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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 25.09.2023**

**PRONOUNCED ON : 17.11.2023**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P.(MD)No.3008 of 2021**

**and**

**W.M.P.(MD)No.2413 of 2021**

The American College,  
Rep. By its Principal & Secretary,  
Thallakullam,  
Madurai – 625002.

... Petitioner

Vs.

1.The University Grants Commission,  
Rep. By its Secretary,  
Bahadur Shah Zafar Marg,  
New Delhi – 110002.

2.The Madurai Kamarajar University,  
Rep. By its Registrar,  
Palkalai Nagar,  
Madurai - 625021.

... Respondents

**PRAYER** : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the



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records relating to the impugned order made by the second respondent in REF:CDC-1/COMM/1/2020-21 and quash the same as illegal and consequently direct the second respondent to accord qualification approval for the teachers appointed by the petitioner College within the time.

|                |                                                            |
|----------------|------------------------------------------------------------|
| For Petitioner | : Mr.Ajmal Khan Senior Counsel<br>For M/s.Ajmal Associates |
| For R1         | : Mr.V.Maharaja                                            |
| For R2         | : Mr.T.Sakthikumaran, Senior Counsel                       |

### **ORDER**

***The prayer in the writ petition reads as follows:-***

*This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of the second respondent in REF:CDC-1/COMM/1/2020-21 and to direct the second respondent to accord qualification approval for the teachers appointed by the petitioner College within the time.*

***The case of the petitioner in nutshell is as follows:-***

2.The petitioner is the Principal and Secretary of the American College, Madurai which is a Minority Educational Institution, established by the American Christian Missionaries in the year 1841. The same has



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been administered by the Governing Council of American College, which is a Society comprising of members belonging to the Christian minority community. Since the Christian community being less than 50% of the total population of the State of Tamil Nadu, the said community is a religious minority community as per the decision of the Hon'ble Apex Court in ***T.M.A.Pai Foundation v. State of Karnataka*** reported in **2002 (8) SCC 481**. The State of Tamil Nadu has also recognised the petitioner college to be a religious minority educational institution and thus the petitioner college is entitled to administer the said institution free from the State interference in light of the Constitutional guarantee under Article 30(1) of the Constitution of India.

3.In view of various permanent vacancies which arose in the petitioner's college, the Directorate of Collegiate Education by its proceedings dated 23.10.2020, approved and permitted the petitioner college to fill up two vacancies in the post of Assistant Professor in the Department of Economics, two vacancies in the Department of English and one vacancy in the Department of Chemistry. The petitioner college in furtherance to the same, made the following appointments as against



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the said vacancies:-

| <b>Name of the candidates</b> | <b>Post</b>                      | <b>Date of appointment</b> |
|-------------------------------|----------------------------------|----------------------------|
| Dr.M.Gnanamani                | Assistant Professor of Economics | 11.11.2020                 |
| Dr.R.Pazhanichamy             | Assistant Professor of Economics | 11.11.2020                 |
| Mr.M.Josiah Immanuel          | Assistant Professor of English   | 18.11.2020                 |
| Dr.N.Janane                   | Assistant Professor of English   | 19.11.2020                 |
| Dr.J.Dhaveethu Raja           | Assistant Professor of Chemistry | 10.11.2020                 |

4.The said candidates having fulfilled the requisite qualification for their corresponding appointment and having satisfied the educational qualifications and other parameters stipulated in the University Grants Commission minimum qualification for appointment of Teachers and other Academic Staff in Universities and Colleges and other measures for the maintenance of standards in Higher Education Regulations, 2018 (hereinafter referred to as UGC Regulation 2018), the candidates were appointed against the permanent vacancies qua aided posts. The petitioner college had submitted proposals to the second respondent University to grant qualification approval for the said appointees vide



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proposals dated 12.11.2020. 18.11.2020 and 19.11.2020.

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5.However, to the shock and dismay of the petitioner college, the second respondent passed the impugned order dated 31.12.2020, rejecting the proposal and returned the proposals on the ground that the composition of the selection committee for the recruitment of the aforementioned Assistant Professor posts is not in accordance with the UGC Regulations 2018. Challenging the same, this Writ Petition came to be filed.

***Submissions :-***

6.The learned Senior counsel Mr.Ajmal Khan, for M/s.Ajmal Associates, appearing for the petitioner submitted that the impugned order is exfacie illegal, arbitrary and violative of Article 14 of Constitution of India. He further submitted that the said order is contrary to law as declared by this Court in ***Forum of Minority Institutions and Associations v. State of Tamil Nadu*** reported in ***2011(1) CTC 162***.



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7.He vehemently submitted that Regulation V.1.4 is identical to the composition provided for the selection committee for appointment of Assistant Professors in colleges under UGC Regulations, 2010 and the same held the field prior to the present regulations of 2018. When qualification approvals were denied to appointments made by minority educational institutions on the ground of the composition of the selection committee not being in accordance with the Regulation 2010, the Writ Petitions came to be filed on the file of Hon'ble Division Bench of this Court in the case of ***Forum of Minority Institutions and Associations v. State of Tamil Nadu*** reported in ***2011(1) CTC 162*** and after referring to various decisions of the Hon'ble Apex Court of India, this Court categorically held that UGC Regulations providing for composition of the selection committee for appointment of teaching staffs in colleges under the UGC Regulations 2010 does not apply to the minority educational institutions, as forcing the minority educational institutions to select candidates of their choice through a selection committee as preferred by the Regulations which also includes nominees from external authorities, renders the right to administration guaranteed under Article 30(1) of the Constitution of India, illusory. In as much as the impugned



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order has been made rejecting the approval only on the ground that the composition of the selection committee is not in accordance with UGC Regulations 2018, which is identical to the Regulations considered by the Hon'ble Division Bench of this Court is without authority of law and is *per se* illegal.

8.He vehemently submitted that UGC regulations 2018 would be applicable to minority educational institutions only in so far as it provides for necessary qualifications education other than the purpose of appointment. However, other provisions such as composition of selection committee or procedure for selection as provided under the UGC Regulations are not applicable to the minority educational institutions. Hence, the impugned order made by the second respondent University is in violation of the petitioner's fundamental right guaranteed under Article 30(1) of the Constitution of India. Due to the rejection of the qualification approval on an unjustified ground, the petitioner college has been deprived of teaching faculty and the petitioner college is put to utmost hardship and irreparable loss.



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9.In view of the same, the learned Senior counsel for the petitioner pressed for quashing the impugned order and consequently direct the second respondent to accord qualification approval for the teachers appointed by the petitioner college. While concluding the arguments, the learned Senior counsel for the petitioner submitted that the case as against the first respondent UGC has been given up by the petitioner college.

10.Per contra the learned counsel Mr.T.Sakthikumaran appearing for the second respondent submitted that the proposals for qualification approval submitted by the petitioner college was returned by the University on the ground that the selection of the said persons were not in accordance with the UGC Regulations especially Clause V.1.4 which provides for composition of the Selection Committee for appointment of Assistant Professors in Colleges including private and Constituent Colleges.

11.The reason for the said impugned order is because the second respondent University adopted the UGC Regulations on minimum



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qualification for appointment of the Teachers and other academic staffs in Universities and colleges and measure for maintenance of standard in Higher Education, 2018 and the same was approved by the Academic council and Senate on 26.03.2019 and 29.03.2019 respectively and a communication dated 15.04.2019 had already been intimated to all the affiliated colleges that UGC Regulations 2018 is implemented to the affiliated college of this University and the same shall come into force from the date of notification I.e., from 18.07.2018.

12.The entire crux of the petitioner's case rests on the arguments that Clause 3, Annexure of UGC Regulations 2000 has already been struck down by the Hon'ble Division Bench of this Court in the case of ***Forum of Minority Institutions and Associations v. State of Tamil Nadu*** reported in ***2011(1) CTC 162***. In the said case, the very Clause 3, Annexure of UGC Regulations 2000 was challenged and it was put to test and as per the law prevailing as on the date, it was held to be invalid and it was declared that the Clause 3, Annexure of UGC Regulation, 2000 is not necessary for appointment of Assistant Professor in Minority Institutions. However, in the present case, the Clause V.1.4 of UGC



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Regulations, 2018 has not been challenged so far and thus the impugned communication following the impugned order dated 31.12.2020 following UGC Regulations 2018 cannot be set aside and the writ petition is liable to be dismissed.

13. Heard Mr. Ajmal Khan, learned Senior counsel for M/s. Ajmal Associates, appearing for the petitioner, Mr. T. Sakthikumaran learned counsel appearing for the second respondent and perused the entire materials available on record.

***Analysis:-***

14. The petitioner college vide letters dated 12.11.2020, 18.11.2020 and 19.11.2020 had submitted proposals for approval of educational qualification of five Assistant Professors, who were appointed in the petitioner college as Assistant Professor of Economics, Assistant Professor of English and Assistant Professor of Chemistry on 11.11.2020, 18.11.2020, 19.11.2020, 10.11.2020 respectively to the second respondent University. On receipt of the same, the second respondent University had returned the said proposals sent by the



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petitioner college informing that the academic counsel and Senate of the second respondent University dated 26.03.2019 and 29.03.2019 approved and implemented UGC Regulations for minimum qualifications for appointment of the Teachers and other academic staffs in Universities and Colleges and measure for maintenance of standard in Higher Education 2018, dated 18.07.2018 and the same has been communicated to all the affiliated colleges. Further it was communicated vide impugned order dated 31.12.2020. Since the selection committee for the recruitment of Assistant Professors was not in terms of UGC Regulations 2018 guidelines (Section V.1.4) with reference to the minority institution, the proposals are duly returned for compliance of the same.

15.UGC Regulations 2018 provides for the following composition for the selection committee for appointment of Assistant Professors on the Colleges vide Regulations V.1.4 and the same is extracted as under:-

***“5.1 – Selection Committee Composition:***

***V. Assistant Professor in Colleges, including Private and Constituent Colleges:***

***(a) The Section Committee for the post of Assistant Professor in Colleges, including Private and constituent***



Colleges shall consist of the following persons:

i) Chairperson of the Governing Body of the college or his/her nominees from amongst the members of the Governing body, who shall be the Chairperson of the Committee.

ii) The Principal of the College.

iii) Head of the Department/Teacher-in-charge of the subject concerned in the College.

iv) Two nominees of the Vice-Chancellor of the affiliating university, of whom one should be a subject-expert. In case of colleges notified/declared as a minority educational institution, two nominees of the Chairperson of the college from out of a panel of five names, preferably from the minority community, **recommended by the Vice Chancellor of the affiliating university, from the list of experts suggested by the relevant statutory body of the college, of whom one should be a subject-expert.**

v) Two subject-experts not connected with the college who shall be nominated by the Chairperson of the College governing body out of a panel of five names recommended by the Vice-Chancellor from the list of subject experts approved by the relevant statutory body of the university concerned. In case of colleges notified/declared as minority educational Institutions, **two subject experts not connected**



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*with the University nominated by the Chairperson of the Governing Body of the College out of the panel of five names, preferably from the minority communities, recommended by the Vice Chancellor from the list of subject experts approved by the relevant statutory body of the College.*

*vi) An academician representing SC/ST/OBC/Minority/Women/Differently-abled categories, if any of candidates belonging to any of these categories is the applicant, to be nominated by the Vice-Chancellor, if any of the above members of the selection committee does not belong to that category.”*

16.Clause V.1.4 mandates that in case of colleges notified/declared as a minority educational institution, two nominees of the Chairperson of the college from out of a panel of five names, preferably from the minority community, recommended by the Vice Chancellor of the affiliating University, from the list of experts suggested by the relevant statutory body of the college, of whom one should be a subject-expert should be a part of the selection committee. However, the petitioner college without incorporating two nominees of Chairperson of petitioner college as mandated in Clause V.1.4 in the selection committee had



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proceeded to appoint two Assistant Professors of Economics, two Assistant Professors of English and one Assistant Professor of Chemistry, following which the proposals seeking qualification approval of the said candidates was forwarded to the second respondent University vide proposals dated 12.11.2020, 18.11.2020 and 19.11.2020 respectively.

17.The learned Senior counsel appearing for the petitioner categorically submitted that the said Clause V.1.4 of the UGC Regulations 2018 is identical to the Clause 3, Annexure of UGC Regulations 2000, which was struck down by the Hon'ble Division Bench of this Court in the case of ***Forum of Minority Institutions and Associations v. State of Tamil Nadu*** reported in ***2011(1) CTC 162***. In view of the same, he reiterated that UGC Regulations providing for the composition of the selection committee for appointment of teaching staffs in colleges does not apply to the minority educational institutions forcing the minority educational institutions to select the candidates of their choice through a selection committee which is not of their choice and such a right of administration to the minority institution is guaranteed under Article 30(1) of Constitution of India. The Hon'ble



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Apex Court in the case of ***Sk.Md.Rafique v. Managing Committee,***

***Contai Rahamania High Madrasah and others*** reported in (2020) 6

***SCC 689*** has dealt with the similar issue and the relevant portion of which is extracted as follows:-

*“47. When it comes to the right to appoint teachers, in terms of law laid down in TMA Pai Foundation<sup>8</sup> a regulation framed in the national interest must necessarily apply to all institutions regardless whether they are run by majority or minority as the essence of [Article 30\(1\)](#) is to ensure equal treatment between the majority and minority institutions. An objection can certainly be raised if an unfavourable treatment is meted out to an educational institution established and administered by minority. But if ensuring of excellence in educational institutions is the underlying principle behind a regulatory regime and the mechanism of selection of teachers is so designed to achieve excellence in institutions, the matter may stand on a completely different footing.*

*48. The test accepted in TMA Pai Foundation<sup>8</sup>, and the balance between two objectives can well be considered in the context of two categories of institutions; one imparting education which is directly aimed at or dealing with preservation and protection of the heritage, culture, script and special characteristics of a religious or a linguistic minority; while the second category of institutions could be those which*



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*are imparting what is commonly known as secular education.*

*When it comes to the institutions in the former category, the teachers who believe in the religious ideology or in the special characteristics of the concerned minority would alone be able to imbibe in the students admitted in such educational institutions, what the minorities would like to preserve, profess and propagate. But, if the subjects in the curriculum are purely secular in character, that, is to say, subjects like Arithmetic, Algebra, Physics, Chemistry or Geography, the intent must be to impart education availing the best possible teachers. In the first category, maximum latitude may be given to the managements of the concerned minority institutions as they would normally be considered to be the best judges of what would help them in protecting and preserving the heritage, culture, script or such special features or characteristics of the concerned minorities. However, when it comes to the second category of institutions, the governing criteria must be to see to it that the most conducive atmosphere is put in place where the institution achieves excellence and imparts best possible education.*

*49.As laid down in the leading judgment in Ahmedabad St. Xavier's College<sup>5</sup> case, regulations which will serve the interest of the students so also regulations which will serve the interest of the teachers are of paramount importance in good administration; that regulations in the interest of efficiency of*



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*teachers are necessary for preserving harmony amongst the institutions; and that the appointment of teachers is an important part in educational institutions. It is quite natural that qualitatively better teachers will ensure imparting of education of the highest standard and will help in achieving excellence. As accepted in Frank Anthony Public School<sup>17</sup> case, the excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff and would in turn depend inter alia on the quality of teachers.*

*50. Thus, if the intent is to achieve excellence in education, would it be enough if the concerned educational institutions were to employ teachers with minimum requisite qualifications in the name of exercise of Right under [Article 30](#) of the Constitution, while better qualified teachers are available to impart education in the second category of institutions as stated hereinabove. For example, if the qualifying percentile index for a teacher to be appointed in an educational institution, considering his educational qualifications, experience and research, is required to be 50, and if teachers possessing qualifications far greater and higher than this basic index are available, will it be proper exercise for a minority educational institution to select teachers with lower index disregarding those who are better qualified? Will that subserve pursuit of excellence in education? One can*



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*understand if under the regulatory regime candidates who are otherwise less qualified are being nominated in the minority educational institution and the minority educational institution is forced to accept such less meritorious candidates in preference to better qualified candidates. In such cases, the minority educational institution can certainly be within its rights to agitate the issue and claim a right to choose better teachers. But if the candidates who are selected and nominated under the regulatory regime to impart education which is purely secular in character, are better qualified, would the minority institution be within its rights to reject such nomination only in the name of exercise of a right of choice? The choice so exercised would not be in pursuit of excellence. Can such choice then be accepted?*

*51.If the right is taken to be absolute and unqualified, then certainly such choice must be recognised and accepted. But, if the right has not been accepted to be absolute and unqualified and the national interest must always permeate and apply, the excellence and merit must be the governing criteria. Any departure from the concept of merit and excellence would not make a minority educational institution an effective vehicle to achieve what has been contemplated in various decisions of this Court. Further, if merit is not the sole and governing criteria, the minority institutions may lag behind the non-minority institutions rather than keep in step with them.*



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*52. Going back to the example given above, as against index of 50 i.e. the minimum qualifying index, if a candidate nominated under the regulatory regime is at an index of 85, selection by a minority educational institution of a candidate at an index 55 may certainly be above the minimum qualifying mark, but in preference to the one at the index of 85 who is otherwise available, the appointment of a person at the index level of 55, will never give the requisite impetus to achieve excellence. A meritorious candidate at the index level of 85 in the above example, if given the requisite posting will not only help in upholding the principle of merit but will in turn generate an atmosphere of qualitative progress and sense of achievement commensurate with societal objectives and ideology and such posting will, therefore, be in true national interest.*

18. In yet another case the Hon'ble Supreme Court in the case of ***Professor (Dr.) Sreejith P.S. v. Dr. Rajasree M.S. And others*** reported in ***2022 SCC online SC 1473*** has categorically held that UGC regulations shall prevail even if it is not specifically adopted by the State and the relevant portion of which is extracted as follows:-

*“20. Identical question came to be considered by this Court in the case of Gambhirdan K. Gadhvi (supra) and Kalyani Mathivanan (supra). Now, the issue whether the*



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*UGC Regulations shall prevail vis-à-vis the State legislation/[State Act](#), identical question came to be considered by this Court in the recent decision of this Court in the case of Gambhirdan K. Gadhvi (supra). While considering the appointment of the Vice Chancellor in the Sardar Patel University, Gujarat, it is specifically observed and held by this Court that the appointment of Vice Chancellor cannot be made dehors the applicable UGC Regulations, even if the [State Act](#) concerned prescribes diluted eligibility criteria, vis-à-vis the criteria prescribed in the applicable UGC Regulations. It is further observed and held by this Court in the aforesaid decision that the [State Act](#) if not on a par with the UGC Regulations, must be amended to bring it on a par with the applicable UGC Regulations and until then it is the applicable UGC Regulations that shall prevail. It is further observed and held that being a subordinate legislation, UGC Regulations become part of the Act. It is further observed and held that in case of any conflict between the State legislation and the Central legislation, the Central legislation, i.e., the applicable UGC Regulations shall prevail by applying the principle of repugnancy under [Article 254](#) of the Constitution as the subject “education” is contained in the Concurrent List of Schedule VII of the Constitution. The observations made in relevant paras are as under:-*



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*“20. Now the next question which is posed for consideration of this Court is, whether, the appointment of Respondent 4 as a Vice-Chancellor of the SP University — Respondent 2 herein can be said to be contrary to any statutory provisions and whether, can it be said that Respondent 4 fulfils the eligibility criteria for the post of Vice-Chancellor.*

*20.1. While examining the aforesaid issues the relevant provisions of the UGC Regulations, 2010 enacted in exercise of powers conferred under clauses (e) and (g) of sub-section (1) of Section 26 of the University Grants Commission Act, 1956 and the relevant provisions of the SPU Act, 1955, are required to be referred to.*

*20.2. The UGC Act, 1956 was enacted to make provision for the coordination and determination of standards in universities and for that purpose, to establish a University Grants Commission. [Section 12](#) deals with “Functions of the Commission”, while [Section 14](#) speaks of “Consequences of failure of universities to comply with recommendations of the Commission”. [Section 26](#) deals with “Power to make regulations”. As per [Section 28](#) the rules and regulations framed under the UGC Act are required to be laid before each House of Parliament and when both the Houses agree then rules and regulations can be given effect with such modification as may be made by Parliament. Therefore, any*



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regulation enacted in exercise of powers under [Section 26](#) can be said to be subordinate legislation.

20.3. For the appointment and career advancement of teachers in the universities and institutions affiliated to it, UGC by Regulation dated 4-4-2000, enacted the University Grants Commission (Minimum Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to it) Regulations, 2000. However, in the said Regulation of 2000, no qualifications were prescribed for the post of “Pro-Chancellor” or “Vice-Chancellor”.

21. Thereafter, the Government of India, Ministry of Human Resource Development Department of Higher Education, New Delhi by Letter No. 1-32/2006-U.II/U.I(i) dated 31-12-2008 communicated to the Secretary, University Grants Commission, New Delhi the Scheme of revision of pay of teachers and equivalent cadres in universities and colleges following the revision of pay scales of the Central Government employees on the recommendations of the 6th Central Pay Commission.

22. By the said letter, the Government of India directed that there shall be only three designations in respect of teachers in the universities and colleges, namely, Assistant Professors, Associate Professors and Professors. In the said letter revised pay scales, service conditions and Career



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*Advancement Scheme for teachers and equivalent positions including the post of Assistant Professors/Associate Professors/Professors in universities and colleges were intimated. Pay scales of Pro Vice-Chancellor/Vice-Chancellor were also mentioned therein. It was intimated that the said Scheme may be extended to the universities, colleges and other higher educational institutions coming under the purview of the State Legislature, provided the State Governments wish to adopt and implement the Scheme subject to the terms and conditions mentioned therein.*

*23. In view of the aforesaid Letter No. 1-32/2006-U.II/U.I(i), dated 31-12-2008 issued by the Government of India and in exercise of the powers conferred under clauses (e) and (g) of sub-section (1) of Section 26 of the UGC Act, 1956, UGC enacted the Regulations, 2010 in supersession of the UGC Regulations, 2000. It was published in the Gazette of India on 28-6-2010 and came into force with immediate effect.*

*XXXXXXXXXX*

*25. Regulation 7.4.0 mandates that the universities/State Governments shall modify or amend the relevant Acts/Statutes of the universities concerned within six months of adoption of these Regulations.*

*26. Thus, UGC Regulations, 2010, inter alia, prescribe in Regulation 7.3.0 that a person shall have ten years of*



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*teaching work experience as a Professor in a university system. It also provides for constitution of a Search Committee consisting of a nominee of the Visitor/Chancellor, a nominee of the Chairman of the UGC, a nominee of the Syndicate/Executive Council of the University and the Search Committee has to recommend the names of the successful candidates.*

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*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.” That thereafter and having found that the appointment of the Vice Chancellor in the Sardar Patel University was contrary*



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*to the UGC Regulations, 2010, this Court issued the writ of quo warranto. It is required to be noted that the decision of this Court in the case of Kalyani Mathivanan (supra) was also pointed out by this Court.*

*22.Even in the case of Kalyani Mathivanan (supra), it is observed in paragraph 53 that to the extent the State legislation is in conflict with the Central legislation including subordinate legislation made by the Central legislation under Entry 25 of the Concurrent List, the same shall be repugnant to the Central legislation and would be inoperative. It is also required to be noted that in the case of Kalyani Mathivanan (supra), this Court was considering the UGC Regulations, 2010, which were silent in regard to the post of Vice Chancellor .*

*23.The decision of this Court in the case of Gambhirdan K. Gadhvi (supra) has been subsequently followed by this Court in the recent decision of this Court in the case of Anindya Sundar Das & Ors (supra) while considering the appointment of the Vice Chancellor of Calcutta University. In the said decision, it is also observed and held in paragraph 56 that in view of the decision in the case of Gambhirdan K Gadhvi (supra), even if the provisions of the [State Act](#) allowed the appointment of the Vice Chancellor by the State government, it would have to be as per the UGC Regulations and any appointment of Vice Chancellor in*



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*violation of the UGC Regulations shall be void ab initio. It is further observed that the UGC Regulations shall become part of the statute framed by Parliament and, therefore, shall prevail.*

*24. In view of the above two binding decisions of this Court, any appointment as a Vice Chancellor made on the recommendation of the Search Committee, which is constituted contrary to the provisions of the UGC Regulations shall be void ab initio. If there is any conflict between the State legislation and the Union legislation, the Union law shall prevail even as per [Article 254](#) of the Constitution of India to the extent the provision of the State legislation is repugnant. **Therefore, the submission on behalf of the State that unless the UGC Regulations are specifically adopted by the State, the UGC Regulations shall not be applicable and the State legislation shall prevail unless UGC Regulations are specifically adopted by the State cannot be accepted.***

*25. Even otherwise, it is required to be noted that in the present case as such vide order dated 10.12.2010, the UGC Regulations have been specifically adopted by the State Government. At this stage, it is required to be noted that in the order dated 27.03.2010, while adopting/accepting the UGC Regulations, it is specifically observed in paragraph 5 that all the universities shall incorporate the UGC*



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*Regulations in their Statutes and Regulations within one month from the date of the said order and Government will initiate steps to amend the Acts of the Universities, if required to implement the Regulations. It is further mentioned in paragraph 5 that Government will also take the steps to amend the Special Rules to give effect to the stipulations of the UGC Regulations. **Merely because the subsequent amendment has not been specifically adopted/accepted by the State cannot be a ground by the State to contend that the amendment to the Regulations shall not be binding on the State/State's Universities. Therefore also, the UGC Regulations were applicable with respect to the appointment of Vice Chancellor in the respective Universities in the State and the appointment of the Vice Chancellor shall be always as per the relevant provisions of the UGC Regulations amended from time to time.***

19.A careful reading of the aforesaid judgments would make it clear that UGC Regulation would prevail even if the same has not been adopted by the State or the concerned University. However, in the instant case in hand, UGC Regulations 2018 has been promptly adopted by the State vide G.O.Ms.No.5 Higher Education (H-1) Department dated



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11.01.2021. Following which, the said G.O. was adopted by the second respondent University and the assent from His Excellency to Governor-Chancellor of Madurai Kamaraj University for the introduction of New Statute 1-A, in Chapter 8 of the University Act came to be approved on 28.02.2023. Thereafter, the second respondent University by its proceedings dated 10.04.2023 communicated to all the affiliated colleges that the said UGC Regulation 2018 has come into effect from 01.04.2020 as per G.O.Ms.No.5 Higher Education (H.1) Department dated 11.01.2021. Precisely the UGC Regulations 2018 has already been adopted and implemented by all the affiliated colleges with effect from 01.04.2020. However, the petitioner college had made appointments to the post of Assistant Professors of Economics, English and Chemistry on 10.11.2020, 11.11.2020, 18.11.2020 and 19.11.2020 respectively. Thereafter, the proposals dated 12.11.2020, 18.11.2020 and 19.11.2020 seeking qualification approval for the said appointments was forwarded to the second respondent University.

20.The adoption of UGC Regulations 2018 by the State was also duly communicated to all the affiliated colleges including the petitioner



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college vide official communication/circular of the second respondent University dated 15.04.2019 and the same was implemented by the second respondent University in all its affiliated colleges with effect from 01.04.2020. Despite being communicated duly by the second respondent University with respect to the adoption and implementation by UGC Regulations 2018 with effect from 01.04.2020, the petitioner college proceeded to make appointment contrary to Clause V.1.4 of UGC Regulations 2018. Hence, the respondent University has duly returned the proposals sent by the petitioner college vide impugned communication dated 31.12.2020.

21. When the Hon'ble Apex Court has already held that the UGC Regulations shall be applicable to those States even where the same is not specifically adopted by the State, in the instant case, UGC Regulations 2018 has already been adopted by the State vide G.O.Ms.No. 5 Higher Education (H.1) Department 11.01.2021 and also by the second respondent University by introduction of New Statue of 1-A, in Chapter VIII of the University Act. It is needless to state that UGC Regulations 2018 would prevail. It is pertinent to mention here that the second



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respondent University has not questioned the appointment of five candidates but has only returned the same for compliance of Clause V.1.4 of UGC Regulations 2018, with respect to the composition of selection committee. The petitioner college can very well comply with the mandates of Clause V.1.4 of UGC regulations 2018 and re-submit the proposal for qualification approval of the selected candidates before the second respondent University.

22.In view of the same, this Court is not inclined to interfere with the impugned communication dated 31.12.2020.

23.Accordingly, the Writ Petition stands dismissed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

**17.11.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes  
Mrn



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**L.VICTORIA GOWRI, J.**

Mrn

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**17.11.2023**