

HIGH COURT OF MADHYA PRADESH: JABALPUR**(Division Bench)****W.P. No. 1683/2017 (S)****Dr. Vandana Rajoriya**

.....Petitioner

Versus

**Dr. Hari Singh Gour University, Sagar
and others**

.....Respondents

CORAM :**Hon'ble Shri Justice Hemant Gupta, Chief Justice****Hon'ble Shri Justice Vijay Kumar Shukla, Judge****Present:**

Shri Rajendra Tiwari, Senior Advocate with Shri T.K. Khadka,
Advocate for the petitioner.

Smt. Shobha Menon, Senior Advocate with Shri Rahul Choubey,
Advocate for the respondent No.1 - University.

Ms. Priyanka Mishra, Advocate on behalf of Smt. Nirmala Nayak,
Advocate for the respondent/UGC.

Shri Kapil Duggal, Advocate for the respondent No.7 to 10.

Whether Approved for Reporting: Yes**Law Laid Down:**

- ✓ The UGC Regulations 2009 have not envisaged any situation for the candidates who were registered for Ph.D. Degree Programme prior to 11.07.2009. Such situation was addressed effectively only when a Notification was published on 11.07.2016 called as 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. Such Regulations 2016 are not creating any new right or new liability. Such amendment is only clarificatory in nature so as to address the ambiguity in the UGC Regulations 2009 and of 2010 in respect of eligibility of the candidates registered for Ph.D. degree programme prior to 11.07.2009. Thus, the Amendment dated 11.07.2016 would have retrospective

operation and is applicable to the petitioner with full force subject to the fulfilment of the conditions envisaged therein.

Significant Paragraphs: 3, 4, 7, 8, 12 to 14, 22 and 24 to 30
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## **ORDER**

(Passed on this 16th day of August, 2018)

**Per: Hemant Gupta, Chief Justice:**

The petitioner initially filed the present writ petition for issuance of a writ in the nature of prohibition, to restrain the respondents from removing her from the post of Assistant Professor but later on challenge was made to the communication dated 13.02.2017 based on the resolution of the Executive Council of the University dated 10.02.2017 (Annexure P-59). The basis of action against the petitioner and other nine candidates is that such candidates were ineligible for appointment as Assistant Professors as the Ph.D. degree was not awarded to them in accordance with the provisions of UGC (Minimum Standards and Procedure for Awards of M.Phil/Ph.D. Degree), Regulation, 2009 (in short "the UGC Regulations 2009") published in the Gazette of India, July 11, 2009.

2. The respondent-University was earlier established on 18th July, 1946 under the University of Saugor Act, 1946 prior to the Independence of the Country when it was named as "Sagar University" or "University of Saugor", C.P. & Berar Province". In February, 1983, its name was changed to that of Dr. Hari Singh Gour University, Sagar. However, it became a Central University after coming into force of the Central Universities Act, 2009.

3. An advertisement was published on 30.10.2010 to fill the various faculty positions by way of rolling/open advertisement. The last date for submission of the application forms was 15.12.2010 but by way of Corrigendum dated 20.11.2010, the last date was extended up to 21.12.2010. In response to such advertisement, the petitioner was appointed on 20.05.2013 because of her Ph.D. degree granted by the respondent-University on 15/21st December, 2009 (Annexure P-15).

4. The services of the petitioner were earlier terminated on 8/9th July, 2014 for the reason that she does not satisfy the minimum eligibility criteria prescribed by the 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, 2010 (for short "the UGC Regulations 2010") for the post of Assistant Professor. Such termination was challenged successfully by the petitioner by filing a writ petition bearing W.P. No.11934/2014 (Dr. Vandana Rajoriya v. Dr. Hari Singh Gaur Vishwavidyalaya and others) wherein the question of termination was agreed to be decided by the Executive Council of the University. It is in pursuance to such decision that the matter was considered by the Executive Council.

5. The Executive Council decided to constitute a committee comprising of five members to determine the eligibility of Assistant Professors in question *vis-a-vis* the eligibility criteria stipulated in the UGC Regulations 2010 and also contained in the letter No.F.9-3/2010(PS)/Misc dated 20.11.2012 by the Secretary UGC addressed to the then Vice Chancellor of the University.

6. The Executive Council in its meeting dated 10.02.2017 extracted the findings of the Committee dated 23.08.2015 (Annexure P-58). The relevant extract is reproduced for ready reference:-

"1. Seven (07) Assistant Professors, in spite of not being NET/SLET/SET qualified were found eligible by the Committee as the PhD degree awarded to them was found in accordance with the UGC Regulations 2009 governing PhD programme. Thus they satisfy the eligibility criteria stipulated in the UGC Regulations-2010, and as also reiterated by the Secretary of the UGC in his letter no.F.9-3/2010(PS)/Misc. dated 20.11.2012 addressed to the then Vice Chancellor.

2. Eleven (11) Assistant Professors were found not eligible by the committee as neither they possess NET/SLET/SET nor the PhD degree awarded to them is in accordance with the UGC Regulations 2009, governing PhD programme. Thus, they do not satisfy the eligibility criteria stipulated in the UGC Regulations-2010 and as also reiterated by the Secretary of the UGC in his letter no. F.9-3/2010(PS)/Misc. dated 20.11.2012 addressed to the then Vice Chancellor.

3. Proper selection procedure was not followed in the recruitment of four (04) Assistant Professors though three (03) of them are NET qualified and one possess PhD degree in accordance with the UGC Regulations 2009 governing PhD programme."

7. The Executive Council approved the decision of the Expert Committee dated 23.08.2015 wherein 10 Assistant Professors were found to be not eligible. The relevant consideration of the Executive Council in its meeting held on 10.02.2017 (Annexure P-59) is as under:-

"The Council after having deliberated at length on the report of the Committee resolved the following:

- i. The Council resolved to accept the report of the Committee excepting in one case who is reportedly found ineligible by the Committee. That teacher has obtained M.Sc degree under integrated PhD programme availing exit facility after two years from IISc Bangalore, and PhD from Ohio State University, USA.

The teacher under reference has cleared TOEFL and GRE and has done Course Work with a paper on research methodology during his PhD programme and also he has published paper before submission of the doctoral thesis and has given openly defended viva-voce examination. As such, in the opinion of the Council, teacher is found to be eligible. Therefore, the Council resolved to refer the case to the Committee for review and reconsideration.

- ii. Since ten Assistant Professors are found ineligible (one case is being referred back to the Committee for review and reconsideration) and in the appointment of the four Assistant Professors due process was not followed, the Council is of the opinion that it is in conflict with the recommendation of the selection committee. Furthermore, the Executive Council in its 11<sup>th</sup> and 12<sup>th</sup> meetings has already accepted the recommendations of the Selection Committee and appointed them in the University in the year 2013. Under the circumstances and in the light of the provision contained in the Statute 18(5) of the University, the Council resolved to refer the cases of those Assistant Professors who are found ineligible and also the cases in which the due procedure was not followed, to the Hon'ble Visitor for his consideration and final order.
- iii. The Council further resolved that while referring the cases to the Hon'ble Visitor, the University shall prepare a detailed report covering the entire process of recruitment. The report shall also contain complete academic details of the Assistant Professors under reference including their research credentials such as teaching and research experience, research publications including books, patents, research projects, honours and awards and other achievements.

The Committee reviewed the case of Dr. Krishna Kishor Dey and recommended that he fulfilled all the eligibility criteria for appointment to the post of Assistant Professor.

In pursuance of the aforesaid resolution of the Executive Council, a detailed report was submitted to the Hon'ble Visitor of the Vishwavidyalaya through MHRD vide letter No.R/2015/823 dated 27.11.2015 and letter No.R/2015/867 dated 28-30.12.2015 for consideration and final orders. After considering the matter the President of India in his capacity of Visitor of this Vishwavidyalaya has

accepted the resolution of the Council and directed to take consequent action.

The academic credentials at the time of submission of application of 10

Assistant Professors who are found ineligible are as follows:

| S. No. | Name of the Teachers     | Academic Qualification                                       | Teaching/Research Experience UG/ PG (before joining this University)                                                                                                             | Publications including books, patents, research projects, honours and awards and other achievements (before joining this University)                                         |
|--------|--------------------------|--------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.     | Dr. Anita Kumari         | Ph.D. in year 2008 from BHU, Varanasi                        | -                                                                                                                                                                                | Publications: 11(05 Research papers, 02 full papers as proceeding of Conference, 04 Book Chapters) Seminar/ Workshop attended and paper presented : 15                       |
| 2.     | Dr. Bhawna Rewadikar     | Ph.D. in year 2004 from Vikram University, Ujjain            | -                                                                                                                                                                                | Seminar/ Workshop attended : 11                                                                                                                                              |
| 3.     | Dr. Sushma Yadav         | Ph.D. in year 2014 from BHU, Varanasi                        | -                                                                                                                                                                                | Research Papers: 11<br>Book Chapter : 02 Seminar/ Workshop attended: 15                                                                                                      |
| 4.     | Dr. (Smt.) Rupali Saini  | Ph.D. in year 2002 from Dr. H.S. Gour Vishwavidyalaya, Sagar | Worked as a Guest Lecturer and contract Lecturer for a period of nearly 05 years                                                                                                 | Research Papers: 11<br>Book: 01<br>Seminar/ Workshop attended : 05                                                                                                           |
| 5.     | Dr. Vandana Rajoriya     | Ph.D. in year 2009 from Dr.H.S. Gour Vishwavidyalaya Sagar   | Worked as Lecturer for nearly 03 years on regular basis in Govt. Polytechnic College, Khurai, Sagar                                                                              | Research Papers accepted for publication : 04 Seminar/ Workshop attended with papers :05                                                                                     |
| 6      | Dr. Kavita Rohit         | Ph.D in year 2010 from Dr. H.S. Gour Vishwavidyalaya Sagar   | 08 years as regular Assistant Professor in a college under Dept. of Higher Education, Govt. of M.P.                                                                              | Nil                                                                                                                                                                          |
| 7      | Dr. Abhilasha Durgawansi | Ph.D in year 2001 from Barkatullah University Bhopal         | Worked as Assistant Professor on regular basis for nearly 06 years in IT BHU. Also worked as project fellow for a period of 18 months in the university of Amsterdam, Netherland | Research Papers:25<br>Seminar/ Workshop attended : 12                                                                                                                        |
| 8      | Dr. (Mrs.) Sarita Rai    | Ph.D in year 2000 from Gorakhpur University, Gorakhpur       | Worked as a Research Associate for 08 years. PDF for 01 year in <i>Université De Bourgogne France</i>                                                                            | Research work : 19<br>Seminar/ Workshop attended : 11                                                                                                                        |
| 9      | Dr. Vandana Vinayak      | Ph.D in year 2008 from Kurukshetra University                | Worked as Project Assistant for nearly 2½ years in the NOVOD Project entitled "Mass Multiplication of Quality Planting                                                           | Project : 08<br>Research Papers : 01<br>Seminar/Workshop attended and presented : 21<br>Noel Deerr Gold Medal Certificate awarded by the Sugar Technologists" Association of |

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|----|------------------|------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                  |                                                            | Material of TBO's Plant Jatropha : Protocol Development for Commercial Application” Also worked as Senior Scientific Assistant (Toxicology Division) in Forensic Science Laboratory, Haryana | India, New Delhi for the best paper entitled “Sucrose Transport and Accumulation in Parenchyma Cell of Cane Stems: Physiological and Molecular Mechanisms” |
| 10 | Dr. Veena Thawre | Ph.D in year 2009 from Rani Durgawati University, Jabalpur | Worked as Guest Lecturer for nearly 2 years                                                                                                                                                  | Research Papers : 12 Seminar/ Workshop attended : 05                                                                                                       |

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**Resolution:**

The Council deliberated upon the directives of Hon’ble President of India in his capacity as the Visitor of the Vishwavidyalaya as also on the report of the Committee submitted in the matter and resolved as under:

1. That the services of Assistant Professors, namely, Dr. Anita Kumari, Dr. Bhawna Rewadikar, Dr. Sushma Yadav, Dr. Rupali Saini, Dr. Kavita Rohit, Dr. Sarita Rai, Dr. Vandana Vinayak and Dr. Veena Thaware be terminated as they do not fulfil the eligibility criteria for the post of Assistant Professor at the time of their appointment in terms of UGC Regulations, 2010. Further, termination orders be issued immediately by paying them one month’s salary in terms of provision contained in Statute 25(6)(b) of the Vishwavidyalaya.
2. That though Dr. Abhilasha Durgawanshi and Dr. Vandana Rajoria also do not fulfil the eligibility criteria in terms of UGC Regulations, 2010 for the post of Assistant Professor at the time of their appointment, they have obtained stay order in their favour by the Hon’ble High Court of MP at Jabalpur and as such their termination from the post of Assistant Professor may be kept in abeyance till further orders of Hon’ble High Court of MP.

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8. The University Grants Commission in exercise of the powers conferred under Section 26 read with Section 14 of the University Grants Commission Act 1956 framed the University Grants Commission (Minimum

Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) Regulation, 2000 (for short the "UGC Regulation 2000"). Such Regulations contemplated minimum qualification required for appointment for the teaching faculty. The following was provided in the Note to Regulation 1.3.3, 1.4.3, 1.5.3 and 1.6.1. The relevant conditions reads as under :-

“NET shall remain compulsory requirement for appointment as Lecturer even for candidates having Ph.D degree. However, the candidates who have completed M.Phil degree or have submitted Ph.D. thesis in the concerned subject upto 31<sup>st</sup> December, 1993 are exempted from appearing in the NET examination.”

**9.** Such regulation was substituted by the first amendment called as the "University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) (1st Amendment) Regulation 2002. The substituted clause reads as under:-

“NET shall remain compulsory requirement for appointment as Lecturer even for candidates having Ph.D Degree. However, the candidates who have completed M.Phil Degree by 31<sup>st</sup> December, 1993 or have submitted Ph.D thesis to the University in the concerned subject on or before 31<sup>st</sup> December, 2002 are exempted from appearing in the NET examination. In case such candidates fail to obtain Ph.D Degree, they shall have to pass the NET examination.”

**10.** By virtue of the second amendment, called as the University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) (2nd Amendment), Regulation 2006, the following clause was inserted:-

“NET shall remain compulsory requirement for appointment as Lecturer even for those with Post Graduate Degree. However, the



candidates having Ph.D Degree in the concerned subject are exempted from NET for PG level and UG level teaching. The candidates having M.Phil Degree in the concerned subject are exempted from NET for UG level teaching only.”

**11.** Such clause was again substituted on 11.07.2009 by UGC (Minimum Qualifications required for the Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) (3rd Amendment), Regulation 2009, to read as under:-

“NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of Lecturers in Universities/Colleges/Institutions.

Provided, however, that candidates, who are or have been awarded Ph.D Degree in compliance of the ‘University Grants Commission (minimum standards and procedure for award of Ph.D Degree), Regulation 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions.”

**12.** The UGC Regulation 2000 as reproduced above were superseded by 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) Regulation, 2010 (for short "UGC Regulations 2010). The Regulation 2 contemplated that minimum qualifications for appointment and other service conditions in Universities and Colleges teachers, Librarians and Directors of Physical Education and Sports as a measure for the maintenance of standards in higher education shall be as provided in the Annexures to these Regulations. The Clause 4.4.0 as contained in the

Annexure contemplated requirement for appointment to the post of Assistant Professor. Relevant clause reads as under:-

**"UGC Regulations 2010**

4.4.0 Assistant Professor

4.4.1 Arts, Humanities, Sciences, Social Sciences, Commerce, Education, Languages, Law, Journalism and Mass Communication

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(iii) Notwithstanding anything contained in sub-clauses (i) and (ii) to this Clause 4.4.1, candidates, who are, or have been awarded a Ph.D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009, shall be 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."

**13.** The petitioner was appointed when UGC Regulations 2010 were in force, but were granted Ph.D. degree not accordance with UGC Regulations 2009. Such regulations contemplated grant of Ph.D. degree and/or M.Phil degree after the commencement of these regulations. Such regulations created doubt on the legality and validity of the Ph.D. degrees granted prior to publication of UGC Regulations 2009. Such ambiguity was addressed when Regulations of 2016 were published on 11.7.2016, amending the UGC Regulations 2010. The relevant amendment reads as under :-

**"UGC Regulations 2016**

**3.** The proviso prescribed under Regulation 3.3.1, 4.4.1, 4.4.2, 4.4.2.2, 4.4.2.3, 4.5.3 and 4.6.3 in the University Grants Commission (Minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges and other measures for the maintenance of standards in higher education) (3th (sic) Amendment) Regulations, 2016 regarding exemption to the candidates registered for Ph.D. programme prior to July 11, 2009 shall stand amended and be read as under:-

“Provided further, the award of degree to candidates registered for the M.Phil/Ph.D programme prior to July 11, 2009, shall be governed by the provisions of the then existing Ordinances/Bylaws/Regulations of the Institutions awarding the degree and the Ph.D candidates shall be exempted from the requirement of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions subject to the fulfilment of the following conditions:-

- a) Ph.D. degree of the candidate awarded in regular mode only;
- b) Evaluation of the Ph.D. thesis by at least two external examiners;
- c) Open Ph.D. viva voce of the candidate had been conducted;
- d) Candidate has published two research papers from his/her Ph.D. work out of which at least one must be in a refereed journal;
- e) Candidate has made at least two presentations in conferences/seminars, based on his/her Ph.D. work.

(a) to (e) as above are to be certified by the Vice-Chancellor/Pro-Vice-Chancellor/Dean (Academic Affairs/ Dean (University instructions.”

The UGC Regulations 2016 specifically dealt with the Degrees to the candidates registered for M.Phil/Ph.D. programme prior to July 11, 2009.

**14.** The University Grants Commission also framed UGC (Minimum Standards and Procedure for Awards of M.Phil/Ph.D. Degree), Regulation, 2009. Such Regulation contemplated the procedure for grant of Ph.D. Degree and/or M.Phil Degree. The relevant conditions of eligibility as they have undergone change from time to time read as under:-

**"UGC Regulations 2009**

PROCEDURE FOR ADMISSION.

9. (i) All Universities, Institutions, Deemed to be Universities and Colleges/Institutions of National Importance shall admit M.Phil doctoral students through an Entrance Test conducted at the level of individual University, Institution, Deemed to be University, College/Institution of National importance. The University may decide separate terms and conditions for

those students who qualify UGC/CSIR(JRF) Examinations/SLET/GATE/teacher fellowship holder or have passed M.Phil Programme for Ph.D Entrance Test. Similar approach may be adopted in respect of Entrance Test for M.Phil Programme.

- (ii) It shall be followed by an interview to be organized by the School/Department/Institution/University as the case may be.
- (iii) At the time of interview, doctoral candidates are expected to discuss their research interest/area.
- (iv) Only the predetermined number of students may be admitted to M.Phil/Ph.D programme.

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#### COURSE WORK.

13. After having been admitted, each M.Phil/Ph.D student shall be required by the Universities, Institutions, Deemed to be Universities and Colleges/Institutions of National Importance, as the case may, to undertake course work for a minimum period of one semester. The course work shall be treated as pre M.Phil/Ph.D preparation and must include a course on research methodology which may include quantitative methods and Computer Applications. It may also involve reviewing of published research in the relevant field. The individual Universities, Institutions, Deemed to be Universities and Colleges/Institutions of National Importance, as the case may be, shall decide the minimum qualifying requirement for allowing a student to proceed further with the writing of the dissertation.

If found necessary, course work may be carried out by doctoral candidates in sister Departments/Institutes either within or outside the University for which due credit will be given to them."

**15.** Learned senior counsel for the petitioner vehemently argued that the Notification published on 11.07.2016 in the Gazette of India (Extraordinary) Part-III Section-4 called as 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) (4<sup>th</sup> Amendment), Regulations, 2016 (for short "UGC

Regulations 2016”) amending the UGC Regulations 2010 has not been considered by the Executive Council though the meeting was held on 10th February, 2017. Such amended Regulations were not before the committee when it made its recommendation on 23.08.2015. In terms of the amendment carried out on 11.07.2016, the eligibility has to be seen in respect of candidates registered for M.Phil./Ph.D. programme prior to July 11, 2009 subject to the conditions specified therein.

16. It is, thus, contended by the learned senior counsel for the petitioner that the Resolution of the Executive Council was not in the light of the UGC Regulations 2010 as amended on 11.07.2016 but based upon a report of the committee given on 23.08.2015 much prior to amendment carried out by the University Grants Commission on 11.07.2016. Therefore, eligibility of the petitioners who were registered for Ph.D. course prior to 11.07.2009 has to be examined in the light of the provisions as amended on 11.07.2016. The petitioner fulfills the conditions as specified in the said Notification; therefore, the decision to terminate the services is illegal.

17. On the other hand, Smt. Shobha Menon, learned senior counsel appearing for the respondent No.1 — University argued that the eligibility conditions which were in force at the time of issuance of advertisement and appointment are required to be examined. The subsequent amendment in the Regulations will not make the petitioners eligible. The reference is made to a series of decisions of the Supreme Court reported as **(1990) 3 SCC 157 (N.T. Devin Katti and others v. Karnataka Public Service Commission and others)**; **(1998) 3 SCC 381 (Upen Chandra Gogoi v. State of Assam and others)**; **AIR 1990 SC 405 (P. Mahendran and others etc. v. State of**

**Karnataka and others, etc.); (2005) 4 SCC 154 (Secretary, A.P. Public Service Commission v. B. Swapna and others); (2008) 3 SCC 724 (Madan Mohan Sharma and Another vs. State of Rajasthan and others) and (2015) 8 SCC 484 (Prakash Chand Meena and others v. State of Rajasthan and others).**

18. It is also contended that examination from National Eligibility Test (NET) or State Level Eligibility Test (SLET) under UGC Regulations 2009 is a necessary condition of eligibility. Therefore, the petitioner was not eligible in terms of UGC Regulations 2009. Learned counsel for the respondent relies upon the report of the Expert Committee that Ph.D. degree obtained by the petitioner is not in accordance with the UGC Regulations 2009. The reference is made to the decisions of the Supreme Court reported as **(2015) 8 SCC 129 (P. Suseela and others v. University Grants Commission and others)** and **(2011) 3 SCC 436 (State of Orissa and another v. Mamata Mohanty)**.

19. Learned counsel for the respondent relies upon an order passed by a Division Bench of Indore Bench of this Court in **W.P. No.2338/2016 (Pratibha Choudhary v. M.P. Public Service Commission, Indore)** decided on 09.05.2016. Another Division Bench of this Court in **W.A. No.489/2016 (Dr. Bippu Rajak and others v. State of M.P. and others)** decided on 16.08.2016 relying upon the said judgment, has rejected the candidature of the candidates for the reason that they are not exempted from qualifying NET or SLET eligibility tests. Learned counsel for the respondent also relies upon a Single Bench decision of Punjab & Haryana High Court in **Civil Writ Petition No.3450/2012 (O&M) (Dr. Neelam Sharma v. Guru**

**Nank Dev University and another**) decided on 08.05.2017 wherein the writ-petitioner was not considered eligible for the reason that she has not qualified NET. The petitioner in the aforesaid case was the holder of Ph.D. degree prior to July, 2009.

**20.** It is also argued that the executive instructions issued prior to framing of UGC Regulations 2010 particularly the letter dated 27.08.2009 issued by the University Grants Commission is ineffective, as such letter was issued prior to framing of the UGC Regulations 2010.

**21.** On the basis of the aforesaid respective arguments, the first question, which arises for consideration is: whether the amendment notified on 11.07.2016 will make the petitioner eligible for appointment to the post of Assistant Professor - the post, to which the petitioner was appointed in 2013 in pursuance to the advertisement issued on 30.10.2010.

**22.** UGC Regulations 2010 as amended on 11.7.2016 provides for that the candidates who have obtained Ph.D. degree prior to 11.7.2009 would be eligible provided they satisfy the conditions as contained in the said notification. Such notification was to meet the grey area as to whether the candidates who have been awarded Ph.D. degree prior to publication of UGC Regulations 2009 shall be eligible for appointment to the post of Assistant Professor only if they have obtained Ph.D. degree in terms of UGC Regulations 2009. Such question has been set at rest when the amendment was published on 11.07.2016 that the candidates who are registered for the M.Phil./Ph.D. degree programme prior to 11.07.2009 shall be governed by the provisions of the then existing Ordinances/Bylaws/ Regulations of the Institutions awarding the degree and the Ph.D. candidates shall be exempted

from the requirement of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions subject to the fulfillment of the following conditions:

- "a) Ph.D. degree of the candidate awarded in regular mode only;
- b) Evaluation of the Ph.D. thesis by at least two external examiners;
- c) Open Ph.D. viva voce of the candidate had been conducted;
- d) Candidate has published two research papers from his/her Ph.D. work out of which at least one must be in a refereed journal;
- e) Candidate has made at least two presentations in conferences/seminars, based on his/her Ph.D. work.

(a) to (e) as above are to be certified by the Vice-Chancellor/Pro-Vice-Chancellor/Dean (Academic Affairs/ Dean (University instructions.”

**23.** The petitioner was registered for Ph.D. degree prior to 11.07.2009 and has been granted Ph.D. degree in terms of the existing Bylaws/Regulations/Ordinances applicable to the University in question.

**24.** The only question which can be examined by the respondent-University is whether the five conditions as reproduced above are satisfied by the petitioner. If the petitioner satisfies such condition, she is required to be treated as eligible for appointment to the post of Assistant Professor; as such amendment is clarificatory in nature to remove the ambiguity in the applicability of UGC Regulations 2009.

**25.** The argument of Smt. Menon, learned counsel for the respondent - University that such Regulation cannot have retrospective effect is not tenable. Such Regulations are not creating any new right or new liability. It is to clarify that UGC Regulations 2009 will not be applicable in respect of the candidates who were registered for Ph.D. degree programme prior to



11.07.2009. The UGC Regulations 2009 have not envisaged any situation for the candidates who were registered prior to 11.07.2009. Such situation could be explained only with the Notification published on 11.07.2016. Therefore, it is not giving retrospective operation to the Notification but it is a clarification in respect of eligibility of the candidates registered for Ph.D. degree programme prior to 11.07.2009. Therefore such amendment would be applicable to the petitioner with full force.

26. The judgments of the Supreme Court referred to by Smt. Menon, learned senior counsel for the respondent-University that eligibility conditions as applicable on the date of advertisement and/or appointment are to be examined, is not disputed. However, the question is: that the conditions of eligibility are determined by the UGC and the UGC itself has issued number of Notifications in respect of eligibility of candidates, who have enrolled for Ph.D. degree prior to 11.07.2009. Since the amendment dated 11.07.2016 is clarificatory in nature so as to address the ambiguity in the UGC Regulations of 2009 and UGC Regulations of 2010, therefore, such amendment would have retrospective operation in respect of appointments made prior to publication of such amendment. Thus, the judgments referred to by the learned senior counsel for the respondent are not applicable.

27. Reliance of the learned counsel for the respondent on the judgment of this Court in **Pratibha Choudhary's** case (**supra**) is not tenable for the reason that clarification came to be published after the decision on 11.07.2016. In **Dr. Bippu Rajak's** case (**supra**) this Court has decided the matter on 16.08.2016 but followed the order passed on 09.05.2016 in **Pratibha Choudhary's** case (**supra**), when the Court held as under:-

"6. Having heard learned counsel for the parties we find no reason to interfere into the matter. In the case of *Pratibha Choudhary* (supra) a co-ordinate bench of this Court has already dismissed identical petition and ones the requirement of having passed the NET/SLET/SET examination is not fulfilled by the petitioners prior to the cut off date for submitting application for their selection we see no reason to make any indulgence into the matter.

7. It is an admitted position that appellants did not fulfil the requirement of attaining the minimum qualification prescribed in the advertisement before the cut-off date. They now claim the benefit of an amended provision which only has prospective effect. The requirement of fulfilling the minimum qualification prescribed before the cut-off date is a requirement of law and if this requirement has not been fulfilled, the appellants cannot make any grievance as on considering this aspect of the matter the petitioner has been dismissed, we see no reason to interfere in the matter."

28. We find that the ambiguity in respect of candidates, who have joined Ph.D. degree course prior to 11.07.2009 was sought to be addressed by way of another Notification dated 11.07.2009 but failed to achieve the desired object. Such problem was addressed effectively while publishing the amendment on 11.07.2016. Therefore, the judgments referred to by the learned senior counsel for the respondent have no applicability to the facts of the present case. The judgment of Single Bench of Punjab & Haryana High Court in Dr. **Neelam Sharma's** case (supra) is again a judgment in which there was no reference made to the amendment carried out on 11.07.2016. Therefore, the reliance on such judgment is misconceived.

29. In **P. Suseela's** case (supra), the Supreme Court was examining the Constitutional validity of 3rd Amendment Regulations 2009. The Supreme Court held that the Commission has a right to frame regulations consistent with the UGC Act. The Court held as under:-

"14. The other interesting argument made is that such regulations should not be given retrospective effect so as to prejudicially affect the interests of any person to whom such regulation may be applicable. In order to appreciate this contention, it is necessary to distinguish between an existing right and a vested right. This distinction was made with great felicity in *Trimbak Damodhar Rajpurkar v. Assaram Hiran Patil*, AIR 1966 SC 1758. In that case a question arose as to whether an amendment made to Section 5 of the Bombay Tenancy and Agricultural Lands Amendment Act could be said to be retrospective because its operation took within its sweep existing rights. A bench of five Hon'ble Judges of this Court held that Section 5 had no retrospective operation.

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16. Similar is the case on facts here. A vested right would arise only if any of the appellants before us had actually been appointed to the post of Lecturer/Assistant Professors. Till that date, there is no vested right in any of the appellants. At the highest, the appellants could only contend that they have a right to be considered for the post of Lecturer/Assistant Professor. This right is always subject to minimum eligibility conditions, and till such time as the appellants are appointed, different conditions may be laid down at different times. Merely because an additional eligibility condition in the form of a NET test is laid down, it does not mean that any vested right of the appellants is affected, nor does it mean that the regulation laying down such minimum eligibility condition would be retrospective in operation. Such condition would only be prospective as it would apply only at the stage of appointment. It is clear, therefore, that the contentions of the private appellants before us must fail.

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20. Similarly, in *Sethi Auto Service Station vs DDA (2009) 1 SCC 180*, it was held: (SCC p. 191, para 33)

"33. It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken amounts to an abuse of power. The court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended.

Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. (Vide Union of India v. Hindustan Development Corpn. [(1993) 3 SCC 499])"

In the aforesaid judgment, the Supreme Court was examining the constitutionality of 3rd Amendment Regulation 2009 whereas there is no challenge in the present petition to any of the Regulation of the UGC but the petitioner claims benefit of the amendment carried out on 11.07.2009, which makes them eligible subject to the fulfillment of the conditions.

**30.** Since the Expert Committee has given its report on 23.8.2015 prior to the amendment published on 11.07.2016 and the Executive Council has failed to consider such amendment while accepting the report of the Expert Committee to terminate the services of the petitioner, therefore, we find that the action of the University is wholly untenable, illegal and against the UGC Regulations. Consequently, the decision of the Executive Council dated 10.02.2017 (Annexure P-59) and the subsequent order of termination dated 13.02.2017 is set aside. The eligibility of the candidates may be considered by the Executive Council in the light of the UGC Regulation published on 11.07.2016 as to whether the petitioner fulfills the following conditions:

- "a) Ph.D. degree of the candidate awarded in regular mode only;
- b) Evaluation of the Ph.D. thesis by at least two external examiners;
- c) Open Ph.D. viva voce of the candidate had been conducted;

- d) Candidate has published two research papers from his/her Ph.D. work out of which at least one must be in a refereed journal;
  - e) Candidate has made at least two presentations in conferences/seminars, based on his/her Ph.D. work.
- (a) to (e) as above are to be certified by the Vice-Chancellor/Pro-Vice-Chancellor/Dean (Academic Affairs/ Dean (University instructions).”

**31.** With the aforesaid direction and liberty, the writ petition is **disposed of.**

**(HEMANT GUPTA)**  
**CHIEF JUSTICE**

**(VIJAY KUMAR SHUKLA)**  
**JUDGE**