P. SUSEELA & ORS. ETC. ETC. A

v.

UNIVERSITY GRANTS COMMISSION & ORS. ETC. ETC.

(Civil Appeal Nos. 2891-2900 of 2015) B

MARCH 16, 2015

[T.S. THAKUR AND ROHINTON FALI NARIMAN, JJ.]

University Grants Commission Regulations (Minimum Qualifications Required for the Appointment And Career Advancement of Teachers in Universities and Institutions affiliated to it) (the third Amendment) Regulation 2009 – Recruitment and appointment of Lecturers in Universities/ Colleges/Institutions thereunder – NET/SLET to be the minimum eligibility condition – Constitutional validity of – Plea that earlier UGC exempted Ph.D and M.Phil candidates from the said eligibility test, but later Union Government issued a directive including NET/SLET to be the minimum eligibility condition; and that the said regulations were issued pursuant to directions of the Central Government which themselves were issued outside the powers conferred by UGC Act, thus, the eligibility conditions would not apply to M.Phil and Ph.D degrees awarded prior to 31.12.2009 – Held: Object of the directions of Central Government read with the UGC regulations of 2009/2010 are to maintain excellence in standards of higher education – Keeping the object in mind, a minimum eligibility condition of passing the national eligibility test is laid down, thus, is valid – Petitions filed by PhD/MPhil holders challenging the regulations dismissed, however, the Regulations would be prospective – University Grants Commission Act, 1956 – ss. 20, 22, 26. C D E F G

H

A **Dismissing the appeals and disposing of the contempt petition, the Court**

HELD: 1.1 A vested right would arise only if any of the appellants had actually been appointed to the post B **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** C **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** D **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. [Para 15] [661-G-H; 662-A-C]**

E

1.2 It was submitted based on the language of the direction of the Central Government dated 12th November, 2008 that all that the Government wanted the UGC to do was to "generally" prescribe NET as a F **qualification. But this did not mean that UGC had to prescribe this qualification without providing for any exemption. This cannot be accepted for the simple reason that the word "generally" precedes the word "compulsory" and it is clear that the language of the** G **direction has been followed both in letter and in spirit by the UGC regulations of 2009 and 2010. [Para 16] [662-D-F]**

1.3 The object of the directions of the Central H **Government read with the UGC regulations of 2009/2010**

are to maintain excellence in standards of higher education. Keeping this object in mind, a minimum eligibility condition of passing the national eligibility test is laid down. True, there may have been exemptions laid down by the UGC in the past, but the Central Government now as a matter of policy feels that any exemption would compromise the excellence of teaching standards in Universities/Colleges/ Institutions governed by the UGC. Obviously, there is nothing arbitrary or discriminatory in this, in fact it is a core function of the UGC to see that such standards do not get diluted. [Para 17] [662-G-H; 663-A]

1.4 A legitimate expectation must always yield to the larger public interest. The larger public interest in the instant case is nothing less than having highly qualified Assistant Professors to teach in UGC Institutions. Even if, therefore, the private appellants had a legitimate expectation that given the fact that the UGC granted them an exemption from the NET and continued to state that such exemption should continue to be granted even after the Government direction of 12th November, 2008 would have to yield to the larger public interest of selection of the most meritorious among candidates to teach in Institutions governed by the UGC Act. [Para 20] [665-B-D]

1.5 It is pointed out that the directions of the Central Government under Section 20 of the UGC Act pertain to questions of policy relating to national purpose; and that the regulation making power is subservient to directions issued under Section 20 of the Act. The fact that the UGC is an expert body does not take the matter any further. The UGC Act contemplates that such expert body will have to act in accordance with directions

A issued by the Central Government. [Para 22] [667-E-F]

1.6 The Allahabad High Court adverted to an expert committee which laid down that if six out of eleven criteria laid down by the Committee was satisfied when B such University granted a Ph.D. degree, then such Ph.D. degree should be sufficient to qualify such person for appointment as Lecturer/Assistant Professor without the further qualification of having to pass the NET test. The UGC itself does not appear to have given effect to C this recommendation of the Committee. However, the High Court thought it fit to give effect to this Committee's recommendation in the final directions issued by it. When the UGC itself did not accept the recommendations of the said Committee, it cannot be D understood how the High Court sought to give effect to such recommendations. Therefore, the Allahabad High Court judgment is set aside in its entirety. [Para 23] [667-G-H; 668-A-C]

E 1.7 In SLP (C) NO.3054-3055/2014, a judgment of the same High Court again by a Division Bench arrived at the opposite conclusion. This matter also caused some distress. A Division Bench judgment of the same High Court is binding on a subsequent Division Bench. The F subsequent Division Bench can either follow it or refer such judgment to the Chief Justice to constitute a Full Bench if it differs with it. It cannot be appreciated the manner in which this subsequent judgment, (even though it has reached the right result) has dealt with an G earlier binding Division Bench judgment of the same High Court. This judgment is also set aside only for the reason that it did not follow an earlier binding judgment. [Para 24] [668-D-F; 669-A]

H *University Grants Commission v. Sadhana Chaudhary*

1996 (6) Suppl. SCR 392: (1996) 10 SCC 536; *Udai Singh Dagar v. Union of India* **2007 (6) SCR 707: (2007) 10 SCC 306;** *Trimbak Damodhar Rajpurkar v. Assaram Hiraman Patil* **1962 Suppl. 1 SCR 700;** *Union of India v. International Trading Company* **2003 (1) Suppl. SCR 55: (2003) 5 SCC 437;** *Sethi Auto Service Station v. DDA* **2008 (14) SCR 598: (2009) 1 SCC 180 – referred to.** A B

Case Law Reference

			C
1996 (6) Suppl. SCR 392	**Referred to.**	**Para 10**	
2007 (6) SCR 707	**Referred to.**	**Para 11**	
1962 Suppl. 1 SCR 700	**Referred to.**	**Para 14**	
2003 (1) Suppl. SCR 55	**Referred to.**	**Para 18**	D
2008 (14) SCR 598	**Referred to.**	**Para 19**	

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2891-2900 of 2015

E

From the Judgment and Order dated 06.12.2010 of the Division Bench of the Madras High Court in W.A. Nos. 893, 894, 900 to 902 and 942 to 945 of 2010 & W.P. No. 9483 of 2010.

F

WITH

Civil Appeal Nos. 2901, 2902, 2903, 2904-2906, 2907-2908, 2909, 2910, 2911, 2912, 2913, 2914-2915 and 2916 of 2015 and Contempt Petition (C) Nos. 286-287 of 2014 G

Nalini Chidambaram, Esha Mohapatra, Vikas Mehta, V. Prabhakar, R. Chandrachud, Jyoti Prashar, Amit Kumar, Abhishek Gupta, Aishwarya Bhati, Madhurima Ghosh, Neha Meena, Amit verma, Hemendra Sharma, T. Gopal, Pawan H

A Saini, Anshuman, Anuj Bhandari, Arti Gupta, Ankit Mishra, Maruf Khan, Ravindra S. Garia, Sushma Suri for the Appellants.

Sridhar Potaraju, Mukesh Verma, Menka Guruswamy, B Himanshu Agarwal, Vivek Paul Oriel, B. V. Balram Das, Ravinder Agarwal, Shailendra Sharma, G. S. Mani, R. Sathish, M. P. Parthnan, S. Gowthaman, Subramonium Prasad, Gopal Singh, Navin Prakash, Govind Goel, Sanjay Kumar Yadav, Ankit Goel, Dr. Kailash Chand, S. S. Shaamshery, Amit C Sharma, Sandeep Kohli, Ruchi Kohli, Surya Kant, Jayant Bhatt, Hamid Khan, Milind Kumar, T. V. George, Rakesh Taneja, Satya Lipsu Ray, Mohinder Jit Singh Rupal, Yamni Phyang, Pragati Neekhra, Arjun Harkauli, Nitin Kumar Thakur for the Respondents.

D

The Judgment of the Court was delivered by

R. F. NARIMAN, J.

1. Leave granted in all the special leave petitions.

E

2. A large number of appeals are before us in which the judgments of four High Courts are assailed. The High Court of Delhi in its judgment dated 6th December, 2010 was faced with the constitutional validity of the University Grants F Commission Regulations (Minimum Qualifications Required for the Appointment And Career Advancement of Teachers in Universities and Institutions affiliated to it) (the third Amendment) Regulation 2009 under which NET/SLET is to be the minimum eligibility condition for recruitment and G appointment of Lecturers in Universities/Colleges/Institutions. The challenge was repelled saying that the Regulations do not violate Article 14 and are, in fact, prospective inasmuch as they apply only to appointments made after the date of the notification and do not apply to appointments made prior to H

that date. Along the lines of the Delhi High Court, the Madras and Rajasthan High Courts have also repelled challenges to the aforesaid regulations *vide* their judgments dated 6th December, 2010 and 13th September, 2012. On the other hand, the Allahabad High Court in a judgment dated 6th April, 2012 has found that the said regulations were issued pursuant to directions of the Central Government which themselves were issued outside the powers conferred by the UGC Act and, hence, the eligibility conditions laid down would not apply to M. Phil. and Ph.D. degrees awarded prior to 31st December, 2009. However, a subsequent judgment of the Allahabad High Court dated 6th January, 2014 distinguished the aforesaid judgment and upheld the self-same regulations. Whereas the Union of India is in appeal before us from the Allahabad High Court judgment dated 6th April, 2012, M.Phil. degree holders and Ph.D. degree holders who have not yet been appointed as Assistant Professors in any University/ College/Institution are the appellants before us in all the other appeals.

3. The facts necessary to appreciate the controversy in these appeals are as follows:-

The University Grants Commission Act, 1956, was enacted by Parliament to make provision for the coordination and determination of standards in Universities being enacted under Entry 66 List I, Schedule VII to the Constitution of India. By Section 4 of the Act, a University Grants Commission is established to carry out the functions entrusted to it by Section 12 of the Act. We are directly concerned in these appeals with two Sections of this Act, namely, Sections 20 and 26:-

> **20. Directions by the Central Government.**—(1) In the discharge of its functions under this Act, the Commission shall be guided by such directions on questions of policy relating to national purposes as may

A be given to it by the Central Government.

(2) If any dispute arises between the Central Government and the Commission as to whether a question is or is not a question of policy relating to national purposes, the
B decision of the Central Government shall be final.

26. Power to make regulations.—(1) The Commission may [, by notification in the Official Gazette,] make regulations consistent with this Act and
C the rules made thereunder,—

(*a*) regulating the meetings of the Commission and the procedure for conducting business thereat;

(*b*) regulating the manner in which and the purposes for
D which persons may be associated with the Commission under Section 9;

(*c*) specifying the terms and conditions of service of the employees appointed by the Commission;

E

(*d*) specifying the institutions or class of institutions which may be recognised by the Commission under clause (*f*) of Section 2;

F (*e*) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instruction;

(*f*) defining the minimum standards of instruction for the
G grant of any degree by any University;

(*g*) regulating the maintenance of standards and the co-ordination of work or facilities in Universities.

H [(*h*) regulating the establishment of institutions referred

to in clause (*ccc*) of Section 12 and other matters relating to such institutions;

(*i*) specifying the matters in respect of which fees may be charged, and scales of fees in accordance with which fees may be charged, by a college under sub-section (2) of Section 12-A;

(*j*) specifying the manner in which an inquiry may be conducted under sub-section (4) of Section 12-A.]

(2) No regulation shall be made under clause (*a*) or clause (*b*) or clause (*c*) or clause (*d*) [or clause (*h*) or clause (*i*) or clause (*j*)] of sub-section (1) except with the previous approval of the Central Government.

(3) The power to make regulations conferred by this section [except clause (*i*) and clause (*j*) of sub-section (1)] shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the regulations or any of them but no retrospective effect shall be given to any regulation so as to prejudicially affect the interests of any person to whom such regulation may be applicable.

4. In exercise of the powers conferred by Section 26(1)(e) of the said Act, the UGC framed regulations in 1982 prescribing the qualification for the teaching post of Lecturer in colleges as follows:-

"M. Phil. degree or a recognised degree beyond Master's level".

In 1986, the Malhotra Committee was appointed by the UGC to examine various features of University and College education. It recommended that there should be certain minimum qualifications laid down for the post of Lecturer.

A Pursuant to the said Committee report, the UGC framed regulations on 19th September, 1991 superseding the 1982 regulations and providing apart from other qualifications, clearing of the NET as a test for eligibility to become a Lecturer. *Vide* an amendment dated 21st June, 1995, a B proviso was added to the 1991 regulations by which candidates who have submitted their Ph.D. thesis or passed the M. Phil. examination on or before 31st December, 1993 are exempted from the said eligibility test for appointment to the post of Lecturer. This continued till 2002, the only change C made being that the exemption continued qua Ph.D. thesis holders for dates that were extended till 31st December, 2002. This state of affairs continued until 2008 when the Mungekar Committee submitted its final report recommending that NET should be made a compulsory requirement for D appointment of Lecturer in addition to the candidate possessing M.Phil. or Ph.D degrees. On 12th November, 2008, the Department of Higher Education, Ministry of Human Resources Development, Government of India, issued a E directive under Section 22 of the UGC Act providing *inter alia* as under:-

> "UGC shall, for serving the national purpose of maintaining standards of higher education, frame F appropriate regulations within a period of thirty days from the date of issue of this order prescribing that qualifying in NET/SLET shall generally be compulsory for all persons appointed to teaching positions of Lecturer/Assistant Professor in Higher Education, and G only persons who possess degree of Ph.D. after having been enrolled/ admitted to a programme notified by the Commission, after it has satisfied itself on the basis of expert opinion, as to be or have always been in conformity with the procedure of standardization of H Ph.D. prescribed by it, and also that the degree of Ph.D.

was awarded by a University or Institution Deemed to be University notified by the UGC as having already complied with the procedure prescribed under the regulations framed by the Commission for the purpose." A

5. In pursuance of the said directive, the UGC promulgated the impugned Regulations of 2009, the 3rd Amendment of which provides as follows:- B

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

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 position in Universities/Colleges/Institutions." D E

The proviso referred to a number of new conditions relating to the maximum number of Ph.D. students at any given point of time, stringent admission criteria for a Ph.D. degree, research papers being published, the Ph.D. thesis being evaluated by at least two experts, one of whom shall be an expert from outside the State etc. F

6. This was followed by another directive dated 30th March, 2010 by the Ministry under Section 20 of the Act directing the UGC as follows:- G

"The Ministry of Human Resource Development issued another order dated 30.3.2010 under Section 20 of the University Grants Commission Act, 1956 directing the UGC as follows: H

(i) That the UGC shall not take up specific cases for exemption from the application of the NET Regulations of 2009 after the said Regulations have come into force, for either specific persons or for a specific university/ institution/college from the application of the UGC (Minimum Qualifications for appointment and career advancement of teachers in universities and colleges) 3rd Amendment Regulations, 2009 for appointment as Lecturer in universities/colleges/institutions;

(ii) That appropriate amendment to the second proviso to clause 2 of the UGC Regulations 2000 shall be made by UGC to give full effect to the policy directions issued by the Central Government dated 12th November, 2008, within 30 days from the date of issue of this direction; and

(iii) That the decision taken by the UGC in it's 468th meeting held on 23rd February, 2010 vide agenda item no. 6.04 and 6.05 to grant specific exemptions from the applicability of NET shall not be implemented as being contrary to national policy.

The above said directions shall be implemented by the UGC forthwith."

7. Pursuant to this directive, on 30th June, 2010, the UGC framed Regulations of 2010, para 3.3.1 of which states:

"3.3.1. NET/SLET/SET shall remain the minimum eligibility condition for recruitment and appointment of Assistant Professors in Universities/Colleges/ Institutions.

Provided however, that 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 equivalent positions in Universities/Colleges/ Institutions."

8. By two resolutions dated 12th August, 2010 and 27th September, 2010, the UGC opined that since the regulations are prospective in nature, all candidates having M. Phil. degree on or before 10th July, 2009 and all persons who obtained the Ph.D. degree on or before 31st December, 2009 and had registered themselves for the Ph.D. before this date, but are awarded such degree subsequently shall remain exempted from the requirement of NET for the purpose of appointment as Lecturer/Assistant Professor.

9. The Central Government, however, by letter dated 3rd November, 2010 informed the UGC that they were unable to agree with the decision of the Commission and stated that consequently a candidate seeking appointment to the post of Lecturer/Assistant Professor must fulfill the minimum qualifications prescribed by the UGC including the minimum eligibility condition of having passed the NET test.

10. Learned counsel assailing the Delhi, Madras and Rajasthan High Court judgments argued that Section 26(3) expressly entitles a regulation to be prospective but so as not to prejudicially affect the interests of any person to whom such regulation may be applicable. They, therefore, argued that both under Article 14 as well as this sub-section, since all M.Phil. and Ph.D. holders had been repeatedly assured that they would be exempt from passing the NET exam if they were such holders prior to 2009, the regulations should not be so construed as to impose the burden of this examination upon them. They further argued that under Section 26(2), regulations

made in pursuance of Section 26(1)(e) and (g) do not require the previous approval of the Central Government. Consequently, the impugned regulations are bad since they follow the dictate of the Central Government which is not required. Also, this would show that when it comes to qualifications of persons to be appointed to the teaching staff, the UGC is an expert body to whom alone such qualifications and consequently exemptions from such qualifications should be left to decide. They also argued that there is a violation of Article 14 in that unequals have been treated equally as those who passed their M. Phil. and Ph.D. degrees prior to 2009 fell in a separate class which had an intelligible differentia from those who did not so fall as has been maintained by the UGC from time to time. They strongly relied upon the judgment of this Court in **University Grants Commission v. Sadhana Chaudhary** (1996) 10 SCC 536 for this proposition as well as the proposition that their legitimate expectation in the matter of appointment on the post of Lecturer had been done away with.

11. On the other hand, learned counsel for the Union of India and the UGC stressed the fact that under Section 26 regulations have to be made consistently with the Act and Section 20 is very much part of the Act. Therefore, if directions on questions of policy are made by the Central Government, regulations must necessarily be subordinate to such directions. It was also pointed out that if a question arises as to whether a subject matter is a question of policy relating to national purposes, the decision of the Central Government shall be final. They then relied upon **Udai Singh Dagar v. Union of India** (2007) 10 SCC 306, for the proposition that a person will have the right to enter a profession only if he holds the requisite qualification and the holding of such qualification would be prospective if it is a qualification which is laid down any time before his entry into a profession.

12. It is clear that Section 26 enables the Commission to make regulations only if they are consistent with the UGC Act. This necessarily means that such regulations must conform to Section 20 of the Act and under Section 20 of the Act the Central Government is given the power to give directions on questions of policy relating to national purposes which shall guide the Commission in the discharge of its functions under the Act. It is clear, therefore, that both the directions of 12th November, 2008 and 30th March, 2010 are directions made pertaining to questions of policy relating to national purposes inasmuch as, being based on the Mungekar Committee Report, the Central Government felt that a common uniform nationwide test should be a minimum eligibility condition for recruitment for the appointment of Lecturer/Assistant Professors in Universities/Colleges/ Institutions. This is for the obvious reason that M. Phil. degrees or Ph.D. degrees are granted by different Universities/Institutions having differing standards of excellence. It is quite possible to conceive of M.Phil/ Ph.D. degrees being granted by several Universities which did not have stringent standards of excellence. Considering as a matter of policy that the appointment of Lecturers/ Assistant Professors in all institutions governed by the UGC Act (which are institutions all over the country), the need was felt to have in addition a national entrance test as a minimum eligibility condition being an additional qualification which has become necessary in view of wide disparities in the granting of M. Phil./ Ph.D. degrees by various Universities/ Institutions. The object sought to be achieved by these directions is clear: that all Lecturers in Universities/Colleges/Institutions governed by the UGC Act should have a certain minimum standard of excellence before they are appointed as such. These directions are not only made in exercise of powers under Section 20 of the Act but are made to provide for coordination and determination of standards which lies at the very core of

A the UGC Act. It is clear, therefore, that any regulation made under Section 26 must conform to directions issued by the Central Government under Section 20 of the Act.

13. It was argued that since the previous approval of the B Central Government was not necessary for regulations which define the qualifications required of persons to be appointed to the teaching staff of a University, the Government has no role to play in such matters and cannot dictate to the Commission. This argument does not hold water for the C simple reason that it ignores the opening lines of Section 26(1) which states that the Commission can only make regulations consistent with the Act, which brings in the Central Government's power under Section 20 of the Act, a power that is independent of sub-section (2) of Section 26. A D regulation may not require the previous approval of the Central Government and may yet have to be in conformity with a direction issued under Section 20 of the Act. In fact, even where a regulation can only be made with the previous approval of the Central Government, the Central Government E would have a role to play both before and after the regulation is made. In the first case, it would accord its previous approval to the regulation. Once the regulation becomes law, it may issue directions under Section 20 pursuant to which the very same regulation may have to be modified or done away with F to conform to such direction. It is clear, therefore, that Section 26(2) would not stand in the way of the directions issued in the present case by the Central Government to the Commission.

G 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 H 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 Hiraman Patil**, 1962 Suppl. 1 SCR 700. 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. This Court held:

> "Besides, it is necessary to bear in mind that the right of the appellant to eject the respondents would arise only on the termination of the tenancy, and in the present case it would have been available to him on March 31, 1953 if the statutory provision had not in the meanwhile extended the life of the tenancy. It is true that the appellant gave notice to the respondents on March 11, 1952 as he was then no doubt entitled to do; but his right as a landlord to obtain possession did not accrue merely on the giving of the notice, it accrued in his favour on the date when the lease expired. It is only after the period specified in the notice is over and the tenancy has in fact expired that the landlord gets a right to eject the tenant and obtain possession of the land. Considered from this point of view, before the right accrued to the appellant to eject the respondents amending Act 33 of 1952 stepped in and deprived him of that right by requiring him to comply with the statutory requirement as to a valid notice which has to be given for ejecting tenants.
>
> In this connection it is relevant to distinguish between an existing right and a vested right. Where a statute operates in future it cannot be said to be retrospective merely because within the sweep of its operation all

A existing rights are included. As observed by Buckley, L.J. in *West* v. *Gwynne* [(1911) 2 Ch 1 at pp 11, 12] retrospective operation is one matter and interference with existing rights is another. "If an Act provides that as at a past date the law shall be taken to have been that B which it was not, that Act I understand to be retrospective. That is not this case. The question here is whether a certain provision as to the contents of leases is addressed to the case of all leases or only of some, namely, leases executed after the passing of the C Act. The question is as to the ambit and scope of the Act, and not as to the date as from which the new law, as enacted by the Act, is to be taken to have been the law." These observations were made in dealing with the question as to the retrospective construction of Section D 3 of the Conveyancing and Law of Property Act, 1892 (55 & 56 Vict. c. 13). In substance Section 3 provided that in all leases containing a covenant, condition or agreement against assigning, underletting, or parting E with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition or agreement shall, unless the lease contains an expressed provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum F of money in the nature of a fine shall be payable for or in respect of such licence or consent. It was held that the provisions of the said section applied to all leases whether executed before or after the commencement of the Act; and, according to Buckley, L.J., this construction G did not make the Act retrospective in operation; it merely affected in future existing rights under all leases whether executed before or after the date of the Act. The position in regard to the operation of Section 5(1) of the amending Act with which we are concerned appears to

H

us to be substantially similar. A

A similar question had been raised for the decision of this Court in *Jivabhai Purshottam* v. *Chhagan Karson* [Civil Appeal No 153 of 1958 decided on 27-3-1961] in regard to the retrospective operation of Section 34(2)(*a*) of the said amending Act 33 of 1952 and this Court has approved of the decision of the Full Bench of the Bombay High Court on that point in *Durlabbha Fakirbhai* v. *Jhaverbhai Bhikabhai* [(1956) 58 BLR 85] . It was held in *Durlabbhai case* [(1956) 58 BLR 85] that the relevant provision of the amending Act would apply to all proceedings where the period of notice had expired after the amending Act had come into force and that the effect of the amending Act was no more than this that it imposed a new and additional limitation on the right of the landlord to obtain possession from his tenant. It was observed in that judgment that "a notice under Section 34(1) is merely a declaration to the tenant of the intention of the landlord to terminate the tenancy; but it is always open to the landlord not to carry out his intention. Therefore, for the application of the restriction under sub-section 2(*a*) on the right of the landlord to terminate the tenancy, the crucial date is not the date of notice but the date on which the right to terminate matures; that is the date on which the tenancy stands terminated". B C D E F

15. 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 G H

A 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 B 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.

C

16. One of the learned counsel for the petitioners argued, based on the language of the direction of the Central Government dated 12th November, 2008 that all that the Government wanted the UGC to do was to "generally" D prescribe NET as a qualification. But this did not mean that UGC had to prescribe this qualification without providing for any exemption. We are unable to accede to this argument for the simple reason that the word "generally" precedes the word "compulsory" and it is clear that the language of the E direction has been followed both in letter and in spirit by the UGC regulations of 2009 and 2010.

17. The arguments based on Article 14 equally have to be rejected. It is clear that the object of the directions of the F Central Government read with the UGC regulations of 2009/ 2010 are to maintain excellence in standards of higher education. Keeping this object in mind, a minimum eligibility condition of passing the national eligibility test is laid down. True, there may have been exemptions laid down by the UGC G in the past, but the Central Government now as a matter of policy feels that any exemption would compromise the excellence of teaching standards in Universities/Colleges/ Institutions governed by the UGC. Obviously, there is nothing arbitrary or discriminatory in this – in fact it is a core function

H

of the UGC to see that such standards do not get diluted. A

18. The doctrine of legitimate expectation has been dealt with in two judgments of this Court as follows:

In **Union of India** v. **International Trading Company** (2003) 5 SCC 437, it was held: B

> **"23.** Reasonableness of restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly. In determining whether there is any unfairness involved; the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the relevant time, enter into judicial verdict. The reasonableness of the legitimate expectation has to be determined with respect to the circumstances relating to the trade or business in question. Canalisation of a particular business in favour of even a specified individual is reasonable where the interests of the country are concerned or where the business affects the economy of the country. (See *Parbhani Transport Coop. Society Ltd.* v. *Regional Transport Authority* [AIR 1960 SC 801 : 62 Bom LR 521] , *Shree Meenakshi Mills Ltd.* v. *Union of India* [(1974) 1 SCC 468 : AIR 1974 SC 366] , *Hari Chand Sarda* v. *Mizo District Council* [AIR 1967 SC 829] and *Krishnan Kakkanth* v. *Govt. of Kerala* [(1997) 9 SCC 495 : AIR 1997 SC 128]." C D E F G H

19. Similarly, in **Sethi Auto Service Station v. DDA** (2009) 1 SCC 180, it was held:-

> **"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 *Hindustan Development Corpn.* [(1993) 3 SCC 499]"

20. In **University Grants Commission** v. **Sadhana Chaudhary** (1996) 10 SCC, 536, it is true that in paragraph 22, some of the very appellants before us are referred to as having a legitimate expectation in the matter of appointment to the post of Lecturer in Universities/ Colleges, but that case would have no direct application here. There a challenge was made to exemptions granted at that time to Ph.D. holders and M. Phil. degree holders. It was found that such exemption had a rational relation to the object sought to be achieved at that point of time, being based on an intelligible differentia. An Article 14 challenge to the said exemption was, therefore, repelled. Even assuming that the

said judgment would continue to apply even after the 2009 Regulations, a legitimate expectation must always yield to the larger public interest. The larger public interest in the present case is nothing less than having highly qualified Assistant Professors to teach in UGC Institutions. Even if, therefore, the private appellants before us had a legitimate expectation that given the fact that the UGC granted them an exemption from the NET and continued to state that such exemption should continue to be granted even after the Government direction of 12th November, 2008 would have to yield to the larger public interest of selection of the most meritorious among candidates to teach in Institutions governed by the UGC Act.

21. The Allahabad High Court in its judgment dated 6th April, 2012 has held as follows:

"104. CONCLUSIONS:

1. The Central Government, in exercise of its powers under Section 20 (1) of UGC Act, 1956, does not possess powers and authority to set aside or annul the recommendations of the University Grants Commission, and the regulations made by it under Section 26 (1) (e) of the Act defining the qualification, that should ordinarily be required to be possessed by any person to be appointed to the teaching posts of the University, for which under Section 26 (2) of the UGC Act, 1956, the previous approval of the Central Government is not required.

2. The exemptions given by UGC to those, who were awarded Ph.D degrees prior to 31.12.2009 before the enforcement of the Regulations of 2009, is not a question of policy relating to national purpose on which the Central Government could have issued directions

A under Section 20 (1) of the UGC Act, 1956.

3. The UGC is an expert body constituted with specialists in laying down standards and for promotion and coordination of University education. The
B recommendations made by it in the matters of qualifications and the limited exemptions of such qualifications for appointment for teachers in Universities taken after constituting expert Committees and considering their recommendations is not subject to
C supervision and control by the Central Government. The Central Government in the matters of laying down minimum qualifications for appointment of teachers in the University, does not possess any supervisory powers, to annul the resolutions of UGC.

D

4. The Ph.D holders, who were awarded Ph.D degrees prior to 31.12.2009, cannot be said to have legitimate expectation maturing into any right to be considered for appointment on teaching posts in the University, without
E obtaining the NET/SLET/SET qualifications, unless the UGC has provided for any exemptions.

5. The resolution on agenda item no. 6.04 and 6.05 in the 468th meeting of the UGC held on 23.2.2010, and
F the resolution of UGC in its 471st meeting on agenda item no. 2.08 dated 12.8.2010 recommending the 3rd Amendments to the Regulations of 2009 to be prospective in nature, is binding on the Universities including the University of Allahabad.

G

6. The petitioners were awarded Ph.D degrees in the year 2009 and in the year 2003 respectively prior to enforcement of the 3rd Amendment in the regulations, which came into force on 31.12.2009, and thus they are
H eligible, even if they are not NET/SLET/SET qualified,

if they have been awarded Ph.D degree with any six conditions out of 11 recommended by the UGC prior to 31.12.2009.

The writ petition is allowed. The petitioners are held eligible for consideration for appointment as Lecturer for guest faculty in the Department of Sanskrit of the University, provided they satisfy any of the six tests out of eleven, laid down by the UGC, and which are made essential for award of Ph.D degree under the 3rd Amendment of the Regulations of 2009. It will be open to the University to consider from the material produced by the petitioners, that they satisfy six out of eleven tests recommended by the University Grants Commission for award of their Ph.D."

22. We have already pointed out how the directions of the Central Government under Section 20 of the UGC Act pertain to questions of policy relating to national purpose. We have also pointed out that the regulation making power is subservient to directions issued under Section 20 of the Act. The fact that the UGC is an expert body does not take the matter any further. The UGC Act contemplates that such expert body will have to act in accordance with directions issued by the Central Government.

23. The Allahabad High Court adverted to an expert committee under the Chairmanship of Professor S.P. Thyagarajan which laid down that if six out of eleven criteria laid down by the Committee was satisfied when such University granted a Ph.D. degree, then such Ph.D. degree should be sufficient to qualify such person for appointment as Lecturer/Assistant Professor without the further qualification of having to pass the NET test. The UGC itself does not appear to have given effect to this recommendation of the Thyagarajan Committee. However, the High Court thought it

A fit to give effect to this Committee's recommendation in the final directions issued by it. When the UGC itself has not accepted the recommendations of the said Committee, we do not understand how the High Court sought to give effect to such recommendations. We, therefore, set aside the B Allahabad High Court judgment dated 6th April, 2012 in its entirety.

24. In SLP (C) NO.3054-3055/2014, a judgment of the same High Court dated 6th January, 2014 again by a Division C Bench arrived at the opposite conclusion. This is also a matter which causes us some distress. A Division Bench judgment of the same High Court is binding on a subsequent Division Bench. The subsequent Division Bench can either follow it or refer such judgment to the Chief Justice to D constitute a Full Bench if it differs with it. We do not appreciate the manner in which this subsequent judgment, (even though it has reached the right result) has dealt with an earlier binding Division Bench judgment of the same High Court. In fact, as was pointed out to us by learned counsel E for the appellants, the distinction made in paragraph 20 between the facts of the earlier judgment and the facts in the later judgment is not a distinction at all. Just as in the 2012 judgment Ph.D. degrees had been awarded prior to 2009, F even in the 2014 judgment Ph.D. degrees with which that judgment was concerned were also granted prior to 2009. There is, therefore, no distinction between the facts of the two cases. What is even more distressing is that only sub para 4 of the conclusion in the 2012 judgment is set out without G any of the other sub paragraphs of Paragraph 104 extracted above to arrive at a result which is the exact opposite of the earlier judgment. This judgment is also set aside only for the reason that it did not follow an earlier binding judgment. This will, however, not impact the fact that the writ petitions in the H 2014 judgment have been dismissed. They stand dismissed

having regard to the reasoning in the judgment delivered by us today. In view of this pronouncement, nothing survives in Contempt Petition Nos. 286-287 of 2014 which are disposed of as having become infructuous. The other appeals from the Delhi, Madras and Rajasthan High Courts are, consequently, also dismissed. There shall be no order as to costs. A B

Nidhi Jain

Appeals dismissed and contempt petition disposed of.