pre foundation course is treated as equivalent to 10 years S.S.L.C. and the foundation course is equivalent to Higher Secondary (+2) course. Therefore, the averment in the affidavit filed in support of the Writ Petition that the completion of first year of foundation course is equivalent to passing of X standard and completion of second year of foundation course is passing of +2 course, may not be correct. Therefore, the said submission of the learned senior counsel is devoid of merit and the same is brushed aside.

10. Above all the Hon'ble Supreme Court of India recently considered the very same issue in the case of Orissa Lift Irrigation Corp. Ltd. Vs. Rabi Sankar Patro reported in 2017 SCC Online SC



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1281. *The relevant paragraphs 60 and 70 of the Judgment is extracted here under:*

60.It was laid down by this Court in Annamalai University v. Secretary to Government, Information and Tourism Department¹⁰ that no relaxation could be granted in regard to the basic things necessary for conferment for a degree and if a mandatory provision is not complied with by an administrative authority, the action would be void. This leads us to conclude that the permissions granted by DEC in the first instance allowing the Deemed to be Universities in question to introduce courses leading to the award of degrees in engineering were illegal and opposed to Law. The illegality in the exercise of power was to such an extent that it could not be cured by ex post facto approvals granted later. We have also seen that the exercise of grant of ex post facto approvals, as a matter of fact, was only superficial and perfunctory. Such even when specific complaints were received about concerned Deemed to be Universities. Yet, without causing any inspection such power was exercised which part is already dealt with and the exercise of power has been found by us to be suffering from illegality and infirmity. The only thing in favour of the concerned Deemed to be Universities is the fact that the Joint Committee of UGC AICTE DEC had endorsed the decision though such exercise was also completely flawed. That exercise was



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against Para 10 of the MoU dated 10.05.2007, which contemplated causing of inspections and the decision dated 11.05.2007 of the Joint Committee itself that for an Institution/University to offer distance education programmes it was mandatory to offer the same in face to face mode.

70. Accordingly we direct:

I 1994 AICTE Regulations, do apply to Deemed to be Universities and the deemed to be Universities in the present matter were not justified in introducing any new courses in Technical Education without the approval of AICTE.

II In so far as candidates enrolled during the Academic Sessions 2001-2005, in the present case the ex post facto approvals granted by UGC and their concerned authorities are set aside.

III Consequent to aforesaid direction No.II, all the degrees in Engineering awarded by concerned Deemed to be Universities stand suspended.

IV The AICTE shall devise the modalities to conduct an appropriate test/tests as indicated in Para 47 above. The option be given to the concerned students whose degrees stand suspended by 15.01.2018 to appear at the test/tests to be conducted in accordance with the directions in Para 47 above. Students be given not more than two chances to clear test/tests and if they do not successfully clear the



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test/tests within the stipulated time, their degrees shall stand cancelled and all the advantages shall stand withdrawn as stated in Paras 46 and 47 above. The entire expenditure for conducting the test/tests shall be recovered from the concerned Deemed to be Universities by 31.03.2018.

V Those students who do not wish to exercise the option, shall be refunded entire money deposited by them towards tuition fee and other charges within one month of the exercise of such option. Needless to say their degrees shall stand cancelled and all advantages/benefits shall stand withdrawn as mentioned in para 47.

VI If the students clear the test/tests within the stipulated time, all the advantages/benefits shall be restored to them and their degrees will stand revived fully.

VII As regard students who were admitted after the Academic Sessions 2001-2005, their degrees in Engineering awarded by the concerned Deemed to be Universities through distance education mode stand recalled and be treated as cancelled. All benefits secured by such candidates shall stand withdrawn as indicated in Para 48 above. However, the entire amount paid by such students to the concerned Deemed to be Universities towards tuition fees and other expenditure shall be returned by the concerned



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Deemed to be Universities by 31.05.2018, as indicated in Para 48.

VIII By 31.05.2018 all the concerned Deemed to be Universities shall refund the sums indicated above in VII and an appropriate affidavit to that extent shall be filed with UGC within a week thereafter.

IX We direct the CBI to carry out thorough investigation into the conduct of the concerned officials who dealt with the matters and went about the granting permissions against the policy statement, as indicated in Para 49 above and into the conduct of institutions who abused their position to advance their commercial interest illegally. Appropriate steps can thereafter be taken after culmination of such investigation.

X The UGC shall also consider whether the Deemed to be University status enjoyed by JRN, AAI, IASE and VMRF calls for any withdrawal and conduct an inquiry in that behalf by 30.06.2018 as indicated above. If the moneys, as directed above are not refunded to the concerned students that factor shall be taken into account while conducting such exercise.

XI We restrain all Deemed to be Universities to carry on any courses in distance education mode from the Academic Session 2018-2019 onwards unless and until it is permissible to conduct such courses in distance education mode and specific permissions are granted by the concerned statutory/regulatory



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authorities in respect of each of those courses and unless the off-campus Centres/Study Centres are individually inspected and found adequate by the concerned Statutory Authorities. The approvals have to be course specific.

XII The UGC is further directed to take appropriate steps and implement Section 23 of the UGC Act and restrain Deemed to be Universities from using the word 'University' within one month from today.

XIII The union of India may constitute a three members Committee comprising of eminent persons who have held high positions in the field of education, investigation, administration or law at national level within one month. The Committee may examine the issues indicated above and suggest a road map for strengthening and setting up of oversight and regulatory mechanism in the relevant field of higher education and allied issues within six months. The Committee may also suggest oversight mechanism to regulate the Deemed to be Universities. The Union of India may examine the said report and take such action as may be considered appropriate within one month thereafter and file an affidavit in this Court of the action taken on or before August 31, 2018. The matter shall be placed for consideration of this aspect on 11.09.2018.”



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15. In the present case the respondent on verification, found that the petitioners have not acquired the educational qualification through regular pattern of education and therefore, they are not entitled for regular promotion to the post of Assistant Section Officer. The petitioners were accommodated as temporary Assistant Section Officers on account of an administrative exigencies and in view of the pendency of certain litigation before the High Court. Thus, the cases of the writ petitioners were considered for regular promotion and at that point of time the Government found that they do not possess the requisite qualification and the degree possessed by them are not valid for the purpose of public appointments. Thus, the cases of the writ petitioners were not considered.

16. This Court is of the considered opinion that the judgment of the Hon'ble Supreme Court of India in the case of *Annamalai University* (cited *supra*) regarding validity of the Open University is should be scrupulously followed. Thus, an employee, who acquired the educational qualification through regular pattern of education, alone are entitled to get appointments / promotions as per the rules in force. The Government of



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Tamil Nadu also implemented the judgment of the Apex Court and therefore, the reason and the decision taken by the Government is not infirm, but in consonance with the judgment of the Hon'ble Supreme Court of India. Thus, the petitioners have not established any acceptable grounds for the purpose of considering the relief.

17. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

03.11.2022
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Jeni

Index : Yes
Speaking order

To

The Secretary,
Personnel and Administrative Reforms Department,
Secretariat,
St. George Fort, Chennai – 600 009.



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S.M.SUBRAMANIAM, J.

Jeni

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