

(2022) 01 RAJ CK 0012

In the Rajasthan High Court

Case No : D.B. Civil Writ Petition No. 12080, 12318 Of 2020, 14040 Of 2021

Dr. Karanjeet Kaur And Others

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

Date of Decision : 04-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 16, 254, 254(1), 254(2), 309, 335 Rajasthan Educational Service (Collegiate Branch) Rules, 1986 — Rule 19A Universities And Colleges And Other Measures For The Maintenance Of Standards In Higher Education) Regulations, 2018 — Regulation 2, 3, 3.1, 3.2. 3.12 University Grants Commission Act, 1956 — Section 26

Citation : (2022) 01 RAJ CK 0012

Hon'ble Judges : Akil Kureshi, CJ;Sudesh Bansal, J

Bench : Division Bench

Advocate : Nikhil Jain, Nihar Jain, Manish Vyas, Karan Singh Rajpurohit, Kailash Choudhary, Rajat Arora, Khet Singh Rajpurohit

Final Decision : Dismissed

Judgement

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Akil Kureshi, CJ",,,,,

1. These appeals arise out of common background. They have been heard together and are being disposed of by this common judgment. For,,,,,

convenience, we may record the facts as stated in Civil Writ Petition No. 14040/2021." ,,,,,

2. The petitioners had applied for the post of Assistant Professor in Government colleges for which the Rajasthan Public Service Commission,,,,,

(â??RPSCâ??, for short) had issued advertisement dated 18.12.2020 for a total number of 918 posts. According to the petitioners, the qualifications",,,,,

and the method of recruitment as provided in the advertisement and which are

followed by the RPSC, are not in consonance with the guidelines issued",,,,,,

by the University Grants Commission (â??UGCâ??, for short) in its latest regulations.",,,,,

3. Initially, RPSC had issued an advertisement for recruitment on 02.11.2020. However, the said advertisement was withdrawn and a fresh",,,,,,

advertisement was issued on 18.12.2020. A corrigendum was issued on 07.06.2020 with which we are not concerned. The eligibility criteria,,,,,

prescribed was, good academic record with at least 55% marks or equivalent grade whenever grade system is followed and masterâ??s degree in",,,,,,

the relevant subject from an Indian university or an equivalent degree from an accredited foreign university. Besides this, the candidate must have",,,,,,

cleared the National Eligibility Test conducted by the UGC or the CSIR or similar test, except for candidates who have been awarded Ph.D. degree in",,,,,,

accordance to the UGC (Minimum Standards and Procedure for Award of M.Phil./ Ph.D. Degree) Regulations, 2009. The definition of â??good",,,,,,

academicâ?? record was adopted from the Government circular dated 21.02.2014 which provides as under:-,,,,,

â??good academic record means an average of atleast 55 percent marks in 3 examinations proceeding to masters degree with atleast 50 percent,,,,,

marks in graduation and any one of the secondary/high school/higher secondary/ senior secondary or equivalent grades in the points scale wherefrom,,,,,

grading system is followed without including any grace marks and/or rounding of to make it 55 percent or 50 percent as the case may beâ??.,,,,,

4. The petitioners would point out that in exercise of powers conferred by the proviso of Article 309 of the Constitution, the State Government has",,,,,,

framed the Rajasthan Educational Service (Collegiate Branch) Rules, 1986 (hereinafter referred to as â??Rules of 1986â??) which pertains to the",,,,,,

method of recruitment and service conditions of various teaching staff in the Government colleges, one of the posts being that of Lecturer which is",,,,,,

now re-designated as Assistant Professor. As per the Schedule to the said Rules of 1986, the minimum qualification and experience for direct",,,,,,

recruitment for the said post is â??as laid down from time to time by the University of Rajasthanâ?. The State Government amended the said Rules,,,,,

of 1986 vide notification dated 31.01.2018, by which the definition of term â?? Regulationsâ?? has been inserted as to mean the University Grants",,,,,,

Commission (Minimum Qualification for Appointment of Teachers and other Academic Staff in Universities and Colleges and Other Measures for,,,,,

Maintenance of Standards in Higher Education) Regulation, 2010 as amended from time to time and as adopted by the State Government. Vide this",,,,,

amendment, the existing Schedule to the Rules of 1986 has also been substituted. This Schedule provides method of recruitment, minimum",,,,,

qualifications and experience for direct recruitment etc. for different teaching posts in the Government colleges, one of them being Assistant",,,,,

Professor. The minimum qualification and experience for direct recruitment provided in this Schedule is same as advertised by RPSC in its,,,,,

advertisement dated 18.12.2020.,,,,,,

5. The petitioners further point out that UGC framed fresh Regulations called 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, 2018 (hereinafter to be referred as the said Regulation of 2018). We would take detail note of these Regulations at a later stage.",,,,,

However, at this stage we may record that these Regulations among other things, provide for recruitment and qualifications of various teaching posts",,,,,

in the universities and colleges. The concept of a good academic record does not find place in these Regulations. The Regulations prescribe the,,,,,

criteria for short-listing the candidates for interview for the post of Assistant Professor in universities and colleges and further provide that such short-,,,,,

listing would be only for interview and the selection should be based on the performance in the interview.,,,,,,

6. The grievance of the petitioners is that the RPSC has not applied the provisions of UGC Regulations of 2018, though the recruitment advertisement",,,,,

was issued after promulgation of the said Regulations. Essentially, the grievance revolves around two parameters of recruitment. Firstly, with respect",,,,,

to the eligibility criteria, that a candidate has to show good academic record as defined and the selection process envisaged by RPSC which consists",,,,,

of written test followed by oral interview. According to the petitioners, both these elements are missing from the UGC Regulations, 2018. They would",,,,,

point out that in these Regulations, there is no mention of requirement that a candidate, in order to be eligible, must possess good academic record. The",,,,,

State Government has inserted a requirement which is not found in the UGC Regulations. During the course of hearing of the arguments, however," ,,,,,

this grievance was side-stepped as would be clear hereafter. Main focus of the challenge by the learned counsel for the petitioners was that the ,,,,,

RPSC followed selection process vastly different from and in conflict with that prescribed by UGC under its Regulations of 2018. ,,,,,

7. The RPSC has filed a reply in which it is stated that the scheme of examination as mentioned in the advertisement for recruitment is as provided in ,,,,,

Rule 19A and Schedule-II inserted vide notification dated 28.07.2015 in the Rules of 1986. It is stated that the RPSC is conducting the selection ,,,,,

process on behalf of the State Government who is the recruiting authority. The State Government is therefore proper authority to prescribe the rules ,,,,,

as regards the selection and appointment of the candidates to the post in question. It is stated that in response to the advertisement dated 18.12.2020," ,,,,,

the Commission has received 1,55,984 applications. The Commission has thereupon proceeded to conduct the written examination as per the scheme" ,,,,,

notified in the advertisement dated 18.12.2020. The examination was conducted on 22.09.2021 and the Commission is in the process of declaring the ,,,,,

result. ,,,,,

8. Shri Nikhil Jain, learned counsel appearing for the petitioners at the outset clarified that all the petitioners satisfy the requirement of good academic" ,,,,,

record as provided by the State Government and as prescribed in the recruitment advertisement. So far as these petitions are concerned, this issue is" ,,,,,

not pressed. We therefore have not gone into this aspect of the matter, namely, where in face of the UGC Regulations 2018, the State Government" ,,,,,

can prescribe the requirement of good academic record as one of the eligibility criteria, though there is no such prescription in the UGC Regulations." ,,,,,

9. Learned counsel for the petitioners however vehemently contended that the method of selection adopted by the RPSC is not in consonance with the ,,,,,

UGC regulations and the selection process may therefore be quashed. They drew our attention to the UGC Regulations, 2018 in order to highlight that" ,,,,,

for the post of Assistant Professor in colleges, the Regulations provide for short-listing of the candidates on the basis of allotment of marks as" ,,,,,

prescribed. Thereafter, the selection has to be based only on oral interview. In the present case, the RPSC has not followed this pattern. Instead, a" ,,,,,

written examination is conducted for all eligible candidates which will be followed by oral interview. This is directly in conflict with the UGC,,,,,

Regulations, 2018. He submitted that in case of conflict between the Central legislation and the State legislation in a subject contained concurrent list,",,,,,

the Central legislation must prevail. The UGC Regulations being the Central legislation, the State legislation must yield to the UGC Regulations.",,,,,

10. On the other hand, learned Additional Advocate General appearing for the State submitted that the State Rules are not in conflict with the UGC",,,,,

S.N,Academic Record,Score,,,

1.,Graduation,"80% &

Above

=21","60% to less

than 80% =

19","55% to less

than 60% =

16","45% to

less than

55% =

10

2.,Post-Graduation,"80% &

Above

=25","60% to less

than 80% =

23","55% (50% in case of

SC/ST/OBC

(noncreamy

layer)/PWD) to less

than 60% = 20",

3,M.Phil,"60% &

above=07",55% to less than 60% = 05,,

4,Ph.D.,25,,,

5,NET with JRF,10,,,

,NET,08,,,

,SLET/SET,05,,,

6.,"Research Publications (2 marks for each research publications published in Peer-Reviewed or UGClisted Journals)",06,,,

7.,Teaching/Post Doctoral Experience (2 marks for one year each)#,10,,,

8.,Awards,,,,,

,,"International/National Level (Awards given by International Organisations/

Government of India/Government of India recognised National Level bodies)",03,,,

,State-Level (Awards given by State Government),02,,,

performance in the interview. Though this exercise of awarding scores is prescribed in table 3B, there is no cut-off provided for short-listing. In other",,,,,

words, there is no clarity under the Regulations as to in what manner the candidates would be short-listed once the scores are assigned as provided in",,,,,

the concerned table.,,,,,

17. As against this, the State Government has followed its pattern of written test followed by oral interview. To our mind, though the procedure that is",,,,,

adopted by the State Government may be somewhat different from what the UGC Regulations prescribe, this is not a case of irreconcilable conflict",,,,,

between the Central and the State legislation. The State legislation and RPSC, as the recruiting agency, have followed the pattern of written test",,,,,

followed by oral interview, pointing out that it would be impossible to hold oral interviews for large number of candidates who have applied in response",,,,,

to the public advertisement. We may recall, more than 1,50,000 candidates have applied for 918 posts. As noted, UGC regulations have not provided",,,,,

any cut-off for short-listing the candidates on the basis of scores to be allotted in terms of the table. Even if we permit the degree of latitude to the",,,,,

recruiting agency and expect calling for oral interview candidates 5 times the number of notified vacancies, this would require conducting the oral",,,,,

interview close to 5,000 candidates. The method of written test followed by oral interview adopted by the State Government cannot be seen as",,,,,

irreconcilable conflict with the UGC Regulations. When the note contained in the UGC Regulations refer to purpose of awarding the scores only for",,,,,

short-listing, the essence is that once this task of short-listing is over, these marks shall carry no further significance. The stress therefore is not on the" ,,,,,

selection to be based only on oral interview; the stress is that the purpose for assigning scores prescribed in the table is for the purpose of short-listing,,,,,

only.,,,,,

18. In case of Forum for People's Collective Efforts (FPCE) And Anr. Vs. State of West Bengal And Anr., reported in (2021) 8 SCC 599, the" ,,,,,

Supreme Court had the occasion to consider the question of repugnancy of the State law with a Central legislation on a subject matter which falls in,,,,,

Concurrent List. Referring to Article 254 of the Constitution it was observed that such repugnancy would arise under three situations, namely" ,,,,,

(i) absolute or irreconcilable conflict, (ii) on the principle of occupied field, and (iii) overlap over the same subject matter. After discussing these three" ,,,,,

situations in detail it was observed that the primary effort in the exercise of judicial review must be an endeavor to harmonise. Repugnancy in other,,,,,

words is not an option of first choice but something which can be drawn where a clear case based on the application of one of the three tests arises,,,,,

for determination. Following portion of the judgment need to be noted:-,,,,,

132. The initial part of Clause (1) alludes to a law enacted by a state legislature being "repugnant" to a law enacted by Parliament or to an existing" ,,,,,

law. The concluding part of Clause 1 provides for a consequence, namely that the State law would be void "to the extent of the repugnancy" and the" ,,,,,

Parliamentary enactment shall prevail. The concept of repugnancy emerges from the decisions of this Court which have elaborated on the context of,,,,,

Clause (1) of Article 254. Clause (2) of Article 254 has also employed the expression "repugnant" while providing that a law enacted by the legislature" ,,,,,

of a State which is repugnant to a law enacted by Parliament or an existing law on a matter within the Concurrent List shall, if it has received the" ,,,,,

assent of the President, prevail in the State. The decisions of this Court essentially contemplate three types of repugnancy:" ,,,,,

132.1 The first envisages a situation of an absolute or irreconcilable conflict or inconsistency between a provision contained in a State legislative,,,,,

enactment with a Parliamentary law with reference to a matter in the Concurrent List. Such a conflict brings both the statutes into a state of direct,,,,,

collision. This may arise, for instance, where the two statutes adopt norms or standards of behavior or provide consequences for breach which stand" ,,,,,

opposed in direct and immediate terms. The conflict arises because it is impossible to comply with one of the two statutes without disobeying the ,,,,,

other; ,,,,,

132.2 The second situation involving a conflict between State and Central legislations may arise in a situation where Parliament has evinced an intent ,,,,,

to occupy the whole field. The notion of occupying a field emerges when a Parliamentary legislation is so complete and exhaustive as a Code as to ,,,,,

preclude the existence of any other legislation by the State. The State law in this context has to give way to a Parliamentary enactment not because of ,,,,,

an actual conflict with the absolute terms of a Parliamentary law but because the nature of the legislation enacted by Parliament is such as to ,,,,,

constitute a complete and exhaustive Code on the subject; and ,,,,,

132.3 The third test of repugnancy is where the law enacted by Parliament and by the State legislature regulate the same subject. In such a case the ,,,,,

repugnancy does not arise because of a conflict between the fields covered by the two enactments but because the subject which is sought to be ,,,,,

covered by the State legislation is identical to and overlaps with the Central legislation on the subject. ,,,,,

133. The distinction between the first test on the one hand with the second and third tests on the other lies in the fact that the first is grounded in an ,,,,,

irreconcilable conflict between the provisions of the two statutes each of which operates in the Concurrent List. The conflict between the two statutes ,,,,,

gives rise to a repugnancy, the consequence of which is that the State legislation will be void to the extent of the repugnancy. The expression 'to the' ,,,,,

extent of the repugnancy' postulates that those elements or portions of the state law which run into conflict with the central legislation shall be excised ,,,,,

on the ground that they are void. The second and third tests, on the other hand, are not grounded in a conflict borne out of a comparative evaluation of" ,,,,,

the text of the two provisions. Where a law enacted by Parliament is an exhaustive Code, the second test may come into being. The intent of" ,,,,,

Parliament in enacting an exhaustive Code on a subject in the Concurrent List may well be to promote uniformity and standardization of its legislative ,,,,,

scheme as a matter of public interest. Parliament in a given case may intend to

secure the protection of vital interests which require a uniformity of,,,,,
law and a consistency of its application all over the country. A uniform national
legislation is considered necessary by Parliament in many cases to,,,,,
prevent vulnerabilities of a segment of society being exploited by an asymmetry
of information and unequal power in a societal context. The,,,,,
exhaustive nature of the Parliamentary code is then an indicator of the exercise
of the State's power to legislate being repugnant on the same subject.,,,,,
The third test of repugnancy may arise where both the Parliament and the State
legislation cover the same subject matter. Allowing the exercise of,,,,,
power over the same subject matter would trigger the application of the concept
of repugnancy. This may implicate the doctrine of implied repeal in,,,,,
that the State legislation cannot co-exist with a legislation enacted by
Parliament. But even here if the legislation by the State covers distinct subject,,,,,
matters, no repugnancy would exist. In deciding whether a case of repugnancy
arises on the application of the second and third tests, both the text and",,,,,
the context of the Parliamentary legislation have to be borne in mind. The nature
of the subject matter which is legislated upon, the purpose of the",,,,,
legislation, the rights which are sought to be protected, the legislative history
and the nature and ambit of the statutory provisions are among the factors",,,,,
that provide guidance in the exercise of judicial review.,,,,,
The text of the statute would indicate whether Parliament contemplated the
existence of State legislation on the subject within the ambit of the,,,,,
Concurrent List. Often times, a legislative draftsman may utilize either of both
of two legislative techniques. The draftsman may provide that the",,,,,
Parliamentary law shall have overriding force and effect notwithstanding anything
to the contrary contained in any other law for the time being in,,,,,
force. Such a provision is indicative of a Parliamentary intent to override
anything inconsistent or in conflict with its provisions. The Parliamentary,,,,,
legislation may also stipulate that its provisions are in addition to and not in
derogation of other laws. Those other laws may be specifically referred to,,,,,
by name, in which event this is an indication that the operation of those
specifically named laws is not to be affected. Such a legislative device is
often",,,,,
adopted by Parliament by saving the operation of other Parliamentary legislation
which is specifically named. When such a provision is utilized, it is an",,,,,

indicator of Parliament intending to allow the specific legislation which is enlisted or enumerated to exist unaffected by a subsequent law.,,,,,,

Alternatively, Parliament may provide that its legislation shall be in addition to and not in derogation of other laws or of remedies, without specifically",,,,,,

elucidating specifically any other legislation. In such cases where the competent legislation has been enacted by the same legislature, techniques such",,,,,,

as a harmonious construction can be resorted to in order to ensure that the operation of both the statutes can co-exist. Where, however, the competing",,,,,,

statutes are not of the same legislature, it then becomes necessary to apply the concept of repugnancy, bearing in mind the intent of Parliament. The",,,,,,

primary effort in the exercise of judicial review must be an endeavour to harmonise. Repugnancy in other words is not an option of first choice but,,,,,

something which can be drawn where a clear case based on the application of one of the three tests arises for determination.â??,,,,,,

19. In the result, we find no reason to interfere. The petitions are dismissed.",,,,,,