

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.24825 of 2016

MOU MUKHERJEE DAS

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

For the petitioner	: Mr. Debajyoti Basu, Adv., Mr. Anuran Samanta, Adv., Mr. Arpan Sinha, Adv.
For the respondents	: Mr. Jaydip Kar, Sr. Adv., Mr. Raghunath Chakraborty, Adv., Mrs. Ira Ghose, Adv., Ms. Sanchita Chaudhuri, Adv.
Hearing concluded on	: 12.12.2022
Judgment on	: 15.05.2023

Kausik Chanda, J.:-

The petitioner was appointed as an Assistant Professor in the Department of Journalism and Mass Communication at Aliah University on February 28, 2013. The appointment letter of the petitioner indicated that she would remain on probation for a period of one year or till such time as could be decided by the university with effect from the date of her joining.

2. After the completion of one year probation period, a meeting of the Evaluation Committee of the university was held to consider the confirmation of the petitioner's service. The subject expert recommended that the probation period of the petitioner should be extended by a further period of one year though there was a recommendation by the concerned head of the department to confirm the service of the petitioner. On May 15, 2014, the Council of the university resolved to extend the probation period of the petitioner till March 19, 2015.

3. The Council of the university in its meeting held on April 11, 2015, discussed the petitioner's confirmation of service along with twelve other teachers. The Executive Council resolved that recommendations from the respective head of departments will be required for their services for confirmation of the service. It appears that on July 21, 2015, a guest teacher of the university lodged a complaint against the petitioner before the university alleging that the petitioner was irregular in her duty and abusive at workplace. On July 31, 2015, the head of the department forwarded the self-appraisal report of the petitioner suggesting that the

petitioner was irregular and irresponsible in her duties. The petitioner also on August 12, 2015, lodged a complaint against her head of the department alleging harassment at the workplace. The Council of the university resolved from a three-member Facts Finding Committee to enquire into the allegations made against the petitioner, and the Facts Finding Committee on January 28, 2016, submitted its report before the university.

4. Thereafter, the university formed an Evaluation Committee for consideration of the confirmation of service of the petitioner. On April 8, 2016, a hearing committee was formed and the said committee on April 11, 2016, dismissed the complaints lodged by the petitioner holding that she has failed to substantiate the allegations made in her complaint dated August 12, 2015. On October 3, 2016, the Council of the university after reviewing the Evaluation Committee report dated October 01, 2016, as well as the Facts Finding Committee's report resolved not to extend the probationary period of the petitioner anymore and terminated her service due to unsatisfactory performance and negligence of duty.

5. The said order was communicated to the petitioner by a letter dated October 4, 2016. In the letter of termination, it was mentioned that the petitioner had been dismissed from service by Aliah University on the purported ground of unsatisfactory performance as well as being detrimental to the best interest of the university.

6. The petitioner has challenged the said communication dated October 4, 2016, by filing this writ petition before this Court.

7. It has been submitted by the petitioner that in terms of the University Grants Commission Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 (In short, the UGC Regulations, 2010), the university should have confirmed the service of the petitioner automatically on completion of one year of service. It has further been argued by the petitioner that the order of termination is stigmatic and therefore, the service of the petitioner could not have been terminated without a proper disciplinary proceeding.

8. The petitioner further contends that as per Rule 57 (3) of Aliah University's further Statute, the petitioner is liable to be mandatorily confirmed in her post after the expiry of one year probation period with the approval of the Executive Council of the university and her probationary period could have been extended by a maximum period of one year in the case of unsatisfactory service.

9. Learned advocate appearing for the petitioner, in support of his submission, has placed reliance upon the judgments reported at **(1997) 7 SCC 550 (Chief General Manager, State Bank of India v. Bijoy Kumar Mishra)**, **(2019) 17 SCC 157 (Durgabai Deshmukh Memorial Senior**

***Secondary School v. J.A.J. Vasu Sena*) and (1989) 3 SCC 311 (*Sumati P. Shere Dr. v. Union of India*).**

10. On the point of stigma, it has been argued on behalf of the petitioner that the impugned termination order dated October 4, 2016, is stigmatic and not a termination simpliciter. It has been highlighted that the impugned order of termination was issued on the ground that her performance was "unsatisfactory" and "detrimental" to the best interest of the university.

11. It has been further argued that the letter dated October 4, 2016, mentions that the petitioner has been dismissed pursuant to the Aliah University Council meeting held on October 3, 2016. The minutes of the meeting clearly suggest that the Council discussed the report of the Facts Finding Committee which was placed before the Council in its 24th meeting held on February 27, 2016. The report of the Facts Finding Committee as discussed by the university clearly found the petitioner guilty of some misconduct. The committee found that the petitioner was guilty of wrongly confining the students after closing the door and that she threatened students with dire consequences. Other allegations are that the petitioner has lost the answer scripts of the students and she made some caustic remarks against the head of the department and the Registrar of the university. The petitioner also was charged with the allegation that she was responsible for destroying a computer of the department. Therefore, the

report of the Facts Finding Committee as referred to in the minutes of the Council dated October 3, 2016, read with the statements made in the impugned letter of termination dated October 4, 2016, without any doubt proved that termination of the petitioner was nothing but a stigmatic discharge.

12. In support of such contention, the learned advocate for the petitioner has placed reliance on the decision of the Supreme Court reported at **(1999) 3 SCC 60 (*Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta*)** and **(2020) 12 SCC 426 (*Dr Vijaykumaran C.P.V. v. Central University of Kerala*)**.

13. Finally, the petitioner has drawn the attention of this Court to page 14 of the affidavit-in-reply of the petitioner, which is a letter addressed to the Special Secretary to the Governor of West Bengal, relating to the termination of service of the petitioner, written by Professor Nagraj, who was a member of the Evaluation Committee. It has been highlighted that the said professor has clearly stated in his letter that the decision to remove the petitioner from service was against the principle of natural justice and also draconian in his opinion and he appealed to the Governor to take corrective measures to reinstate the petitioner to her original post and render justice to her.

14. On behalf of the university, it has been submitted that Aliah University came into existence by operation of the Aliah University Act,

2007, which was published in the official gazette on February 20, 2008. Neither the appointment letter nor the first Statute of the university contains any rule as to automatic confirmation or deemed confirmation. At the time of employment of the petitioner, the Aliah University Act, 2007, did not contain any provision as to probation and, therefore, the relationship of the parties would be governed by the contract of employment dated February 28, 2013. The service of the petitioner was subsequently extended dated March 19, 2015, and such extension was not challenged by the petitioner. During the existence of the probation period of the petitioner, the university introduced another Statute in the exercise of the power under Section 55 (2) of the Act of 2007, which came into force on August 10, 2016. Section 57 (3) of the said Statute provides as follows:

“(3) No teacher of the University shall be confirmed in his/her post unless he/she has fulfilled the conditions laid down in the contract of his/her appointment and unless the Shaikh-ul-Jamia (Vice-Chancellor), on the recommendation of the Dean of the Faculty and Head of the Department concerned, if such posts are not vacant, testifies to his/her fitness for confirmation.”

15. Therefore, with the introduction of the said Statute on August 10, 2016, any probationer who was still working as the probationer on that day became bound by the said Rule which required an express act on the part of the university to confirm the service of the petitioner. The appointment letter of the petitioner clearly indicated that the probation of the petitioner would continue till the university took a decision.

16. It has been further argued that Aliah University is a minority institution, governed under Article 30 of the Constitution of India. The university does not take any grants from the University Grants Commission. In order to attract the regulations of the University Grants Commission, the university has to have aid and funds from the University Grants Commission under Section 26 of the University Grants Commission Act, 1956. In support of such contention, the university relied upon a decision reported at **(2002) 8 SCC 481 (*T.M.A. Pai Foundation v. State of Karnataka*)**.

17. It has further been submitted that the letter of appointment of the petitioner did not indicate that the UGC Regulations, 2010, was to be applied to the petitioner. On the issue of “deemed confirmation”, the university has placed reliance upon the judgment reported at **(2001) 7 SCC 161 (*High Court of M.P. v. Satya Narayan Jhavar*)**, **(2010) 8 SCC 155 (*Kazia Mohammed Muzzammil v. State of Karnataka*)** and **(2012) 4 SCC 793 (*Head Master, Lawrence School, Lovedale v. Jayanthi Raghu*)**, to argue that when the petitioner joined the service neither the letter of appointment contained any provision for deemed confirmation nor any rule to that effect was there. The position remained unchanged till further Statute was introduced, which required a positive action on the part of the employer for confirmation of the probationary. Therefore, it

cannot be stated that the service of the petitioner was automatically confirmed.

18. On the point of applicability of the UGC Regulations, 2010, it has, further, been submitted by the university that the present case relates to the appointment and non-extension of a probationer teacher which falls under the Entry 25 of List III and not under Entry 66 of List I. The educational qualification of the petitioner is not an issue in the writ petition. The university argues that the letter of the termination dated October 4, 2016, is not at all stigmatic and is based on the finding and recommendations of the Evaluation Committee report. The said report does not attract the test to determine whether in substance an order of termination is punitive. The Evaluation Committee was formed pursuant to the direction of the High Court in WP 4835 (W) of 2016, which was absolutely between the head of the department, the other faculty students and the petitioner. The same does not touch upon any allegation of misconduct or moral turpitude or any finding of guilt to that effect. There was no formal enquiry ever held. Those were all at the stage of preliminary facts finding on the complaints between two teachers. Therefore, it does not attract the test of stigma. On the point of stigmatic discharge, the university has placed reliance upon the judgments reported at **(2002) 1 SCC 520 (*Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences*)**, **(2011) 4 SCC 447 (*Rajesh Kumar Srivastava v.***

State of Jharkhand) and **(2020) SCC OnLine SC 337 (Rajasthan High Court v. Ved Priya)**. It has been submitted that the university though does not admit that there was any stigma attached to the letter of termination, but it is still willing to delete or expunge any word appearing in the letter of termination, which this Court may direct.

19. The relevant order of termination dated October 4, 2016, is quoted below *in extenso*:

“I am directed to inform you that the Aliah University Council in its 27th meeting held on 3rd October 2016 has examined your performance during your probation period extended from time to time as Assistant Professor in Journalism & Mass Communication of the University as unsatisfactory and detrimental to the best interest of the University.

Further, I have been directed to intimate you the decision of the Aliah University Council Meeting of the University held on 3rd October 2016 that your appointment in the post of Assistant Professor in Journalism & Mass Communication under this University is neither confirmed nor your period of probation will be extended any further.

This decision will take immediate effect and salary for the month as mentioned in Aliah University Act, 2007 will be paid to you shortly.”

20. Let me first deal with the question as to whether the said order of termination can be said to be a stigmatic one.

21. The celebrated judgment of the Supreme Court reported at **(1999) 3 SCC 60 (Dipti Prakash Banerjee v. Satyendra Nath Bose National**

Centre for Basic Sciences, Calcutta) makes the position of law clear. The relevant paragraph of the said judgment is quoted below:

“**21.** If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as “*founded*” on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.”

22. Keeping in mind the aforesaid proposition of law, the factual aspects involved in this case need to be looked into.

23. The termination order *ex-facie* suggests that the Aliah University Council in its 27th meeting dated October 3, 2016, found the performance of the petitioner during the probation period as extended from time to time as unsatisfactory and detrimental to the best interest of the university. The relevant resolution is quoted below:

“Regarding confirmation of service of Mrs. Mou Mukherjee Das was discussed elaborately. Based on the Evaluation Committee’s report dated 01/10/2016 as well as Facts Finding Committee’s Report which was placed on 24th Council Meeting

held on 27th February 2016, it is unanimously resolved that the probation period of Mrs. Mou Mukherjee Das should not be extended anymore. In addition, it was resolved that her service should be terminated due to unsatisfactory performance and negligence of duty. Furthermore, it is also resolved that the Registrar should serve her a termination letter with immediate effect.”

24. It is, therefore, clear that the decision, not to confirm the service of the petitioner, was taken on the basis of the Evaluation Committee’s report dated October 1, 2016, and the Facts Finding Committee’s report placed before the Council on February 27, 2016. The Facts Finding Committee in the said report observed, *inter alia*, as follows.

- a) Attendance of the petitioner at the university was very poor. She took only two classes in one semester. She took leaves as per her whims.
- b) Eight students of her faculty lodged complaints that she wrongfully confined them in the classroom by closing the door and threatened them with dire consequences.
- c) She also admitted to losing the answer scripts of the students of her faculty.
- d) She also admitted that the computer of her faculty became idle for about four to five months due to her mishandling during the absence of the head of the department.

- e) She undermined the guest faculty members and made caustic remarks against the Registrar of the university.
- f) She engaged in gross indiscipline relating to her attendance.
- g) She had misbehaved with her colleague.
- h) The highest authority of the university was also not spared by the diatribe of the petitioner and tacit threat to the committee suggesting that she won a case against Burdwan University.

25. Ultimately, the Facts Finding Committee concluded as follows:

“It would not be congenial to keep such type of disgruntled Faculty Member in any University for the teaching of students who wrongfully confined the students and had threatened them with dire consequences.”

26. The Evaluation Committee in its meeting held on October 1, 2016, quite interestingly, concluded as follows:

“Under these circumstances, the members of the Committee are not in a position to take a final decision regarding the confirmation of her service. It may be noted that Mrs. Mou Mukherjee Das has already completed 3 years 6 months 13 days of service as on date. The findings of the Committee may be placed before the members of the Aliah University Council for taking a final decision in this regard.”

27. There is no scope to read the said order of termination dated October 4, 2016, in isolation from the report of the Facts Finding Committee dated

January 28, 2016, and the report of the Evaluation Committee dated October 1, 2016. This position of law is clear from the judgment of the Supreme Court reported at **(2020) 12 SCC 426 (*Dr Vijayakumaran C.P.V. v. Central University of Kerala*)**. The relevant part of the said judgment is quoted below:

“8. It is well-established position that the material which amounts to stigma need not be contained in the order of termination of the probationer, but might be contained in “any document referred to in the termination order”. Such reference may inevitably affect the future prospects of the incumbent and if so, the order must be construed as ex facie stigmatic order of termination. A three-Judge Bench of this Court in *Indra Pal Gupta v. Model Inter College* had occasion to deal with somewhat similar situation. In that case, the order of termination referred to the decision of the Managing Committee and subsequent approval by the competent authority as the basis for termination. The resolution of the Managing Committee in turn referred to a report of the Manager which indicated serious issues and that was made the basis for the decision by the Committee to terminate probation of the employee concerned.”

28. The facts and circumstances leading to the order of termination as impugned in the writ petition are similar to the aforesaid cases.

29. The order of termination refers to the resolution of the Executive Council of the university dated October 3, 2016, and the resolution was based upon the Evaluation Committee’s report and the Facts Finding Committee’s report. A bare reading of the content of the Facts Finding Committee report leaves no room for doubt that the said report was

stigmatic. The material, which amounts to stigma, needs not to be contained in the order of termination but might be contained in any document referred to in the termination order or its annexure. It is not a case of motive rather it is a clear case of foundation and, therefore, a regular disciplinary proceeding ought to have been conducted against the petitioner by the university in the present case. I am, therefore, of the definite view that the present order of termination is stigmatic and the petitioner's service could not have been terminated by the university.

30. Therefore, the judgments relied upon by the university on point of stigma are not applicable in the facts of the case though there cannot be any quarrel with the abstract propositions of law as laid down therein.

31. Law relating to confirmation of a probationer's service after the expiry of initial period of probation has already been crystallised by the different judgments of the Supreme Court. There cannot be any dispute with regard to the proposition of law as laid down in the judgments reported at **(1997) 7 SCC 550 (Chief General Manager, State Bank of India v. Bijoy Kumar Mishra)**, **(2019) 17 SCC 157 (Durgabai Deshmukh Memorial Senior Secondary School v. J.A.J. Vasu Sena)** and **(1989) 3 SCC 311 (Sumati P. Shere Dr. v. Union of India)** and **(2001) 7 SCC 161 (High Court of M.P. v. Satya Narayan Jhavar)**, **(2010) 8 SCC 155 (Kazia Mohammed Muzzammil v. State of Karnataka)** and **(2012) 4 SCC 793 (Head Master, Lawrence School, Lovedale v. Jayanthi Raghu)**.

32. The aforesaid judgments make it clear that the probation period and the deemed confirmation of service after the expiry of probation period depend on the applicable service rules. There can be cases where the rules require a definite act on the part of the employer before an officer on probation can be confirmed. There may be rules or regulations requiring the competent authority to examine the suitability of the probationer and then upon recording its satisfaction issue an order of confirmation. Under the rules of this nature, the question of automatic confirmation will not arise. Where the rules do not contemplate issuance of such a specific order in writing but merely require that there will not be any automatic confirmation or some acts other than issuance of specific orders are required to be performed by the parties, even in those cases the deemed confirmation doctrine is not attracted. Wherein the service rules or in the letter of appointment, a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the probationer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases, there is no bar against termination at any point of time after the expiry of period of probation, but the cases where there is a provision for initial probation and a maximum period of extension is also provided beyond which it is not permissible to extend probation, the probationer

concerned is deemed to have been confirmed upon expiry of the maximum period of probation.

33. The question remains to be decided whether the petitioner's probation period will be governed by her letter of appointment dated February 28, 2013, and further Statutes 2016, framed under Section 55(2) of the Aliah University Act, 2007, as suggested by the university or by the UGC Regulations, 2010, as contended by the petitioner. Significantly, they differ from each other and the outcome of this writ petition hinges on the said question. It is necessary to reproduce the relevant part of the aforesaid appointment letter and the Regulations.

34. The further Statutes 2016, of the university came into force from August 10, 2016, and Statute 57 (3) thereof provides as follows:

*“Terms and
Conditions
of
University
Teachers.*

57. (3) No teacher of the University shall be confirmed 34in his/her post unless he/she has fulfilled the conditions laid down in the contract of his/her appointment and unless the Shaikh-ul-Jamia (Vice-Chancellor), on the recommendation of the Dean of the Faculty and Head of the Department concerned, if such posts are not vacant, testifies to his/her fitness for confirmation.”

35. The relevant part of the appointment letter of the petitioner is quoted below:

“Dear Mrs. Das,

I am directed to inform you that you have been appointed to the post of Assistant Professor on substantive basis in the department of Journalism and Mass Communication of this University (vide Agenda No.2 of Executive Council Meeting held on 27.02.2013) in the present scale of pay with usual allowances.

You will remain on probation for a period of one year or till such time as will be decided by the University with effect from the date of your joining.

You will have to abide by the Service Rules of the University in existence and as framed and/or amended from time to time in future. You will also be guided by the West Bengal University Teachers Service rules and rules made thereunder in addition to the Government Orders and Rules and Statutes/Regulation/Rules/Ordinances, Act of the University.

...

36. The relevant part of the UGC Regulations, 2010 reads:

“11.0 PERIOD OF PROBATION AND CONFIRMATION

11.1. The minimum period of probation shall be one year extendable by a maximum period of one more year in case of unsatisfactory performance.

11.2. The confirmation at the end of one year shall be automatic, unless extended for another year by a specific order, before expiry of the first year.

11.3 Subject to this Clause 11, it is obligatory on the part of the university/the concerned institution to issue an order of confirmation to the incumbents within 45 days of completion of probationary period after due process of verification of satisfactory performance.

11.4 Probation and confirmation rules are applicable only at the initial stage of recruitment, issued from time to time, by Central Government.

11.5 All other Central Government rules on probation and confirmation shall be applicable mutatis mutandis.”

37. The petitioner was appointed as a probationer on February 28, 2013, *inter alia*, on the condition that she would remain on probation for a period of one year or till such time as would be decided by the university with effect from the date of her joining.

38. After the completion of one year, the Evaluation Committee of the university in its meeting dated April 8, 2014, considered the confirmation of the petitioner's service. Though the relevant head of the department recommended confirmation of service, the subject expert recommended that her probation period should be extended by one year and ultimately, the Aliah University Council extended the probation period for another one year with effect from March 19, 2014. On April 11, 2015, the university Council suggested that recommendations from the respective head of the departments were mandatory requirements for confirming the service of the petitioner, and ultimately, the Aliah University Council on October 3, 2016, resolved to terminate the service of the petitioner. Therefore, it is clear that the petitioner's service was terminated after more than three and half years of service as a probationer.

39. At the relevant point of time, when the petitioner was appointed, there was no provision in the Aliah University Act, 2007, to govern the probation period.

40. Aliah University comes within the definition of "University" within the meaning of Section 2(f) of the University Grants Commission Act, 1956.

41. Clause 1.2 of the UGC Regulations, 2010, is quoted below:

“1.2. They shall apply to every university established or incorporated by or under a Central Act, Provincial Act or a State Act, every institution including a constituent or an affiliated college recognized by the Commission, in consultation with the university concerned under Clause (f) of Section 2 of the University Grants Commission Act, 1956 and every institution deemed to be a university under Section 3 of the said Act.”

42. It has been held by the Supreme Court in a judgment reported at **(2022) 5 SCC 179 (Gambhirdan K. Gadhvi v. State of Gujarat)** as follows:

“50. It cannot be disputed that the UGC Regulations are enacted by the UGC in exercise of powers under Sections 26(1)(e) and 26(1)(g) of the UGC Act, 1956. Even as per the UGC Act every rule and regulation made under the said Act, shall be laid before each House of Parliament. Therefore, being a subordinate legislation, UGC Regulations becomes part of the Act. In case of any conflict between the State legislation and the Central legislation, Central legislation shall prevail by applying the rule/principle of repugnancy as enunciated in Article 254 of the Constitution as the subject “education” is in the Concurrent List (List III) of the Seventh Schedule to the Constitution. Therefore, any appointment as a Vice-Chancellor contrary to the provisions of the UGC Regulations can be said to be in violation of the statutory provisions, warranting a writ of quo warranto.”

43. The Supreme Court in the judgment reported at **(1995) 4 SCC 104 (State of T.N. v. Adhiyaman Educational & Research Institute)** held, *inter alia*, as follows:

“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 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 the Central authority to short-list 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. ...”

44. The same view has been followed in a subsequent judgment of the Supreme Court reported at **(2015) 6 SCC 363** (*Kalyani Mathivanan v. K.V. Jeyaraj*).

45. I cannot accept the contention of the university that while the qualification of a Vice-Chancellor is governed by Entry 66 of List I, the instant case relates to the extension of a probationer teacher, and therefore, it falls under the Entry 25 of List III, and not under Entry 66 of List I. The period of probation and confirmation have also been prescribed in Clause 11.0 of the UGC Regulations, 2010, and there cannot be any difficulty in tracing the said provision to Entry 66 of List I since confirmation of a probationer’s service is an integral part of process of appointment and relatable to measures for the maintenance of standards in higher education.

46. Mere application of UGC Regulations, 2010, in my view, does not amount to interference with the right of administration of minorities. The facts of the present case are totally distinguishable and the answer to the question no. 5(c) in paragraph 161 of the judgment reported at **(2002) 8**

SCC 481 (*T.M.A. Pai Foundation v. State of Karnataka*) has got no manner of application in the present case.

47. It has been held by the Supreme Court in a judgment reported at **(2004) 6 SCC 224 (*Brahmo Samaj Education Society v. State of W.B.*)** as follows:

“7. But that control cannot extend to the day-to-day administration of the institution. It is categorically stated in *T.M.A. Pai* (SCC at p. 551, para 72) that the State can regulate the method of selection and appointment of teachers after prescribing requisite qualification for the same. Independence for the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution. The State can very well provide the basic qualification for teachers. Under the University Grants Commission Act, 1956, the University Grants Commission (UGC) had laid down qualifications to a teaching post in a university by passing Regulations. As per these Regulations UGC conducts National Eligibility Test (NET) for determining teaching eligibility of candidates. UGC has also authorised accredited States to conduct State-Level Eligibility Test (SLET). Only a person who has qualified NET or SLET will be eligible for appointment as a teacher in an aided institution. This is the required basic qualification for a teacher. The petitioners' right to administer includes the right to appoint teachers of their choice among the NET-/SLET-qualified candidates.”

48. There has been no interference from the State or Union in the decision to terminate the service of the petitioner. The university has the authority to take the decision without any interference from the external controlling agency. Mere prescription of a probation period does not

amount to interference with the day-to-day management like the appointment of staff and administrative control over them and it does not violate Article 30 of the Constitution of India.

49. I am of the view that the said UGC Regulations, 2010 shall prevail over the State enactment or university statutes or the rules framed thereunder or the terms of the appointment letter.

50. Therefore, in my view, the period of probation and the confirmation of the petitioner have to be decided in the light of the UGC Regulations, 2010 only.

51. Clause 11.1 of the UGC Regulations, 2010, as quoted above, makes it clear that the period of probation can be for a maximum period of two years, and under no circumstances the same can extend beyond two years. In the present case, it has also been noted that the petitioner has already served as a probationer for more than three and a half years. Therefore, I am of the view that the petitioner shall be deemed to be confirmed in her service after two years of probation.

52. Accordingly, the resolution of Aliah University Council adopted on October 3, 2016, and the decision of the Council as communicated to the petitioner by a letter dated October 4, 2016, are set aside. The university will treat the petitioner to be a permanent teaching staff of the university with effect from March 20, 2015. The university, within a period of seven days from the date of communication of this order, shall reinstate her in

service with the status of permanent teaching staff with effect from March 20, 2015.

53. In the facts and circumstances of the case, the petitioner shall also be entitled to 50 percent back wages. Such back wages also shall be paid to the petitioner within a period of four weeks from the date of communication of this order.

54. Accordingly, W.P.A. No. 24825 of 2016 is allowed.

55. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)