

(2017) 04 OHC CK 0035

In the Orissa High Court

Case No : 19861 of 2009

Dr. Kshitendra Narayan Mishra

APPELLANT

Vs

State of Orissa, & Ors.

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

Constitution of India, Article 246 -
Subject-matter of laws made by Parliament and by the Legislatures of States
University Grants Commission Act, 1956, Section 3, <a href=

Citation : (2017) 04 OHC CK 0035

Hon'ble Judges : B.R.Saranghi

Bench : SINGLE BENCH

Advocate : S. Mohanty, D.K. Pani, J.K. Mishra, S.Mohanty, P.C. Behera, S.B. Jena, A. Mishra, S.C. Rath

Final Decision : Allowed

Judgement

1. The petitioner herein was an Agricultural Scientist under Indian Council of Agricultural Research ("ICAR"). By the notification dated 31.12.2008 issued by Ministry of Human Resource Development, Department of Higher Education, Government of India (Annexure-2), teachers in universities and colleges were categorized into three types, namely, Assistant Professor, Associate Professor and Professor, as against the existing hierarchy of Lecturer, Lecturer (Sr. Scale), Lecturer (Selection Grade), Reader and Professor. Accordingly, vide Annexure-1 dated 06.03.2009, the corresponding designations of Scientists in ICAR were redesignated as Scientist, Senior Scientist and Principal Scientist. While the petitioner was working as Junior Scientist (Soils), AICRP on Weed Control under opposite party no.6-University, he was promoted to the rank of Assistant Professor (Selection Grade) with effect from 28.07.2008. On acquisition of Ph.D. degree, he was designated as Associate Professor with effect from 27.08.2008 under Career Advancement Scheme vide office order dated 23.10.2009.

2. While the petitioner was so continuing, the Government of India, on

consideration of recommendation made by University Grant Commission (UGC), revised the pay scales of teachers in the central universities, by virtue of the notification dated 31.12.2008 issued by the Ministry of Human Resource Development, Department of Higher Education, Government of India (Annexure-2), which came into force w.e.f. 01.01.2006. As per the said notification (Annexure-2), the State Government had to implement the scheme without any modification, except with regard to the date of implementation and scales of pay mentioned therein. Sub-clause (g) of Clause-8(p)(v) of the said notification, which stipulates the above requirement, is extracted hereunder:

"Payment of Central assistance for implementing this Scheme is also subject to the condition that the entire Scheme of revision of pay scales together with all the conditions to be laid down by the UGC by way of Regulations and other guidelines shall be implemented by State Governments and Universities and Colleges coming under their jurisdiction as a composite scheme without any modification except in regard to the date of implementation and scales of pay mentioned therein above."

The State Government was also vested with the power to introduce higher scales of pay to the teachers, considering the local conditions take recourse to sub-clause (f) of Clause-8(p)(v), which reads as follows:

"(f) State Governments, taking into consideration other local conditions, may also decide in their discretion, to introduce scales of pay higher than those mentioned in this Scheme, and may give effect to the revised bands/scales of pay from a date on or after 01.01.2006; however, in such cases, the details of modifications proposed shall be furnished to the Central Government and Central assistance shall be restricted to the Pay Bands as approved by the Central Government and not to any higher scale of pay fixed by the State Government(s).

3. In adherence to the above notification dated 31.12.2008 (Annexure-2), the State Government passed a resolution on 14.12.2009 vide Annexure-3 and, in the matter of fixation of pay for Readers in the UGC Scale of pay, provided in Clause 5.1(iii) as follows:

"In the matter of fixation of pay for Readers in the UGC scales of pay effective from 01.01.2006, minimum of higher Pay Band shall be allowed to those who would have completed 5 (five) years in the grade. Hence the revised scales for the incumbent Readers before completion of 5(five) years shall be at the pay band of Rs. 15,600 - 39,100/- and after completion of 5(five) years shall be at the pay band of Rs.37,400-67,000/- in the pre-revised scale of Rs.12,000-18,300/-.

Whereas, Clause- 3.2 of the UGC guidelines states as follows:

"3.2 Incumbent Readers and Lecturers (Selection Grade) who had not completed three years in the pay scale of Rs.12,000-18,300 on or after 1 January, 2006 shall be placed at the appropriate stage in the Pay Band of Rs.15,600 -Rs.39,100

with AGP of Rs.8,000 till they complete three years of service in the grade of Lecturer (Selection Grade) / Reader, and thereafter shall be placed in the higher Pay Band IV of Rs.37,400 -Rs.67,000 and accordingly re-designated as Associate Professor."

As per the criteria fixed under UGC guidelines for grant of Selection Grade, one has to complete three years of service in the grade of Lecturer (Selection Grade)/ Reader and thereafter shall be placed in higher Pay Band IV of Rs. Rs.37,400 - Rs.67,000 and accordingly re-designated as Associate Professor. But, the State Government, while issuing resolution dated 14.12.2009 (Annexure-3), enhanced the eligibility criteria from 3 years to 5 years, which is contrary to the instruction issued under UGC guidelines. The petitioner is grossly aggrieved by such fixation of eligibility criteria of 5 years by the State Government in place of 3 years as fixed in UGC guidelines, hence this application.

4. Mr. S. Mohanty, learned counsel for the petitioner states that UGC, being the competent authority in the matter of extension of benefit to the teachers of the universities, the rules, regulations, guidelines framed by it are also applicable to the State authorities. Therefore, once the UGC has fixed a criteria entitling a person to get a scale of pay benefit after having three years experience, the same should not have been enhanced by the State Government by incorporating Clause

5. 1(iii) in the resolution dated 14.12.2009 in Annexure-3. Such fixation of the eligibility criteria enhancing from three years to five years by the State Government is without jurisdiction and as such, the same is liable to be quashed.

5. Mr. D.K. Pani, learned Addl. Standing Counsel for the State opposite parties tried to justify the resolution passed by the State Government in Annexure-3 with regard to fixation of eligibility criteria of five years experience in place of three years in Clause- 5.1(iii) for grant of revised scale of pay to the Readers, but no counter affidavit has been filed by the State opposite parties in the writ application.

6. Learned Central Government Counsel states that the Ministry of Human Resource Development, Department of Higher Education, Government of India has fixed the criteria for grant of revised scale of pay admissible to the teachers of the Colleges and Universities, and as such, the same is to be implemented in consonance with the provisions of law.

7. Mr. J.K. Mishra, learned Senior Counsel appearing along with Mr. S. Mohanty, learned counsel for opposite party no.4, relying upon the counter affidavit filed on its behalf, states that on the basis of the decision taken by the Ministry of Human Resource Development, Department of Higher Education, Government of India and recommendation made thereof revision of pay scales of teachers in the Central Universities have been considered and as such, the revision of pay scales thereafter shall be subject to various provisions of the scheme of revision of pay scales, as contained in the letter and regulations to be framed by the UGC in this

behalf. Consequentially, the UGC has extended the benefit of revision of pay scale for the Readers, who have completed three years in the Grade to entitle him to get minimum higher pay band w.e.f. 01.01.2006 and the same should be adhered to while issuing the resolution passed by the State Government. As such, the State Government has no authority to make any change of the eligibility criteria of the UGC.

8. Mr. A. Mishra, learned counsel appearing on behalf of Mr. S.B. Jena, learned counsel for ICAR states that the State Agricultural Universities having been established under the Acts of State Legislatures and the Universities having their own statutes for governing various issues concerning conditions of service of teachers of the State Agricultural Universities, they do not come within the purview of UGC Regulations. In order to maintain the standard of agricultural education, the Government of India has extended the UGC pay scales and Career Advancement Scheme to teachers of State Agricultural Universities, w.e.f. 01.01.1986 as notified by the Ministry of Human Resource Development, Department of Higher Education, Government of India by notification dated 22.07.1988 for teachers of General Universities and Colleges covered under the UGC. Therefore, onus lies on the State Government to implement the guidelines contained in the Department of Agricultural Research and Education (DARE)'s notification dated 03.03.1999. As per Clause-8(p)(v) of the notification dated 31.12.2008 issued by the Ministry of Human Resource Development, Department of Higher Education it is stated that the scheme may be extended to universities, colleges and other higher educational institutions coming under the purview of State Legislatures, provided state governments wish to adopt and implement the scheme subject to terms and conditions mentioned therein. As such, fixation of minimum eligibility criteria of five years, instead of three years as fixed by UGC, is not within the domain of the ICAR. Therefore, the ICAR does not have any grievance for the said issue nor such benefits can be extended by the ICAR.

9. Mr. Ashok Mishra, learned Senior Counsel appearing for opposite party no.6-OUAT contended that the university is under administrative control of Agriculture Department, Government of Odisha. The Revision of pay scales to the teachers and equivalent cadres are guided by Rules and Regulations as communicated by the Agriculture Department of Government of Odisha. Since the Government has framed a resolution the same is applicable to the employees of the university including the petitioner.

10. This Court heard learned counsel for the parties. Pleadings between the parties, except the State-opposite parties, having been exchanged, the matter is disposed of at the stage of admission on perusal of records. The State-opposite parties, whose resolution is under challenge, have not filed any counter affidavit (despite service of copy of the writ petition) and in the meantime more than 8 years have elapsed. Due to nonfiling of the counter affidavit by the State-opposite parties, the averments made in the writ petition are to be taken into consideration, by applying the doctrine of non-traverse.

11. The U.G.C. has been constituted under the provisions of the University Grants Commission Act, 1956 (for short "the Act"), which came into force w.e.f. 05.11.1956. The Act was enacted to make provisions for the coordination and determination of standards in universities. The Commission under the provisions of the Act has been entrusted with the duty to take such steps as it may think fit for the promotion and coordination of university education and for the determination and maintenance of standards of teaching, examination and research in universities. For the said purpose, the Commission has been vested with the power to recommend to any university the measures necessary for the improvement of university education and advice the universities upon the action to be taken for the purpose of implementation of such recommendation. The Commission is also authorized to perform such other functions as may be prescribed, or as may be deemed necessary by the Commission for advancing the cause of higher education in India, or as may be incidental or conducive to the discharge of its functions.

12. Section 26 of the Act gives power to the Commission to make regulations consistent with the Act, permits the Commission to define 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 the applicant is expected to give instruction. The department of Higher Education, Ministry of Human Resource Development, Government of India in its letter dated 31.12.2008 addressed to the Secretary, UGC informed regarding the scheme of revision of pay of teachers and equivalent cadres in universities and colleges following the revision of pay scales of Central Government employees on the recommendations of the Sixth Central Pay Commission. It was informed to the UGC that the Government of India has decided, after taking into consideration the recommendations made by the UGC based on the decision taken at the meeting held on 7-8 October, 2008 to revise the pay scales of teachers in the Central universities. The revision of pay scales of teachers shall be subject to various provisions of the scheme of revision of pay scales as contained in the letter and regulations to be framed by the UGC in accordance with the scheme given in the letter. Specifically, the revised pay scales and other provisions of the scheme were stipulated in Clause-1 to 12 of the said letter. As per Clause-8(p)(i), the applicability of the scheme has to be taken into consideration to the following effect.

8(p)(i) - "This scheme shall be applicable to teachers and other equivalent cadres of Library and Physical Education in all the Central Universities and colleges thereunder and the Institutions Deemed to be Universities whose maintenance expenditure is met by the UGC. The implementation of the revised scales shall be subject to the acceptance of all the conditions mentioned in this letter as well as Regulations to be framed by the UGC in this behalf. Universities implementing this scheme shall be advised by the UGC to amend their relevant statutes and Ordinances in line with the UGC Regulations within three months from the date of issue of this letter"

In Clause-8(p)(v), which deals with applicability of the scheme to universities, colleges and other higher educational institutions which come under the purview of the State legislature, the following has been stipulated :-

"8 (p)(v). This scheme may be extended to Universities, colleges and other higher educational institutions coming under the purview of the state legislatures, provided State Governments wish to adopt and implement the scheme subject to the following terms and conditions:

(a) Financial assistance from the Central Government to State Governments opting to revise pay scales of teachers and other equivalent cadre covered under the Scheme shall be limited to the extent of 80% (eighty percent) of the additional expenditure involved in the implementation of the revision.

(b) The State Government opting for revision of pay shall meet the remaining 20% (twenty percent) of the additional expenditure from its own sources.

(c) Financial assistance referred to in sub-clause (a) above shall be provided for the period from 01.06.2006 to 31.03.2010.

(d) The entire liability on account of revision of pay scales etc. of university and college teachers shall be taken over by the State Government opting for revision of pay scales with effect from 01.04.2010.

(e) Financial assistance from the Central Government shall be restricted to revision of pay scales in respect of only those posts which were in existence and had been filled up as on 01.10.2006.

(f) State Government, taking into consideration other local conditions, may also decide in their discretion, to introduce scales of pay higher than those mentioned in this Scheme, and may give effect to the revised bands/scales of pay from a date on or after 01.01.2006; however, in such cases, the details of modifications proposed shall be furnished to the Central Government and Central assistance shall be restricted to the Pay Bands as approved by the Central Government and not to any higher scale of pay fixed by the State Government(s).

(g) Payment of Central assistance for implementing this Scheme is also subject to the condition that the entire Scheme of revision of pay scales together with all the conditions to be laid down by the UGC by way of Regulations and other guidelines shall be implemented by State Governments and Universities and Colleges coming under their jurisdiction as a composite scheme without any modification except in regard to the date of implementation and scales of pay mentioned herein above."

As per stipulation contained in Clause 8(p)(v), the State Governments, taking into consideration other local conditions, may also decide in their discretion to introduce scales of pay higher than those mentioned in the scheme and may give effect to the revised bands/scales of pay from a date on or after 01.01.2006. In such cases, the details of modifications proposed shall be furnished to the

Central Government and the central assistance shall be restricted to the pay band as approved by the Central Government and not to any higher scale of pay fixed by the State Governments.

13. On receipt of such letter dated 31.08.2011 (Annexure-2) of the Department of Higher Education Ministry of Human Resource Development, the UGC constituted an expert committee to consider the issues and suggest follow up action as also to frame the regulation as contemplated therein. Accordingly, the UGC framed the Regulations called "UGC (Minimum Qualifications for appointment of teachers and other academic staff in universities and colleges and other measure for the maintenance of the standards in higher education) Regulations, 2010" (for short "Regulations, 2010"), which came into force with immediate effect and was published in the gazette of India on 18.09.2010. The said Regulations, 2010 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 University Grant Commission Act, 1956 and every institution deemed to be a university under Section 3 of the said Act. Regulations 2.1.0 and 2.3.3, as well as Regulation 6.8.0, which deal with pay scales, etc., read as under:

"2.1.0 The revised scales of pay and other service conditions including age of superannuation in central universities and other institutions maintained and/or funded by the University Grants Commission (UGC), shall be strictly in accordance with the decision of the Central Government, Ministry of Human Resource Development (Department of Education), as contained in Appendix-1.

2.3.3. All other aspects which are not covered in these Regulations, on applicability, financial assistance, date of implementation of revised pay and allowances and payment of arrears, etc. shall be as laid down in the MHRD Notifications provided as Appendix-I of these Regulations and the MHRD letter No. F.1-7/2010-U II dated 11 May, 2010."

xx xx xx

"6.8.0. The Schedule annexed to these Regulations outlines the Pay Scales, Designations and stages or promotions under CAS of incumbent and newly appointed teachers and equivalent positions in the Library and Physical Education and Sports cadres in Central Universities and colleges thereunder and Institutions deemed to be Universities whose maintenance expenditure is met by the UGC."

14. The schedule to Clause 6.8.0 deals with pay scales, designations and stages or promotion under CAS of incumbent and newly appointed Assistant Professors/ Associate Professors/Professors and other equivalent cadres in library and physical education and sports in central universities and colleges thereunder and institutions deemed to be universities whose maintenance expenditure is met by the UGC. It is profitable to refer to Clause 3.0 to 3.5:

"3.0 Posts of Associate Professor shall be in the Pay Band IV of Rs.37,400 - Rs.67,000, with AGP of Rs.9,000. Directly recruited Associate Professors under these Regulations shall be placed in the Pay Band IV of Rs.37,400 -Rs.67,000 with an AGP of Rs.9,000, at the appropriate stage in the Pay Band in terms of the conditions of appointment.

3.1 Incumbent Readers and Lecturers (Selection Grade) who have completed three years in the current pay scale of Rs.12,000 -Rs.18,300 on 1 January, 2006 shall be placed in Pay Band IV of Rs. 37,400 -Rs.67,000 with AGP of Rs.9,000 and shall be re-designated as Associate Professor.

3.2. Incumbent Readers and Lecturers (Selection Grade) who had not completed three years in the pay scale of Rs.12,000- Rs.18,300 on or after 1 January, 2006 shall be placed at appropriate stage in the Pay Band of Rs.15,600 - Rs.39,100 with AGP of Rs.8,000 till they complete three years of service in the grade of Lecturer (Selection Grade)/ Reader, and thereafter shall be placed in the higher Pay Band IV of Rs.37,400 -Rs.67,000 and accordingly redesignated as Associate Professor.

3.3. Readers/Lecturers (Selection Grade) in service as present shall continue to be designated as Lecturer (Selection Grade) or Readers, as the case may be, until they are placed in the Pay Band of Rs.37,400 -Rs.67,000 and re-designated as Associate Professor in the manner described in 3.1 and 3.2 above.

3.4. Assistant Professors completing three years of teaching in the AGP of Rs.8,000 shall be eligible, subject to the qualifying conditions prescribed by these Regulations, to move to the Pay Band IV of Rs.37,400 - Rs.67,000 with AGP of Rs.9,000 and to be designated as Associate Professor.

3.5. Associate Professor completing three years of service in the AGP of Rs. 9,000/- and possessing a Ph.D Degree in the relevant discipline shall be eligible to be appointed and designated as Professor, subject to satisfying the required credit points as per API based on PBAS methodology provided in Appendix-IV, Table I-III stipulated in these Regulations and assessment by a duly constituted selection committee as suggested for the direct recruitment of Professor. No teacher other than those with Ph.D. shall be promoted or appointed as Professor. The Pay Band IV for the post of Professors shall be Rs.37,400 - Rs.67,000 with AGP of Rs.10,000."

15. In Appendix-I to Regulations, 2010, the applicability, implementation of pay scales, etc. have been provided in the following terms:

"8 (p) Applicability of the Scheme:

(i) This scheme shall be applicable to teachers and other equivalent cadres of Library and Physical Education in all the Central Universities and colleges thereunder and the Institutions Deemed to be Universities whose maintenance expenditure is met by the UGC. The implementation of the revised scales shall be subject to the acceptance of all the conditions mentioned in this letter as well as

Regulations to be framed by the UGC in this behalf. Universities implementing this scheme shall be advised by the UGC to amend their relevant statutes and Ordinances in line with the UGC Regulations within three months from the date of issue of this letter.

(ii) This Scheme does not extent to the cadres of Registrar, Finance Officer and Controller or Examination for which a separate Scheme is being issued separately.

(ii) This scheme does not extend to the Accompanists, Coaches, Tutors and Demonstrators, Pay and Grade Pay of the said categories of employees shall be fixed in the appropriate Pay Bands relative to their existing Pay in each university/ institution corresponding to such fixation in respect of Central Government Employees as provided by the Central Government on the basis of the recommendations of 6th Central Pay Commission.

(iii) This Scheme does not extend to the posts of Professionals like System Analysts, Senior Analysts, Research Officers etc. who shall be treated at par with similarly qualified personnel in research/scientific organizations of the Central Government.

(v) This scheme may be extended to Universities, colleges and other higher educational institutions coming under the purview of the state legislatures, provided State Governments wish to adopt and implement the scheme subject to the following terms and conditions:

(a) Financial assistance from the Central Government to State Governments opting to revise pay scales of teaches and other equivalent cadre covered under the Scheme shall be limited to the extent of 80% (eighty percent) of the additional expenditure involved in the implementation of the revision.

(b) The State Government opting for revision of pay shall meet the remaining 20% (twenty percent) of the additional expenditure from its own sources.

(c) Financial assistance referred to in sub-clause (a) above shall be provided for the period from 01.06.2006 to 31.03.2010.

(d) The entire liability on account of revision of pay scales etc. of university and college teachers shall be taken over by the State Government opting for revision of pay scales with effect from 01.04.2010.

(e) Financial assistance from the Central Government shall be restricted to revision of pay scales in respect of only those posts which were in existence and had been filled up as on 01.10.2006.

(f) State Government, taking into consideration other local conditions, may also decide in their discretion, to introduce scales of pay higher than those mentioned in this Scheme, and may give effect to the revised bands/scales of pay from a date on or after 01.01.2006; however, in such cases, the details of modifications proposed shall be furnished to the Central Government and Central assistance shall be restricted to the Pay Bands as approved by the Central Government and

not to any higher scale of pay fixed by the State Government(s).

(g) Payment of Central assistance for implementing this Scheme is also subject to the condition that the entire Scheme of revision of pay scales together with all the conditions to be laid down by the UGC by way of Regulations and other guidelines shall be implemented by State Governments and Universities and Colleges coming under their jurisdiction as a composite scheme without any modification except in regard to the date of implementation and scales of pay mentioned herein above."

16. The date of implementation of revised pay and allowance and payment of arrears have been stated as follows:

"9.(i) The revised Pay and revised rates of Dearness Allowance under this Scheme shall be effective from 01.01.2006. The revised rates of all other applicable allowances such as House Rent Allowances, Transport Allowance, Children Education Allowance etc. and the non-compounded advance increments shall take effect from 01.09.2008.

(ii) Payment of arrears up to 40% of the total arrears shall be made during the current financial year i.e. 2008-09, after deduction of admissible income tax.

(iv) An undertaking shall be taken from every beneficiary under this Scheme to the effect that any excess payment made on account of incorrect fixation of pay in the Revised Pay Bands or grant of inappropriate Pay Band/ Academic Grade Pay or any other excess payment made shall be adjusted against the future payments due or otherwise to the beneficiary in the same manner as provided in this Ministry's O.M. No. F.23-7/2008IFD dated 23.10.2008, read with Ministry of Finance (Department of Expenditure) O.M. No. F.1-1/2008-IC dated 30.08.2008."

17. Learned counsel for the petitioner does not dispute with regard to power of the Department in Higher Education, Ministry of Human Resources Development and consequential framing of Scheme by the UGC, as discussed above, save and except that, if the UGC has fixed a criteria for grant of revised scale of pay as per Clause-3.2 fixing minimum eligibility criteria for 3 years completion of service in the grade of Lecturer (Selection Grade)/Reader, the same could not have been altered or modified by the State Government in its resolution dated 14.12.2009 in Annexure-3 under Clause 5.1(iii).

18. As has been stated above, though the Scheme of the UGC has given power to the State authority to fix its criteria, but that is subject to the approval made by the Central Government, but as such no material has been produced before this Court to show that fixation of eligibility criteria of 5 years in the resolution dated 14.12.2009 Annexure-3 issued by the State Government any such approval has been made by the Central Government. In view of such position, the criteria fixed in the Scheme of the UGC under Clause-3.2 for 3 years in the Grade of Lecturer (Selection Grade)/Reader should not have been changed by the State Government in its resolution dated 14.12.2009. In absence of any

reason whatsoever, the change of eligibility criteria from 3 years to 5 years made by the State Government in its resolution dated 14.12.2009 (Annexure-3) under Clause 5.1(iii) cannot be allowed to stand.

19. Article 246 of the Constitution reads as follows:

"246. Subject-matter of laws made by Parliament and by the Legislatures of States.-

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List")

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List"

The above article deals with the distribution of legislative powers as between the Union and the State Legislatures, with reference to the different Lists in the 7th Schedule. The gist of the Article, in short, is that the Union Parliament has full and exclusive power to legislate with respect to matters in List I and has also concurrent power to legislate with respect to matters in List III. The State Legislature, on the other hand, has exclusive power to legislate with respect to matters in List II, minus matters falling in Lists I and III and has concurrent power with respect to matters included in List III.

In *Union of India v. Harbhajan Singh Dhillon*, AIR 1972 SC 1061 analyzing Article 246 the apex Court held as follows:

"The function of Art. 246(1) read with Entries 1 to 96 of List I of Seventh Schedule is to give positive power to Parliament to legislate in respect of these Entries. Object is not to debar Parliament from legislating on a matter, even if other provisions of the Constitution enable it to do so. What one has to ask is, whether the matter sought to be legislated is included in List II or List III and no question has to be asked about List I. If the answer is in the negative, then it follows that Parliament has power to make laws with respect to that matter."

20. Under Entry-66 of List-I of Schedule Seven it has been stated as follows:

"66. Co-ordination and determination of standards in institutions for higher

education or research and scientific and technical institutions."

Similarly, Entry 25 of List-III of Schedule Seven reads as follows:

"25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

21. In view of the Entries made in List I and List III, so far as Higher Education is concerned the field is occupied by the Central Government. As such, the Central Government has got power to frame the law. So far as Entry 25 of the List III is concerned, both the Central Government, as well as State Government has power to frame law. But, both the laws cannot be inconsistent to each other. Any repugnancy to any provision, the Central Act shall prevail upon the same. The object of Concurrent List of the subjects, over which the Centre and State have concurrent powers, is uniformity, since the plan of three Lists in the Constitution has been adopted from the Government of India Act, 1935. In *Amalgamated Electricity Co. v. Ajmer Municipality*, AIR 1969 SC 227, the apex Court held as follows:

"The Union and State Legislatures have concurrent power with respect to the subjects enumerated in List III. Hence, the State Legislature has full power to legislate regarding these subjects, subject only to the condition in cl.(2) of Artr.254, that is, the provisions of the State Act must not conflict with those of any Central Act on the subject."

In *Kulwant Kaur v. Gurdial Singh Mann*, AIR 2001 SC 1273, the apex Court held as follows:

"Uniformity of law being the basic characteristics of Indian jurisprudence cannot be termed to be at sufferance by reason of a State legislature which runs counter to the Central legislation. It is not necessary that one legislation should be on the positive side whereas the other on the negative side; such a stringent requirement is not the requirement in order to bring home the repugnancy; but all the same, it might result when both the legislations cover the same field."

22. Applying the provisions, as discussed above, to the present context, the entire field relating to the Higher Education is occupied by the Central Government. The Regulations framed under the UGC Act, namely, the Regulations, 2010 laying down the eligibility conditions for appointment to the teaching staff and also extension of the revised pay scale of the University would prevail over the statute framed under the various State University Acts. The State cannot, therefore, dispense with any provision of the Regulations. Once the State has accepted Regulations framed by the UGC and these Regulations were treated as applicable for the purpose of recruitment and extension of revised scale of pay to various teaching posts in the University, the relaxation/clarification made by the UGC therein from time to time will also be binding on the State Government, provided they are not inconsistent with the Regulations.

23. In the present case, it appears, that the eligibility criteria has been modified by the State authority pursuant to resolution under Clause 5.1(iii), which is not in consonance with Clause-3.2 of the Regulations, 2010 framed by the UGC. Such Regulations have been framed, in pursuance of letter issued by the Central Government dated 31.12.2008 in Annexure-2. Therefore, the eligibility criteria, which was fixed by Regulations, 2010 of the UGC, could/should not have been modified by the State Government's resolution under Annexure-3 dated 14.12.2009.

24. No doubt, if any dispute arose to this respect, the State Government could have sent the matter to the Central Government for its approval and consequentially the UGC could have issued a fresh intimation to the State authority. But in regard to the same, no material is produced before this Court to consider the same, and even no counter affidavit has been filed by State opposite parties. More so, in course of hearing, learned Addl. Standing Counsel for the State-opposite parties has not brought any material to the notice of the Court to show that the State Government has ever taken any steps for modification of the eligibility criteria from 3 years (as fixed by the UGC) to 5 years (vide Clause 5.1(iii) of the resolution under Annexure-3 dated 14.12.2009).

25. For the foregoing reasons, this Court is of the considered view that fixation of eligibility criteria of 5 years by the State Government under clause 5.1(iii) of the resolution dated 14.12.2009 (Annexure-3), being contrary to clause 3.2 of the Regulations, 2010 framed by the UGC in exercise of power conferred under Section 26 of the UGC Act, cannot sustain in the eye of law. Accordingly, the same is hereby quashed.

26. The writ application is allowed to the extent indicated above. No order to cost.