

(2015) 09 PAT CK 0027

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 18016 of 2012, 17873, 18834, 18971, 19011, 19427, 20019, 20051, 20101, 20295, 20807, 21703, 21809 and 22260 of 2014 and 1168 and 2315 of 2015

Rakesh Kumar Singh and Others

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 320

Patna University Act, 1976 — Section 56

University Grants Commission Act, 1956 — Section 12, 12A, 13, 14, 25

Citation : (2015) 4 PLJR 477

Hon'ble Judges : I.A. Ansari, A.C.J; Chakradhari Sharan Singh, J

Bench : Division Bench

Advocate : Abhinav Srivastava, for the Appellant; N.A. Shamsi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J—Present batch of writ applications, filed under Article 226 of the Constitution of India, relate to appointments, sought to be made, to the posts of Assistant Professors in different subjects in the Universities of Bihar and various constituent Colleges of such Universities, through an advertisement, dated 14.09.2014, issued by the Bihar Public Service Commission, Patna, (hereinafter referred to "as the BPSC). All these cases have been heard together as the issues, involved in all the cases, are almost common except the issues raised in CWJC No. 21809 of 2014 (Dr. Kumar Jay Prakash & Ors Vs. the Chancellor the Universities of Bihar-cum-Governor & Ors) and CWJC No. 22260 of 2014 (Shilpi Kiran vs. State of Bihar & ors).

2. Except the two cases as noted above, in all other cases, the constitutional validity of Clause 3.3.3 of the "Statutes for Appointment of teacher (Assistant Professor Grade) for Universities of Bihar 2014" (hereinafter referred to as the Statutes)", whereby National Eligibility Test (NET)/State Edibility Test (SET) or

equivalent test accredited by the University Grants Commission (hereinafter referred to as the U.G.C.), has been prescribed as one of the minimum eligibility criteria for appointment of Assistant Professors in Universities and the Institutions affiliated to it; with the exemption from passing NET/SET granted only to such Ph.D./M.Phil. degree holders who have acquired the said degree on the basis of the "Minimum Standard and Procedure Regulation, 2009" framed by the U.G.C. for M.Phil/Ph.D degree.

3. The main thrust of attack on confining exemption granted to only such Ph.D./M.Phil. degree holders, who have acquired the said degree as per Minimum Standard and Procedure Regulation, 2009, framed by the U.G.C. for M.Phil/Ph.D degree, is that such prescription creates a class, without any nexus with the object to be achieved, among the Ph.D./M.Phil degree holders. Such classification does not satisfy the test of intelligible differentia and is, therefore, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

4. It has been contended, on behalf of the petitioners, that exemption from passing the NET/SET ought to have been granted to all Ph.D degree holders irrespective of the fact whether they have acquired such degree on the basis of Minimum Standard and Procedure Regulation, 2009 framed by the U.G.C, or otherwise. Prescribing such eligibility criterion/qualification amounts to disqualifying the persons, who were awarded M.Phil/Ph.D. degree, before coming into force of the Minimum Standard and Procedure Regulation, 2009 for M.Phil/Ph.D degree, framed by the U.G.C; for the purpose of consideration of their appointment as teacher (Assistant Professor) in a University or a College affiliated to it, they contend. It has been argued, with particular reference to the ground realities in the State of Bihar, that the said 2009 Regulations of the U.G.C, laying down Minimum Standard and Procedure for M.Phil/Ph.D degree, could be enforced in the State of Bihar very recently and, therefore, the prescription, as contained under Statute 3.3.3 of the Statutes, has caused serious prejudice to aspirants from the State, who, otherwise, fulfill the criteria so prescribed.

5. The said Statutes for appointment of teachers (Assistant Professor Grade) for the Universities of Bihar, 2014, have been framed by the Chancellor of Bihar in exercise of powers vested in him under Section 36(7) of the Bihar State Universities Act, 1976, and Section 36(7) of the Patna University Act, 1976. We will record briefly the background in which the Statues have been framed containing the provisions in the nature of Clause 3.3.3, constitutional validity whereof has been questioned in the present proceeding

6. This is to be noted that the U.G.C is vested with the power to make regulation under Section 26(1)(e) of the University Grants Commission, Act, 1956, laying down qualification, while should, ordinarily, be required for any person to be appointed to the teaching posts in a University or any Institution affiliated to it, having regard to the branch of education such person is expected to impart teaching/instructions. From time to time, the U.G.C. has been laying down, in

exercise of the power aforesaid the minimum qualification for the said purpose. Passing of NET/SET or any other equivalent test duly accredited by the UGC had been one of the minimum qualifications prescribed for appointment as a Lecturer (now Assistant Professor). However, persons, having completed M.Phil/Ph.D degree on particular date/dates as prescribed by the U.G.C. were, earlier exempted from the requirement of proving NET/SET for the purpose of their appointment as a teacher.

7. In the year 2009, the U.G.C. came out with a regulation, namely, U.G.C. (Minimum Standard and Procedure for Award of M.Phil./Ph.D. Degree) Regulation, 2009. The U.G.C. also came out with U.G.C. (Minimum Qualification Required for Appointment & Career Advancement of Teachers in Universities & Colleges Affiliated to it) (3rd Amendment), Regulation, 2009, laying down the following as the minimum eligibility condition for appointment of Lecturers in Universities/Colleges/Institutions:-

"NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of Lecturers in Universities/Colleges/Institutions.

Provided, however, that candidates, who are or have been awarded Ph.D. Degree in compliance of "University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree), Regulation 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions."

8. Subsequently, in exercise of power vested under Clause (e) and (g) of sub-section (1) of Section 26 of the University Grants Commission Act, 1956, the U.G.C. has framed regulations called "University Grants Commission (Minimum Qualification of Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures or Maintenance of Standard in Higher Education) Regulations, 2010" (hereinafter referred to UGC Regulations, 2010). As would be evident from Regulation, 2010, that they have been issued for fixing minimum qualification for appointment and other service conditions of University and College Teachers, for the maintenance of Standards in Higher Education and revision of pay scales. Regulation 3.1.0 requires that direct recruitment to the post of Assistant Professor, Associate Professor and Professor in the Universities and Colleges shall be on the basis of merit through All India Advertisement and selections by duly constituted Selection Committee as per the provisions made under the Regulations "to be incorporated under the Statutes/Ordinances of the concerned Universities".

9. Regulation 3.1.0, 3.3.0 and 3.3.1 of the 2010 Regulations provide thus:-

"3.1.0 - The direct recruitment to the posts of Assistant Professors, Associate Professors and Professors in the Universities and Colleges shall be on the basis of merit though all India advertisement and selections by the duly constituted Selection Committees as per the provisions made under these Regulations to be

incorporated under the Statutes/Ordinances of the concerned university. The composition of such committees should be as prescribed by the UGC in these Regulations.

3.3.0 - The minimum requirements of a good academic record, 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the master's level and qualifying in the National Eligibility Test (NET), or an accredited test (State Level Eligibility Test - SLET/SET), shall remain for the appointment of Assistant Professors.

3.3.1 - NET/SLET/SET shall remain the minimum eligibility condition for recruitment and appointment of Assistant Professors in Universities/Colleges/Institutions.

Provided however, that candidates, who are or have been awarded a Ph.D degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009 shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET to recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions".

10. Amendments have been incorporated in the Bihar Universities Act, 1976, and Patna University Act, 1976, authorizing Bihar Public Service Commission to perform the same function in respect of appointment to the sanctioned post of the University/College Teachers, as assigned to it under Article 320 of the Constitution of India, in relation to the State Service. The Bihar Public Service Commission has also been authorized to hold on the recommendation of the State Government State Eligibility Test for appointment to the post of Teacher (Assistant Professor). The amendment prescribes that only such candidates who have passed the National Eligibility Test conducted by the University Grants Commission/Council for Scientific and Industrial Research/State Eligibility Test and obtained minimum qualification prescribed by the U.G.C. Regulation, 2010, or as may be prescribed from time to time, shall be eligible to apply for appointment to the post of teacher (Assistant Professor). Exemption has been granted under the Act to such candidates, who have obtained Ph.D. Degree on the basis of Minimum Standard and Procedure Regulation, 2009, framed by the U.G.C for M.Phil/Ph.D. degree from passing National Eligibility Test as the minimum eligibility criterion for appointment to the post of Teacher (Assistant Professor).

11. It would be in the fitness of the things that the concerned amendment introduced in the Bihar Universities Act, 1976, through Bihar Act 17, 2013 are reproduced, for quick reference, as the petitioners have challenged the validity of certain provisions of the Statutes, which are in the form of delegated legislation framed under the parent Acts, viz, Bihar State Universities Act, 1976 and Patna University Act, 1976.

12. In order not to leave any scope for doubt or confusion, we hasten to mention

that identical provisions have been incorporated by amending Section 57 of the Bihar State Universities Act, 1976 (Bihar Act, 23, 1976) and Section 56 of Patna University Act, 1976 (Bihar Act 24, 1976). It would be repetition, therefore, if the amendments introduced in Bihar University Act and Patna University Act, both are reproduced.

13. The amendment in Section 57 of the Bihar State Universities Act, through Bihar Act 17, 2013, which are pari materia amendments made in Section 56 of the Patna University Act, are being reproduced hereinbelow:-

"3. Amendment in Section 57 of Bihar Act 23, 1976. - In the said Act Section-57 shall be amended as follows, namely:-

(a) before the existing clause (i) including heading following new sun section (1) shall inserted; namely:-

57. Appointment to the post of teachers in Universities and their constituent Colleges.

(i) Subject to the provision mentioned in this Act and Statutes as far as possible the Commission shall perform the same function in respect of the appointments to the sanctioned posts of the teachers of Universities as are assigned to it by Article 320 of the Constitution of India in relation to the State Service.

(ii) The Commission on the recommendation of the State Government may organize an eligibility test to be called "State Eligibility Test" for appointment to the posts of Teacher (Assistant Professor) in the Universities and Constituent "Affiliated Colleges under them. In this behalf, Commission shall invite subject wise applications only from such candidates who have obtained the qualifications prescribed in the UGC Regulations, 2010 or as may be prescribed by the University Grants Commission from time to time;

Provided that, such test shall be conducted by the Commission in the light of the order issued by the State Government in conformity with the Regulations made by the University Grants Commission.

(iii) Every year the Commission shall invite subject wise applications for appointment to the posts of Teacher (Assistant Professor) in the University and their constituent College only from such candidates who have passed the National Eligibility Test Conducted by the University Grants Commission/Council for Scientific and Industrial Research/State Eligibility Test and obtained minimum qualifications prescribed by the University Grants Commission Regulations, 2010 as as may be prescribed from time to time;

Provided that, the candidates who have obtained Ph.D Degree on the basis of Minimum Standard and Procedure Regulation, 2009 framed by the University Grants Commission for M.Phil/Ph.D Degree, shall be exempted from passing the National Eligibility Test.

(iv) The subject wise vacancies including the presumed vacancies of the next

calendar year alongwith the Reservation roster shall be forwarded to the Commission by the Universities upto thirty first December every year.

(v) The University shall make appointments to the posts of Teacher, duly sanctioned and communicated by the State Government, only on the recommendation of the Commission and no appointment to the post of teachers shall be made by the University without the recommendation of the Commission. Commission shall comply with the conditions laid down in this Section for making recommendations for appointment to the posts of teachers of the University according to their need.

(vi) The Commission shall prepare a subject wise merit list against the vacancies communicated by the University on the basis of the interview from among the candidates applied for under clause (iii). The subject wise list shall contained the names of the candidate in order of merit double in number of the vacancies, however, the commission shall forward only one name at a time to the University for appointment against vacancy;

Provided that, the commission shall recommend the names of the University in order of merit and on the basis of reservation roster sent by the University in conformity with the laws applicable to reservation in appointments in the State: notwithstanding anything contrary to provision of this Act, Statue, the reservation policy prevalent in the Bihar State shall be applicable to all the appointments.

(vii) All the proceeding of the Commission shall be completed on daily-basis itself, which includes minutes of the meeting, the list of the candidates on the basis of merit. The records pertaining to the merit list shall be signed by the Commission and the merit list of subject concerned shall be finalized on the last day of the interview of that subject.

(viii) The merit list prepared by the Commission shall be valid for one year from the date of its issue. On receipt of the recommendations of the Commission under clause (vi) the University shall make appointments per the recommendations of the Commission within six months from the date of its receipt.

(ix) In respect of appointment, dismissal removal, termination of service or demotion of teacher of the University and Constituent College, the University shall take action in consultation with the Commission in prescribed manner.

(x) The Board for selection of candidates for appointments to the posts of teachers of the University Departmental and Constituent Colleges shall be constituted by the Commission in view of the directions communicated by the State Government in conformity with the provisions prescribed in the regulations and circulated by the U.G.C. from time to time;

Provided that at least three experts of the subjects concerned shall attend the meeting of Board organized for making recommendations for appointment. (b)

Before existing clause (i) bracket and number as sub-section"(2)" shall be added and the word "teachers" wherever occurred in this sub-section shall be substituted by the word "Principal".

x x x x x

6. Amendment in Section 58 of the Bihar Act 23, 1976:- In the said Act Section 58 shall be substituted by the following; namely:-

"58. Implementation of Selection Procedure:-Notwithstanding any thing contained in any provisions of this Act, Statute or any other laws for the time being in force, the Selection Committee constituted under Section 57(i) and 57B shall be bound to follow the procedure under this Act."

14. In conformity with the statutory provisions under the Bihar State Universities Act, 1976, Patna University Act, 1976, as aforesaid, in exercise of power under Section 36(7) of the Bihar State Universities Act, 1976, and Patna University Act, 1976, the Statutes for appointment of Teachers (Assistant Professor Grade) for the Universities of Bihar, 2014 have been framed; Clause 3.3.2 and Clause 3.3.3 whereof read thus:-

"3.3.2 - A candidate must have passed NET/SET or equivalent test accredited by U. G.C.

3.3.3 - The candidates who have obtained Ph.D. Degree on the basis of Minimum Standard and Procedure Regulation, 2009 framed by the University Grants Commission for M.Phil/Ph.D Degree, shall be exempted from passing the National Eligibility Test."

15. As has been noted above, validity of Clause 3.3.3 of the said Statutes is being challenged on the ground of it, being violative of Articles 14 and 16 of the Constitution of India.

16. Learned counsel, representing the petitioners, assailing the validity of the said Clause, has submitted that before coming into force of 2009 Regulations of the UGC and subsequent framing of the Statutes by the Chancellor of the Universities, persons, holding qualification of Ph.D, were eligible for being considered for appointment as teachers even if they were not NET/SET qualified, but by virtue of the provisions under challenge, the petitioners, who were awarded Ph.D. degree prior to enforcement of U.G.C. Regulation in the year 2009 read with the provisions of the Statutes are being, now, unreasonably disqualified from being considered.

17. We need not go into this aspect in detail and deal with various submissions made at the bar questioning the constitutional validity of Clause 3.3.3 of the Statute as the issue has been set at rest in a recent decision of the Supreme Court in case of P. Suseela and Others Vs. University Grants Commission and Others(2015) 2 ESC 201 : (2015) LabIC 2251 : (2015) 3 SCALE 726 : (2015) 2 SCT 580 . The Supreme Court, dealing with the similar argument and

contentions as are being raised in the present proceeding has held in paragraph 15 as follows:-

"15. Similar is the case on facts here. A vested right would arise only if any of the appellants before us had actually been appointed to the post of Lecturer/ Assistant Professors. Till that date, there is no vested right in any of the appellants. At the highest, the appellants could only contend that they have a right to be considered for the post of Lecturer/Assistant Professor. This right is always subject to minimum eligibility conditions, and till such time as the appellants are appointed, different conditions may be laid down at different times. Merely because an additional eligibility condition in the form of a NET test is laid down, it does not mean that any vested right of the appellants is affected, nor does it mean that the regular laying down such minimum eligibility condition would be retrospective in operation. Such condition would only be prospective as it would apply only at the stage of appointment. It is clear, therefore, that the contentions of the private appellants before us must fail."

18. Rejecting the contention that laying down minimum eligibility criteria by the U.G.C. for appointment as Assistant Professor in a University or its affiliated Institutions, as has been done in Clause 3.3.3 of the Statutes, is violative the Supreme Court held, in paragraph 17, as follows:-

"17. The arguments based on Article 14 equally have to be rejected. It is clear that the object of the directions of the Central Government read with the UGC regulations of 2009/2010 are to maintain excellence in standards of higher education. Keeping this object in mind, a minimum eligibility condition of passing the national eligibility test is laid down. True, there may have been exemptions laid down by the UGC in the past, but the Central Government now as a matter of policy feels that any exemption would compromise the excellence of teaching standards in Universities/Colleges/Institutions governed by the UGC. Obviously, there is nothing arbitrary or discriminatory in this - in fact it is a core function of the UGC to see that such standards do not get diluted."

19. As has been noted above, learned counsel, representing the petitioners, have contended that persons, already holding Ph.D./M.Phil. degree prior to coming into force of 2009 Regulation and the Statute framed in 2014, should have had been allowed to be considered for appointment to the post of Teachers (Assistant Professors) inasmuch as exemptions were granted earlier by the UGC from passing of NET/SET for those, who had held M.Phil/Ph.D. degree. Similar submissions were advanced, but rejected by Supreme Court in a case of P. Suseela Vs. University Grants Commission (supra) in the following terms:-

"20.....a legitimate expectation must always yield to the larger public interest. The larger public interest in the present case is nothing less than having highly qualified Assistant Professor to teach in UGC Institutions. Even if, therefore, the private appellants before us had a legitimate expectations that given the fact that the UGC granted them an exemption from the NET and

continued to state that such exemption should continue to be granted even after the Government direction of 12th November, 2008 would have to yield to the larger public interest of selection of the most meritorious among candidates to teach in Institutions governed by the UGC Act."

20. Having considered, in the light of the Supreme Court decision in case of P. Suseela Vs. University Grants Commission (supra), the submissions made on behalf of the petitioners over the validity of Clause 3.3.3 of the Statutes, we do not find any merit in the submissions so made and are accordingly rejected.

21. We, therefore, uphold the constitutional validity of said Clause 3.3.3 of the Statute, which cannot be said to be violative of Articles 14 and 16 of the Constitution of India.

22. The writ applications, questioning the constitutional validity of Clause 3.3.3 of the said Statutes, accordingly stand dismissed.

CWJC No. 21809 of 2014

23. Petitioners of C.W.J.C. No. 21809 of 2014 (Dr. Kumar Jay Prakash & ors. vs. Chancellor of the Universities) have questioned the validity of Clause 5.2 of the Statutes For Appointment of Teachers (Assistant Professor) For the Universities of Bihar, 2014," on the ground that it is ultra vires the "UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in the universities and colleges and Measures for the Maintenance of Standards in Higher Education, 2010". They have accordingly sought for quashing the part of the advertisement, dated 14.09.2014, issued by the Bihar Public Service Commission, which has incorporated Clause 5.2 of the said statutes as the basis for evaluation of respective merit of the candidates, who participate in the process of selection. It is their case that Table II(c) of Appendix III of Regulations, 2010 provides for "Minimum Scores for APIs for direct recruitment of Teachers in Universities/Colleges, and "weightages in Selection" by Committees to be considered along with other specified eligibility qualifications stipulated in the Regulation.

24. Petitioners of this case claim to be having in their favour the requisite UGC-CSIR/NET certificates in their respective subjects and fulfilling the minimum eligibility condition for recruitment and appointment as Assistant Professors in Universities/Colleges/Institutions. In addition to, some of the petitioners have claimed to be having Ph.D degrees to their credit obtained prior to coming into force of 2009 Regulations framed by the UGC prescribing minimum standards and procedure for award of Ph.D degrees. It is their further claim that they were engaged in teaching work, though on temporary basis, in different departments/ Colleges of Patna University for last few academic sessions under the approval of the Vice-Chancellor and they also carry certain papers of seminar presentation, paper/book publication in their names. It is their plea that as per Appendix III, Table II(c) of the Regulations, the aspirants to the post of Assistant Teachers are required to be assessed on the basis not only of academic record and research

performance, but also on the basis of the assessment of domain knowledge and teaching skills. It is their further plea that 15 per cent marks have been prescribed for interview performance, under the Statute in Clause 5.2 of the Statutes, whereas, in terms of UGC Regulations, as referred to in Appendix III, Table II(c), 20 per cent marks is required to be fixed for the said purpose. It is accordingly their case that Clause 5.2 of the Statutes be declared ultra vires 2010 UGC Regulations.

25. According to the petitioners, the criterion, as prescribed in Clause 5.2 of the Statutes for assessment and evaluation of the relative merits of the candidates, is hit by the said provisions of the UGC Regulations, and, therefore, deserves to be declared invalid.

26. In order to appreciate the contention as raised by the petitioner, it would be apt to refer to Clause 5.2 of the Statutes which reads thus:-

"5.2 Educational qualification shall carry 85 marks and interview 15 marks distribution of marks for academic and interview has been given below-

However, candidates will be given the benefit of Ph.D./M. Phil. Degree. But the candidate will be entitled to claim the benefit of either M.Phil or Ph. D. have for both."

27. The Schedules I, II, III, IV, V as mentioned in Clause 5.2, prescribe the marks/points to be awarded to a candidate in the process of selection, based on his performance at the stages specified therein, apparently in order to ensure optimum level of objectivity and to obviate and minimize scope of inconsistency in award of marks against academic achievements of a candidate.

28. The petitioners, on the other hand, have relied on the criteria laid down in Appendix III, Table II(c) of 2010 Regulations, which, according to them should, have been the criterion and method for evaluation of the respective candidates. For the purpose of clarity, Appendix III of Table II(c) is being extracted hereinbelow:

"APPENDIX-III TABLE-II(c)

Minimum Scores for APIs for direct recruitment of teachers in university departments/Colleges, Librarian/Physical Education cadres in Universities/Colleges, and weightages in Selection Committees to be considered along with other specified eligibility qualifications stipulated in the Regulation.

Note: For universities/colleges for which Sixth PRC Awards (vide Appendix 2) are applicable, Stages 1.4 and 5 correspond to scales with AGP of Rs. 6000, 9000 and 10000 respectively."

29. It is the case of the petitioners that in view of the amendment in Bihar Universities Act, 1976, through Bihar Act 17/2013, which came into force w.e.f. 14.08.2013, selection to the Post of Assistant Professors has to be made strictly in accordance with the provisions of 2010 Regulations.

30. We have already extracted the amendment in Section 57 of the Bihar State Universities Act, 1976, which is *pari materia* Section 56 of the Patna University Act, 1976. There are 10 clauses to the said Sub-section 1 of Section 57 of the Act. Clause (i) and (ii) assign to the Bihar Public Service Commission the function of holding State Eligibility Test and making recommendation for appointment to the post of Teachers. Clause (ii) lays down that for the purpose of holding State Eligibility Test, the Commission shall invite subject-wise applications only from such candidates, who have obtained the qualifications prescribed in UGC Regulations, 2010, or as may be prescribed from time to time. Clause (iii) requires the Commission to invite subject-wise applications for appointment to the post of Teachers in the University departments and their Constituent Colleges from only such candidates, who have passed the National Eligibility Test conducted by the University Grants Commissions/Scientific and Industrial Research/State Eligibility Test and have obtained minimum qualifications prescribed by the University Grants Commission Regulations, 2010, as may be prescribed from time to time. Clause (iv) requires the Universities to intimate the Commission subject-wise vacancies and anticipated vacancies, along with reservation roster. Clause (v) mandates that the University shall make appointments to the post of Teachers duly sanctioned and communicated by the State Government, only on recommendation of the Commission and prohibits making appointments without recommendation of the Commission. Sub-clause (vi) requires the Commission to prepare subject-wise merit list against the vacancies communicated by the University on the basis of interview from amongst the candidates applied for under Clause (iii). Clause (vii) deals with the manner in which the Commission shall complete the proceedings and sign the records. Clause (viii) prescribes the period of validity of merit list prepared by the Commission. Clause (ix) mandates the University to consult the Commission in respect of appointment, dismissal, removal, termination of service or demotion of Teacher of the University and Constituent Colleges. Clause (x) deals with the Board of Selection to be constituted for selection of candidates for appointment to the post of Teachers in conformity with the provisions prescribed in the Regulations and circulated by the UGC from time to time. No provision has been incorporated in the Bihar State Universities Act, 1976, or Patna University Act, 1976, which requires that the evaluation of respective merits of the candidates for the purpose of their appointment as Teacher (Assistant Professor) shall be on the basis of criteria prescribed under 2010 UGC Regulations.

(Emphasis added)

It is in this background that we are required to consider the validity of Clause 5.2 of the Statues, which is a subordinate legislation framed under Section 36(7) of the Bihar State Universities Act, 1976 or Patna University Act, 1976.

31. In our considered view, a delegated legislation can be declared *ultra vires* and invalidated by a Court mainly on two grounds. Firstly, it is violative of any provision of the Constitution of India and, secondly, it is violative of the enabling

parent enactment. The second ground would arise, when the delegatee, conferred with power to make subordinate legislation, lays down any provision, which is inconsistent with the parent enactment and, thus, overrides the provision(s) of the Parent enactment. This view finds support from Supreme Court decision in case of State of Madhya Pradesh and Another Vs. Bhola @ Bhairon Prasad Raghuvanshi, AIR 2003 SC 1191 : (2003) 1 JT 594 : (2003) 1 SCALE 689 : (2003) 3 SCC 1 : (2003) 1 SCR 906 : (2003) 2 UJ 828 : (2003) AIRSCW 752 : (2003) 1 Supreme 882 , paragraph 20 of which reads as follows:

"A delegated legislation can be declared invalid by the court mainly on two grounds: firstly, that it violates any provision of the Constitution and secondly, it is violative of the enabling Act. If the delegate which has been given a rule-making authority exceeds its authority and makes any provision inconsistent with the Act and thus overrides it, it can be held to be a case of violating the provisions of the enabling Act but where the enabling Act itself permits ancillary and subsidiary functions of the legislature to be performed by the executive as its delegate, the delegated legislation cannot be held to be in violation of the enabling Act."

Nothing has been brought to our notice to come to a conclusion that Clause 5.2 of the Statutes is in conflict with the provisions bodied in the parent enactment, i.e. Bihar State Universities Act, 1976, or Patna University Act, 1976.

32. There is yet another reason why the plea of the petitioners of this case questioning validity of Clause 5.2 of the Statutes cannot be accepted. The UGC Regulations, 2010, have been framed under the provisions of University Grants Commission Act, 1956. Section 14 of the University Grants Commission Act, 1956, provides for the consequences of failure of the Universities to comply with the recommendations of UGC, which reads thus:-

"14. Consequences of failure of Universities to comply with recommendations of the Commission. - If any University [grants affiliation in respect of any course of study to any college referred to in sub-section (5) of section 12A in contravention of the provisions of that sub-section or fails within a reasonable time to comply with any recommendation made by the Commission under section 12 or section 13, [or contravenes the provisions of any rule made under clause (f) or clause (g) of sub-section (2) of section 25, or of any regulation made under clause (e) or clause (f) or clause (g) of section 26, the Commission, after taking into consideration the cause, if any, shown by the University [for such failure or contravention,] may withhold from the University the grants proposed to be made out of the fund of the Commission."

33. It would be clearly evincible, upon close reading of Section 14 of the University Grants Commission Act, 1956, that the UGC, in the event of contravention of provision of any Rule made under Section 26(e) or (g),"after taking into consideration the cause, if any, shown by the University for such failure or contravention, may withhold from the University Grants proposed to be

made out of the fund of the Commission."

34. It is the case of the petitioners that Clause 5.2 of the Statutes is in conflict with the Regulation made under Clause (e) and Clause (g) of the UGC Act by the UGC and, therefore, the said provisions should be declared invalid. The contention, so raised, cannot be accepted in view of the provisions as contained in Section 14 of the UGC Act, 1956 which provide for the consequences in the case of failure, if any, that too after considering cause shown by the University. Therefore, on such a ground as raised by the petitioners, Clause 5.2 of the Statutes cannot be invalidated by this Court.

35. What has been done by the Chancellor, by introducing Clause 5.2 by making provision for qualitative assessment of the aspirants participating in the process of recruitment, is a matter of policy, which cannot be said to be discriminatory, arbitrary and, therefore, violative of Articles 14 and 16 of the Constitution of India.

36. Having discussed thus, we do not find any merit in the said application which is accordingly dismissed.

CWJC No. 22260 of 2014

37. In C.W.J.C. No. 22260 of 2014 (Silpi Kiran Vs. The State of Bihar & Ors.), the petitioner has claimed that she has passed a test i.e. DST-INSPIRE (JRF), which is recognized by the Government of India as of the same level as National Eligibility Test. She has a grievance that on such basis, her candidature for appointment as Assistant Professor, in the light of the advertisement aforesaid, ought to be considered by the Bihar Public Service Commission, which is wrongly being denied. She claims that she is, otherwise, qualified having secured 55 per cent marks at the level of Master's degree in the concerned subject.

38. A counter affidavit has been filed, on behalf of the Bihar Public Service Commission, stating therein that she, having not passed NET/SET or any other equivalent test accredited by the UGC, is not eligible to participate in the process of selection in terms of the Advertisement, which is based on statutory prescriptions.

39. In order to convince us, Mr. Ajay Kumar Sinha, learned counsel for the petitioner, has submitted, referring to the information received by the petitioner under Right to Information Act, 2005, from the Government of India that passing of the DST-INSPIRE (JRF) Fellow Examination is equivalent to NET. Clause 3.3.2 of the statutes, as quoted above, prescribes passing of NET/SET "or Equivalent Test accredited by the UGC" as a minimum eligibility criteria for appointment as Assistant Professor.

40. Evidently thus, equivalence of test is not the solitary criterion for a person to become eligible for appointment as Assistant Professor in terms of the Statute, which requires that such test, if equivalent, must have accreditation by the University Grants Commission. Nothing has been brought to our notice to

establish or show that the test, which the petitioner is said to have cleared i.e. DST-INSPIRE (JRF), is accredited by the University Grants Commission, which could have made her eligible to be considered for selection through the Bihar Public Service Commission's advertisement, in question. Further, on her own showing, the petitioner is said to have passed the required CSIR-UGC NET Examination on 25.06.2015, held on 21.12.2014, much after the last date, i.e. 20.11.2014, of submission of the application forms, as per the advertisement, issued by the Bihar Public Service Commission, inviting applications for the post. We, therefore, do not find any merit in this writ application, which is accordingly dismissed.

41. An attempt, though feeble, has been made to question the criteria prescribed in Schedule V of Clause 5.2 of the Statutes for giving weightage to the candidates on the basis of their Ph. D. qualification. In our considered view, the criteria cannot be said to be inconsistent with any provision of the parent Act nor violative of Articles 14 and 16 of the Constitution of India. It is trite that any criteria laying down weightage against different attributes, in a process of selection, by statutory provision cannot be struck down by this Court exercising power of judicial review under Article 226 of the Constitution of India unless it is found to be manifestly arbitrary and, therefore, violative of Articles 14 and 16 of the Constitution of India.

42. In the result we do not find any merit in the present batch of writ applications, which are accordingly dismissed.

43. All the Interlocutory Applications stand disposed of accordingly. The interim order, dated 17.11.2014, passed by this Court stands vacated.

44. The respondents are, thus, at liberty to proceed in accordance with the terms of the advertisement, in question, in the matter of recruitment/appointment to the post of Teachers (Assistant Professors) in University departments/Colleges.

45. There shall be no order as to costs.

I.A. Ansari, Actg. C.J.

I Agree.