
(2017) 01 P&H CK 0083
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 13527 of 2013 (O&M)

Dr. Ramesh Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 30-01-2017

Acts Referred:

Citation : (2017) 2 SCT 757

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : R.K. Malik, Sr. Advocate, with Sajjan Singh Malik, Advocate, for the Petitioner in CWP No. 13527 of 2013; Yogesh Chaudhary, Advocate, for the Petitioner in CWP No. 22627 of 2013; Rajinder Singh Mann, Advocate, for the Petitioner in CWP No. 26527 of 2013; M.K. Mittal, Advocate, for the Petitioner in CWP No. 21838 of 2013; Ms. Shruti Jain Goyal, AAG, Haryana, for the Respondent; H.N. Mehtani, Advocate, for the Respondent No. 2 in CWP Nos. 13527, 22627 and 26527 of 2013; R. Kartikeya, Advocate, for the Respondent No. 3 in CWP No. 13527 of 2013; Girish Agnihotri, Sr. Advocate, with Arvind Seth, Advocate, for the Respondent No. 4 in CWP No. 13527 of 2013; Girish Agnihotri, Sr. Advocate, with Arvind Seth, Advocate, for the Respondent No. 5 in CWP Nos. 21838 and 22627 of 2013; Ramandeep Singh, Advocate, for the Respondent No. 4 in CWP No. 22627 of 2013; Anil Ghanghas, and Sunil Panwar, Advocate, for the Respondents No. 3, 4 & 7 in CWPs No. 21838 & 13527 of 2013; Kanwal Goyal, Advocate, for the Respondent No. 2 in CWP No. 21838 of 2013; Dinesh Arora, Advocate, for the Respondent No. 8 in CWP No. 13527 of 2013

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.—This order will dispose of CWP No. 13527 of 2013 titled Dr. Ramesh Kumar v. State of Haryana and others, CWP No.21838 of 2013 titled Dr. Ramesh Kumar v. State of Haryana and others, CWP No.22627 of 2013 titled Dr. Satish Kumar Bhardwaj v. State of Haryana and others & CWP No.26527 of 2013 titled Dr. Ajit Singh v. State of Haryana and others as common questions of law and fact are involved therein which can conveniently be decided by a common order.

2. Question No.(vii) posed in my interim order dated August 02, 2016 calling upon the Principal Secretary to Government of Haryana, Higher Education Department to explain why the requisition of the State Government was sent in 2011 clubbed for the post of Principals and Deputy Directors and in case the State is unable to justify this clubbing then why should not the selection and appointments be confined to the post of Deputy Directors and accordingly seven posts declared vacant retrospectively for filling afresh from open market after following the new criteria with API Record System added to the selection process as its inherent part as it prevailed on the date of the recommendations by the Commission has been adequately answered in the additional affidavit the Principal Secretary to Government of Haryana, Higher Education Department, Chandigarh to satisfy the insistence of Mr. Sajjan Singh Malik, learned counsel that this query remains at large and not answered. More will follow on this issue in the course of the opinion.

3. The answer to this controversy lies in the Appendix to the Haryana Education (College Cadre) Group-A Service (Amendment) Rules, 2005 [for short "the Rules, 2005"] itself where both the posts are clubbed and made inseparable. The State has explained that Principals work in colleges and when posted to the Directorate they discharge duties and responsibilities of administrative office and not in the classroom. Principals become Deputy Directors and Deputy Directors resume their work as Principals on posting and transfers. They are, therefore, one and the same thing under twin designation depending on the exigencies of administration of who is placed where by posting. Those Principals who are found complacent with rules, regulations and principles of governance are brought to headquarters of the Higher Education Department, Haryana to perform purely administrative functions. Both the designations are twins which cannot be separated for different treatment from the point of view of selection and appointment. There is thus no occasion to declare seven posts of Principals vacant for fresh selection. The Court is satisfied with the explanation given in the additional affidavit of the Principal Secretary as unexceptionable and the stand is in accordance with the rules and to the contrary holding otherwise would amount to re-writing the rules.

4. The keen contest in this petition and the grounds for battle is regarding the selection to seven posts of Principals in Government Colleges/Deputy Director against vacancies advertised on October 19, 2012 from general and reserve category by way of direct recruitment. The post of Principal/Deputy Director is governed by the provisions of the Rules, 2005 which provide that the post will be filled by promotion from amongst college Lecturers or by direct recruitment in the ratio of 75:25. The present case involves direct recruitment. Since we are not concerned with promotion the conditions of eligibility prescribed for direct recruitment in the Appendix to the Rules, 2005 is to the following effect:-

"4.2.0. PRINCIPAL

i. A Master's Degree with at least 55% marks (or an equivalent grade in a point

scale wherever grading system is followed) by a recognised University.

ii. A Ph.D. Degree in concerned/allied/relevant discipline(s) in the institution concerned with evidence of published work and research guidance.

iii. Associate Professor/Professor with a total experience of fifteen years of teaching/research/administration in Universities, Colleges and other institutions of higher education.

iv. A minimum score as stipulated in the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS), as set out in this Regulation in Appendix III for direct recruitment of Professors in Colleges."

5. It is the common ground that the essential qualifications prescribed in the rules of service are faithfully reproduced in the advertisement. However, the case of the petitioners is in sharp departure to the rules of service with the argument built on the edifice of the University Grants Commission, New Delhi notification dated June 30, 2010 in Clause 4.2.0 prescribing for the post of Principal, the following conditions:-

"4.2.0. PRINCIPAL

i. A Master's Degree with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed by a recognised University.

ii. A Ph.D. Degree in concerned/allied/relevant discipline (s) in the institution concerned with evidence of published work and research guidance.

iii. Associate Professor/Professor with a total experience of fifteen years of teaching/research/administration in Universities, Colleges and other institutions of higher education.

iv. A minimum score as stipulated in the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS), as set out in this Regulation in Appendix III for direct recruitment of Professors in Colleges."

6. It is urged that the UGC is the competent authority to prescribe qualifications for the post of Assistant Professor, Associate Professor, Professor/ Principal of the College. It is contended that State Governments and Universities are bound to follow the qualifications laid down by the UGC which is the competent authority to lay down minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges.

7. The Haryana Government vide letter dated July 21, 2011 decided to revise the minimum qualifications for the posts in issue. The dispute in this case is that the Academic Performance Indicator (API) dependent on Performance Based Appraisal System (PBAS) is set out in the UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 ("UGC Regulations, 2010") in Appendix III for direct

recruitment of Professors in Colleges has not been advertised as an essential part of the criteria by the Haryana Government and, therefore, the advertisement deserves to be invalidated and a fresh selection ordered by taking into account API/PBAS scores on computation on the parameters indicated in the regulations. It is also well settled that recommendations of the UGC apply by adoption by State Governments and Universities and have no force of their own unless accepted by amendment of rules, wherever necessary.

8. Much of the debate has sprung from Memo dated July 21, 2011 issued by the Financial Commissioner & Principal Secretary to Government of Haryana, Higher Education Department to the Registrars of the four Universities established in Haryana and to the Principals of Government and Government Aided Private Colleges situated in the Haryana on the subject of adoption of various recommendations of the UGC with regard to minimum qualifications for appointment of teachers and other academic staff in the Universities and Colleges and measures for the maintenance of the standards of Higher Education. It will be worthwhile to quote verbatim the memo, which reads:-

"In Supersession of this office memo No.KW-7/18- 2009 C-IV (3) dated 28.8.2009, 09.09.2009 and 29.04.2011, the State Government after reconsidering the recommendations of the Ministry of Human Resource Development, Govt. of India and University Grants Commission as conveyed vide their letter No.1-32/2006- U.II/U.I(i) dated 31.12.2008 and letter No.F3-1/2009, dated 30.06.2010, has decided to issue a revised order on minimum qualifications for appointment of teachers and other academic staff in the Universities and Colleges and measures for the maintenance of the standards of Higher Education. The decisions taken by the State Government are incorporated in the enclosed Appendices.

Anomalies, if any, in the implementation of the scheme may be brought to the notice of Higher Education Department for clarification.

This issues with the concurrence of the Finance Department conveyed vide their U.O. No. 1/46/2009.4PR (FD), dated 19.07.2011."

[emphasis added]

9. Vide this memo the State Government decided to issue a revised order on minimum qualifications for the post concerned and if there are anomalies, if any, in the implementation of the scheme they may be brought to the notice of the Higher Education Department for clarification. The State Government took into account the suggestions of the Ministry of Human Resource Development, Govt. of India and the UGC in formulating the decision. However, the State of Haryana did not amend the relevant rules of service. Consequently, API scoring system was not introduced in promotions.

10. It is urged by the respondent-State that API record/scoring system is not a qualification under the UGC Act, 1956 ("1956 Act") but it is a standard of

evaluation whenever it transcribes itself into the law or in the statutory rules. Responding to the letter dated July 21, 2011 issued by the State Government, the Department received a communication dated August 30, 2011 from the Haryana Federation of University & College Teachers Organization (HFUCTO) demanding that the API scoring system should be implemented w.e.f. academic session 2012-13 as during the previous session i.e. 2011-12, the API scoring system was in the blue print process and was yet to be prepared and communicated to the teachers. The matter was reconsidered by Government regarding implementation of API scoring system in the academic session 2012-13 and the matter was referred to the Finance Department, Government of Haryana.

11. The Finance Department vide letter dated August 09, 2012 while approving application of the API scoring system in recruitments and Career Advancement Scheme (CAS) promotions of the University/College teachers approved that they apply from session 2012-13 instead of July 21, 2011, the date when the decision was taken by the State Government.

12. Based on the advice of the Finance Department, Government issued circular on September 19, 2012 agreeing to implement the API scoring system w.e.f. 2012-13. After the spade work was done advertisement No.2/2012 was published by the Haryana Public Service Commission inviting applications from eligible candidates with closing date on November 19, 2012 and November 26, 2012 as a last date of receiving applications from Forward Remote Areas etc.

13. After publication of the advertisement in the newspapers the petitioner Dr. Ramesh Kumar made a representation vide his letter dated Nil which was received on November 19, 2012. He sought guidelines as to whether the API scoring system was required for the post advertised or not. In order to decide the representation, the selection process was halted. A three member committee was constituted under the Chairmanship of the then Joint Director Colleges. This representation and the communication from HFUCTO were deliberated upon and the Committee submitted its report vide Annex P-6. The report dated January 09, 2013 was as follows:-

"In compliance of the orders of W/DGHE at page No. 164-165 ante, the Committee met on 9.1.2013 at 3.00 p.m. under the Chairmanship of Joint Director Colleges. The matter was thoroughly examined and discussed in view of the query raised by Administration Branch. Following two issues have been raised:-

1. Whether the API score will be applicable on the direct recruitment of Principals of Govt. Colleges through HPSC ?
2. Whether the said API Score will be applicable on the requisition for the recruitment to 07 Posts of Principals, the demand for which was sent to HPSC on 21.12.2011.

These issues were studied in view of letter No. 7/18-2009 CIV (3) dated 19.09.2012 issued to all the colleges and Universities wherein it has been clarified that the criteria of API in recruitment and promotions of university/college teachers will be applicable from 19.9.2012. Further another letter which was issued subsequently on 20.9.2012, was also perused vide which the guidelines for API Score System was forwarded to universities and colleges for strict adherence while making promotions and recruitments. Further the State Govt. Has already decided that API Score System would be followed while making direct promotions to the post of Principals in Govt. Colleges. Hence, the API Score System will also be automatically applicable while making recruitments to the post of Principals through HPSC.

As far as the question of applicability of API Score System on the posts, for which requisition has already been sent to HPSC, is concerned the committee is of the opinion that API guidelines issued by this office for universities and colleges be sent to the HPSC for taking necessary action. As per these guidelines, API will be applicable on the posts under reference if, the interviews are conducted after completion of current academic session 2012-13 i.e. From 01.07.2012 to 30.06.2013 and then API Score of one year will be required. And if the interviews are conducted prior to 30.06.2013 API will not be applicable.

The copies of the approval of noting and letter issued by the concerned branch along with guidelines are being enclosed herewith for the consideration and further necessary action of the concerned branch."

14. The recommendations and suggestions were approved by the competent authority on January 22, 2013. On February 14, 2013 with HPSC conveyed Government's opinion that if the interviews for the ongoing recruitment are conducted after completion of the academic session 2012-13 i.e. from July 01, 2012 to June 30, 2013 then API score of one year will be required and if the interviews are conducted prior to June 30, 2013 API Scoring System will not be applicable. The Commission was requested to conduct the interviews before June 30, 2013 to fill up the seven vacant posts of Principals of Government Colleges for which the requisition had already been sent on December 21, 2011. The academic session 2012-13 meant the period falling between July 01, 2012 and June 30, 2013.

15. It transpired that on June 13, 2013 UGC, New Delhi issued notification allowing the Universities either to follow the template made for implementation of API scoring system or to device their own scoring system. Besides, it was recommended that the API score will be used for "screening purpose" only and will have no bearing on expert assessment of candidates for direct recruitment or in CAS promotions. Further, these procedures can be followed for direct recruitment and CAS promotions wherever Selection Committees are prescribed in the resolutions.

16. Applying these principles of evaluation of merit the Haryana Public Service

Commission interviewed the candidates and declared the result on June 18, 2013. The present petition filed by Dr. Ramesh Kumar, an Associate Professor was instituted on June 20, 2013 praying for quashing of the selection of Principals/Deputy Directors of Government Colleges in Haryana on the ground that qualifications advertised is contrary to the qualification prescribed by UGC duly adopted by the Government of Haryana. The recruitment was finalized on June 25, 2013 and the selected candidates have been appointed to service.

17. The State has put in its written statement contesting the claim of the petitioners. The difference between a Principal of a College/Deputy Director, Colleges has been explained. The posts of Deputy Director Colleges and Joint Director, Colleges is filled up on temporary basis by the teaching faculty. The basic cadre of these officers remains the teaching field i.e. Principal, Associate Professor and Assistant Professor. These posts do not carry any extra remuneration and allowances etc. but do carry extra amount of burden and responsibility which are of an altogether different type and nature of work is different which requires knowledge of rules, regulations, procedures of governance and the work in the Directorate at its headquarters where Joint Directors and Deputy Directors work is more onerous than the teaching work in the Colleges. Keeping in view the above position, the Haryana Government in the Higher Education Department vide order of the Governor of Haryana dated May 06, 2011 re-designated posts of Assistant Director (Colleges) and Deputy Director (Colleges) as Deputy Director (Colleges) and Joint Director (Colleges) respectively.

18. It followed that when Principals are posted to Headquarters in the Directorate in their own pay scales they assume the designations and resume them when they are posted back to colleges. The post of Principal and Deputy Director (Colleges) is clubbed in the Appendix to the rules and are interchangeable, dependent on transfers and posting in the administrative exigencies. For all intents and purposes, the two posts are one and the same thing except as to duties attached to the post.

19. When this matter came up for the first time for effective preliminary hearing it was argued by Mr. Malik, learned Senior counsel for the petitioner that qualifications recommended by UGC vide letter dated June 30, 2010 were adopted by the Haryana Government vide memo dated July 21, 2011. Consequently, the advertisement issued was notified after adoption and, therefore, the advertised qualification had to be in line with the recommendations of the UGC. It was urged that there has been a failure to advertise essential qualifications with respect to API scoring system by the Government after their own acceptance. When the petition was filed the petitioner had faced interview but had remained unsuccessful on merit. It was urged that the interviews were held on March 05, 2013. This Court was persuaded to believe on these premises (R.N. Raina, J.) that when the minimum UGC qualifications were not incorporated in the advertisement the fault went to

the root of selection and may tend to vitiate it. The learned Law Officer was asked to seek instructions as to why UGC recommendations duly accepted by the Haryana Government were not incorporated in the advertisement and what is the effect of this. I had ordered status quo to be maintained as on July 01, 2013 when the motion order was issued. With the pleadings on file and an application filed to vacate the interim order I heard the learned counsel on July 29, 2013 and vacated the interim directions of status quo for the reason that the petitioner's eligibility was yet to be determined by the Court and, therefore, continuing the status quo was not justified or in public interest since the posts of Principals should normally not be kept vacant. The balance of convenience was prima facie found in favour of the State and the petitioner could be easily compensated in the event of success of the writ petition grievance could be remedied through re-conduct in case, the petition succeeded.

20. I ordered an exercise to be conducted by the Government that in case, API scoring system was applicable then what would be the result of the selection and the petitioning candidates were asked to apply their full particulars for evaluation on API standards to the authorities. Only three candidates responded namely, Dr. Ramesh Chander Mehra, Dr. Satish Kumar Bhardwaj and Dr. Ajit Singh, also the petitioner while the private respondents had not by them cooperated but did so soon after. Thereafter, it was found that the case would have to be decided on merits as the purpose for which API score assessment was resorted to was not resting the controversy and that is how the matter has been posted for a consideration on the merits of the case.

21. On August 02, 2016, I passed the following interim order concerning issues I thought arose for the Government to express its views. The order reads:-

"Let the Principal Secretary to Government of Haryana, Higher Education Department file an additional affidavit explaining:-

(i) Whether State Government vide memo dated 21.07.2011 had adopted the UGC recommendations with regard to minimum qualifications for appointment to the post of Principal in Colleges in Haryana and especially with regard to API system. He would explain that when State Government had adopted UGC guidelines on API score in 2011 what steps were taken to amend the rules of service, where there is no mention of API scoring system.

(ii) If the criteria of API scores is not prescribed in the service rule would the adoption of the system in the evaluation process for appointments of Principals/ Deputy Director then would the Adoption of UGC Guidelines amount to executive instructions supplementing the rules and adding condition precedent to selection and would be deemed to have been issued under Article 162 of the Constitution of India, and consequently, would have to be read into the rules for selection.

(iii) He would also explain what is meant by the word "anomaly" when used in the Memo dated 21.07.2011 and in what cases or instances can anomalies arise out of adoption of UGC guidelines which include recruitments/promotions made

with the criteria of API scores.

(iv) The affidavit would also disclose the circumstances under which the State Government wrote letter to the HPSC, Panchkula dated 14.02.2013 (Annex RII) and why did the State Government after having made the API record system applicable ask the Commission to go ahead with the selection advising it, that in case the result is not declared by 30.06.2013 then API score of one year will be required to be applied and if the interviews are conducted prior to 30.06.2013, then API record system would not be applicable. Would this, amount to an admission, that rules stood amended w.e.f. 1.7.2013 and thus the UGC API record system became intrinsic in the recruitment processes for appointment of Principals thereafter. To also apprise Court as to why was such a letter issued only with respect to the present selection against seven vacancies/posts of Principal//Deputy Directors for which Government has sent requisition on 21.12.2011 to the HPSC. Was this inaction in colourable exercise of power and abuse of authority aimed at avoiding the law which State Government itself believed was a part of the criterion for appointment.

(v) The Principal Secretary will also reflect that in case, the Commission was unable, for one reason or the other, unable to conduct interviews by 30.06.2013 then would the requisition have been rendered infructuous.

(vi) When the decision of far reaching consequences has been taken in the adoption memo dated 21.07.2011 (supra) to improve standards of appointments as envisioned by UGC why was the requisition sent on 21.12.2011 without mentioning mandate of API score system as intrinsic part of the recruitment process. The Principal Secretary would also examine the fact that when the petitioner Dr. Ramesh Kumar had, even before the interviews, brought his grievance to the notice of the State Government in writing that API System is mandatory, why did it not pay due attention to the representation and kept silent on the issue which could go to the root of selection.

(vii) To explain why was the requisition sent in 2011 clubbed for the post of "Principal and Deputy Director". If State is unable to justify this clubbing then why should not the selection and appointments be confined to the post of Deputy Director and the seven posts declared vacant retrospectively for filling afresh from open market after following the new criteria with API Record System added to the selection process as its inherent part as it prevailed on the date of recommendations by the HPSC.

(viii) The affidavit would also disclose the stand of State in CWP No.8256 of 2014 as against the present one between "appointment" and "promotion" of Principals/Deputy Directors with reference to API record system. He would also state in affidavit his views on the report of the Committee appointed by the Government in pursuance of interim orders passed by this Court and inform whether the selected candidates had requisite API scores and its impact on the selection process and whether it casts a long shadow on the merit of the candidates

selected and appointed.

Let the additional affidavit be filed within three weeks.

List on 30.08.2016.

To be shown in the urgent list.

A photocopy of this order be placed on the files of connected cases."

22. The additional affidavit dated November 05, 2016 has been filed by Dr. Mahavir Singh, IAS Principal Secretary to Government of Haryana, Higher Education Department, Chandigarh who after reproducing the special interim order has made his point-wise submissions. Most of what I have noticed above is narrated. The API scoring system could be introduced only after June 30, 2013 in case the selection process was concluded before that date. It is admitted that State Government had adopted recommendations dated December 31, 2008 and June 30, 2010 of the UGC vide letter dated July 21, 2011 (P-2). However, the API scoring system was not a qualification under the UGC Act, 1956 where the word qualification is defined as under:-

"Qualification means a degree or any other qualification awarded by a University:"

23. In the light of the above mentioned definition, the API scoring system could not be construed as "qualification" as it is based on performance like teaching experience, examination duties, paper publications, research work etc. of a teaching during his/her service and such qualifications are not awarded by any University. Therefore, the API score cannot be considered as a mandatory qualification. The mandatory nature of the guidelines of the UGC dated December 31, 2008 and June 30, 2010 is confirmed vide UGC subsequent letter dated June 13, 2013 allowing Universities either to follow the template made by it for implementation of API scoring system or to devise their own scoring system. The API score can be used only for screening purposes and will have no bearing on expert assessment of candidates in direct recruitment.

24. In the additional affidavit, the word "anomaly" has been explained as to how it crept in the letter dated July 21, 2011. It is given out that the word "anomaly" has been used in Government notification from yester years while adopting the recommendations of UGC. They cite a previous order dated December 08, 2000 where the heading came from and without due application of mind has been continued to be printed mechanically without paying due thought and regard to its implications. It has been explained that when the word anomaly was used for the first time in the Haryana Government notification dated December 08, 2000 (Annex D-3) in para.6 of the letter it was in connection with revision of pay scales of teachers of Universities and Colleges. The notification has nothing to do with essential qualifications or standards of higher education. I find that there is sufficient explanation on the word "anomaly" in the additional affidavit which satisfies the Court on its query. If a decision was taken by the Government to implement the API scoring system w.e.f. 2012-13 it was on the voice of HFUCTO,

a body which represented the teachers and Principals of Colleges in Haryana. It was on their grievance that the matter was re-considered and re-examined by the Government regarding implementation of API scoring system duly recommended by the Finance Department on June 30, 2012. That is why the system was not made effective from July 21, 2011 for the session ending June 30, 2012. It was after this decision was taken that the advertisement was published and no one can have any complaint regarding this.

25. It is the contention of Ms. Shruti Goyal appearing for the State that the rules of the game were laid down in the advertisement and those were followed by the Commission and the Government religiously. Even the representation of the petitioner was paid due attention and a three Member Committee was constituted on January 09, 2013 to look into his grievance. Government did not treat the request of the petitioner lightly and instead the report of the Committee was processed up to the highest quarters before initiating the recruitment process. After all, the requisition was sent by the State Government to the Commission on December 21, 2011 and it was on the request of HFUCTO and the petitioner which consumed time of the Government in taking a rational, uniform and conscious decision to apply the API score system only after June 30, 2013. Therefore, it cannot be said that there was any ill-will or inaction on the part of the Government as suggested by the petitioner which can be considered in colourable exercise of power and in abuse of authority. It was only after the final decision was conveyed to the Commission that the process of interviews was conducted.

26. State counsel submits that there is no untoward hurry in conducting interviews before June 30, 2013. The Haryana Public Service Commission being an independent and autonomous constitutional body over which the Government has no control in its functioning conducted the selection process fairly and faithfully. Moreover, the State action was based on rule and the evaluation was on merits by the Commission. API scores were not part of the rules of service and was not an essential part of the qualifications. She further explains that the requisition sent to the Commission was not withdrawn and the Government letters dated September 19, 2012 and February 14, 2013 were duly conveyed to the Commission only for their consideration but not as a command. The Commission choose to finalize the recruitment process on June 25, 2013 i.e. before June 30, 2013. No mala fides have been alleged against the Commission or bias of any of its members in conducting the interviews. If the petitioners are unsuccessful they cannot turn around and question the selection when API scoring system was not part of criterion.

27. There was a shadow of doubt on clubbing of the posts of Principals and Deputy Directors which has now been dispelled on the basis of the Rules, 2005 of recruitment and re-designation of the posts explaining how the post of Deputy Director (Colleges) and Joint Director (Colleges) falls in the headquarters/ Directorate cadre while other Principals teaching in the field staff in the

respective colleges is as dealt with earlier in this order. The affidavit refers to an earlier litigation in CWP No.8256 of 2014, Meer Singh and others v. State of Haryana and others where the State had filed reply informing the Court that the API scoring system was not being introduced in matters of promotion as Principals in the State Government. The written statement has been attached as D-6 with the affidavit of the said Principal Secretary to Govt. of Haryana.

28. Still further, the Principal Secretary in his affidavit has placed the report of the Committee constituted as per interim directions dated November 28, 2013 to assess the API scores of selected candidates. Their scores range from 37.5 to 246.5 and are found mentioned at page 203 of the paper-book. As one understands the case presently after the pleadings have come in and the full picture made known, the API scoring system on reconsideration with fresh inputs was not relevant to the present selection and the exercise ordered to be undertaken to assess API scores was only a process of loud thinking in the Court at a premature stage than what is revealed after hearing full arguments and understanding the case.

29. Today, one is wiser with the full landscape of facts in view and the case presented with the able assistance of counsel, it appears that the only question which boils down for adjudication is that the premise of the petitioner that UGC API scoring system was adopted by the Government is incorrect statement since the implementation of the recommendations of the UGC were decided by the competent authorities to be put in place only after June 30, 2013. It is one thing to adopt a decision of UGC in principle and another to fix an actual date when it is accepted to be implemented. The implementation part was postponed by a conscious decision of the competent authorities managing the selection on the plea of none else than HFUCTO [the Union of Teachers] and in the face of Rules, 2005 laying down the essential qualifications which forms the criterion of selection.

30. The letter of the State Government dated July 21, 2011 decides only to issue a revised order on minimum qualifications and not that the guidelines of the UGC have come into operation. The decision taken by the State Government dated September 19, 2012 (P-7) qualifies as the revised order acknowledging API scoring system to be applicable in the academic session 2012-13. This decision is within the executive domain and is not in abrogation of the adoption on July 21, 2011 but is purely a decision to stamp the date from which the adoption will operate as living law. Besides, the UGC, New Delhi itself diluted its API scoring system procedures and reduced them as only a screening test but not part of eligibility or essential qualifications for the post of Principal/Deputy Director.

31. I would, therefore, find no error much less palpable in what the State Government and the Commission did in the direct recruitment process while declaring the result before June 30, 2013 without resorting to the API scoring system. There was no illegality in this action/decision or any arbitrariness involved in the decision making process. The authorities acted within their

jurisdiction and did not dishonour the UGC Regulations.

32. Accordingly, on a thoughtful consideration of the matter I would reject the contentions advanced by Mr. R.K. Malik, Mr. Sajjan Singh Malik and a host of their able colleagues representing their side of the case, and instead would accept those promoted by Mr. H.N.Mehtani for the Commission, Ms. Shruti Jain Goyal for the State and the other learned counsel including Mr. Girish Agnihotri, learned Senior counsel appearing for the respondents etc. Having heard them at length, I find there was in this case only the proverbial smoke but without fire sufficient to ignite the jurisdiction of this Court to venture to vitiate the selection and order the nullification of the advertisement and setting aside of the appointments of the private respondents.

33. During the course of the arguments, a strong reliance has been placed by the petitioners on the decision of the Supreme Court in *Kalyani Mathivanan v. K.V. Jeyaraj and others*, (2015) 6 SCC 363 to submit that the UGC Regulations, 2010 are mandatory and when departed from, the action would be void, the selection vitiated. A close reading of the five directions issued by the Supreme Court in para.44 of the judgment actually explain succinctly what is urged by the State, the Commission and the private respondents in this case. The UGC Regulations, 2010 are mandatory for maintenance of expenditure of the Central Government Universities and Colleges and Institutions deemed to be Universities whose maintenance expenditure is met by UGC entitlements while the UGC Regulations, 2010 are directory for the Universities, Colleges or other higher educational institutions under the purview of the State Legislation as the matter has been left to the State Government to adopt and implement the scheme. Their Lordships of the Supreme Court have differentiated between the two distinct parts, one of adoption while the other of implementation. There is a wide divide in law between the two dissimilar concepts. Therefore, the State Government was at liberty to adopt the UGC Regulations, 2010 but its implementation could be postponed and, therefore, reliance on *Kalyani Mathivanan* runs actually against the petitioner, leaning heavily in favour of the respondent-authorities. It would be helpful to reproduce verbatim the operative directions of the Supreme Court in *Kalyani Mathivanan* which read thus:-

"(i) To the extent the State Legislation is in conflict with Central Legislation including sub-ordinate legislation made by the Central Legislation under Entry 25 of the Concurrent List shall be repugnant to the Central Legislation and would be inoperative.

(ii) The UGC Regulations being passed by both the Houses of Parliament, though a sub-ordinate legislation has binding effect on the Universities to which it applies.

(iii) UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central Universities and Colleges thereunder and the Institutions deemed to be Universities whose maintenance expenditure is met by the UGC.

(iv) UGC Regulations, 2010 is directory for the Universities, Colleges and other higher educational institutions under the purview of the State Legislation as the matter has been left to the State Government to adopt and implement the Scheme.

Thus, UGC Regulations, 2010 is partly mandatory and is partly directory.

(v) UGC Regulations, 2010 having not adopted by the State Tamil Nadu, the question of conflict between State Legislation and Statutes framed under Central Legislation does not arise. Once it is adopted by the State Government, the State Legislation to be amended appropriately. In such case also there shall be no conflict between the State Legislation and the Central Legislation."

34. Mr. Sajjan Singh Malik, on his turn though while assisting Mr. R.K. Malik, senior counsel then placed strong reliance on a recent Full Bench of the Kerala High Court in W.P. (Civil) No.17148 of 2013 titled Dr. Radhakrishnan Pillai v. State of Kerala and others including connected case titled Dr. Vijay Lekshmi v. U.G.C. and others and connected petitions decided on February 23, 2016 to submit that if there is any repugnancy between the UGC regulations and the regulations framed in University enactments and statutes then the latter would be void. The Kerala High Court held that the fact that the Universities Statutes were not amended is inconsequential. The University should have followed the UGC Regulations for the selection notified. The fact of the matter is that in the State of Kerala, UGC Regulations, 2010 had been adopted by the Government of Kerala vide G.O (P) No.392/2010/H.Edn dated 10.12.2010 w.e.f. 18.9.2010. It is nobody's case that when the State Government adopts and implements the UGC Regulations, 2010 together then the entire picture would be different if the selection was to govern service. If adopted and implemented by the University making the recruitment then it would be bound without doubt by the same principle as the one enunciated by the Kerala High Court. It is also not the case that after June 30, 2013 the State is not enjoined to amend its legislation appropriately. Therefore, the fifth direction in Kalyani Mathivanan casts a burden on the State to amend Legislation but in this no time frame is stipulated or fixed for application to selection of candidates. It is well known that amendment to legislation cannot be done in a single day in public interest and looking to the exigencies of service the State can within its power fix the date for implementation after having adopted the regulations. Hence, the Supreme Court in direction (iv) in Kalyani Mathivanan have held that the UGC Regulations, 2010 are partly mandatory and partly directory in nature.

35. That apart, there is also a fine distinction which has to be kept in mind and appears not to have fallen for consideration before the Full Bench of the Kerala High Court that University Statutes and rules of service framed under proviso to Article 309 of the Constitution of India are different in character and content. University Statutes are lesser species than statutory rules framed under the Constitution which have primacy. UGC guidelines aim at maintaining standards of higher education which the State has to contend with both honouring UGC but

also looking to its employment demands within the genius of the people of its State and balance education with employment under the State, the costs of which employment are not borne by UGC but by the State exchequer. To borrow words from M. Nagaraj v. Union of India, (2006) 8 SCC 212, on meritpublic employment relationship while quoting from Amartya Sen in "Meritocracy and Economic Inequality", edited by Kenneth Arrow, Kapadia, J. speaking for the Court observed:-

" The basic presumption, however, remains that it is the State who is in the best position to define and measure merit in whatever ways it considers it to be relevant to public employment because ultimately it has to bear the costs arising from errors in defining and measuring merit."

36. The question presently is not one of diluting the principle laid down in Kalyani Mathivanan as observed in para.14 of the judgment of the Full Bench since the Full Bench was dealing with another set of circumstances which do not arise for consideration in this case even by long shot. I would, therefore, like to reproduce para.14 of the report as downloaded from www.livelaw.in by Mr. Malik and produced in Court to be in touch with the judgment in Dr. Radhakrishnan Pillai. Para.14 of the download reads:-

"14. According to us, this judgment cannot, in any manner, dilute the principles laid down in the aforesaid judgments for the reason that the State of Kerala itself has adopted the UGC Regulations vide Government order dated 10.12.2010, which has been extracted in the earlier part of this judgment. Once the UGC Regulations were adopted by the State Government and implemented with effect from 18.9.2010, the Regulations are mandatorily to be complied with by the Universities in the State. It is also clarified that anything that is in conflict with the Central law and the subordinate legislation made thereunder, will be void and inoperative."

37. The Notification of the Kerala Government is itself the distinguishing feature from this case and speaks volumes against the petitioners and the case they seek to set up before me in this petition. It is, therefore, reproduced to appreciate the difference between the two cases:-

"GOVERNMENT OF KERALA

Abstract

Higher Education-UGC Scheme-Revision of Scale of Pay of Teachers of Universities, Affiliated Colleges, Teachers in Law Colleges and Engineering Colleges and Kerala Agricultural University and Teachers in Physical Education and Qualified Librarians etc. Regulations of UGC on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education 2010-Regulations-- Approved-Orders Issued

HIGHER EDUCATION (C) DEPARTMENT

G.O. (P) No. 392/210/H.Edn. Dated, Thiruvananthapuram, 10th December, 2010.

Read :- 1. G.O. (P) No. 58/2010/H.Edn. Dated 27-3-2010

2. Letter No. F. No.I-2/2009(EC/PS) Pt. File-3 dated 23-11-2010 from the UGC.

ORDER

Government vide order read as 1st paper above have issued orders implementing UGC pay revision of Teachers in Universities, Affiliated Colleges, Teachers in Law Colleges and Engineering Colleges and Kerala Agricultural University and Teachers in Physical Education and qualified Librarians etc.

2. Now, UGC vide letter read as 2nd paper above have furnished UGC regulations, 2010 on minimum qualifications for appointment of Teachers and other Academic Staff in Universities and Colleges and measures for the maintenance of standards in Higher Education.

3. Government have examined the matter in detail and are pleased to approve and to implement the Regulations as such.

4. The Regulations shall come into force with effect from 18-9-2010, i.e., the date of publication of the Regulations in the Government of India Gazette.

5. All the Universities shall incorporate the UGC Regulations in their Statutes and Regulations within one month from the date of this order Government will initiate steps to amend the Acts of the University, if required to implement the Regulations. Government will also initiate steps to amend the Special Rules to give effect to the stipulations of the UGC Regulations.

6. Government are also pleased to order that where there are any provision in the Regulations inconsistent with the provisions in the G.O. read as 1st paper above, those provisions in the G.O. would override the provisions in the Regulations to the extent of such inconsistency.

7. Government are also order that notwithstanding anything contained in the Regulations only those benefits both monetary and others specified in the Government Order read as 1st paper above would be receivable.

By order of the Governor,

M. Mohammed Basheer,

Additional Secretary to Government"

The Notification adopts and implements the UGC Regulations in the same breath, leaving nothing open to debate.

38. Then Mr. Sajjan Singh Malik's reliance on the Full Bench is misconceived and the law therein is of no avail to him for the reason the adoption notification itself made the implementation retrospective in the same document to fit the academic session in which the material transactions took place, which is not the

case in hand. The case before the Kerala High Court was squarely covered by the ruling of the Supreme Court in Kalyani Mathivanan. When both the essential ingredients i.e. adoption and implementation co-exist by a conscious decision of the State Government, at the same time, in the same way; then UGC guidelines are mandatory in nature and are to be abided by. For this, no elaborate order needed to be penned down. The Full Bench decision on the point involved could easily have been disposed of as a case covered by the appropriate binding direction in Kalyani Mathivanan.

39. Besides, the Kerala Full Bench was not called upon to consider the subsequent letter of the UGC issued in the year 2013 which makes API scoring system only a "screening test" and has no mandatory force on the State Governments or the Universities within their jurisdiction. In the present scenario no final opinion is expressed on whether the State Government can be compelled to amend rules of service. This issue is left open for debate in some other case where the issue directly arises.

40. Accordingly, it is held that the Memo dated September 19, 2012 (P-7) is neither illegal nor arbitrary nor unconstitutional nor is it void or voidable by the UGC Regulations, 2010. The selection process and the appointments that have followed are clearly in accordance with law. It may be noted that there has been no debate asked for by the petitioners on the merits of the selection. The issues raised in these petitions alas were purely legal in character and covered by the directory part of Kalyani Mathivanan. It was competent to the Government in its deliberations at its decision making levels after seeking advice of its functionaries to have agreed to implement the API Score System in the next academic session of the Universities concerned. Even then, by virtue of the UGC Regulations of 2013 API Score System would operate as a screening test with merit of the candidates to be evaluated by University criteria.

41. For the foregoing reasons, I find no merit in these petitions warranting interference and would dismiss them without any order as to costs.