

*Before A.K. Sikri, CJ & Rakesh Kumar Jain, J.*

**ANIL KUMAR AND ANOTHER—Petitioners**

*versus*

**STATE OF HARYANA AND OTHERS—Respondents**

**CWP No. 24447 of 2012**

March 5, 2013

*Constitution of India, 1950 - Art. 226 & 227 - Haryana Education (College Cadre) Group B Services Rules, 1986 (as amended in 2013) - Service Rules, 2010 (as amended in 2012) - University Grants Commission Act, 1956 - S. 4 - Minimum eligibility for appointment to the post of Assistant Professor - Mandatory condition of passing National Eligibility Test (NET) relaxed by UGC for candidates who possess Ph.D. degree - Amendment of Service Rules in 2012 - Providing that such Ph.D. degrees should be obtained from State/Central Universities and the Ph.D. degrees of only those private universities which have been accredited as "A" Grade Universities by the National Assessment and Accreditation Council (NAAC)*

*shall be considered for relaxation in lieu of NET - University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) Regulation, 2000 - Reg. 26(1) - Exempting all candidates having Ph.D. degree irrespective of gradation of the University from where such a degree is obtained - State Government cannot have a provision which goes contrary to the UGC Regulations - It will not stand judicial scrutiny - UGC Regulations on minimum standards of education - Mandatory and not recommendatory - Such Regulations have a binding affect - Once the petitioners become entitled for exemption on the application of Regulations framed by the UGC, they cannot be debarred by virtue of impugned Regulations, which are contrary to the regulations framed by the UGC - Service Rules, 2010 as also the Haryana Education (College Cadre) Group B Service (Amendment) Rules, 2013 set aside to the extent these rules specify that Ph.D. degrees awarded by only those private universities be considered which have been accredited as 'A' Grade Universities by the NAAC for relaxation in lieu of NET.*

*Held*, that we are of the view that insofar as the purport and objective in carrying out the amendment in the rules and granting exemptions to only those Ph.D. degree holders who have been awarded degrees by Central/State Universities and those private universities which have been given the accreditation as "A" Grade University by the NAAC, is bona fide and even appears to be laudable. However, at the same time, the important question which needs serious consideration is as to whether the State can have a rule or stipulation which is contrary to the regulations framed by the UGC. All said and done, even if we presume that objective behind such a provision is commendable, if legal position is that the State Government cannot have a provision which goes contrary to the UGC Regulations, then it will not stand judicial scrutiny.

(Para 12)

Held further, that the argument, therefore, that UGC is only a recommendatory body which provides recommendations to the Universities and its role is limited in the framing of Regulations on minimum standards

of education in colleges and universities and the norms fixed by the UGC for appointment to various posts are only recommendatory and not mandatory, has to be rejected.

(Para 18)

*Held further*, that UGC has now framed Regulations, 2009, as noted above. Regulation-2 thereof also provides that these Regulations shall 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(f) of Section 2 of the UGC Act and every Institution deemed to be a University under Section 3 of the said Act. These regulations are also framed in exercise of powers conferred on it by Clauses (e) and (g) of sub-section (1) of Section 26 of the UGC Act which have been amended vide University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) (3rd Amendment) Regulation, 2009. As per these Regulations, those candidates who are or have been awarded Ph.D. degrees in compliance of the Regulations, 2009 are to be exempted from requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/institutions. It is not in dispute that all these petitioners have obtained Ph.D. degrees in compliance with Regulation, 2009. Following the ratio of University of Delhi vs. Raj Singh (supra) and Neeraja Malik (supra), such Regulations have a binding effect. Once the petitioners become entitled for exemption on the application of Regulations framed by the UGC, they cannot be debarred by virtue of impugned Regulations, which are contrary to the regulations framed by the UGC. We feel that instead of amending their Regulations and bringing them in conflict with UGC Regulations, the appropriate course of action could have been to point out justification and necessity for such a provision as is made by the respondents in their Regulations and to persuade the UGC to come out with similar amendments.

(Para 20)

We, thus, have no option but to set aside the Service Rules, 2010 as also the Haryana Education (College Cadre) Group B Service (Amendment) Rules, 2013 to the extent these rules specify that Ph.D. degrees awarded by only those private universities be considered which have been accredited as 'A' Grade Universities by the NAAC for relaxation in lieu of NET.

(Para 21)

Raj Kapoor Malik, Mr. Sandeep Kodan and Mr. Vinod Bhardwaj,  
Advocate, *for the petitioners.*

B.S. Rana, Addl. Advocate General, Haryana

### **A.K. SIKRI, CHIEF JUSTICE**

(1) An important issue of significance arises for consideration in these writ petitions. The respondent i.e. State of Haryana has framed the rules known as Haryana Education (College Cadre) Group-B Services Rules, 1986 (for short, Rules of 1986) as they have been promulgated under proviso to Article 309 of the Constitution of India. These rules pertain to the appointment of teachers in the college cadre and stipulate other service conditions.

(2) It is a common case of the parties that for appointment to the post of Assistant Professor in the college, the minimum eligibility condition of passing National Eligibility Test (NET) is mandatory. However, the University Grants Commission (UGC) has relaxed this condition for those candidates who possess Ph.D. degree. It appears that the respondents have also framed Service Rules, 2010 laying down same eligibility conditions for recruitment and appointment to the post of Assistant Professor.

(3) Vide notification dated 5.11.2012 amendment was made in the Service Rules, 2010. This amendment provides that NET shall remain the minimum eligibility condition for recruitment and appointment as Lecturer in college. First proviso to this rule also stipulates that candidates possessing Ph.D. degrees shall be exempted from the requirement of the minimum eligibility condition of NET for recruitment and appointment as Assistant Professor or equivalent positions in colleges. However, second proviso thereto, which is inserted vide the aforesaid amendment, mentions that such

Ph.D. degrees should be obtained from State/Central Universities and the Ph.D. degrees of only those private universities which have been accredited as "A" Grade Universities by the National Assessment and Accreditation Council (NAAC) shall be considered for relaxation in lieu of NET. Thus, this amendment excludes those candidates who are holders of Ph.D. degree but they have obtained such a Ph.D. degree from those private universities which are not given accreditation as "A" Grade by the NAAC. All the petitioners herein fall in this category. For this reason, by means of present petitions, the petitioners are challenging the aforesaid amendment. We would like to point out here itself that during the pendency of these petitions, vide notification dated 10.1.2013, Rules of 1986 have also been amended by framing Rules for Haryana Education (College Cadre) Group B Service (Amendment) Rules, 2013, incorporating identical provisions.

(4) As is clear from above, the issue arising in all these petitions is common and, therefore, these petitions were heard together and precisely for this very reason, we are deciding these writ petitions by this judgment, common to all cases.

(5) According to the petitioners, the respondent-University is bound by the guidelines issued by the UGC. The UGC has given exemption from acquiring NET qualification for recruitment and appointment to the posts of Assistant Professor to all those candidates who possess Ph.D. degree from any university, only condition being that such a university is recognized by the UGC as deemed university under Section 4 of the University Grants Commission Act, 1956 (hereinafter to be referred to as the "UGC Act"). No distinction is made between "A" Grade Universities and Universities graded otherwise. This is sought to be demonstrated from the provisions contained in University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) (3rd Amendment) Regulation, 2009, framed by the UGC in exercise of powers conferred by Clauses (c) and (g) of subsection(1) of Section 26 of the UGC Act. By the aforesaid amendment, University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and

Institutions affiliated to it) Regulation, 2000 were amended and the amendment with which we are concerned reads 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.”

It is pointed out that as per the aforesaid proviso, all candidates having Ph.D. degree irrespective of gradation of the University from where such a degree is obtained, are exempted.

(6) The petitioners have also referred to UGC (Minimum Standards and Procedure for awards of M.Phil/Ph.D. Degree) Regulation, 2009 and submitted that these regulations provide for minimum standards as well as procedure for awards of M.Phil/Ph.D. degrees and once the minimum standards laid down in these regulations are fulfilled by a University while awarding Ph.D. degree and it has also followed the procedure prescribed therein, there is no reason not to recognize such a Ph.D. degree for the purposes of granting exemption from passing NET. It is, thus, argued that the impugned amendment recognizing the Ph.D. degrees awarded only by the State/Central Universities and those private universities which have been accredited as “A” Grade by NAAC and ignoring other universities, is not only arbitrary and unreasonable and violates Article 14 of the Constitution, but it is also against the UGC Regulation, 2000, as amended, as well as Regulation, 2009, noted above. It is further submitted that such a provision is contrary to the right to be considered for employment which has accrued in favour of the petitioners and is sought to be taken away by the impugned amendment.

(7) The respondent-State has filed the written statement wherein justification for introducing such a condition is given by stating that the Council of Ministers in its meeting held on 12.12.2012 has approved the amendment in Haryana Education (College Cadre) Group-B Service Rules,

1986 under columns 3 and 4, after serial No.9, in Note-I of Item (c) which makes the following reading:

| <p style="text-align: center;">3<br/>(Academic Qualification and experience, if any, for appointment and recruitment)</p>   | <p style="text-align: center;">4<br/>(Academic Qualification and experience, if any, for appointment and recruitment)</p>  |
|---|--|
| <p>“(C) National Eligibility Test (NET) shall remain the minimum eligibility condition for recruitment and appointment as Assistant Professor in Colleges.</p> <p>Submission of application shall be exempted from the requirement of the minimum eligibility condition of NET for recruitment and appointment as Assistant Professor in all subjects:</p> <p>Provided, further, that Ph.D degrees awarded by State/Central Universities or only those Private/Deemed Universiteis which have been accredited as ‘A’ universities by the National Assessment and Accreditation Council (NAAC) shall be considered for relaxation in lieu of NET.</p> <p>Provided further that NET shall not be required for such Master’s programmes in disciplines for which there is no NET.”</p> | <p>“(C) National Eligibility Test (NET) shall remain the minimum eligibility condition for recruitment and appointment as Assistant Professor in Colleges.</p> <p>Submission of application shall be exempted from the requirement of the minimum eligibility condition of NET for recruitment and appointment as Assistant Professor in all subjects:</p> <p>Provided, further, that Ph.D Universities or only those Private/Deemed Universities which have been accredited as ‘A’ Grade universities by the National Assessment and Accreditation Council (NAAC) shall be considered for relaxation in lieu of NET.</p> <p>Provided further that NET shall not be required for such Master’s programmes in disciplines for which there is no NET.”</p> |

(8) It is submitted that the above amendment has been necessitated in view of the dubious Ph.D. degrees presently being awarded by some of the private/deemed universities throughout the country. To standardise the quality of higher education, it was decided by the Government that Ph.D. degree awarded by only those private universities be considered which have been accredited as ‘A’ Grade Universities by NAAC and the Service Rules have been accordingly amended. Although NET was started by UGC to improve the quality of higher education through selection of teachers with higher academic standard, however, it is an open secret that there are many universities which do not have adequate infrastructure and faculty for even post graduate-level teaching, but have been offering programmes like Ph.D.

and Doctor of Science and most of these universities target students who fail to get a place in premier institutions. Thus, the standard of the degree awarded by different universities of the country vary. Therefore, UGC NET is considered a benchmark to test the academic capability of different post-graduate degrees awarded by various universities. The standard of NET is very high as it is conducted by UGC and for this reason the NET qualified candidates are considered as eligible for recruitment to the posts of Assistant Professor in colleges. The respondent has highlighted that the demand for Ph.D. degrees has gone up as a substitute for NET, as it offers an easier option for doctorates to get employed in higher educational institutions without passing the tougher NET examination and many universities recognized by UGC are offering sub-standard Ph.D. programmes. In this manner, the respondent has sought to justify the stipulation of "A" Grade University, if it is a private university.

(9) It is argued that insofar as State Universities are concerned, they are being run under direct monitoring of the Government and maintain a considerably high standard of academics. All the State Universities fully adopt and practice the UGC norms for infrastructure, appointment of faculty and for research, etc. In order to uplift the standard of higher education in the State of Haryana, it has been decided that Ph.D. Degree awarded by State/Central Universities or only those private/deemed Universities which have been accredited as "A" Grade Universities by NAAC shall be considered for relaxation in lieu of NET. A newly recruited Assistant Professor remains in teaching profession for 25- 30 years. If the best candidates are recruited, eventually the standard would automatically rise.

(10) Emphasising the role of NAAC, the submission of respondent is that it has been established to address the issues of deterioration of quality of education and is an autonomous body funded by UGC. Accreditation is a tool used to monitor, assess and evaluate the standard and quality of education. NAAC has been grading the Colleges and Universities since 1998-99 on the basis of a number of parameters including infrastructure, qualifications of the faculty, adoption of new methodology of teaching and research, publications, holding of activities like seminars, workshops, library facilities and overall results of the universities.



(11) In nutshell, the argument is that the Government has amended the service rules with the objective to improve the standard of higher education, more so when the State of Haryana is gearing up to the future educational hub of the country. The endeavour is to focus on the quality of higher education and to bring qualitative changes in the present educational system.

(12) After considering the respective submissions, we are of the view that insofar as the purport and objective in carrying out the amendment in the rules and granting exemptions to only those Ph.D. degree holders who have been awarded degrees by Central/State Universities and those private universities which have been given the accreditation as "A" Grade University by the NAAC, is bona fide and even appears to be laudable. However, at the same time, the important question which needs serious consideration is as to whether the State can have a rule or stipulation which is contrary to the regulations framed by the UGC. All said and done, even if we presume that objective behind such a provision is commendable, if legal position is that the State Government cannot have a provision which goes contrary to the UGC Regulations, then it will not stand judicial scrutiny.

(13) As noted above, contention of the respondent in this behalf is that UGC is only a recommendatory body and its provisions are not binding on the State. It is argued that UGC provides recognition to Universities of all the States and frames regulations on minimum standards of education in colleges and universities. Otherwise, it is the State Government which has prerogative of fixing norms and standards for appointment to various posts.

(14) The learned counsel for the petitioners, on the other hand, argued that the regulations framed by the UGC have binding force and for this proposition, the petitioners have relied upon the judgment of the Supreme Court in *University of Delhi versus Raj Singh (1)*, which was followed by a Division Bench of this Court in its decision dated 12.7.1996 in **CWP-9839-1995** titled as **Neeraja Malik vs. State of Haryana**.

(15) After going through these judgments, we find sufficient force in the arguments of the petitioners. Almost identical situation had arisen in the case of Raj Singh (supra). In that case, Raj Singh had applied for post of Lecturer in Commerce in three colleges affiliated to Delhi University, but he had not been called for interview, on the ground that he should have passed the test. This action of the University was challenged by him by filing a writ petition in the High Court of Delhi. His submission was that advertisement for applications in this behalf did not lay down that candidate should have passed the test prescribed by the regulations. It was argued that UGC had framed University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of a University and institution affiliated to it) Regulations, 1991, which did not prescribe passing of any such test. The University contested the petition by arguing that the said Regulations were beyond the competence of UGC and, in any event, they were directory and not mandatory in nature. It was argued that Delhi University was an autonomous body and no condition of eligibility can be imposed upon it. It is clear that the argument raised by the Delhi University was almost same as raised by the respondent-State herein. The Delhi High court, however, did not accept the contention of the Delhi University and upheld the validity of the Regulations framed by the UGC. The Supreme Court while upholding the decision of the Delhi High Court, went through various provisions of the Delhi University Act, 1922 and concluded therefrom that it is the Parliament which is invested with power to legislate concerning the Delhi University. The apex court thereafter examined the provisions of UGC Act which were enacted under the provisions of Entry 66 of List-I of the Seventh Schedule to the Constitution for the carrying out of the purposes of the UGC Act. Section 26 of the Act entitles the UGC to make Regulations consistent with the Act and rules made thereunder. Clauses (c) and (g) of Section 26 of the Act read as under:-

‘(c) 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.

(g) regulating the maintenance of standards and the coordination of work or facilities in Universities.’”

The Supreme Court noticed that Regulations, 1991, were made in exercise of the powers conferred by Section 26(1)(c) read with Section 14 of the U.G.C. Act and were applicable to 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 UGC Act and every institution deemed to be a University under Section 3 of the said Act. The history leading to framing of these regulations was also noticed, *inter alia*, pointing out that genesis of the said regulations can be found in the recommendations made by the expert bodies of educationists from time to time. Various reports of the expert bodies in this behalf were taken note of. The legal position qua the functioning of the UGC was thereafter delineated in the following manner:

“66. The principal function of the U.G.C. is set out in the opening words of section 12, thus “It shall be the general duty of the Commission to take all such steps as it may think fit for the promotions and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities” It is very important to note that a duty is cast upon the Commission to take” all such steps as it may think fit for the determination and maintenance of standards of teaching”. These are very wide ranging powers. Such powers, in our view, would comprehend the power to require those who possess the education qualifications required for holding the post of lecturer in Universities and colleges to appear for a written test, the passing of which would establish that they possess the minimal proficiency for holding such post. The need for such test is demonstrated by the reports of the commissions and committees of educationists referred to above which take note of the disparities in the standards of education in the various Universities in the country. It is patent that the holder of a post-graduate degree from one University is not necessarily of the same standard as the holder of the same post-graduate degree from another University. That is the rationale of the test prescribed by the said Regulations. It falls squarely within the scope of entry 66 and the U.G.C. Act inasmuch as it is intended to co- ordinate standards and

the U.G.C. Act is armed with the power to take all such steps as it may think fit in this behalf. For performing its general duty and its other functions under the U.G.C. Act, the U.G.C. is invested with the powers specified in the various clauses of Section 12. These include the power to recommend to a University the measures necessary for the improvement of University education and to advise in respect of the action to be taken for the purpose of implementing such recommendation (clause (d)). The U.G.C. is also invested with the power to perform such other functions as may be prescribed or as may be deemed necessary by it for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of such functions (clause (j)). These two clauses are also wide enough to empower the U.G.C. to frame the said regulations. By reason of Section 14, the U.G.C. is authorised to withhold from a University its grant if the University fails within reasonable time to comply with its recommendation, but it is required to do so only after taking into consideration the cause, if any, shown by the University for such failure. Section 26 authorises the U.G.C. to make regulations consistent with the U.G.C. Act, and the rules made thereunder, inter alia, defining the qualifications that should ordinarily be required for any person to be appointed to the teaching staff of a University, having regard to the branch of education in which he is expected to give instruction (clause (e) of sub-section (1)); and regulating the maintenance of standards and the coordination of work or facilities in Universities (clause (g)). We have no doubt that the word 'defining' means setting out precisely or specifically. The word 'qualifications', as used in clause (e), is of wide amplitude and would include the requirement of passing a basic eligibility test prescribed by the U.G.C. The word 'qualifications' in clause (e) is certainly wider than the word 'qualification' defined in Section 12A(1) (d), which in expressly stated terms is a definition that applies only to the provisions of Section 12A. Were this definition of qualification, as meaning a degree or any other qualification awarded by a University, to have been intended to apply throughout the Act, it would have found place in the definitions section, namely Section 2.

(16) Commenting upon the nature of the Regulations, the Court made the following pertinent observations :

“We now turn to analyse the said Regulations. They are made applicable to a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, every institution, including a constituent or an affiliated college recognised by the U.G.C. in consultation with the University concerned, and every institution deemed to be a University. The said Regulation are thus intended to have the widest possible application, as indeed they must have if they are to serve the purpose intended, namely, to ensure that all applicants for the post of lecturer, from whichever University they may have procured the minimum qualificatory degree, must establish that they possess the proficiency required for Lecturers in all Universities in the country. This is what clause 2 of the said Regulations mandates, thus :” No person shall be appointed to a teaching post in university in a subject if he does not fulfill the requirements as to the qualifications for the appropriate subject as provided in the Schedule 1”. The first proviso to clause 2 permits relaxation in the prescribed qualifications by a University provided it is made with the prior approval of the U.G.C. This is because the said Regulations, made under the provisions of Section 26 (1)(e), define the qualifications that are ordinarily and not invariably required of a lecturer. The second proviso to clause 2 makes the application of the said Regulations prospective. Clause 3 of the said Regulations provides for the consequence of the failure of a University to comply with the recommendation made in clause 2 in the same terms as are set out in section 14 of the U.G.C. Act. The provisions of clause 2 of the said Regulations are, therefore, recommendatory in character. It would be open to a University to comply with the provisions of clause 2 by employing as lecturers only such persons as fulfill the requirements as to qualifications for the appropriate subject provided in the schedule to the said Regulations. It would also be open, in specific cases, for the University to seek prior approval of the U.G.C. to relax these requirements. Yet again, it would be open to the University not to comply with the provisions of clause 2, in which case, in the event that it failed to satisfy the U.G.C. that it had done so for good cause,

it would lose its grant from the U.G.C. The said Regulations do not impinge upon the power of the University to select its teachers. The University may still select its lecturers by written test and interview or either. Successful candidates at the basic eligibility test prescribed by the said Regulations are awarded no marks or ranks and, therefore, all who have cleared it stand at the same level. There is, therefore, no element of selection in the process. The University's autonomy is not entrenched upon by the said Regulations."

(17) It is clear from the above that almost identical pleas, as raised by the respondent-State in the present case, were negatived in the aforesaid manner by the apex court.

(18) The argument, therefore, that UGC is only a recommendatory body which provides recommendations to the Universities and its role is limited in the framing of Regulations on minimum standards of education in colleges and universities and the norms fixed by the UGC for appointment to various posts are only recommendatory and not mandatory, has to be rejected. It would also be of significance to point out that in *Raj Singh (supra)*, the Supreme Court had taken note of earlier judgments in the case of *Osmania University Teachers Association versus State of Andhra Pradesh and Anr. (2)*, and what was held in that case would be material for our purposes as well, as is clear from the following:

"In *Osmania University Teachers Association v. State of Andhra Pradesh and Anr.*, [1987] 3 SCR 949, the validity of the Andhra Pradesh Commissionate of Higher Education Act, 1986, was in question. It was enacted to provide for the constitution of a Commissionate to advise the State Government in matters relating to higher education and to oversee its development and perform all functions necessary for the furtherance and maintenance of excellence in the Standards of higher education. The legislation was upheld by the High Court. This court on appeal held to the contrary. It observed that entry 66 of List I gave power to the Union to see that the required standard of higher education in the country was maintained. It was the exclusive responsibility of the Central Government to coordinate and determine the standards of higher education. That power included

that power to evaluate, harmonise and secure proper relationship to any project of national importance. Such coordinate action in higher education with proper standards was of paramount importance to national progress. Parliament had exclusive power to legislate with regard to the matters included in List-I and the State had no power at all in regard to such matters. If the State legislated on a subject falling within List-I, the State legislation was void. The Court went on to say, "The Constitution of India vests parliament with exclusive authority in regard to co-ordination and determination of standards in institutions for higher education. The Parliament has enacted the UGC Act for that purpose. The University Grants Commission has, therefore, a greater role to play in shaping the academic life of the country. It shall not falter or fail in its duty to maintain a high standard in the Universities. Democracy depends for its very life on high standards of general, vocational and professional education, Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs. It is hoped that University Grants Commission will duly discharge its responsibility to the national and play in increasing role to bring about the needed transformation in the academic life of the Universities."

(19) In *Neeraja Malik (supra)*, the Division Bench of this Court was concerned with validity of the decision of the Haryana Public Service Commission (hereafter referred to as the 'Commission'), rejecting the claim of the petitioner, to be considered for appointment as Lecturer in English. The petitioner therein was appointed as Lecturer on 17.10.1988 in English in Chhotu Ram Arya College, Sonapat by a duly constituted selection committee against a permanent post. The Commission had issued advertisement for recruitment to the post of Lecturer (English) (College Grade) and the petitioner also submitted her application. She was not called for interview on the ground that she had not passed the eligibility test. This decision was challenged by the petitioner by filing the aforesaid writ petition on the ground that her candidature could not have been rejected as the UGC had already relaxed the requirement of passing eligibility test in case of persons who are serving as Lecturers on permanent basis, after regular

selection by a duly constituted selection committee. The State of Haryana had opposed the petition on the ground that as per notification dated 19.9.1991, no candidate, who had not passed the eligibility test, can be considered for recruitment to the post of Lecturer. It was also argued that decision of the UGC could not be treated as binding as the same had not been notified in terms of Section 14 read with Section 26(1) (a) of the UGC Act. UGC also was a party in that petition and in its affidavit it had pointed out that as per the decision taken in its 347th meeting, the UGC revised the minimum qualifications for appointment of Lecturers and a candidate who was appointed on the recommendations of a duly constituted committee before September, 1991 was eligible for the post of Lecturer without fulfilling the qualifications prescribed in the Regulations of 1991. This Court took note of Regulations, 1991 framed by the UGC and applicability thereof to various types of institutions including the State Universities. The Court also took note of the resolution passed by the UGC giving relaxation from passing the eligibility test by those who were appointed as Lecturer on permanent basis and further decision granting similar exemption from qualifying eligibility test even to those who were appointed against the temporary posts. The Court held that these decisions were binding on the respondents. Material portion of the said judgment is reproduced below:

“11. Undisputedly the State of Haryana has accepted the Regulations framed by the University Grants Commission in the year 1991 and these Regulations have been treated as applicable for the purpose of recruitment to various teaching posts in the colleges affiliated to different Universities. Therefore, if it is found that relaxation/clarifications made by the University Grants Commission from time to time are not in consistent with Regulations, they will be binding on the State Government as well as the Commission (respondent No.2).

12. The argument of the learned counsel for respondent Nos.1 and 2 that the decisions taken by the University Grants Commission in its 347th meeting held on 14.2.1995 are not required to be followed because they have not been notified in the Gazette of India as required by Section 26(1) of the Act, in our considered view, is misconceived. Once the Regulations framed by the University Grants Commission



have been notified and these Regulations contain a provision for relaxation in the prescribed qualifications, which can be brought about with prior approval of the University Grants Commission the relaxation, if any, approved by the University Grants Commission will be effective irrespective of the fact that the decision of the University Grants Commission is not published in the Official Gazette. If the University Grants Commission wanted to amend the Regulations of 1991, then the same could have become effective only after their publication in the Gazette of India, but a decision taken by the University Grants Commission in exercise of its power under proviso to Regulation 2, is not required to be published so as to become effective. Circulation of such decision and communication thereof to the educational institutions and State Government is sufficient. Therefore, we do not find any substance in the plea of the counsel for respondents No.1 and 2 that the relaxation granted by the University Grants Commission in its 347th meeting is not effective and binding because it has not been published in the Gazette of India. In our opinion, the proviso (1) of Regulation 2 empowers the University Grants Commission to take administrative decision on the issue of relaxation of the prescribed qualifications and such decision is binding on all those authorities which are required to follow the provisions of the Act while making recruitment of lecturers etc.

13. In this connection, it would be useful to refer to a recent decision of the Supreme Court in University of Delhi v. Raj Singh 1995(1) SCT 1 (SC): 1994(5) SLR 286. That was a case in which the University of Delhi had shown its unwillingness to comply with the provisions of 1991 Regulations. On writ petitions filed before it, the High Court of Delhi issued mandamus to the University to make selection of candidates strictly in accordance with the provisions of 1991 Regulations. In appeal, their Lordships of the Supreme Court affirmed the directions given by the High Court and held that the regulations framed by the University Grants Commission did not in any manner trench upon the autonomy of the University. Their Lordships held:-

“The ambit of entry 66 has already been the subject of the decision of this Court in the cases of the Gujarat University and the Osmania University. The U.G.C, Act is enacted under the provisions of entry 66 to carry out the objective thereof. Its short title, in fact, reproduces the words of entry 66. The principal function of the U.G.C. is set out in the opening words of section 12, thus “It shall be the general duty of the Commission to take .... all such steps as it may think fit for the promotions and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities...” It is very important to note that a duty is cast upon the Commission to take “all such steps as it may think fit....for the determination and maintenance of standards of teaching”. These are very wide ranging powers. Such powers, in our view, would comprehend the power to require those who possess the educational qualifications required for holding the post of lecturers in Universities and colleges to appear for a written test, the passing of which would establish that they possess the minimal proficiency for holding such post.”

From these observations of the Supreme Court, it is clear that the Apex Court unequivocally recognized right of the University Grants Commission to make regulations prescribing qualifications for recruitment of various teachers etc. As a logical corollary it must be held that the University Grants Commission has full power to grant relaxation in the right of the first proviso to Regulation 2 of the 1991 Regulations and there can be no justification for any Government or University to ignore such relaxation on the pretext that the same is not published in the gazette.”

(20) The only difference is that UGC has now framed Regulations, 2009, as noted above. Regulation-2 thereof also provides that these Regulations shall 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(f) of Section 2 of the UGC Act and every Institution deemed to be a University under Section 3 of the said Act. These regulations are also framed in exercise of powers conferred on i by Clauses (c) and (g) of sub-section (1) of Section 26 of the UGC Act which have been amended vide University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) (3rd Amendment) Regulation, 2009. As per these Regulations, those candidates who are or have been awarded Ph.D. degrees in compliance of the Regulations, 2009 are to be exempted from requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/institutions. It is not in dispute that all these petitioners have obtained Ph.D. degrees in compliance with Regulation, 2009. Following the ratio of University of Delhi vs. Raj Singh (supra) and Neeraj Malik (supra), such Regulations have a binding effect. Once the petitioners become entitled for exemption on the application of Regulations framed by the UGC, they cannot be debarred by virtue of impugned Regulations, which are contrary to the regulations framed by the UGC. We feel that instead of amending their Regulations and bringing them in conflict with UGC Regulations, the appropriate course of action could have been to point out justification and necessity for such a provision as is made by the respondents in their Regulations and to persuade the UGC to come out with similar amendments.

(21) We, thus, have no option but to set aside the Service Rules, 2010 as also the Haryana Education (College Cadre) Group B Service (Amendment) Rules, 2013 to the extent these rules specify that Ph.D. degrees awarded by only those private universities be considered which have been accredited as 'A' Grade Universities by the NAAC for relaxation in lieu of NET.

(22) There shall, however, be no orders as to costs.