



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4691 OF 2022

Balasaheb Tukaram Pote,
Age : 43 Years, Occu. : Service
As Assistant Professor,
R/o Ganraj Niwas, H. No. 1-3-2358,
Flat No. 2, Chanakyapuri,
Beed, Tq. & Dist. Beed.

.. Petitioner

Versus

1. The State of Maharashtra,
Through Secretary
Higher and Technical Education
Department, Mantralaya,
Mumbai – 32.
2. The Director of Education
(Higher Education), Central
Building – III, B. J. Medical Road,
Pune.
3. Joint Director Higher Education,
Aurangabad Region,
Railway Station Road, Aurangabad.
4. Union of India,
Through its Secretary,
Ministry of Education,
Government of India,
New Delhi.
5. The University Grants Commission,
Bahadur Shaha Jafar Marg,
New Delhi.
6. Mrs. Kesharbai Sonajirao Kshirsagar
alias Kaku Arts, Science and Commerce
College, Beed, Tq. and
Dist. Beed.

.. Respondents

WITH

WRIT PETITION NO. 4698 OF 2022

Shrinivas Chandramoli Motekar,
Age : 42 Years, Occu. : Service
As Assistant Professor,
R/o 138/95, Shikshak Colony,
New Bhatwadgaon Vasahat,
Majalgaon, Tal. Majalgaon,
Dist. Beed.

.. Petitioner

Versus

1. The State of Maharashtra,
Through Secretary
Higher and Technical Education
Department, Mantralaya,
Mumbai – 32.
 2. The Director of Education
(Higher Education), Central
Building – III, B. J. Medical Road,
Pune.
 3. Joint Director Higher Education,
Aurangabad Region,
Railway Station Road, Aurangabad.
 4. Union of India,
Through its Secretary,
Ministry of Education,
Government of India,
New Delhi.
 5. The University Grants Commission,
Bahadur Shaha Jafar Marg,
New Delhi.
 6. Sunderrao Solanke Mahavidyalaya,
Majalgaon, Tq. Majalgaon,
Dist. Beed.
- .. Respondents

WITH

WRIT PETITION NO. 4704 OF 2022

Vijayamala Tanaji Ghuge,
Age : 44 Years, Occu. : Service
As Assistant Professor,
R/o Shivnagar, Plot No. 23,
Near Ghati Hospital, Jalna,
Tq. and Dist. Jalna.

.. Petitioner

Versus

1. The State of Maharashtra,
Through Secretary
Higher and Technical Education
Department, Mantralaya,
Mumbai – 32.
 2. The Director of Education
(Higher Education), Central
Building – III, B. J. Medical Road,
Pune.
 3. Joint Director Higher Education,
Aurangabad Region,
Railway Station Road, Aurangabad.
 4. Union of India,
Through its Secretary,
Ministry of Education,
Government of India,
New Delhi.
 5. The University Grants Commission,
Bahadur Shaha Jafar Marg,
New Delhi.
 6. Rashtramata Indira Gandhi College,
Jalna, Tal & Dist. Jalna.
- .. Respondents

**WITH
WRIT PETITION NO. 4716 OF 2022**

Vishal Vilasrao Naiknaware,
Age : 45 Years, Occu. : Service
As Assistant Professor,
R/o 'Muraliraj' Flat No. A2,
Varad Pride Residency,
Dhanura Road, Beed,
Tal & Dist. Beed.

.. Petitioner

Versus

1. The State of Maharashtra,
Through Secretary
Higher and Technical Education
Department, Mantralaya,
Mumbai – 32.
2. The Director of Education
(Higher Education), Central
Building – III, B. J. Medical Road,
Pune.
3. Joint Director Higher Education,
Aurangabad Region,
Railway Station Road, Aurangabad.
4. Union of India,
Through its Secretary,
Ministry of Education,
Government of India,
New Delhi.
5. The University Grants Commission,
Bahadur Shaha Jafar Marg,
New Delhi.
6. Swa. Sawarkar Arts, Science and
Commerce College, Beed,
Tal & Dist. Beed.

.. Respondents

**WITH
WRIT PETITION NO. 4720 OF 2022**

Vikram Shivram Dhanve,
Age : 42 Years, Occu. : Service
As Assistant Professor,
R/o At/Post Shirsala, Tal. Parali,
Dist. Beed.

.. Petitioner

Versus

1. The State of Maharashtra,
Through Secretary
Higher and Technical Education
Department, Mantralaya,
Mumbai – 32.
2. The Director of Education
(Higher Education), Central
Building – III, B. J. Medical Road,
Pune.
3. Joint Director Higher Education,
Aurangabad Region,
Railway Station Road, Aurangabad.
4. Union of India,
Through its Secretary,
Ministry of Education,
Government of India,
New Delhi.
5. The University Grants Commission,
Bahadur Shaha Jafar Marg,
New Delhi.
6. Shri Panditguru Pardikar Mahavidyalaya,
Shirsala, Tal. Parali, Dist. Beed. .. Respondents

**WITH
WRIT PETITION NO. 4731 OF 2022**

Madan Kacharu Magare,
Age : 48 Years, Occu. : Service
As Assistant Professor,
R/o Tathagat, Plot No. 1868,
Vidhut Colony, Jafrabad,
Tal. Jafrabad, Dist. Jalna.

.. Petitioner

Versus

1. The State of Maharashtra,
Through Secretary
Higher and Technical Education
Department, Mantralaya,
Mumbai – 32.
 2. The Director of Education
(Higher Education), Central
Building – III, B. J. Medical Road,
Pune.
 3. Joint Director Higher Education,
Aurangabad Region,
Railway Station Road, Aurangabad.
 4. Union of India,
Through its Secretary,
Ministry of Education,
Government of India,
New Delhi.
 5. The University Grants Commission,
Bahadur Shaha Jafar Marg,
New Delhi.
 6. Siddarth Arts, Commerce and
Science College, Jafrabad,
Tal. Jafrabad, Dist. Jalna.
- .. Respondents

Shri P. R. Katneshwarkar, Senior Advocate i/by Shri Anuj A. Fulfagar, Advocate for the Petitioner in all matters.

Shri S. P. Joshi, A.G.P. for the Respondent Nos. 1 to 3 in all matters.

Shri S. W. Munde, Standing Counsel for the respondent No. 5 in all matters.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

**CLOSED FOR JUDGMENT ON : 08.10.2024
JUDGMENT PRONOUNCED ON : 25.10.2024.**

JUDGMENT (*Per Shailesh P. Brahme, J.*) :-

. Rule. Rule is made returnable forthwith. With the consent of parties heard finally at the admission stage.

2. All these petitions raise identical controversy pertaining to essential qualification for the promotional post of Associate Professor. The facts are not in dispute much. We propose to decide all the petitions by common judgment and order. For the sake of convenience, we are referring to the paper book of Writ Petition No. 4691 of 2022.

3. We will be using following abbreviations in the judgment to avoid confusion.

(i) The University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) (4th

Amendment), Regulations, 2016 : Regulation of 2016 enforced from 11.07.2016

- (ii) UGC 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, 2018 : Regulation of 2018 enforced from 18.07.2018
- (iii) Government Resolution dated 08th March 2019 issued by the Higher and Technical Education Department, Government of Maharashtra, Mantralaya, Annex, Mumbai : G. R. dated 08.03.2019.
- (iv) University Grants Commission ; U.G.C. .
- (v) Approved Progression Indicator : A.P.I.

4. The petitioners are seeking declaration that Regulation of 2018 and G. R. dated 08.03.2019 apply prospectively and those are not applicable to them and they are governed by Regulation of 2016. They are seeking quashment of Clause No. 3.8 of Regulation of 2018 and Clause 4.8 of the G. R. dated 08.03.2019. They are further seeking direction to promote them as Associate Professors from level 12 to level 13-A from the date of the eligibility with consequential benefits.

5. The petitioners are permanent employees of the respondent No. 6 – colleges. They are claiming promotional posts of Associate Professors, which are denied for want of qualification of Ph. D. degree. They have put in 14 years of service. They comply with requirements like A.P.I. as per U.G.C. norms and they have

undergone requisite training programme. On the date of the petitions, they were not having Ph. D. degree. The factual details for which there is no controversy are as follows :

Sr. No.	W. P. No.	Name of Petitioner	Qualification	Post	Initial date of Appointment	College
1	4691/2022	Balasaheb Tukaram Pote	B. Ed. M.A., SET	Asst. Professor	01.08.2006	Sau. K.S.K. @ Kaku Arts, Science & Commerce College, Beed
2	4731/2022	Madan Kacharu Magare	M.A. NET, Ph.D, (appeared)	Asst. Professor	23.12.2006	Siddharth College, Jafrabad, Jalna
3	4720/2022	Vikram Shivram Dhanve	M.A. NET, Ph.D, (on going)	Asst. Professor	03.10.2006	Shri Panditguru Pardikar College, Sirsala, Parli Vajinath, Beed
4	4716/2022	Vishal Vilasrao Naiknaware	M. Phil M.Sc. Ph.D. (on going)	Asst. Professor	15.10.2007	Swa. Sawarkar Arts, Science and Commerce College, Beed.
5	4704/2022	Vijaymala Tanaji Ghuge	M. Sc. M. Phil	Asst. Professor	28.09.2007	Rashtramata Indira Gandhi Arts, Commerce and Science College, Jalna.
6	4698/2022	Shriniwas Chandramoli	M. Sc. NET (twice)	Asst. Professor	26.07.2007	Sunderrao Solanke College,

		Motekar				Majalgaon, Beed
--	--	---------	--	--	--	--------------------

6. The petitioners claim that they were eligible for promotion to the post of Associate Professor. The respondent No. 6 – colleges forwarded requisition to screening – cum – evaluation Committee for the assessment of the petitioners. Accepting the request, the University constituted the Committee and the claims of the petitioners were considered in its meeting dated 28.09.2020. The Committee recommended them for further promotion as Associate Professor. Dr. Babasaheb Ambedkar Marathwada University, Aurangabad granted approval vide letter dated 22.10.2020. The proposals were forwarded to respondent No. 3 – Joint Director for further approval so as to secure requisite scale. Respondent No. 3 – Joint Director refused to grant approval to the promotions, which is the cause of action for filing the petitions.

7. The petitioners' association made representations on 14.12.2020 agitating that the issue that Ph. D. was not the requisite mandatory qualification for granting promotion for those who were appointed before enforcement of Regulation of 2018. There was correspondence and ultimately it was informed by the respondent No. 5 – U.G.C. that its regulations are mandatory, albeit, the core issue remained unanswered.

8. During pendency of the petitions, respondent No. 5 – U.G.C. issued notification dated 06.06.2024 deleting Clause No. 6.3 from (03rd amendment) Regulation 2023. The petitioners pressed into service this notification to support their contention that they are

governed by existing Regulation that is Regulation of 2016.

9. The learned senior advocate Mr. P. R. Katneshwarkar appearing for the petitioners has advanced following submissions :

i) All the petitioners are complying with eligibility criteria set out by Regulation of 2016. The acquisition of Ph. D. is not a mandatory requirement and it is only to dispense with two publications.

ii) The subsequent Regulation of 2018 and G. R. dated 08.03.2019 would operate prospectively and are not applicable for the promotions of the petitioners.

iii) Even if Clause No. 6.3 of Regulation of 2018 and/or Clause 7.3 of the G. R. dated 08.03.2019 are made applicable, the petitioners are governed by existing regulations that is Regulation of 2016.

iv) Inaction on the part of the Joint Director to approve the promotions of the petitioners is arbitrary and against U.G.C. Regulations.

v) The regulations of U.G.C. shall prevail over the G. R. dated 08.03.2019.

10. The petitioners are placing reliance on the judgment of the Supreme Court **dated 21.10.2022 in the matter of Prof. Dr. Sreejith P. S. Vs. Dr. Rajsree M.S. and others in Civil Appeal Nos. 7634-7635 of 2022.**

11. The learned advocate of respondent Nos. 1 to 3 repelled the submissions referring to their affidavit in reply. It is contended that the petitioners are not having Ph. D. degree and they are not eligible for the promotion in question. They are governed by the Regulation of 2018 which are adopted by the State Government vide G. R. dated 08.03.2019. It provides Ph. D. as a mandatory qualification for promotion. It is contended that Regulation of 2018 and G. R. dated 08.03.2019 are prospective in nature and would govern the petitioners' promotion. Reliance is placed on the **judgment of the Supreme Court dated 17.07.2023 in the matter of Jagdish Prasad Sharma Vs. State of Bihar in Civil Appeal Nos. 5527-5543 of 2013** and that of a division bench of this Court **dated 05.05.2022 in the matter of Dr. Sharmila Sandesh Ghuge Vs. State of Maharashtra and others in Writ Petition No. 3509 of 2021.**

12. The respondent No. 5 also contested the petition by filing separate affidavit in reply. Its learned advocate toed the same line of submissions that Ph. D. degree is a mandatory qualification for promotion to the post of Associate Professor.

13. The respondent Nos. 1 to 3 filed additional affidavit to deal with the supervening event of issuance of notification dated 06.04.2024. They reiterated their earlier stand. It is further contended that notification of 06.06.2024 has not been made applicable by the State Government.

14. Having heard both the sides elaborately a short issue is posed for consideration as to whether acquisition of Ph. D. degree is mandatory for granting promotion to the post of Associate Professor from Assistant Professor. It needs to be clarified that the screening cum evaluation committees have found the petitioners eligible for granting them promotion to the post of Associate Professors. There is no dispute as regards eligibility criteria like previous experience, API score or the training programme.

15. The petitioners are relying on Regulation of 2016. It does not provide Ph. D. degree as a mandatory qualification for the promotion to the, post of Associate Professor. The reference of 'Ph. D.' holder occurring in the eligibility criteria is to dispense with two publications. Similarly, reference to M. Phil is to dispense with one publication. Certainly, it cannot be inferred that M. Phil or Ph. D. is a mandatory qualification. It is relevant to reproduce the eligibility criteria as per Regulation of 2016.

APPENDIX-III – TABLE : III

MINIMUM ACADEMIC PERFORMANCE AND SERVICE REQUIREMENTS FOR PROMOTION OF TEACHERS IN UNIVERSITIES AND COLLEGES

S. No.	Promotion of Teachers through CAS	Service requirement	Minimum Academic Performance Requirements and Screening/Selection Criteria
1.			
2.			
3.	Assistant Professor	Assistant Professors	(i) Minimum cumulative API scores using the PBAS scoring proforma

	(Stage3) to Associate Professor (Stage 4)	with three years of completed service in Stage 3.	developed by the UGC as per the norms provided in Table II (A). (ii) At least three publications in the entire period as Assistant Professor (twelve years). However, in the case of College teachers, an exemption of one publication may be given to M. Phil. Holders and an exemption of two publications may be given to Ph. D. holder. (iii) One course / programme from among the categories of methodology workshops, Training, Teaching-Learning – Evaluation Technology Programmes, Soft Skills development Programmes and Faculty Development Programmes of minimum one week duration.
--	---	---	--

16. Regulation of 2018 was enforced on 18.07.2018. The following are the relevant clauses :

“3.8 The Ph. D. Degree shall be a mandatory qualification for appointment and promotion to the post of Associate Professor.

6.3 The criteria for promotions under Career Advancement Scheme laid down under these Regulations shall be effective from the date of notification of these Regulations. However, to avoid hardship to those faculty members who have already qualified or are likely to qualify shortly under the existing regulations, a choice may be given to them, for being considered for promotions under the existing Regulations. This option can be exercised only within three years from the date of notification of these Regulations.

6.4 STAGES OF PROMOTION UNDER THE CAREER ADVANCEMENT SCHEME OF INCUMBENT AND NEWLY-APPOINTED ASSISTANT PROFESSORS/ASSOCIATE PROFESSORS/PROFESSORS

A. The entry-level Assistant Professors (Level 10) shall be eligible for

promotion under the Career Advancement Scheme (CAS) through two successive levels (Level 11 and Level 12), provided they are assessed to fulfill the eligibility and performance criteria as laid down in Clause 6.3. of these Regulations.

B.

I.

II.

III. Assistant Professor (Selection Grade/Academic Level 12) to Associate Professor (Academic Level 13A) Eligibility:

- 1) Assistant Professor who has completed three years of service in Academic Level 12/Selection-Grade.
- 2) A Ph.D. degree in subject relevant /allied/relevant discipline.
- 3) Any one of the following during the last three years: completed one course / programme from amongst the categories of Refresher Courses/ Methodology Workshop/Syllabus Up-gradation Workshop/ Teaching Learning-Evaluation Technology Programme/ Faculty Development Programme of at least two weeks (ten days) duration (or completed two courses of at least one week (five days) duration in lieu of every single course/programme of at least two weeks (ten days) duration); or completed one MOOCs course (with ecertification); or contribution towards development of e-contents in 4-quadrant(at least one quadrant) minimum of 10 modules of a course/contribution towards development of at least 10 modules of MOOCs course/ contribution towards conduct of a MOOCs course during the period of assessment. CAS Promotion Criteria: A teacher may be promoted if; i) He/she gets a ‘satisfactory‘ or ‘good‘ grade in the annual performance assessment reports of at least two of the last three years of the assessment period as prescribed in Appendix II, Table 1, and ii) The promotion to the post of Associate Professor is recommended by the selection committee in accordance with these Regulations.

17. The State Government for implementation of recommendation of 7th Pay Commission adopted the norms laid down by the UGC for the selection and promotion of the teachers in the senior colleges. Accordingly, Government Resolution dated 08.03.2019 was issued adopting and reiterating the promotional criteria of 2018 by following clauses.

GOVERNMENT RESOLUTION DATED 08 MARCH, 2019

1.
2.

4.8 The Ph.D. Degree shall be a mandatory qualification for appointment and promotion to the post of Associate Professor.

7.3 The criteria for promotions under Career Advancement Scheme laid down under these Rules shall be effective from the date of notification of these Rules. However, to avoid hardship to those faculty members who have already qualified or are likely to qualify shortly under the existing Rules, a choice may be given to them, for being considered for promotions under the existing Rules. This option can be exercised only within three years from the date of notification of these Rules.

18. The petitioners were appointed in the year 2006 or in the year 2007. They rendered qualifying services. They are found to be complying with other eligibility norms for the promotion to the post of Associate Professors. The Regulation of 2016 does not stipulate Ph. D. degree as a mandatory qualification as it is expressly done by Clause 3.8 of Regulation of 2018 and 4.8 of G. R. dated 08.03.2019.

19. Regulation of 2018 expressly provides vide Clause No. 1.3 that it came into force from 18th July 2018. There is no provision

in Regulation of 2018 to infer that it has been made applicable retrospectively. This Regulation is adopted by the State Government vide G. R. dated 08.03.2019. Obviously, it cannot be made applicable retrospectively. The petitioners became eligible for the promotion before the enforcement of Regulation of 2018 and G. R. dated 08.03.2019. The learned Senior Counsel Mr. P. R. Katneshwarkar is justified in contending that these norms are not applicable retrospectively.

20. As we have recorded that Regulation of 2016 would apply, it is not necessary to go into the niceties of Regulation of 2018 and G. R. dated 08.03.2019. It is reiterated that qualification of Ph. D. is made compulsory vide Regulation of 2018, which cannot be made applicable retrospectively. The respondent No. 3 – Joint Director has to conduct objective scrutiny of individual proposals of the petitioners in the wake of Regulation of 2016.

21. The learned A. G. P. placed reliance on the judgment of the division bench of this Court in the matter of **Dr. Sharmila Sandesh Ghuge Vs. State of Maharashtra and others** (supra). In that matter there was challenge to the corrigendum dated 10.05.2019 modifying G. R. dated 08.03.2019 to the extent of Clause 7.3(VI)(i). The controversy pertained to issue as to if the date of promotion would be from eligibility or actual promotion. Unlike the present matter the coordinate bench was not called upon to decide as to whether Regulation of 2016 would apply or Regulation of 2018. Therefore, though the challenge raised by the petitioner in that matter was not accepted, the ratio laid down therein is not applicable to the present case.

22. Next reliance was on the judgment of the Supreme Court in the matter of **Jagdish Prasad Sharma Vs. State of Bihar** (supra). We have gone through para No. 64 and 65 of the judgment. In that matter also controversy pertained to binding effect of UGC regulations on the State enactments. The controversy involved in the case in hand was not before the Supreme Court. In the present case there is no state legislation so as to fix the qualification/eligibility criteria for the promotion of teachers in the senior colleges. The UGC regulations only are in the field. This judgment is of no avail to the respondents.

23. The petitioners are relying on the judgment of the Supreme Court in the matter of **Prof. Dr. Sreejith P. S. Vs. Dr. Rajsree M.S. and others** (supra). In that case appointment of the respondent as a Vice Chancellor of the University was challenged by the appellant before the learned Single Judge of the Kerala High Court on the ground that it was *de hors* the UGC guidelines. The challenge failed on the ground that unless the UGC regulations were adopted by the State Government, they would not apply and act of the State would prevail. The matter was carried to the division bench unsuccessfully. Thereafter matter reached Supreme Court. Our attention is invited to paragraph Nos. 8, 8.1, 8.3 and 8.5 of the judgment. The observations made by the Supreme Court in the earlier judgment of Gambhirdan K. Gadhvi Vs. State of Gujrat and others; (2022) 5 SCC 179 were relied upon. The ratio is that in the case of any conflict between state legislation and the central legislation, the central legislation shall prevail. UGC regulations are part of UGC Act i. e. central

legislation which would prevail. Ultimately, it was held that any appointment in violation of UGC regulation shall be *void ab initio* as regulations have overriding effect. We do not find any similarity in the facts and the controversy in the case before the Supreme Court and the one in the case in hand. This judgment is also not applicable to the present case.

24. The subsequent event of issuance of Regulation on 06.06.2024 in our considered view has no bearing on the merits of the matter. By this regulation Clause 6.3 of UGC Regulation (III) Amendment Regulation 2023 has been deleted. It is not demonstrated by the parties as to whether UGC Regulation III Amendment of 2023 has any relevance. No such regulation is placed on record.

25. The respondent No. 3 has not taken any decision over the proposals submitted by the management for the promotions of the petitioners from the post of Assistant Professors to Associate Professors. The respondent – university has already granted approvals to the promotion of the petitioners for considering the petitioners for promotion. Respondent No. 3 – Joint Director has to conduct objective scrutiny of the proposals considering our analysis. We, therefore, pass following order.

O R D E R

- (i) The writ petitions are allowed partly.
- (ii) The respondent No. 3 shall consider the proposals of the petitioners for granting them promotion to the post of

Associate Professor in accordance with Regulation of 2016, on their own merits as early as possible and preferably within a period of six (06) weeks from today.

- (iii) The UGC Regulation of 2018 and G. R. dated 08.03.2019 issued by the Higher and Technical Education Department, Government of Maharashtra, Mantralaya, Mumbai shall not apply for deciding the petitioners' claim for promotion.
- (iv) Rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

bsb / Oct. 24