

W.P. Nos. 4595/2016, 4612/2016, 4642/2016, 4751/2016, 4855/2016, 4871/2016, 4945/2016, 4964/2016, 4982/2016, 4992/2016, 4994/2016, 4995/2016, 4996/2016, 5315/2016, 5504/2016, 5578/2016, 5707/2016, 5739/2016, 5745/2016, 5852/2016, 5859/2016, 5860/2016, 5896/2016, 5907/2016, 5951/2016, 5952/2016, 5963/2016, 5967/2016, 5970/2016, 5978/2016, 5980/2016, 6006/2016, 6008/2016, 6009/2016, 6010/2016, 6011/2016, 6016/2016, 6017/2016, 6037/2016, 6095/2016, 6107/2016, 6109/2016, 6135/2016, 6173/2016, 6183/2016, 6217/2016, 6221/2016, 6231/2016, 6261/2016, 6327/2016, 6330/2016, 6367/2016, 6368/2016, 6385/2016, 6454/2016, 6481/2016, 6559/2016, 6561/2016, 6840/2016, 6854/2016, 6991/2016, 6994/2016, 6997/2016, 7000/2016, 7077/2016, 7146/2016, 7196/2016, 7198/2016, 7266/2016, 7326/2016, 7330/2016, 7333/2016, 7337/2016, 7344/2016, and W.P. No. 7456/2016

27.04.2016

W.P. No.4612/2016 (S)

Dr. Anuvad Shrivastava, Advocate for the petitioner.

Shri Brahm Datt Singh, Government Advocate for the respondent No.1/State.

Shri Prashant Singh, Advocate for the respondent/PSC.

Smt. Nirmala Nayak, Advocate for the respondent/UGC.

Heard counsel for the parties on admission.

Since the petitioner does not possess degree in subject Geography, it is not open to the petitioner to participate in the ensuing selection process commenced on the basis of advertisement issued by the respondents-Authorities on

19.02.2016.

Indeed, the petitioner possesses Master's degree in Public Administration. That will be of no avail to the petitioner for participating in the selection process for the post of Assistant Professor for subject Geography. In the companion cases, we have already dealt with this aspect in extenso.

The argument of the petitioner that other States are giving relaxation to candidates, who have appeared in final examination, cannot be the basis to apply the same logic to the advertisement in question, as that is not expressly provided in the advertisement nor so specified in the statutory Rules under which the selection process is being taken forward. In absence of express provision in the Rules or the advertisement, it is not open to the Court to issue direction to the Authority to entertain application submitted by the petitioner *sans* Master's degree in the relevant subject issued by the University. As and when the petitioner acquires that degree and certificate, only then he would become eligible to submit application in the context of extant Rules as applicable to the State of M.P. and, in particular, the advertisement issued by the Authority concerned. Hence, we decline to entertain this petition.

Dismissed.

Interim relief, if any, is vacated forthwith.

W.P.No.5896/2016

Shri A.P. Shroti, Advocate for the petitioner.

Shri Brahm Datt Singh, Government Advocate for the respondents/State.

Shri Prashant Singh, Advocate for the respondent/PSC.

Smt. Nirmala Nayak, Advocate for the respondent/UGC.

Heard counsel for the parties on admission.

The limited relief claimed in this petition is to direct the respondents to permit the petitioner to take part in the ensuing selection process for the post of Assistant Professor (Geography) as per advertisement dated 19.02.2016.

In the petition, it is plainly conceded that the petitioner is otherwise ineligible to apply as per the extant Rules and Regulations. The grievance of the petitioner is founded on the fact that petitioner had applied for appointment on the post of Assistant Professor (Geography) pursuant to earlier advertisement issued in that behalf. That advertisement, however, was cancelled on 23.09.2015. The fact that the advertisement was cancelled will not create any right in favour of the petitioner to be considered in the subsequent selection process commenced on the basis of advertisement

issued for filling up the vacancies by the concerned Authorities.

We have already dealt with this aspect in the companion cases and have taken the view that cancellation of previous advertisement will not enure any advantage or for that matter, right in favour of the candidate/petitioner. The candidates, who are eligible as per Rule 8 of the Rules of 1990 read with Schedule III and Rule 11(8) of the same Rules, would be entitled to participate in the fresh selection process commenced pursuant to advertisement dated 19.02.2016. For the purpose of reckoning the age limit, Rule 8 postulates that the candidate must not have attained the age as specified in column (5) of the said schedule on the first day of January next following the date of commencement of the examination/selection. That is the test to be applied to the case on hand. Since the petitioner is desirous of appearing and participating in the selection process commenced on the basis of advertisement dated 19.02.2016 and as per Rule 8, the cut off date for reckoning the age limit is 01.01.2017, is obviously not eligible.

Realizing this position, petitioner has been advised to make representation to the appropriate Authority for relaxation in exercise of power under Rule 24 of the Rules. Even though the petitioner has made such representation,

that cannot be the basis to permit the petitioner to submit application, even though as per the Rules, the petitioner is not eligible. Only eligible persons can be permitted to make application. Taking any other view would result in opening Pandora's box for similar grievance and requests that may be made by candidates similarly placed. We find no merit in the petition. **Dismissed.**

Interim relief, if any, is vacated forthwith.

W.P.No.5980/2016 (S) and W.P. No.6009/2016 (S)

Shri G.S. Ahluwalia, Advocate for the petitioner in W.P. No.5980/2016 (S).

Shri Pratyush Tripathi, Advocate for the petitioner in W.P. No.6009/2016 (S).

Shri Brahm Datt Singh, Government Advocate for the respondents/State.

Shri Prashant Singh, Advocate for the respondent/PSC.

Smt. Nirmala Nayak, Advocate for the respondent/UGC.

Heard counsel for the parties on admission.

Even in these petitions the petitioners possess Master's degree in subject other than for the post of Assistant Professor relating to some other subject.

This aspect has already been considered by this Court

in W.P. No.7064/2016. Hence, even these petitions are also **dismissed** on same terms.

W.P. No.6183/2016

Shri Brindavan Tiwari, Advocate for the petitioners.

Shri Bramhadatt Singh, Govt. Advocate for the respondents/State.

Smt. Nirmala Nayak, Advocate for the U.G.C.

Shri Prashant Singh with Shri Manas Verma, Advocates for the M.P. Public Service Commission.

Heard counsel for the parties on admission.

The issue raised in this petition has already been considered in the case of **Juveriya Ali vs. State of M.P. and others** in W.P. No.5801/2016 and **Dr. Pushpraj Singh vs. State of M.P.** in W.P. No.7064/2016 decided yesterday i.e. 26.04.2016.

The counsel for the petitioners, however, submits that he would like to raise a new plea. According to the learned counsel for the petitioners, the petitioners and similarly placed persons when they were appointed as Guest Lecturers, the University recognized the allied qualification possessed by the concerned incumbent as appropriate and permissible for being appointed as Assistant Professor for the given subject.

The procedure adopted for appointment of Guest Lecturer in the first place is not under the Rules of 1990 as such. The Rules of 1990 read with the Regulations issued by the University Grants Commission of 2010, leave no manner of doubt that for being appointed as Assistant Professor on regular basis the incumbent must possess Master's degree in the relevant subject from an Indian University. The petitioners intend to apply for the post of subject Economics. Thus, the petitioners are expected to possess Master's degree in Economics. However, the petitioners possess Master's degree in the subject of Business Economics. It is not for this Court to examine whether the Master's degree in Business Economics is equivalent to the Master's degree in subject Economics. That is the prerogative of the experts. No official document issued by the expert, such as University Grants Commission, has been relied by the petitioners to substantiate the argument that Master's degree in Business Economics means the same as Master's degree in Economics. Reliance, however, is placed on correspondence and letters of Principal of Government Law College dated 11.08.2008 addressed to the Additional Director, Higher Education, Rewa Division and another communication dated 19.10.2007 sent by the Commissioner to Additional

Director Annexure P/5 and P/6 respectively.

We are afraid, neither the Principal, Government Law College nor the Commissioner can be considered as expert to opine on the issue as to whether the Master's degree in Business Economics and Master's degree in Economics would mean the same. That is the job of the University Grants Commission.

Counsel for the petitioners was at pains to rely on the decision of the Supreme Court in the case of **Rajbir Singh Dalal (DR.) vs. Chaudhari Devi Lal University, Sirsa and another** reported in (2008) 9 SCC 284. In that case, the question was whether the appellant fulfilled the requisite academic qualification for appointment to the post of Reader in Public Administration in the respondent-University. While dealing with the argument canvassed before the Court, the Supreme Court in paragraph 29 of the same decision has noticed that clarification was sought from University Grants Commission as to whether a candidate who possesses a Master's degree in Public Administration is eligible for the post of Lecturer in Political Science and *vice versa*. In response to which, University Grants Commission replied vide letter dated 05.03.1992 to the Registrar of the University that the subjects of Political Science and Public Administration are interchangeable and interrelated, and a

candidate who possesses Master's degree in Public Administration is eligible as Lecturer in Political Science and *vice versa*. It is on that basis the Court examined the matter further and opined that it is not open to the Court to sit in appeal over the opinion of the experts, who are of the view that subjects of Political Science and Public Administration are interchangeable and interrelated. That is not the case before us.

As aforesaid, the petitioners are not relying on any specific opinion of the experts such as University Grants Commission or for that matter even the University, if competent to pronounce about the equivalence of the two degrees in support of the argument that the Master's degree in Business Economics is equivalent to Master's degree in Economics.

Having failed to do so, it necessarily follows that the petitioners are not eligible to participate in the ensuing selection process keeping in mind the mandate of Regulations of 2010 framed by University Grants Commission. Hence, **dismissed**.

Interim relief is vacated forthwith.

W.P.No.6561/2016

Shri S.P. Mishra, Advocate for the petitioners.

Shri Brahm Datt Singh, Government Advocate for the respondents/State.

Shri Prashant Singh, Advocate for the respondent/PSC.

Smt. Nirmala Nayak, Advocate for the respondent/UGC.

Heard counsel for the parties on question of admission.

This petition is filed by seven petitioners. Each of them possess different qualification and have applied for different posts. According to the counsel for the petitioners, some of the petitioners have acquired qualification of Ph.D. in the relevant subject in accordance with the Regulations of 2009.

Realising the position that petition suffers from misjoinder of cause of action – as it is not possible to equate all the petitioners as eligible in terms of the Regulations, as is contended by the petitioners, counsel for the petitioners seeks liberty to withdraw this petition. Hence, allowed to be **withdrawn** with liberty to file fresh petition, if so advised.

W.P. No.6135/2016

Shri Mohan Sausarkar, Advocate for the petitioner.

Shri Brahm Datt Singh, Government Advocate for the respondent No.1/State.

Shri Prashant Singh, Advocate for the respondent/PSC.

Smt. Nirmala Nayak, Advocate for the respondent/
UGC.

Heard counsel for the parties on admission.

The limited relief claimed in this petition is to direct the respondents to award Ph.D degree to the petitioner which he has submitted in December, 2015. According to the petitioner, for inexplicable reason, the University has failed to issue Ph.D degree and resultantly, the petitioner would be deprived of participating in the ensuing selection process for the post of Assistant Professor commenced on the basis of advertisement dated 19.02.2016.

Considering the limited relief claimed in this petition, it is not necessary for us to engage with the other contention and grievance about the denial of opportunity to the petitioner to participate in the ensuing selection process for the post of Assistant Professor, as contended. Accordingly, we dispose of this petition with direction to the Registrar of respondent No.2 University to expedite the proposal submitted by the petitioner and similarly placed persons and to communicate the status of the proposal to the petitioner within six weeks from today. No further indulgence can be shown in this petition. At the same time, we make it clear that the proposal submitted by the petitioner shall be examined on its own merits and in accordance with law. We

may not be understood to have issued directions to the University to award Ph.D. to the petitioner.

Disposed of accordingly.

Interim relief, if any, stands vacated forthwith.

W.P. No.6385/2016 (S)

Shri S.K. Dubey, Advocate for the petitioner.

Shri Brahm Datt Singh, Government Advocate for the respondent No.1/State.

Shri Prashant Singh, Advocate for the respondent/PSC.

Smt. Nirmala Nayak, Advocate for the respondent/UGC.

Heard counsel for the parties on admission.

The relief claimed in this petition is to direct the respondents to allow the petitioners to participate in the selection process commenced on the basis of advertisement inviting applications for the post of Assistant Professor. Notably, in the petition averment is made that petitioner is postgraduate in subject History. He has also obtained M.Phil. degree in the year 2008-2009. In para 5.3 of the petition it is, however, admitted that petitioner was registered for Ph.D in subject History on 27.07.2009 prior to enforcement of Regulations, 2009. The fact remains that petitioner has not been awarded Ph.D degree in accordance

with the Regulations, 2009, which alone is exempted in terms of Regulation 4.4.1 of the Regulations of 2010. This issue has been considered by us in W.P. No.7064/2016 and answered against the writ petitioner. That decision has been followed in subsequent petitions involving the same contention.

The fact that petitioner possesses post-graduation degree in subject History, by itself, is not sufficient. In addition to Master's degree in the relevant subject, the candidate must also possess qualification of NET/SET/SLET. The petitioner does not possess the latter qualification. Hence, the petitioner having been found to be ineligible and declined participation in the ensuing selection process, no fault can be found with the Authority in that behalf. Hence, **dismissed**.

Interim relief, if any, is vacated forthwith.

W.P. No.6481/2016 (S)

Shri N.P. Rai, Advocate for the petitioner.

Shri Brahm Datt Singh, Government Advocate for the respondent No.1/State.

Shri Prashant Singh, Advocate for the respondent/PSC.

Smt. Nirmala Nayak, Advocate for the respondent/
UGC.

Heard counsel for the parties on admission.

The only argument canvassed in this appeal is that direction be issued to the State Government to follow the norms specified in the Rules followed in the State of Rajasthan and State of Haryana.

It is incomprehensible that any comparison can be drawn in Rules of two different States. Framing of Rules is a policy matter and State specific. The policy is not evolved by the Central Government or made applicable uniformly to all the States. Thus understood, relief as claimed cannot be countenanced. Hence, **rejected**.

Interim relief, if any stands **vacated** forthwith.

W.P. No.6559 of 2016

W.P. No.7337 of 2016

Shri S.P. Mishra, Advocate for the petitioners.

Shri Brahm Datt Singh, Government Advocate for the respondent No.1/State.

Shri Prashant Singh, Advocate for the respondent/PSC.

Smt. Nirmala Nayak, Advocate for the respondent/UGC.

Heard counsel for the parties on admission.

In these petitions it is fairly conceded not only by the petitioners, but, through counsel that the petitioners do not

possess Ph.D degree issued in accordance with University Grant Commission (Minimum Standards and Procedure for Award of Ph.D Degree) Regulations, 2009. In that case, Ph.D degree possessed by the petitioners will be of no avail in the context of clause 4.4.1 of Regulations of 2010. Hence, the petitioners cannot succeed as in the case of W.P. No.7064/2016. Hence, even these petitions deserve to be dismissed.

Counsel for the petitioners submits that the petitioners have also prayed for regularization on the assertion that they have been working in the capacity of Guest Lecturers since more than 10 years.

The relief of regularization was claimed by similarly placed persons by way of W.P. No.882/2006 in the case of **Dr. Narayan Dutt Tripathi and others vs. State of Madhya Pradesh and others** and companion cases decided on 10.8.2006. That relief has been rejected in the light of decision of the Supreme Court in **Secretary, State of Karnataka vs. Uma Devi (3) and others, (2006) 4 SCC 1**. An intra Court Appeal (W.A. No.1419/2006) against that decision has been filed by the State Government. The same is pending. The writ petitioners have not chosen to challenge the rejection of relief of regularization. Therefore, applying the same principle even in these petitions, the

relief of regularization will have to be answered on the basis of decision of the Supreme Court in **Uma Devi's** case.

The argument of the petitioners, however, proceeds that since the concerned petitioners were working for more than 10 years and the Supreme Court has permitted one time regularization of employees, who have served for more than 10 years, the claim of the petitioners must be considered by the appropriate Authority.

We have no manner of doubt that the appropriate Authority would consider all aspects of the matter while examining the representation for regularization filed by any individual petitioner on case to case basis, keeping in mind the exposition in the case of **Uma Devi** and Full Bench of our High Court in W.P. No.11816/2010 (**Dr. Geeta Rani Gupta vs. The State of Madhya Pradesh**) decided on 31.8.2015. Besides this, nothing more is required to be said.

We place on record the submission made by the counsel for the State that as per **Uma Devi's** judgment, the petitioners will not be entitled to any relief, as one time regularization applies only to Class-III and Class-IV employees. The post of Assistant Professor is certainly not Class-III or Class-IV post in respect of which regularization request can be pursued.

The petitions are, therefore, **disposed of**.

Interim relief, if any, is **vacated** forthwith.

W.P. No.7344 of 2016

Shri S.P. Mishra, Advocate for the petitioners.

Shri Brahm Datt Singh, Government Advocate for the respondent No.1/State.

Shri Prashant Singh, Advocate for the respondent/PSC.

Smt. Nirmala Nayak, Advocate for the respondent/UGC.

Heard counsel for the parties on admission.

The only point argued in this petition is about regularization on the assertion that the petitioners have been in service in the capacity of guest faculty for more than 10 years. This contention is considered in the companion matters W.P. No.6559/2016 and W.P. No.7337/2016. Applying the same reasoning, even this petition deserves to be disposed of on the same terms.

Ordered accordingly.

W.P. Nos. 4595/2016, 4642/2016, 4751/2016, 4855/2016, 4871/2016, 4945/2016, 4964/2016, 4982/2016, 4992/2016, 4994/2016, 4995/2016, 4996/2016, 5315/2016, 5504/2016, 5578/2016, 5707/2016, 5739/2016, 5745/2016, 5852/2016, 5859/2016, 5860/2016, 5907/2016, 5951/2016, 5952/2016, 5963/2016, 5967/2016, 5970/2016, 5978/2016, 6006/2016, 6008/2016, 6010/2016, 6011/2016, 6016/2016, 6017/2016,

6037/2016, 6095/2016, 6107/2016, 6109/2016, 6173/2016, 6217/2016, 6221/2016, 6231/2016, 6261/2016, 6327/2016, 6330/2016, 6367/2016, 6368/2016, 6454/2016, 6840/2016, 6854/2016, 6991/2016, 6994/2016, 6997/2016, 7000/2016, 7077/2016, 7146/2016, 7196/2016, 7198/2016, 7266/2016, 7326/2016, 7330/2016, 7333/2016, and W.P. No. 7456/2016

Petitioners through their respective counsel.

Shri Bramhadatt Singh, Govt. Advocate for the respondents/State.

Smt. Nirmala Nayak, Advocate for the U.G.C.

Shri Prashant Singh with Shri Manas Verma, Advocates for the M.P. Public Service Commission.

Heard counsel for the parties.

In all these petitions the challenge is to the condition stipulated in the advertisement issued by the M.P. Public Service Commission dated 19.02.2016 regarding the upper age limit of the candidate. The challenge is, essentially, founded on the argument that the petitioners having served as guest faculty for long time; and had also participated in the previous selection process commenced pursuant to a similar advertisement issued by the Public Service Commission in the year 2014 when they were found to be eligible, but now merely because of passage of time they have become ineligible due to age limit specified in the

concerned Rules, be declared as entitled and eligible to participate even in the subject selection process.

According to the petitioners, the State should consider the claim of the petitioners keeping in mind that the petitioners have been working on the post of guest faculty and served the institution for quite some time. The argument is also one of legitimate expectation of the petitioners of right to participate in the ensuing selection process. The petitioners assert that the petitioners have right to participate in the ensuing selection process irrespective of the age bar specified in the concerned Rules and on the assumption that they were otherwise eligible to participate when the vacancies were notified earlier in the year 2014.

For examining the grievance of the petitioners we may first advert to the Rules of 1990, known as Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1990. Rule 8 of the said Rules provides for conditions for eligibility of direct recruits. The validity of this Rule has not been put in issue.

As aforesaid, the petitioners have been appointed as guest faculty on tenure basis (year to year) from time to time. They intend to participate in the ensuing selection process for which the Rules of 1990 will come into play. Rules of 1990 have undergone amendment. Rule 8 as

applicable reads thus:-

“8. Conditions of eligibility of direct recruits. - In order to be eligible to compete at the examination/selection a candidate must satisfy the following conditions, namely:-

Age. - (a) The candidate must have attained the age as specified in column (4) of the Schedule III and not attained the age as specified in column (5) of the said schedule on the first day of January next following the date of commencement of the examination/selection;

(b) The upper age limit shall be relaxable up to a maximum of 5 years if a candidate belongs to a Scheduled Caste or a Scheduled Tribe;

(c) The upper age limit will also be relaxable in respect of candidates who are or have been employees of the Madhya Pradesh Government to the extent and subject to the conditions specified below:-

(i) A candidate who is a permanent Government Servant should not be more than 38 years of age.

(ii) A candidate holding a posts temporarily and applying for another post should not be more than 38 years of age. This concession shall also be admissible to the teachers appointed on emergency basis, contingency paid employees. Work charged employees and employees working in the Project Implementation Committees.

(iii) A candidate who is retrenched Government servant will be allowed to deduct from his age the period of all temporary service previously rendered by him up to a maximum limit of 7 years even if it represents more than one spell provided that the resultant age does not exceed the upper age limit by more than three years.

Explanation. - The term “retrenched Government servant” denotes a person who was in temporary Government service of this State or of any of the constituent units, for a continuous period of not less six months and who was discharged because of reduction in establishment not more than three years prior to the date of his

registration at the employment exchange or of application made otherwise for employment in Government Service.

(iv) A candidate who is an ex-serviceman will be allowed to deduct from his age the period of all defence service previously rendered by him provided that the resultant, age does not exceed the upper age limit by more than three years.

Explanation.- The term “ex-serviceman” denotes a person who belonged to any of the following categories and who was employed under the Government of India for a continuous period of not less than six months and who was retrenched or declared surplus as a result of the recommendation of the Economy Unit or due to normal reduction in establishment not more than three years before the date of his registration at any employment exchange or of application made otherwise for employment in Government Service :-

- (1) Ex-servicemen released under mustering out concessions;
- (2) Ex-servicemen enrolled for the second time and discharged on -
 - (a) completion of short term engagement.
 - (b) fulfilling the conditions of enrolment;
- (3) Ex-personal of Madras Civil Units;
- (4) Officers (military and Civil) discharged on completion of their contract (including short service Regular Commissioned Officers);
- (5) Officers discharged after working for more than six months continuously against leave vacancies;
- (6) Ex-servicemen invalidated out of service;
- (7) Ex-servicemen discharged on the ground that they are unlikely to become efficient soldiers;
- (8) Ex-servicemen who are medically boarded out on account of gun-shot, wounds etc.
- (d) The upper age limit shall be relaxable upto 38 years of age in respect of candidates who are employees of Madhya Pradesh State Corporation/Boards.
- (e) The general upper age limit shall be 35

years in respect of widow destitute and divorced women candidates.

(f) The upper age limit shall be relaxable upto maximum of 2 years in respect of those candidates who are holding Green Card under the Family Welfare Programme.

(g) The general upper age limit shall be relaxed upto 5 years in respect of awarded superior cast partner of a couple under the Inter Caste Marriage incentive programme of the Tribal, Harijan and Backward Classes Welfare Department.

(h) The upper age limit shall also be relaxed upto 5 years in respect of "Vikram Award" holder candidates.

(i) The upper age limit shall be relaxed in the case of voluntary Home Guards and non-commissioned officers of Home Guards for the period of service rendered so by them subject to the limit of 8 years but in no case their age should exceed 38 years.

Note.- Candidates who are admitted to the examination/selection under the age concessions mentioned in rule 8(c) (i) and (ii) above will not eligible for appointment if after submitting the application, they resign from service either before or after taking the examination. They will, however, continue to be eligible if they are retrenched from the service or post after submitting the applications. In no other case will these age limits be relaxed. Departmental candidates must obtain previous permission of the appointing authority to appear for the examination.

(ii) **Educational Qualification.** - He must possess the educational qualification prescribed for the service as shown in Scheule-III:

Provided that -

(a) In exceptional cases the Commission may, on the recommendation of the Government, treat as qualified a candidate, who though not possessing any of the qualifications prescribed in this clause has passes examination conducted by other institutions by a standard which, in the opinion of the Commission, justifies the admission of the candidate to the examination/selection;

(b) Candidates who are otherwise qualified but have taken degree from Foreign Universities, being Universities not specifically recognised by Government may also be considered for the examination/selection at the discretion of the Commission.”

(emphasis supplied)

The age limit specified in Rule 8, in particular, sub-clause (a), is that, the candidate must have attained the age as specified in Column (4) of the Schedule III and not attained the age as specified in Column (5) of the same Schedule on the first day of January next following the date of commencement of the examination/selection. Schedule-III of the Rules of 1990 has undergone amendment on 27.08.2015. The amended Schedule-III as applicable to the case on hand reads thus:-

**“ SCHEDULE-III
(See rule 8)**

S.No.	Name of post	Minimum age limit	Upper age limit	Educational prescribed	Qualification
(1)	(2)	(3)	(4)	(5)	
1.	Principal	-	-	Minimum qualifications prescribed for the concerning posts under the University Grants Commission (minimum qualification for appointment of Teachers and other Academic staff in university and colleges and measures for the maintenance of standard in Higher Education Regulation, 2010 as notified in Gazette of Government of India	
2.	Professor	-	-		
3.	Associate Professor	-	-		
4.	Assistant Professor	21	40		
5.	Sports Officer	21	40		
6.	Librarian	21	40		

				by University Grants Commission and by the rules adopted by the Government of Madhya Pradesh from time to time.
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Note:

- The upper age limit for all concerning cadres shall be admissible in accordance with the directions/instructions issued by the General Administration Department from time to time.
- The rules, pay scale and other provisions except minimum qualification shall be determined/ascertain in accordance with University Grants Commission (minimum qualification for appointment of Teachers and other Academic staff in university and colleges and measures for the maintenance of standard in Higher Education) Regulation, 2010 and notifications issued and amended from time to time and fully and partly adopted by Government of Madhya Pradesh.”

Besides the aforesaid provisions it may be useful to refer to Rule 11, in particular, sub-rule (8). Sub-rule (8) of Rule 11 was inserted in the year 2009 on 27.02.2009. The same deals with the subject of relaxation by way of weightage percentage and relaxation of maximum age limit. The original Rule was amended firstly on 11.03.2014 and recently on 15.04.2014. The latest amendment has bearing on the issues that need to be answered in the present petitions.

The amended sub-rule 8 of Rule 11 was notified on 15.04.2014 which reads thus:-

“The State Government, hereby, substituted the said sub-rule with the following, namely :-

- (8) Those candidates who have worked as a Guest faculty in Government colleges of Madhya Pradesh as Assistant Professor or Sports officer or Librarian, and who have applied for direct recruitment on the sanctioned post of

Assistant Professor of the same subject or Sports officer or Librarian, shall get the maximum 3 additional merit marks for each session based on their work as guest faculty, as per criteria decided by Government and subject to a maximum limit up to 20 merit marks. The merit marks shall be added at a time of preparation of final merit list. Such guest faculties shall be given a relaxation in the maximum age limit upto 5 years based on work experience, as per criteria decided by Government, subject to the maximum age limit shall not exceed according to General Administration Department circulars issued from time to time.”

(emphasis supplied)

The amended sub-rule (8) of Rule 11 has made material change to the earlier provision. By virtue of amended Rule the provision is not only in respect of weightage marks but also relaxation of the age limit for maximum 5 years based on work experience.

Besides the Rules of 1990, we may have to also advert to the M.P. Civil Services (Special Provision for Appointment of Women) Rules, 1997. These Rules have been framed in exercise of powers under Article 309 of the Constitution of India and in supersession of the M.P. Civil Services (Special Provision for Appointment of Women in the Public Services and Posts) Rules, 1996. Rule 2 postulates that Rules of 1997 would apply to all persons to public service and post in connection with the affairs of the State without prejudice to the generality of conditions of provisions contained in the Service Rules. Rule 3 provides for reservation of post for women. In the present

proceedings, we are concerned with the provisions in Rule 4 which is for relaxation of age limit for women candidates. The same reads thus:-

“4. Age relaxation.-There shall be age relaxation of ten years for women candidates for direct appointment in all posts in the services under the State in addition to the upper age limit prescribed in any service rules or executive instructions :

Provided that the maximum age limit for women candidates for direct appointment in all categories shall be 45 years.”

(emphasis supplied)

The proviso to Rule 4 has been inserted vide Notification dated 26.09.2012. Resultantly, even this proviso will have to be borne in mind while dealing with the argument specific to relaxation of age limit for women.

The petitions were originally filed only to challenge the subject advertisement and in particular the onerous conditions specified in the said advertisement. In most of the petitions, after hearing these petitions for some time and the counsel for the petitioners having realized that they may have to also challenge the validity of the relevant Rules, on their oral request they were permitted to move formal application which has been tendered in the respective petitions. The amendment applications by concerned petitioners were treated as taken on record; and because of

the urgency the arguments proceeded on the assumption that the amendment has already been allowed and carried out in the respective petitions. By virtue of this amendment, we have now been called upon to examine the validity of the amended Rule 11(8) of the Rules of 1990 and proviso below Rule 4 in the Rules of 1997.

The argument of the petitioners with reference to the validity of these provisions, is that, the effect of the decision of the Single Judge would be diluted or whittled down due to amendment of sub-rule (8). In that, the decision of the learned Single Judge of this Court in W.P. No.882/2006 and companion petitions decided on 10.08.2006 was to direct the respondents to fill up the post by way of regular recruitment and while doing so, as far as possible, the petitioners and similarly placed persons be given age relaxation for the period for which they have rendered services with the respondents as Guest Faculties and also to consider to give weightage to the experience which each of them possess.

This argument, however, overlooks the order passed by the Division Bench in writ appeal against the said decision. In W.A. No.1419/2006 the Division Bench on 08.01.2007 stayed the judgment and order passed by the learned Single Judge dated 10.08.2006 in W.P.

No.882/2006; with liberty to the Authorities to consider framing of or amending the relevant Rules for the purpose of giving age relaxation to those who have rendered services as guest faculty. The purport of the order passed by the Division Bench, therefore, clearly eclipses the direction issued by the learned Single Judge and instead has allowed the Authorities to frame Rules for the purpose of giving age relaxation to the writ petitioners and similarly placed persons. In furtherance of that liberty the Rules of 1990 have been amended, sub-Rule (8) in Rule 11 was inserted. The said Rule, as now amended, therefore, has been challenged as ultra vires being unjust and unreasonable affecting the rights of the writ petitioners.

The question is: whether the writ petitioners have any vested right against the vacancies which have been notified by the Public Service Commission vide advertisement dated 19.02.2016. The writ petitioners, admittedly, were appointed as guest faculty. Their appointment was not under the Rules of 1990 and, thus, it was not a regular appointment against any vacancy as such. Thus, it is too late in the day for the petitioners to contend that they have any vested right against the vacancies now notified to be filled on the basis of the subject advertisement and the selection process which would follow soon thereafter. The petitioners, at best, can

claim right to be considered subject to fulfilling qualification and eligibility conditions provided in the statutory Rules to fill up such vacancies.

It was also contended that since 1991, no selection process has been resorted to. The Authorities continued to make appointments on year to year basis, as that was beneficial to the State. It was thus a case of malafide exercise of power, in law. Firstly, this argument cannot be the basis to question the validity of Rule 11 (8) of the Rules of 1990 or the proviso below Rule 4 of Rules of 1997. Further, as aforesaid, Rules of 1990 in particular Rule 8 read with Schedule-III thereunder provides qualification and eligibility regarding age limit. That provision has not been challenged. Rule 11(8) is a provision for relaxing the age limit specified in the Schedule-III to the extent mentioned in the said provision.

The question, therefore, that arises for our consideration is: whether the provision, namely, sub-rule (8) of Rule 11 of the Rules of 1990 can be said to be unjust or unreasonable. This provision has been framed obviously in exercise of powers under Article 309 of the Constitution of India. The argument of the petitioners, however, is that the notification issued to introduce amendment to Rule 11 makes no reference to Article 309 and, therefore, it must

necessarily follow that the said amendment to the principal Rules of 1990 has not been carried out in accordance with law and, therefore, non-est in the eyes of law. For that, the petitioners have relied on the decision of the Supreme Court in the case of **Punjab State Warehousing Corpn., Chandigarh vs. Manmohan Singh and another** reported in (2007) 9 SCC 337 in particular paragraph 12 which reads thus:-

“12. Furthermore, when the terms and conditions of the services of an employee are governed by the rules made under a statute or the proviso appended to Article 309 of the Constitution of India laying down the mode and manner in which the recruitment would be given effect to, even no order under Article 162 of the Constitution of India can be made by way of alterations or amendments of the said rules. A fortiori if the recruitment rules could not be amended even by issuing a notification under Article 162 of the Constitution of India the same cannot be done by way of a circular letter.”

We fail to understand as to how this decision will be of any avail to the petitioners. This decision deals with the scheme formulated by the State Government for regularisation of its employees. Paragraph 2 read with paragraph 4 of the said judgment makes it amply clear that the validity of scheme formulated under Article 162 of the Constitution was the subject matter before the Supreme Court. It was not a case of Rules formulated in exercise of

powers under Article 309 of the Constitution. Further, the fact that the notification issued on 15.04.2014 notifying amendment to Rule 11 (8) makes no reference to Article 309 of the Constitution, cannot be the basis to assume that the said notification though issued by order and in the name of the Governor of Madhya Pradesh is with reference to some other statutory provision muchless executive instructions. It would have been a different matter if the notification was to refer to some other or specific statutory provision. Since the notification is silent about any provision under which the same has been issued, it can reasonably be assumed that the same is ascribable to Article 309 of the Constitution of India, having been issued by and in the name of the Governor of the Madhya Pradesh. More so, because it is intended to amend the Rules which have been framed in exercise of powers under proviso to Article 309 of the Constitution of India.

Understood thus, it is not open to the petitioners to question the amendment having been issued without following due procedure. Except this, no other submission has been made by petitioners with regard to non-compliance of procedure followed by the Authorities and the validity of the Notification dated 15.04.2014.

The next argument of the petitioners is that the

petitioners have been working as guest faculty for quite some time. That, however, cannot create any right in favour of the petitioners to be appointed against the regular post of Assistant Professors. The petitioners are required to compete in the selection process to be conducted by the Public Service Commission for that purpose and they can do so only if possess requisite qualification and eligibility as specified under Rules of 1990. As per Rules of 1990 and the Regulations issued by the University Grants Commission (minimum qualification for appointment of Teachers and other Academic staff in university and colleges and measures for the maintenance of standard in Higher Education) Regulation, 2010, they must possess Master's degree in the relevant subject issued by Indian University and must have cleared the National Eligibility Test (NET) conducted by UGC, CSIR or similar test accredited by UGC like SLET/SET. Candidates possessing Ph.D. Degree issued in accordance with University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009, however, have been exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions.

Besides the required qualification, the candidate must also fulfill eligibility condition, in particular, regarding the age limit as per Schedule-III appended to Rules of 1990, as amended. The upper age limit for the post of Assistant Professor has been specified as 40 years. The age limit, however, is relaxed in case of persons who were in service but now by virtue of the amended Rule 11(8) limited upto 5 years based on work experience. In that sense, the petitioners and similarly placed persons were to be eligible to participate in the selection process only till attaining the age of 45 years. The petitioners claim that they were less than 45 years when the earlier selection process commenced in the year 2014. That selection process, however, was required to be terminated as it was noticed that the same was not in conformity with the decision of the Supreme Court reported in the case of **P. Sushila and others vs. University Grants Commission and others** reported in **(2015) 8 SCC 129** – which mandated that the appointment be made strictly in conformity with the Regulations framed by the University Grants Commission regarding NET/SLET/SET. As a result, the Authorities had no other option but to cancel the selection process commenced in the year 2014; and to re-advertise the vacancies by issuing fresh advertisement on 19.02.2016. The decision to cancel the

previous selection process taken by the appropriate Authority, however, has been allowed to attain finality. That was never challenged by anyone nor any attempt has been made to challenge the same in the present writ petitions, inspite of opportunity given to the petitioners to amend the writ petitions. Their challenge, however, is limited to the advertisement issued on 19.02.2016. This advertisement, we find, is, in conformity, not only with the provisions of the Rules of 1990 but other related provisions in the Rules of 1997 and the Regulations framed by University Grants Commission. Since the advertisement is in conformity with the relevant Rules and being a fresh selection process, we fail to understand as to how the said advertisement can be questioned by the petitioners merely because the petitioners have been working as guest faculty for quite some time and in the process have exceeded the age limit of 45 years because of the fortuitous situation of cancellation of selection process commenced in the year 2014.

The petitioners did make endeavour to persuade the Court that University Grants Commission was contemplating to issue instructions to reckon the period of service rendered by candidates such as the petitioners; and to give benefit of that experience for the purpose of appointment on regular basis. However, such instructions or

Regulations have not seen the light of the day. As and when those Regulations are introduced and brought into force, the argument may become relevant. In any case, the Regulations cannot be given retrospective effect and be made applicable to advertisement issued on 19.02.2016, which has already ignited the selection process to fill up the existing vacancies on the given date.

Considering the above, we hold that neither the Rules of 1990 nor the Rules of 1997 can be said to be unjust or irrational so as to be struck down at the instance of these petitioners. For the same reason and more so because the advertisement as has been issued being in conformity with the extant Rules and Regulations, no further inquiry about the validity thereof is warranted or can be countenanced.

The counsel for the respondents have rightly pressed into service exposition of the Supreme Court in the case of **Union of India and others vs. Shivbachan Rai** reported in **(2001) 9 SCC 356**. The Supreme Court has restated the settled legal position that prescribing any age limit as also deciding the extent to which any relaxation can be given if an age limit is prescribed, are essentially matters of policy. It is open to the Government while framing Rules under proviso to Article 309 to prescribe such age limit or to provide extent to which any relaxation can be given. Further

prescription of age limit in such Rules or the extent of relaxation given under the Rules, cannot be termed as arbitrary or unreasonable. If no such extent is prescribed, that may give rise to charge of arbitrariness in the Rules. Following this decision, there is no reason to doubt justness or reasonableness of the relevant Rules, validity whereof has been put in issue in the present petitions.

That takes us to the next contention that the proviso below Rule 4 of the Rules of 1997 is in conflict with sub-rule (8) of Rule 11 of the Rules of 1990; and that the said proviso virtually whittles down the principal provision contained in Rule 4. This argument, in our opinion, is completely ill-advised. The purpose of proviso is always to provide for an exception to the general Rule. The general Rule regarding the age limit and, in particular, age relaxation is prescribed in Rule 4, but, that has been circumscribed to maximum of 5 years by virtue of proviso. The proviso though inserted in subsequent point of time will have to be telescoped in Rule 4; and the setting in which that Rule has been framed, in our opinion, it is a provision providing for the maximum age limit for women as 45 years and relaxation upto 10 years for direct appointment of the maximum age specified under the concerned Rules, whichever is less. In other words, if the maximum age

prescribed in the relevant recruitment Rules is specified as 30 years the benefit of relaxation would be only upto 10 years, to make it 40 years for women. By virtue of proviso to Rule 4, where the maximum age limit specified in the recruitment Rules is provided as 40 years, relaxation will be applicable only till the age of 45 years. Only such harmonious construction and conjoint reading with Rule 11(8) of the Rules of 1990, is permissible. Any other interpretation would result in rewriting of Rule 4, which cannot be countenanced.

The argument, however, proceeds that, in effect, women candidates would get benefit or relaxation for only 5 years, as is also applicable to male candidates. Although Rule 11(8) permits relaxation upto 5 years on account of work experience; and opening part of Rule 4 of the Rules of 1997 provides relaxation upto 10 years, that relaxation is made available to women candidates by virtue of Rules of 1997, which Rules itself provide for outer age limit of 45 years as per the proviso. That is in consonance with the age limit specified in Rule 8 read with Schedule III and Rule 11(8) of the Rules of 1990. In that, by virtue of Rule 11(8) relaxation can be given up to 5 years age based on work experience. The fact that in the case of women candidates no additional benefit becomes available cannot be the basis

to question the validity of Rule 11(8) or for that matter proviso below Rule 4 of the Rules of 1997. Moreover, in our opinion, there is no conflict between the proviso below Rule 4 of the Rules of 1997 and Rule 11(8) of 1990. Both operate in different fields. It is possible that both the provisions apply to women candidate, but in either case the maximum age limit specified is 45 years for being eligible for direct recruitment on the post of Assistant Professor. That being a policy matter and has been made applicable by framing statutory Rules, none of the petitioners before this Court can succeed or get any relief as they have already exceeded the outer age limit of 45 years.

In some petitions before us the petitioners claim that they belong to OBC category for which they must deserve further relaxation beyond 45 years. The reason as applicable in the case of women, by the same logic, it is not open to argue that beyond the age of 45 years the candidate may be considered merely because he belongs to OBC category. Notably, neither the Rules of 1990 nor the Rules of 1997, expressly specify further extension in the case of OBC beyond 45 years. That being a matter of legislative policy and being a case of concession or relaxation and not a matter of reservation as such, the selection process commenced on the basis of extant Rules and Regulations

cannot be doubted.

We may now turn to the decision of the Supreme Court relied by the counsel for the petitioners in the case of **Richa Mishra vs. State of Chhattisgarh and others** reported in **AIR 2016 SC 753**. That was a case in which selection process though commenced after coming into force of Rules of 2005 was proceeded on the basis of Recruitment and Promotion Rules of 2000. In the backdrop of the facts of that case, the Supreme Court considered the matter and opined that the eligibility criteria must be reckoned for the purposes of Rules of 2000 as can be discerned from paragraphs 22 and 30 of the said decision.

Indisputably, validity of Rule 8(i)(a) of the Rules of 1990 was challenged in the past, which has been negated by the Division Bench of this Court in the case of **Santosh d/o Narayan Choubey (DR.) vs. State of M.P. & others, 2014 (4) MPLJ 557**. The Division Bench has relied on the decision of the Supreme Court in the case of **Council of Scientific and Industrial Research and others vs. Ramesh Chandra Agrawal and another, (2009) 3 SCC 35** in support of its conclusion to negative the challenge. Applying the same logic, the challenge to Rule 11(8) also deserves to be rejected and for the additional reasons mentioned hitherto.

In W.P. No.7077/2016 and W.P. No.6017/2016 additional relief has been claimed by the writ petitioners to issue direction to the Authorities to regularise the petitioners against the vacancies of the post of Assistant Professor keeping in mind their length of service as guest faculty. Similar relief has been claimed in the writ-petition filed by the Association. In two petitions, the counsel for the petitioners gave up that relief on being confronted with the situation that two sets of reliefs, deal with self contradictory situation. If the petitioner was interested in participating in the selection process, it is unfathomable that the same candidate can be heard to pursue relief of regularization and vice versa. In the petition filed by the Association, however, counsel for the petitioner has insisted for a decision of this Court. In the first place, the members of the petitioner/Association, indisputably, were appointed without following the procedure prescribed under Rules of 1990 for regular appointment. In the case of **Secretary, State of Karnataka & Ors. vs. Uma Devi & Ors. 2006 AIR SCW 1991 = (2006) 4 SCC 1**, the Constitution Bench of the Supreme Court has frowned upon the practice of making appointments on such temporary or contract or year to year basis. Besides deprecating such practice, the Supreme Court has also opined that persons appointed by such process

cannot be regularised against the regular vacancies. However, the Supreme Court has permitted one time regularisation only in respect of employees belonging to Class-III and Class-IV and not for others. The learned Single Judge of this Court in the judgment rendered on 10.08.2006 on which reliance has been placed by these very petitioners in W.P.No.882/2006 and connected matters, has rejected similar prayer made in those petitions. That view taken by the learned Single Judge has been allowed to become final. It is the State Government, who has challenged the decision on different count, which appeal is pending before this Court as W.A.No.1419/2006. In our opinion, the relief of regularisation cannot be taken forward in absence of any statutory provision in that behalf. The sources of recruitment is specified in the Rules of 1990, which will have to be adhered to and the appointment of candidates made as guest faculty cannot be transformed or regularised against regular post. The regular post will have to be and must be filled by the method of recruitment specified in the Rules of 1990. Hence, even the prayer for regularisation does not commend to us.

Taking overall view of the matter, therefore, these petitions are **dismissed**. Interim relief if any, is vacated forthwith.

While parting, we place on record that we decided to hear all the petitions analogously as the same related to the selfsame Advertisement and also involving overlapping issues. However, we have passed separate orders on case to case basis and common order in cases which were argued together. We were required to pass the orders in open Court contemporaneously after conclusion of arguments in the concerned petition because of the urgency – as the last date of submitting application form is scheduled as 28th April, 2016.

We appreciate the able assistance given by the counsel appearing for the respective parties in the concerned matter, without whose cooperation it would not have been possible for us to conclude the hearing of all these matters in such a short time.

(A.M. Khanwilkar)
Chief Justice

(J.P. Gupta)
Judge

shukla