

GAHC010196882021



2026:GAU-AS:5613

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6543/2021

DR ARCHANA GOGOI
W/O MR. AJIT KR. DOWRA, R/O NO. 1 PADUMONI, P.O. AND P.S.
SARUPATHAR, DIST. GOLAGHAT, ASSAM, PIN 785601

VERSUS

THE STATE OF ASSAM AND 9 ORS
REPRESENTED BY ITS COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION (HIGHER) DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DIRECTOR

HIGHER EDUCATION
KAHILIPARA
GUWAHATI-19

3:THE GOVERNING BODY OF SARUPATHAR COLLEGE

REPRESENTED BY ITS PRESIDENT. SARUPATHAR
P.O. AND P.S. SARUPATHAR
DIST. GOLAGHAT
PIN 785601.

4:THE PRINCIPAL

SARUPATHAR COLLEGE
SARUPATHAR
P.O. AND P.S. SRUPATHAR
DIST. GOLAGHAT
PIN 785601.

5:THE UNIVERSITY GRANTS COMMISSION

REPRESENTED BY ITS SECRETARY
BAHADUR SHAH ZAFAR MARG (ITO)
NEW DELHI
PIN 11000.

6:DR. HASMAT ALI

PRINCIPAL
JURIYA COLLEGE
P.O. JURIYA
DIST. NAGAON
ASSAM
PIN 782124.

7:DR. GANGASWAR KALITA

PRINCIPAL
DALGUMA ANCHALIK COLLEGE

P.O. DALGOMA
DIST. GOALPARA
ASSAM
PIN 783125.

8:DR. JYOTI KAMAL HAZARIKA

PRINCIPAL
TEZPUR COLLEGE
P.O. TEZPUR
DIST. SONITPUR
ASSAM
PIN 784001.

9:DR. SAIFUL ISLAM

ASSTT. PROFESSOR
JURIYA COLLEGE
P.O. JURIA
DIST. NAGAON
ASSAM
PIN 782124.

10:DR. PALLAV JTOI KONWAR

ASSOCIATE PROFESSOR
DEPARTMENT OF ECONOMICS
NAZIRA COLLEGE

P.O. NZIRA
DIST. SIVASAGAR
PIN 785685

Advocate for the Petitioner : K U AHMED, MS P SARMA,MS N HASAN

Advocate for the Respondent : , SC, HIGHER EDU,SC, UGC

Linked Case : WP(C)/4721/2021

DR. MITALI SARMA
W/O MR. RUPAK KUMAR SARMAH
R/O VILL. AND P.O. CHAPARMUKH
P.S. RAHA
DIST. NAGAON
ASSAM
PIN 782425

VERSUS

THE STATE OF ASSAM AND 10 ORS
REPRESENTED BY ITS COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM
EDUCATION (HIGHER) DEPTT.
DISPUR
GUWAHATI 6

2:THE DIRECTOR OF HIGHER EDUCATION

KAHILIPARA
GUWAHATI19

3:THE GOVERNING BODY OF JAGIROAD COLLEGE

REPRESENTED BY ITS PRESIDENT
JAGIROAD
P.O. JAGIROAD
DIST. MORIGAON
PIN 782410

4:THE PRINCIPAL OF JAGIROAD COLLEGE
JAGIROAD

MORIGAON

5:THE UNIVERSITY GRANTS COMMISSION

REPRESENTED BY ITS SECY.
BAHADUR SHAH ZAFAR MARG (ITO) NEW DELHI
PIN 110002

7:DR. HASMAT ALI
PRINCIPAL
JURIYA COLLEGE
P.O. JURIYA
DIST. NAGAON
ASSAM
PIN 782124

8:GANGASWAR KALITA
PRINCIPAL
DALGUMA ANCHALIK COLLEGE
P.O. DALGOMA
DIST. GOALPARA
ASSAM
PIN 783125

Advocate for : K U AHMED
Advocate for : MR. P R MAHANTA SC
HIGHER EDU appearing for THE STATE OF ASSAM AND 10 ORS

Linked Case : WP(C)/556/2024

DR. TILAK SARMAH
S/O- RITUBARNA SARMAH
R/O- VILL GAMIRIPAL
P.O. AND P.S. GAMIRIPAL
DIST. SONITPUR
ASSAM
PIN- 784180

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY ITS COMMISSIONER AND SECRETARY TO THE GOVT. OF
ASSAM
EDUCATION (HIGHER) DEPARTMENT
DISPUR

GUWAHATI-6

2:THE DIRECTOR OF HIGHER EDUCATION
KAHILIPARA
GUWAHATI-19

3:THE GOVERNING BODY OF TYAGBIR HEM BARUAH COLLEGE
REPRESENTED BY ITS PRESIDENT
P.O.- JAMUGURIHAT
DIST. SONITPUR
PIN- 784180

4:THE PRINCIPAL OF TYAGBIR HEM BARUAH COLLEGE
JAMUGURIHAT
SONITPUR
ASSAM

5:THE UNIVERSITY GRANTS COMMISSION
REPRESENTED BY ITS SECRETARY
BAHADUR SHAH ZAFAR MARG (ITO)
NEW DELHI
PIN- 110002

BEFORE

HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Advocate for the petitioner(s) : Mr K U Ahmed.

Advocate for the respondent(s) : Dr Ashim Chamuah for UGC,
Mr K Gogoi, SC, Higher Education,
Dr P Agarwal for UGC

Date on which judgment was reserved: **12.02.2026**

Date of pronouncement of judgment : **23.04.2026**

Whether the pronouncement is of the **NA** operative part of the judgment?

Whether the full judgment has been : **Yes** pronounced?

JUDGMENT AND ORDER (CAV)

Heard Mr. K.U. Ahmed, learned counsel for the petitioner in all the writ petitions. Mr. K. Gogoi, learned standing counsel, appears for the Department of Higher Education in all the writ petitions. Dr. A. Chamuah, learned standing counsel, appears for the UGC in WP(C) No. 4721/2021 and WP(C) No. 6543/2021, and Dr. P. Agarwal, learned standing counsel, appears for the UGC in WP (C) No. 556/2024. Mr. S.K. Das, learned counsel, appears for respondent no.4 in WP(C) No. 4721/2021, and Mr. P. Hazarika, learned counsel, appears for respondent nos.3 And 4 in WP(C) No. 556/2024.

2. These writ petitions under Article 226 of the Constitution of India have been preferred by the petitioners being aggrieved by the the condition incorporated in the orders granting them each regularisation in services insofar as the orders require the petitioner s to qualify in the NET/SLET/Ph.D. within 2 years, failing which their services were to be discontinued and till which time, they would be entitled to get a fixed pay only. Although the

petitioners have challenged the respective orders passed concerning each of the petitioners, all the orders are dated 24.5.2018, and are worded identically, save and except for a difference in the description of the petitioners and the posts in which they were regularised.

3. It is the common stand of the petitioners that they had acquired the PhD degree before the orders of regularisation being passed, while the uniform stand of the respondents in all the petitions is that the doctorate degrees were obtained in violation of the relevant University Grants Commission Regulations, and therefore cannot be recognized as valid PhD degrees.

4. The facts relating to each of the petitioners are listed below:

A. WRIT PETITION (CIVIL) No. 6543/2021

The petitioner had qualified the High School Leaving Certificate Examination in 1987 and had qualified the Higher Secondary examination in 1989. She acquired her Bachelor of Arts Degree in 1992, and she obtained her Master's Degree in Arts in 1996.

Pursuant to a selection process conducted by the authorities of Sarupathar College, in which the petitioner had participated, the petitioner was offered the post of Lecturer in the said College against a non-sanctioned post on an honorary basis by the appointment order dated 23.08.1999. The

petitioner accordingly joined on 26.08.1999 and has been serving the College uninterruptedly to date. When the petitioner wanted to pursue her Ph.D., the Principal of the College issued a No Objection Certificate releasing her from College duty to pursue her Ph.D. at Singhania University, Rajasthan. Accordingly, the petitioner got herself registered provisionally with the Singhania University for the Session 2009. The petitioner thereafter pursued her Ph.D. with one Dr. Munirul Hussain as her guide. By the notification dated 31.12.2013, the petitioner was declared eligible for the award of the Degree of Doctor of Philosophy by the Singhania University. The provisional Degree of Ph.D. in Education was awarded to the petitioner by the Singhania University on 24.01.2014.

B. WP(C)/4721/2021

The petitioner in this petition had qualified the High School Leaving Certificate examination in 1998 and had obtained the Higher

Secondary School Leaving Certificate in 1990. The petitioner acquired her Bachelor's degree in 1993, and although she obtained a Master's in Science degree in 1997, she appeared for a betterment and qualified the same in 1998. Pursuant to an advertisement issued by the college authorities of the Jagiroad College, Morigaon, on 3rd of October 2000, the petitioner applied for the post of lecturer in mathematics, which was a non-sanctioned post even as

per the advertisement. The petitioner was placed in the second position in the selection. When the first candidate did not join, the petitioner was offered appointment as a lecturer in the Mathematics department against a non-sanctioned post on a consolidated pay. The petitioner accordingly joined on 13.9.2001. She thereafter obtained the permission on the basis of a GB resolution and a no objection certificate issued by the Principal of the Jagiroad College, and pursued her M.Phil degree from Vinayaka Mission University, Tamil Nadu and completed her M. Phil in 2009, where she was placed in the first class. The petitioner thereafter registered herself for a Ph.D. degree from the Singhania University, Rajasthan, in 2009 itself and by a notification issued by the Singhania University on 13.3.2013, the petitioner was declared eligible for the Award of Degree of Doctor of Philosophy by the Singhania University. The guide for the petitioner during her Ph.D. was a lecturer in the Department of Mathematics, N N Saikia College, Titabor, Jorhat.

C. WP(C)/556/2024

The petitioner in this petition had obtained his Bachelor's degree in Arts in 1991 and had passed his Master's degree in Arts in Nepali in the year 1992. The petitioner had participated in a selection process initiated by the issuance of an advertisement dated 29.5.1997 by the THB College Jamugurihat, and being the most meritorious amongst the candidates who participated in the selection, he was recommended for appointment as a lecturer in the THB

College Jamugurihat in the department of Nepali. The letter offering appointment to the petitioner had specified that the post was a non sanctioned post and the offer was on a consolidated pay per month. Petitioner accordingly joined his services in the college on 16.7.1997. When two vacancies in sanctioned posts were available in the college, the petitioner approached this court by filing WP(C) number 4262/2008 with a prayer for directions to the respondent authorities to regularize his services against one of the sanctioned posts. By an order dated 3.12.2008, this Court directed the Director of Higher Education to decide the matter to his best judgment and decision, and accordingly, the petition was disposed of. When no action was taken on the orders passed by the Court, the petitioner preferred a second writ petition, WPC number 3509/2011, with the same prayer. The said petition was disposed of by directing the respondent no. 2, that is, the Director of Higher Education, to decide in accordance with the earlier order dated 3.12.2008 passed by the Court in WPC number 4262/2008.

The petitioner had, in the meantime, registered himself to pursue a Ph.D. degree from the Singhania University. He was provisionally registered for the degree on 16.12.2009. The petitioner was awarded the provisional Doctor of Philosophy degree in Nepali drama by a certificate dated 22nd of June 2016.

Facts common to all the writ petitions:

5. In the meantime, the Government of Assam in the Education (Higher) Department issued an Office Memorandum dated 17-7- 2004, which proposed the adjustment of service of College teachers working without sanctioned posts. By Clause 4(a) of the Office Memorandum, it was decided that a vacant post in a particular department in a grants-in-aid college of Assam may be allotted in order of seniority to accommodate teachers in the same College, who are working in some other department without a valid sanctioned post, provided the respective governing bodies had appointed such teachers by observing due procedure. The adjustment of the services of the petitioner under the aforementioned Office Memorandum was initiated by the College authorities. Pursuant thereto, by the order dated 25.04.2018, the services of the petitioner, who was working against a non-sanctioned post, were regularized against the sanctioned vacant post of Assistant Professor in the department of Economics in the same College.

6. For a ready reference, the order dated 25.04.2018 is quoted herein below:-

“GOVERNMENT OF ASSAM

OFFICE OF THE DIRECTOR OF HIGHER EDUCATION, ASSAM

KAHILIPARA::::::::::GUWAHATI-19

No. G(B)AC/Post Creation/61/2013/Pt./1247 Dated Kahilipara the 25.04.2018 O R D E R

In compliance of te Govt. O.M. No. B(2)H.97/2003/98 dated 17.07.2004 and as per approval of Govt. vide letter No. AHE349/2016/152, dated 29.12.2017, No. AHE349/2016/154,

dated 02.02.2018 and No. AHE349/2016/163, dated 08.02.2018, the service of the following teacher working against non-sanctioned post is hereby regularized against the vacant sanctioned post of the same college and other department with immediate effect, subject to the following terms and condition.

Terms and conditions

1. The proposed regularization is governed as per provision made vide OM No. B(2) H.97/2003/98, dated 17.07.2004.
2. The incumbent concerned will be required to qualify in NET/SLET/Ph.D within 2 (two) years, otherwise his/her service will be discontinued and till then he/she will be entitled to get fixed (basic) pay as prescribed only from the date of joining subsequent to this order.
3. The appointment is made subject to receipt of satisfactory Police Verification Report.
4. The appointee concerned will have to submit an undertaking before joining in the college as prescribed by the Finance (Budget) Department vide its Letter No. BW.3/2003/Pt./11/1, dated 25.01.2005 regarding introduction of "New Pension" Rules alongwith the joining report.

Name of the teacher	Name of College	Department	The Post against which the regularizat ion is made	Eligibility as per UGC	Pay provided
Archana Gogoi	Sarupathar College, Sarupathar, Golaghat	Assistant Professor Department of Education	Vacant post of Assistant Professor in the Departme nt of Economics	Nil	Rs. 21,600/- fixed

in the
same
college

In pursuance of the Govt. letter No. AHE.349/2016/163, dated 08.02.2018, the vacant sanctioned post of Assistant Professor, Department of Economics of the college is utilized in the Education Department for regularization of service of the aforesaid teacher working against non-sanctioned post

Sd/- Gitimoni Phukan, ACS

Director, Higher Education, Assam,

Kahilipara::::::Guwahati-19.”

7. The petitioner no. 2 accordingly joined on 25.4.2018, and both the petitioners number 1 and 3 joined on 26.04.2018. After such joining, the application of the petitioners for verification of documents related to the PhD Degree had been forwarded to the Director of Higher Education by the College. Such applications for verification had to be resorted to by each of the petitioners, since the order dated 25.04.2018, by which their respective services had been regularized, quoted their eligibility, as per UGC norms, to be nil. It is the case of the petitioners that since their eligibility as per UGC had been shown to be nil in the appointment orders, the impugned condition available at Serial No. 2 of the terms and conditions in the order dated 25.04.2018 had been incorporated and the petitioners had been given a fixed pay instead of the UGC recommended pay scale and further there was a

condition requiring the petitioners to acquire NET/SLET/Ph.D. within a period of 2 years from the date of joining pursuant to the order dated 25.04.2018. When the petitioners had not been provided their pay in the UGC recommended scale, they preferred applications to the Director of Higher Education, requesting the payment of regular salary as per UGC norms w.e.f. 26.04.2018, i.e., the date of joining as an Assistant Professor in the Department of Education in their respective colleges. After such an application, the Office of the Director of Higher Education, Assam, requested the Principal of the concerned Colleges to submit detailed reports along with relevant documents to the Directorate.

8. The reports presented by the Principals to the Office of the Director of Higher Education, Assam, stated that the petitioners had obtained a PhD from Singhania University. It was further mentioned that other similarly situated persons who had obtained Ph.D. from Singhania University were allowed to retire as Associate/Assistant Professors and that the said incumbents had been allowed to enjoy the benefits which the petitioners had prayed for through their representations. When no action had been taken by the respondent authorities to release the pay of the petitioners as per the UGC norms and fearing adverse action, which could include termination from services, the petitioners preferred the present writ petitions.

9. In the writ petitions, the petitioners have prayed for directions to be issued to the respondent authorities to pay regular salary to the petitioners as per

UGC norms w.e.f. 25/26.04.2018, i.e., the dates when they joined services on regularization. The petitioners had also brought on record the advertisements under which they had participated at the initial stage for selection and appointment to the post of Lecturer in their respective colleges.

10. Responding to the writ petitions, the Director of Higher Education has filed affidavits-in-opposition resisting the prayers made by the petitioners. While it is not disputed in the affidavit-in opposition that the petitioners had been regularized w.e.f. 25/26.04.2018, the prayers made by the petitioners have been sought to be resisted on the ground that the petitioners had obtained a PhD Degree as per their own assertions from Singhania University, Jhunjhunu, Rajasthan, which is outside the State of Assam. Elaborating the reasons for resisting the prayer of the petitioners, the Director has stated that the PhD Degree of the petitioners had not been obtained in consonance with the then prevalent UGC norms and regulations and therefore, as per the respondents, it cannot be said,

that the petitioners had valid PhD Degrees to entitle them to the benefits of a regular pay scale as per the UGC norms. In the affidavit in-opposition, it has also been stated that the appointment of non faculty members of the Singhania University as Supervisor/Ph.D. guide by the Singhania University was invalid and contrary to the UGC (Minimum Standard and Procedure for Award of M. Phil/PhD Degree) Regulations, 2009. It is the stand of the

respondents in the affidavit that since the appointment of the PhD guides of the petitioners was invalid and contrary to the relevant Regulations, the PhD Degrees obtained by the petitioners cannot be accepted as valid as per the UGC Regulations of 2009. The affidavit-in-opposition also refers to the clarification issued by the UGC vide DO No. F-10-6/2011 (PS Misc) dated 06.07.2015 to impress that on the face of the aforesaid clarification, the Universities were not entitled to allocate Supervisors/guides for Ph.D. from persons who were not faculty members of the University or its affiliated PG Colleges/Institute.

11. The University Grants Commission had also filed an affidavit in the matter explaining the manner of appointment of guides/supervisors for PhD aspirants. The UGC has stated that, as per the Regulations of 2009, the supervisors or the guides for PhD scholars had to belong to the faculty of the University under which the PhD course was being pursued. This aspect had been clarified by the order dated 6.7.2015.

Arguments on behalf of the petitioners:

12. Mr K U Ahmed, learned counsel appearing on behalf of all the petitioners, has submitted that the petitioners had participated in a

selection process, which was undeniably conducted in accordance with law. Each of the petitioners had been offered appointment to the post of lecturers

in the respective colleges as per the decisions taken by the Governing Bodies in each case. They had accordingly joined their service, and during the course of service, each of the petitioners had duly intimated the college authorities regarding their intention to pursue a Ph.D. under the Singhania University, Rajasthan, and they were also afforded permission by the Principal of the College. The learned counsel has submitted that none of the parties contests the authenticity of the Ph.D. qualification obtained by the petitioners, and the records available before this Court would be evidence enough to substantiate that the respondent University had duly verified them.

13. The learned counsel has submitted that the only reason for denying recognition to the Ph.D. qualification obtained by the petitioners was that it had been obtained under the guidance of a guide, who was not a regular faculty member of the Singhania University. Addressing this aspect of the matter, the learned counsel has submitted that the clarification that the guide for the Ph.D. programme of a candidate had to be mandatorily a faculty of either the University or of an affiliated college was issued on 06-07-2015. By that time, the petitioners had already acquired their Ph.D. He submits that in view of the aforesaid facts, the ground taken by the respondents not to recognise the Ph.D. degree of the petitioners cannot stand to reason. He has submitted that the degree of Ph.D. obtained by the petitioners before the clarification issued by the UGC cannot be affected by the clarification dated 06.07.2015. He has further argued that a clarification issued by notifications

with regard to the UGC Regulations cannot be given retrospective effect. Therefore, the said notification could not have any adverse effect on the doctorate which was acquired before the clarification was published.

14. The second limb of the arguments adopted by the learned counsel is that the assertion of the petitioners that other similarly situated persons, who had obtained doctoral degrees under the guidance of guides who were not faculty members of the University concerned had been given the benefits of regular pay at a scale recommended under the UGC norms and several of such persons had also been allowed to serve and thereafter superannuate from services without questioning their doctoral degrees, have not been countered by the respondents in the Department of Higher Education. The petitioners had named some of such candidates in the representation before the Director of Higher Education as well as in this writ petition; however, the respondent authorities have failed to respond to such assertion, and in fact, in the report furnished by the Principals of the Colleges to the Director of Higher Education, such position stood admitted. The learned counsel submits that even in view of the right of the petitioners to equal treatment in law under equal circumstances, the respondents are liable to be directed to ignore the second condition appearing in the order dated 25.4.2018 and are further liable to be directed to take into account the Ph.D. degree obtained by the petitioners and to grant them all service benefits arising out of such recognition, including the benefits of a scale of pay as per the UGC norms and continuity in service. The

respondents would also remain liable to be directed to refrain from interfering with the continuous service in the College by relying solely on the impugned condition given in the order dated 25.4.2018.

15. Mr K Gogoi, learned counsel appearing for the Department of Higher Education has resisted the prayers made by the petitioners by submitting that the doctoral degree of the petitioner does not, as it cannot, deserve any recognition since the petitioners had obtained the degree under circumstances which did not adhere to the University Grants Commission (Minimum Standards for award of M.Phil/Ph.D. Degree) Regulations 2009, which stood clarified by the notification dated 6.7.2015. The learned counsel has submitted that the requirement that a guide in a Ph.D. programme had to be a member of the faculty of the University was a condition enshrined in the Regulations of 2009 itself. However, since it was observed that several of the Universities were not following the said mandate, the UGC had issued the clarification, making explicit what was implicit, with regard to the Regulations of 2009. He has submitted that in such a view of the matter, the doctoral degrees obtained by the petitioners were clearly in violation of the provisions of the Regulations of 2009. Therefore, the respondents had rightly refused to recognise the doctoral degree of the petitioner.

16. The learned counsel has submitted that the services of the petitioners had been regularised in the year 2018, even though they did not possess the requisite qualifications as required by the UGC norms, and therefore, the

second condition had been imposed in the order dated 25.4.2018, allowing the petitioners to obtain either

NET/SLET or Ph.D. within a time period of 2 years. It was further provided that upon achieving the requisite qualifications, they would be entitled to pay on a scale mandated by relevant UGC norms. He has submitted that the said time period was over by 24.4.2020, and the petitioner has attempted to challenge the said condition only in the year 2021. He has submitted that there is no illegality when the petitioners have been allowed to draw a salary at a fixed rate in the absence of a recognised doctoral degree. He has prayed for rejection of the prayers made by the petitioners through these writ petitions and has prayed for dismissal of the writ petitions.

17. Dr. A. Chamua and Dr. P Agarwal, learned counsel representing the University Grants Commission, have, based on the affidavits in opposition filed in each of the cases, submitted that the doctoral degree of the petitioners had been obtained in violation of the provisions of the relevant Regulations of 2009. The petitioners have admitted that the persons who had acted as guides in the quest for the degree were not faculty members of the Singhania University and therefore, the same are not recognised or valid degrees. He has submitted that the notification dated 6.7.2015 is clarificatory in nature and therefore, would have retrospective operation, thus covering the case of the petitioners also.

18. I have considered the submissions made by the learned counsels for the contesting parties, and I have also gone through the different provisions of law, the relevant Regulations, notifications and clarifications issued by the University Grants Commission and also different documents annexed to the records of the case.

ISSUES REQUIRING ADJUDICATION:

19. The crux of the litigation is whether the clarification issued by the UGC on 6.7.2015, i.e. after the petitioners had obtained their respective doctoral degrees, could adversely affect the said degree. In the event the answer to the above issue is found in the negative, the next question would arise as to whether the doctoral degree achieved by the petitioners from the Singhania University, Rajasthan in the manner as done in the present set of petitions, fulfil the prerequisites required by the then prelevant Regulations governing the grant of such degree, insofar as the guide/supervisor is concerned, and whether the said degree would suffice the cause of the petitioner to demand eligibility for pay in the scale recommended by the UGC norms and their claim to be allowed to continue in service.

After the issuance of the clarification dated 6.7.2015, the universally accepted position is that the guide/supervisor for aspirants to the Ph.D. degree must be a regular teacher in the university/ affiliated college and using external supervisors (those not employed at the university/affiliated college)

constituted a violation of the 2009 Regulations.

DISCUSSIONS:

20. The University Grants Commission (Minimum Standards for award of M.Phil/Ph.D. Degree) Regulations, 2009, were published in the Official Gazette of India on 11th June 2009, bringing them into effect from the date of publication in the Gazette. They would apply to every University established or incorporated by or under a Central Act, Provincial Act or a State Act, every Institution including a constituent or an affiliated College recognized by the Commission, in consultation with the University concerned under clause (1) of Section 2 of the University Grants Commission Act, 1956, and every Institution deemed to be a University under section 3 of the said Act. The case of the petitioners would, without doubt, be governed by the said regulations.

21. The regulations, relevant and relating to the appointment/allotment of Guide/supervisor for M.Phil/Ph.D aspirants, necessary for adjudication of the lis are quoted herein below for ready reference:

“ELIGIBILITY CRITERIA FOR M. PHIL./PH.D. SUPERVISOR 6. *All Universities, Institutions, Deemed to be Universities and Colleges/Institutions of National Importance shall lay down the criteria for the faculty to be recognized as Research Supervisor both for M.Phil and Ph.D. Programmes.*

7. *All Universities, Institutions, Deemed to be Universities and Colleges/Institutions of National Importance shall lay down and decide on annual basis, a predetermined and manageable number of M.Phil and doctoral students depending on the number of the available eligible Faculty*

Supervisors. A Supervisor shall not have, at any given point of time, more than Eight Ph.D Scholars and Five M.Phil. Scholars.

8. *The number of seats for M.Phil and Ph.D. shall be decided well in advance and notified on the University website or advertisement. All Universities, Institutions, Deemed to be Universities and Colleges/Institutions of National Importance shall widely advertise the number of available seats for M.Phil/Ph.D studies and conduct admission on regular basis.*

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ALLOCATION OF SUPERVISOR

12. *The allocation of the supervisor for a selected student shall be decided by the Department in a formal manner depending on the number of student per faculty member, the available specialization among the faculty supervisors, and the research interest of the student as indicated during interview by the student. The allotment/allocation of supervisor shall not be left to the individual student or teacher. "*

22. The clarification dated 6.7.2015 is also quoted below for ready reference:

“It has come to the notice of the UGC that some Universities are hiring the services of supervisors who do not happen to be regular teachers of the university or its affiliated PG colleges/Institutes awarding the M.Phil/PhD degree. This practice is in violation of UGC(Minimum Standards and Procedure for Award of M.Phil/PhD Degree) Regulations 2009. The following clarification is, therefore, issued in this regard:

“Universities shall allocate the supervisor from amongst the regular faculty members

in a department or its affiliated PG colleges/Institutes, depending on the number of students per faculty member, the available specialisation among the faculty supervisors and the research interest of the student. It is further clarified that any PhD degree awarded by a University under the supervision of a supervisor who is not a faculty member of the university or its affiliated PG colleges/Institutes would be in violation of the UGC Regulations, 2009.”

This may be brought to the notice of the colleges or research institutions affiliated to your University. Any violation of the regulation of the UGC will be viewed very seriously by the UGC”

23. The DO dated 6th of July 2015 is undoubtedly in the form of a clarification. The language adopted is one of clarification. The retrospectivity or otherwise of a clarification issued by the competent authority has been discussed by the Apex in several cases. This Court finds it relevant to refer to the following observations, which have a direct bearing on the facts of the present case:

a) **Gelus Ram Sahu & Ors vs. Dr. Surendra Kumar Singh & Ors** reported in **(2020) 4 SCC 484**. Paragraph Nos. 24 to 26 are reproduced below:

“24. “Clarificatory” legislation is an exception to the general rule of presuming prospective application of laws, unless given retrospective effect either expressly or by necessary implication. In order to attract this exception, mere mention in the title or in any provision that the legislation is “clarificatory” would not suffice. Instead, it must substantively be proved that the law was in fact “clarificatory”, as noted by this Court in Virtual

Soft Systems Ltd. v. CIT : (SCC pp. 687-88, paras 50-51)

“50. It may be noted that the amendment made to Section 271 by the Finance Act, 2002, only stated that the amended provision would come into force with effect from 1-4-2003. The statute nowhere stated that the said amendment was either clarificatory or declaratory. On the contrary, the statute stated that the said amendment would come into effect on 1-4-2003 and therefore, would apply only to future periods and not to any period prior to 1-4-2003 or to any assessment year prior to Assessment Year 2004-2005. It is the well-settled legal position that an amendment can be considered to be declaratory and clarificatory only if the statute itself expressly and unequivocally states that it is a declaratory and clarificatory provision. If there is no such clear statement in the statute itself, the amendment will not be considered to be merely declaratory or clarificatory.

51. Even if the statute does contain a statement to the effect that the amendment is declaratory or clarificatory, that is not the end of the matter. The Court will not regard itself as being bound by the said statement made in the statute but will proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is an amendment which is intended to change the law and which applies to future periods.”

25. The present case is one where, except for the title, nothing contained therein indicates that the 2016 AICTE Notification was clarificatory in nature. The said Notification is framed in a question-answer style and merely restates what has already been made explicit in the 2010 AICTE Regulations. There seems to be no intent to alter the position of law, but instead only to simplify what the AICTE had resolved through its original regulation. The 2016 AICTE Notification is a response to the doubts put

forth to AICTE by the public. This is evident from the stand put forth by AICTE before us in its reply as well as during the course of hearing, namely, that there is no retrospective alteration in the qualification prescribed for the post of Principal.

26. Even if the 2016 AICTE Notification was clarificatory, it must be demonstrated that there was an ambiguity in the criteria for appointment to the posts of Principal, which needed to be remedied. Clarificatory notifications are distinct from amendatory notifications, and the former ought not to be a surreptitious tool of achieving the ends of the latter. If there exists no ambiguity, there arises no question of making use of a clarificatory notification. Hence, in the absence of any omission in the 2010 AICTE Regulations, the 2016 AICTE Notification, despite being generally clarificatory, must be held to have reiterated the existing position of law.”

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b) WPIL Ltd., Ghaziabad vs. Commissioner of Central Excise, Meerut, U.P., reported in **(2005) 3 SCC 73**. Paragraph 15 of the judgment is quoted below:

“15. The learned counsel for the appellant is also right in relying upon a decision of this Court in CCE vs. Wood Craft Products Ltd. In that case, this Court held that a clarificatory notification would take effect retrospectively. Such a notification merely clarifies the position and makes explicit what was implicit. Clarificatory notifications have been issued to end the dispute between the parties.”

c) **CCE vs. Wood Craft Products Ltd**, reported in **(1995) 3 SCC 454**.

At paragraph 19, the Apex Court held as follows:

This extract is taken from CCE v. Wood Craft Products Ltd., (1995) 3 SCC 454 at page 464

“**19.** In our opinion, the expression “similar laminated wood” in Heading No. 44.08 as it stood from the beginning must be construed to include within it block boards of all kinds so that the amendment in Chapter Note 5 w.e.f. 19-3-1990 and thereafter w.e.f. 1-3-1992 merely clarified and made explicit that which was implicit in the heading throughout. These amendments were obviously made to end the dispute raised by the manufacturers by an express statement. Any further discussion with reference to the definitions in the ISI Glossary is unnecessary for the reason already indicated.”

24. In view of the law laid down by the Apex Court, this Court has to proceed to analyse the nature of the contents of the DO issued on 6.7.2015 by the to conclude whether it is in reality a clarificatory or declaratory provision or whether it is an amendment which is intended to change the law as to apply to future periods. **25.** The UGC Regulations of 2009 stated that all universities, Institutions, deemed to be Universities and Colleges/Institutions of National Importance shall be eligible for conducting M.Phil. and Ph.D. Programmes. The eligibility criteria for the faculty to be recognized as Research Supervisor are the same for M.Phil and Ph.D. Programmes were to be laid down by the universities, etc. The decision regarding a predetermined

and manageable number of M.Phil and doctoral students, depending on the number of the available eligible Faculty Supervisors, was to be made on an annual basis. A Supervisor was not allowed to have at any given point of time more than eight Ph.D. scholars and Five M.Phil. Scholars. The allocation of the supervisor for a selected student was to be decided by the Department formally, depending on the number of student per faculty member, the available specialization among the faculty supervisors, and the research interest of the student as indicated during interview by the student. The allotment/allocation of supervisor could not be left to the individual student or teacher. These mandates flow from the Regulations of 2009. From a bare reading of the conditions, it is apparent that the University could allot only a member of its own faculties or of its affiliated colleges to be a supervisor, and it had no jurisdiction to allot a faculty of another university or institution as a supervisor for an aspirant pursuing M.Phil or Ph.D. under it.

26. The reason is simple; no university would be in a position to ascertain the basic mandatory requirements, such as the number of seats available, the number of available eligible Faculty Supervisors, the number of students and scholars being handled by each eligible faculty member and/or the available specialization among the faculty supervisors of some other institution/University. The allocation of the supervisor for a selected student was to be decided by the Department formally, depending on the aforesaid criteria, along with reference to the research interest of the student as

indicated during interview by the student. The concerned institution for higher education would only have the information maintained by itself and not for all institutions offering such a degree. Each university could lay down the eligibility criteria for the faculty to be recognized as Research Supervisor both for M.Phil and Ph.D. Programmes and such criteria would apply only to the members of the faculties of the University itself or its affiliated colleges. Therefore, there is no doubt in the mind of this court that a concerned University could have allotted only a member of its own faculty or from its affiliated colleges as a supervisor for M.Phil and Ph.D. scholars, and the Regulations of 2009 did not allow person who was not a faculty member of the institute of higher education to be appointed as supervisors and/or guides. Any such allotment to persons who were not faculty members as guides or supervisors would be against the norms of the Regulations of 2009. Therefore, the UGC or an employer would not be at fault in refusing to accept such a doctoral degree to be in sufficient compliance with UGC norms.

27. Another aspect of the matter has caught the attention of this Court. The petitioners in WP(C) 6543/2021 and the petitioner in WP(C) 556/2024 have annexed the letters by which the respective so-called supervisors were informed of the proposal submitted by the petitioners regarding registration for a PhD degree. The so-called supervisor was informed that the candidate had been registered for a Ph.D. degree and would be governed by the academic regulations of the university. The thesis topic was also mentioned in the note

to the aforesaid letter, and the documents required to be submitted by the candidate had been informed. The letter is obviously not a letter appointing the addressee as a supervisor for the petitioner concerned. This Court fails to see how a doctoral degree, without formal approval/allotment of a supervisor/guide by the University concerned, can be said to be a degree earned in accordance with the UGC Norms.

28. In view of the conclusions arrived at by this Court, it can be safely held that the DO dated 6.7.2015 issued by the UGC was a notification clarifying and making an implicit mandate explicit, namely that the concerned universities offering Ph.D. degrees could allot only their own faculties as guides or supervisors. Therefore the said notification would have retrospective operation and cannot be restricted to have prospective effect only.

29. The effect of the Ph.D. not being in accordance with the then prevalent UGC norms has to be assessed next. 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) Regulations, 2010 were issued for minimum qualifications for appointment and other service conditions of University and College Teachers, Librarians, Directors of Physical Education and Sports for the maintenance of standards in higher education and revision of pay scales. As per the said Regulations, namely Regulation 4.4.0 and 4.4.1., a candidate for the post of Assistant Professor in Arts, Humanities, Sciences, Social

Sciences, Commerce, Education, Languages, Law, Journalism and Mass Communication was required to have a good academic record as defined by the concerned university with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign university. Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or a similar test accredited by the UGC, like SLET/SET. However, 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. This requirement remained unchanged in the amendment brought in 2016 and the later Regulations of 2018 and 2022.

30. Since the petitioners claim the benefit of pay under the UGC norms, it is implicit that they must also fulfil the UGC norms. At the time of regularisation of the petitioners, the Ph.D. held by the petitioners were not in accordance with UGC norms then prevailing, and this Court does not find any fault with the requirement incorporated in the orders dated 25.4.2018, requiring the petitioners to qualify NET/SLET/SET within a given time frame. The necessary

corollary of the conclusion arrived at by this Court, to the extent that the qualification of Ph.D. was not obtained as per UGC norms, is that the petitioners cannot be absolved of the requirement to qualify the NET/SLET/SET and till the time they do so, the petitioners cannot be said to be entitled to the benefit of pay under the UGC norms.

31. This now brings the Court to analyse whether the aforesaid situation would also lead to termination of the services of the petitioners as per the second condition given in the orders dated 25.4.2018. The specific case of the petitioners is that several similarly situated persons had been allowed to continue to serve as Assistant Professors in their respective colleges, some of them even allowed to retire on attaining the age of superannuation. The department has not responded to the said assertions, and following the "doctrine of non-traverse", this Court is inclined to believe the stand taken by the petitioners. Though the prayer of the petitioner to be allowed to draw the pay as per UGC recommended scales is rejected at this stage when the petitioners have not qualified the NET/SLET/SET, this Court is of the considered opinion that terminating the services of the petitioners, who have served the colleges for over 25 years, at this stage, on the ground of absence of qualifying the NET/SLET/SET, would be too harsh, more so, in view of the undisputed position that similarly situated incumbents had been allowed to serve up to the date of their superannuation from service. Accordingly, this Court clarifies that nothing in this order shall be understood to be an

indication to require or allow the respondent authorities to terminate the services of the petitioner without following the due process of law.

32. The writ petition is accordingly disposed of. No costs.

JUDGE

Comparing Assistant