

(2015) 10 BOM CK 0135
In the Bombay High Court
Case No : Writ Petition No. 5336 of 2012

Ram and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Maharashtra Universities Act, 1994 — Section 2
University Grants Commission Act, 1956 — Section 14, 2, 26, 3

Citation : (2016) 1 ALLMR 214

Hon'ble Judges : S.S. Shinde and A.M. Badar, JJ.

Bench : Division Bench

Advocate : A.V. Patil h/f V.D. Gunale, Advocate, for the Appellant; A.G. Magre, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. By consent of the learned counsel appearing for the parties, heard finally.

2. This Petition is filed with the following prayers:--

"(B) By issuing appropriate writ, order or directions, the impugned communication dated 10/5/2010 and 30/09/2010 (At Exhibit-"L" colly.) be quashed and set aside, consequently the respondent No. 3 be directed to grant permanent approval to the petitioners and for that purpose necessary directions be issued."

3. It is the case of the petitioners that, initially pursuant to the selection by selection committee of the respondent No. 4 and 5, and thereafter pursuant to the selection made by duly constituted selection committee of the respondent No. 3 university, although the petitioners are appointed and working in respondent No. 5 -college, and they are possessing the requisite qualification, the respondent No. 3 university has refused to grant approval to the services of

the petitioners. It is the case of the petitioners that, the petitioners are possessing the qualification of master's degree in their respective subjects. The petitioners have also completed M.Phil. course in the year 2009. The petitioner No. 1 is the Lecturer in History subject, Petitioner No. 2 is Lecturer in Marathi subject, petitioner No. 3 is Lecturer in Sociology subject. The petitioners have placed on record the copies of the documents showing educational qualifications of respective petitioners along with M.Phil certificates in the compilation of the Writ Petition.

4. It is the case of the petitioners that, the petitioners being eligible and qualified, initially had applied for the post of lecturers in respondent No. 5 college pursuant to the advertisement dated 4th August, 2001. The said advertisement was issued for making appointment of lecturers. The petitioners were interviewed by the selection committee constituted by the respondent No. 4 and 5 and having found meritorious, the petitioners were issued appointment orders on temporary basis. The petitioners have placed on record the copies of advertisement dated 4/8/2001 and the appointment orders with the compilation of the Petition. It is the case of the petitioners that, pursuant to their above selection, the respondent No. 3 university had granted them temporary approval on clock-wise basis. It is the case of the petitioners that, in the academic year 2003-2004, the respondent Nos. 4 and 5 applied for approval from the respondent No. 3 university to fill in posts of lecturers in respondent No. 5 - college permanently through the duly constituted selection committee. Pursuant to such application made by respondent No. 5 college, the respondent No. 3 university had granted approval for issuance of the advertisement. The petitioners have placed on record copy of the approval dated 11/10/2003 with the compilation of Writ Petition.

It is the case of the petitioners that, as stated above, the petitioners were working on clockwise basis in the respondent No. 5 college pursuant to their selection by the selection committee of the respondent No. 3 university. It is the case of the petitioners that, as per above approval by the respondent No. 3 University, the advertisement was issued and interview was fixed on 20/1/2004. Accordingly, the petitioners applied for the post of lecturers in their respective subjects from open category since the post of lecturer in History, Marathi and Sociology shown for open category candidates. The petitioners have placed on record the copy of advertisement dated 07/11/2003 with the compilation of the Writ Petition.

It is the case of the petitioners that, pursuant to their application, the duly constituted selection committee interviewed the petitioners. After assessed petitioners merit, the duly constituted selection committee recommended the petitioners for appointment on the posts of Lecturers in their respective subjects. The petitioners have placed on record the copies of minutes of the selection committee with the compilation of the Writ Petition.

5. It is the case of the petitioners that, pursuant to the above recommendation of

the selection committee, they were appointed on the post of Lecturers in their respective subjects and their proposal was forwarded with the respondent No. 3 university for approval. The petitioners have placed on record copies of appointment orders dated 10/08/2003 of petitioners and proposal dated 05/02/2004 with the compilation of Writ Petition. It is the case of the petitioners that, pursuant to their selection through duly selection committee and consequent proposal for approval, the respondent No. 3 university by communication dated 19/3/2004 pleased to grant approval to the petitioners on clock-wise basis for the academic year 2003-04, although the petitioners were appointed against clear, vacant and permanent post. The petitioners have placed on record the copy of approval letter dated 19/3/2004 with the compilation of Writ Petition. It is the case of the petitioners that, thereafter, by communication dated 5/7/2006, the respondent No. 3 university was pleased to grant approval to the petitioners on contract basis from their initial date of appointment as per the policy introduced by the State Government in that respect. The petitioners have placed on record the copy of approval on contract basis dated 5/7/2006 with the compilation of the Writ Petition.

It is the case of the petitioners that, the above approval on contract basis was granted for the period of 2 years, as such after completion of 2 years period, the petitioners were again granted approval for further 2 years on contract basis vide communication dated 24/10/2007. The petitioners have placed on record the copy of approval dated 24/10/2007 with the compilation of the Writ Petition.

It is the case of the petitioners that, pursuant to the above approvals granted to them on contract basis, they are continued in the respondent No. 5 college and they are discharging their duties sincerely and honestly. However, after the approval letter dated 24/10/2007, the petitioners have not been granted approval by the respondent No. 3 university although they are in continuous service in respondent No. 5 college.

6. It is further case of the petitioners that, the State of Maharashtra as per the circular/resolutions dated 31/5/2005 and 6/7/2007 had introduced a policy that, the lecturers appointed by the duly constituted selection committee be issued contractual appointment initially for the period of two years and thereafter for the period of 11 months. The petitioners have placed on record the copies of said Govt. Resolution/Circulars dated 31/5/2005 and 6/7/2007 with the compilation of the Writ Petition.

It is the case of the petitioners that, in view of their above appointment and approval on contractual basis, the petitioners ought to have been given the permanent approval, however same was not granted by the respondent No. 3 university for the reasons best known to it. It is the case of the petitioners that, the Govt. of Maharashtra had introduced the policy regarding issuance of appointment and approval on contract basis in respect of lecturers working in the senior college, as at the relevant time, the issue regarding requisite qualification of NET/SET for being appointed as lecturer in the senior college was pending

before the University Grants Commission (UGC). Hence, as per the resolution/circular issued by the State of Maharashtra, the concerned universities used to grant approval to the lecturers on contract basis who were appointed by duly constituted selection committee, however, were not possessing the qualification of NET/SET. It is the case of the petitioners that, the respondent No. 3 university has issued a letter dated 27/5/2009 to the principals of affiliated colleges, wherein it is informed that, the lecturers who are possessing the qualification of M.Phil/Ph.D and who are working in affiliated colleges since from the year 2004/05 onwards on contract basis shall not be terminated on the ground that, there is no approval to the appointment of such lecturers by the university till the University Grants Commission takes final decision regarding exemption from NET/SET. The petitioners have placed on record the copy of letter dated 27/5/2009 issued by the respondent No. 3 university with the compilation of the Writ Petition.

7. It is the case of the petitioners that, after appointment of the petitioners through duly constituted selection committee of respondent No. 3 university, the petitioners had registered themselves for acquiring the M.Phil qualification, as such all the petitioners have acquired the M.Phil qualification while in service and the certificates in that respect are already placed on record. It is the case of the petitioners that, in view of above developments, the respondent No. 5 college by proposal dated 27/1/2010 requested for permanent approval to the petitioners in view of the fact that, the petitioners have acquired the qualification of M.Phil in the year 2009. The said proposal was forwarded by the respondent No. 5 college in view of the fact that, the petitioners were/are in continuous service in respondent No. 5 college and while in service, they have acquired the M.Phil qualification. By the said proposal, the respondent No. 5 college had sought permanent approval to the petitioner as they being eligible and entitled for the same as per the relevant regulation of U.G.C. It is the case of the petitioners that, pursuant to the above proposal, the respondent No. 3 university surprisingly by communication dated 10/5/2010 & subsequent communications dated 30/09/2010 informed that, the petitioners have acquired the qualification of M.Phil after the completion of approval period on contract basis. Therefore, the approval cannot be granted to the petitioners.

8. The learned counsel appearing for the petitioners submits that, the aforesaid communications issued by the respondent No. 3 university are highly illegal and same are against own policy of respondent No. 3 university and the policy introduced by the State of Maharashtra, in as much as, the respondent No. 5 college had forwarded the proposal of petitioners for approval in view of the fact that, the petitioners are in continuous service and have acquired the M.Phil qualification while in service. Therefore, only because the respondent No. 3 university did not grant further approval to the petitioners, it does not mean that, petitioners are not entitled for approval although they completed the M.Phil qualification before the cut of date fixed by the U.G.C. as per 3rd amendment regulation 2009. The learned counsel submitted that, the Division Bench of this

Court had an occasion to deal with the cases of lecturers like the petitioners while considering the writ petition No. 6929/2009 and the Division Bench of this Court while dealing with the aforesaid writ petition vide order dated 18/11/2009 has been pleased to hold that, the lecturers who have completed M.Phil by 11/07/2009 or earlier, while in service are exempted from NET/SET for teaching at under graduation level. The Division Bench further held that, the lecturers who were recruited based on the amended regulation 2006 of the U.G.C. will have to be protected. As such, the Division Bench of this Court pleased to grant "Rule" in the Writ Petition and further pleased to grant interim relief, thereby protected the services of the lecturers who were appointed during the subsistence of the 2nd amendment regulation issued by the U.G.C. The learned counsel invited our attention to the order dated 18/11/2009 passed by the Division Bench of this Court in Writ Petition No. 9629/2009 with the compilation of this Petition.

9. The learned counsel submitted that, the issue involved in the present writ petition is no longer res integra in the light of the Division Bench judgment of Bombay High Court bench at Nagpur in Writ Petition No. 1489 of 2010 vide judgment and order dated 01/07/2010. The learned counsel invited our attention to the judgment and order dated 01/07/2010 passed in Writ Petition No. 1489/2010. The learned counsel submitted that, the respondent No. 5 college wherein they are working is a permanent no grant in aid college, as such, in view of the fact that, the respondent No. 3 university has not granted the approval to the services of the petitioners, the petitioners are not getting their regular salary as well as consequential benefits. The learned counsel submitted that, moreover, in view of the fact that, the respondent No. 3 university has not granted approval to the petitioners, there is possibility of termination of the services of the petitioners. Hence, the interference at the hands of this Court in exercise of its extra ordinary jurisdiction is called for in the facts and circumstances of the present case. The learned counsel further submitted that, the impugned action of the respondent No. 3 university to reject the approval to the petitioners is discriminatory and arbitrary, as such violates the fundamental rights of petitioners guaranteed under article 14 and 16 of the Constitution of India. Moreover, it is the fact that, the respondent No. 3 university has granted approval to various lecturers in Latur district who are similarly situated with the petitioners. Therefore, also the appropriate writ/direction deserves to be issued to the respondent No. 3 university, directing it to grant approval to the petitioners' services as lecturers.

10. The learned counsel submitted that the impugned inaction on the part of respondent No. 3 university to grant approval to the petitioners is contrary to the general directions issued by the university dated 12/10/2011 to all the affiliated colleges. The directions contained in said communication states that, the lecturers who have acquired NET/SET, Ph.D and M.Phil qualification before 11/7/2009, should be granted approval on permanent basis. Hence, the impugned action of the respondent No. 3, thereby refusing to grant approval to the petitioners' services as lecturers deserves to be quashed and set aside in the

interest of justice and equity. The learned counsel further submitted that, in view of above stated facts and circumstances, it is apparent that, the impugned inaction on the part of respondent No. 3 university in granting approval to the petitioners is highly illegal and improper. Moreover, in view of the regulation issued by U.G.C. and the policy adopted by the State of Maharashtra as well as by the respondent No. 3 university, the petitioners are entitled for permanent approval from the date they acquired the qualification of M.Phil. Therefore, the learned counsel appearing for the petitioners submits that, the petition deserves to be allowed.

11. The learned counsel further submitted that, the petitioners are in continuous service in respondent No. 5 college since last more than 10 years, therefore, in view of the fact that, the petitioners are entitled for permanent approval, the respondent No. 3 deserves to be directed to grant permanent approval to the petitioners.

12. The learned counsel appearing for Respondent No. 3, relying upon the averments in the affidavit in reply, made following submissions.

The respondent No. 3-university is established under the Maharashtra Universities Act, 1994. The provisions of Maharashtra Universities Act, Rules and Statutes framed there under are applicable to the respondent No. 3 university. The respondent No. 3 university is bound to implement the policy decision taken by the Respondent No. 1 and UGC. The learned counsel submitted that, the issue involved in this Petition is whether NET/SET examination is mandatory for securing appointment as Assistant Professor in respondent No. 4 & 5 colleges which are affiliated to respondent No. 3 university. It is submitted that, the University Grant Commission (hereinafter referred to as "UGC") was established in November 1956 as a statutory body for coordination, determination and maintenance of standards of University Education in India. The learned counsel submitted that, the UGC mandate includes a) Promoting and coordinating University Education; b) Determining & maintaining standards of teaching examination and research Universities; c) Framing regulations on minimum standards of education; d) Monitoring development in the field of Colleges and University Education, disbursing grant to the University and Colleges, e) Serving as a vital link between the Union and State Govt. and Institutions of higher learning and f) Advancing Central and State Govt. on the measures necessary for improvement and University Education.

13. The learned counsel submitted that, the UGC was entrusted with the task of co-ordination, formation and maintenance of the Standard of University education. It engaged itself. in, among other things, framing regulations on minimum standard of education, determining standards, of teaching, examination and research in Universities, monitoring development in the field of colleges and University Education, disbursing Grants to Universities and Colleges and setting up common facilities, services and programmes for a group of University in the form of Inter University centers. The learned counsel submitted

that, the Committee formed by UGC in 1983 on revision of pay scales of teachers in the universities and colleges under the Chairmanship of Prof. R.C. Mehrotra recommended for the post of Lecturer (i) qualifying at the National test conducted for the purpose by UGC or any other agency approved by UGC and (ii) Master's degree with at least 55% marks or its equivalent grade.

The learned counsel submitted that, the qualifications should not be relaxed even for candidates possessing M.Phil/Ph.D. at the time of recruitment. The Mehrotra Committee also found that, the stipulation of M.Phil/Ph.D. as an essential qualification for Lecturers. Neither the same has been followed faithfully nor contributed to the raising of teaching and research standards. In fact, it was of the view that, if at all, it had led to the dilution of research standards on account of the rush to get a research degree in the shortest possible time. In view of the diversity of standards among universities, the Mehrotra Committee recommended that passing a national qualification examination before recruitment be made an essential pre-condition. The National Commission of Teachers on Higher Education headed by Prof. Rais Ahmed observed that, it is extremely important to make a rigorous merit based selection for the entry level of teaching profession.

14. The learned counsel submitted that, the National Policy on Education, 1986, it was suggested that, "the teachers will be recruited on the basis of a common qualifying test, the details of which will be formulated by UGC. Efforts will be made to move towards the objective of making recruitment of teachers on all India basis in consultation with the State Governments". The learned counsel submitted that, with a view to working out the modalities for the conduct of such a test, the Commission had constituted a Committee, which evolved strategies for the conduct of a national level eligibility test (or the recruitment of teachers in universities and colleges. Consequently, the Government of India, through a notification in 1988 entrusted the task of conducting the eligibility test for lectureship to UGC. The learned counsel submitted that, the National Educational Testing Bureau of University Grants Commission (UGC) conducts National Eligibility Test (NET) to determine eligibility for lectureship and for award of Junior Research Fellowship (JRF) for Indian Nationals in order to ensure minimum standards for entrance in the teaching profession and research. The test is conducted twice in a year, generally in the month of June and December in various subjects including History & Hindi. It was felt that, eligibility test at the national level may not be completely able to represent the subjects which are original in their character. Moreover the demand for enabling the candidate, who appears for the test in their own mother-tongue, was also being made. The State Government and Union Territory were therefore given option of conducting their own test for eligibility for lectureship at the State level and it is called as State Entrance Test (SET). State level test is based on the pattern of the NET conducted by UGC. SET is being conducted in the various States including the State of Maharashtra. The UGC from time to time issued various regulations thereby it was made mandatory for passing of NET/SET examination for

appointment as teacher in university & affiliated colleges. The learned counsel submitted that, the UGC (minimum qualifications required for the appointment & career advancement of teachers in universities & institutions affiliated to it) (3rd Amendment) Regulation 2009, which is published in the Gazette of India on 11/07/2009 contemplates that, for the appointment of teacher in Universities & Institutions affiliated to it NET/SET is compulsory. As such passing of NET/SET is mandatory condition applicable to petitioners also. The Respondent No. 3 has placed on record the copy of UGC (minimum qualifications required for the appointment & career advancement of teachers in universities & institutions affiliated to it) (3rd Amendment) Regulation, 2009. The learned counsel submitted that, as per Sub Clause 34 of Section 2 of Maharashtra Universities Act teacher includes Assistant Professor.

15. The learned counsel further submitted that, the UGC from time to time amended the provisions in respect of NET/SET by introducing necessary amendments. As per Clause 2 of UGC (minimum qualifications required for the appointment and career advancement of teachers in universities and institutions affiliated to it, Regulation 2000 UGC prohibits appointment to a teaching post in university or in any of institutions including constituent or affiliated colleges recognized under clause (f) of Section 2 of the University Grants Commission Act, 1956 or in any institution deemed to be a university under Section 3 of the said Act in a subject if he/she does not fulfill the requirements as to the qualifications for the appropriate subjects as provided in the regulation. Section 14 of University Grants Commission Act 1956 further contemplates serious consequences of failure of universities to comply with recommendations of the Commission. The learned counsel submitted that, as per Clause 1.3.3. of UGC (minimum qualifications required for the appointment and career advancement of teachers in universities and institutions affiliated to it, Regulation 2000 made it compulsory passing of NET/SET for appointment as Lecture even for candidate having Ph.D degree. However the candidates who have completed M.Phil degree or have submitted Ph.D. thesis in the concerned subject up to 31st December, 1993 are exempted from appearing in the Net examination. The said UGC (minimum qualifications required for the appointment and career advancement of teachers in universities and institutions affiliated to it), Regulation 2000 amended on 31/07/2002. The said amended regulation namely UGC (minimum qualifications required for the appointment and career advancement of teachers in universities and institutions affiliated to it) (1st Amendment), Regulation 2002, extended date of submission of Ph.D. thesis from 31st December, 1993 to 31st December, 2002.

16. The learned counsel submitted that, the 2nd Amendment came to be introduced by UGC on 14/06/2006. By this amendment NET shall remain compulsory requirement for appointment as Lecture even for those with Post Graduate Degree. However, the candidates having Ph.D degree in the concerned subject are exempted from NET for PG level and UG level teaching. The candidates having M. Phil Degree in the concerned subject are exempted from

NET for UG level teaching only. The learned counsel further submitted that, the 3rd amendment introduced by UGC on 11th July, 2009. By this amendment NET shall remain minimum eligibility condition for requirement and appointment as Lecturer in Universities/Colleges/Institutions. Provided, however, that candidates, who are or have been awarded Ph.D. Degree in compliance of the "University Grants Commission (minimum standards and procedure for award of Ph.D. Degree), Regulation 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions. The learned counsel further submitted that, the State of Maharashtra as per Government Resolution dated 25th July, 2002 introduced appointments of teaching posts on contract basis. As per clause 2, it has been specifically stated that, the appointee should be passed Net/Set examination. But, from the subject, which Net/Set candidate is not available, can be appointed on contract basis. The clause 3 of the said Government Resolution contemplates that, the candidate should be registered with the local employment office and the list should be called from the local Employment Exchange Office and selection should be made through the Selection Committee. It has been specifically contemplated that, the candidate should be appointed on contract basis for maximum period of two years or till the regular candidate made available from the regular selection process, whichever is earlier and till that time, the candidate appointed on contract basis should be continued. It has been specifically stated in the Clause 4 that, the persons, those are already appointed on contract basis, have no right for regular appointment. The Respondent No. 3 has placed on record the copy of the Government Resolution dated 25th July, 2002, introducing appointments on contract basis on teaching posts with the compilation of the Affidavit in Reply.

17. The learned counsel submitted that, the Deputy Secretary, Higher and Technical Education Department, Maharashtra State issued communication dated 07.01.2005. By this communication, it has been clarified that, the candidates, who have been appointed in pursuance to the Govt. resolutions dated 25.07.2002 and 19.07.2003 and appointed on contract basis, should be given priority as per the instructions issued on 01.09.2004 by the Higher and Technical Education Department. This communication is in respect of those appointments made in pursuance to the Govt. resolution dated 25.07.2002 and 19.07.2003. The communication dated 01.09.2004 further states that, those colleges, who have taken approval of advertisement from the University and appointed candidates as per the Maharashtra Universities Act, 1994 through Selection Committee, as per the norms, such candidates, having requisite qualifications, appointed on contract basis, are not required again to go through the selection process and their appointments should be regularized. The learned counsel submitted that, these candidates should be treated for the appointment on probation period, for the period of 2 years from the date of their respective appointments and if their service record is satisfactory, their services, should be regularized. The learned counsel submitted that, by this communication dated

07.01.2005, there was no concession or exception given to the candidates, who are not holding Net/Set examination. The respondent No. 3 has placed on record the copy of communication dated 07.01.2005 with the compilation of the Affidavit in Reply. The learned counsel further submitted that, the State of Maharashtra has issued another communication dated 31.05.2005 in relations to the re-appointment of candidates, who have been appointed on contract basis, in pursuance to the Govt. resolution dated 25.02.2002. By this communication, it has been clarified that, the appointment made on contract basis should be for only two years, or till the candidate duly qualified is appointed through the Selection Committee duly constituted, whichever is earlier. It has been further clarified that, thereafter, all these appointments stands terminated. In short, the appointment on the contract basis is at the most should be continued for further two years or in other words the scheme for appointing candidates on contract basis is continued for further two years from 31.05.2005, apart from other conditions, which have been stated in Clause 2, 3, 4 and 5. The learned counsel appearing for respondent No. 3 invited our attention to the copy of the communication dated 31.05.2005 issued by the Additional Secretary, Higher and Technical Education Dept. State of Maharashtra, which is placed on record with the affidavit in reply.

18. The learned counsel submitted that, the scheme for appointing candidates on contract basis is expired on 31.05.2007 i.e. after the period of two years, as per the communication dated 31.05.2005. The Additional Secretary, Higher and Technical Education Department, State of Maharashtra issued another communication dated 06.07.2007, granting further approval for re-appointments of such candidates for further 11 months. The learned counsel appearing for respondent No. 3 invited our attention to the copy of the communication dated 06.07.2007 issued by the Additional Secretary Higher and Technical Education Dept. State of Maharashtra, which is placed on record with the Affidavit in Reply. The learned counsel further submitted that, in view of the above referred communications, the appointments made on the contractual basis finally came to an end as per communication dated 06.07.2007. As per said communication dated 06.07.2007, further 11 months period has been given for reappointment/continuation to the candidates on contract basis, meaning thereby, the scheme would be automatically come to an end thereafter. The learned counsel further submitted that, while deciding the issue involved in this matter, this Court is required to consider the above referred various Govt. resolutions, regulations and communications issued by the UGC and State of Maharashtra from time to time. In short, the basic qualification for the appointments on the teaching post, passing of Net/Set examination is compulsory. The learned counsel submitted that, none of the petitioner is qualified for the appointment on permanent or on regular basis on teaching post, as the petitioners are not holding basic required qualification of passing of Net/Set examination. The learned counsel submitted that, even as per first amendment of Regulation, 2002, the date of submission of Ph.D thesis was extended from 31.12.1993 to 31.12.2002. The candidates, who

have completed M.Phil degree or have submitted Ph.D. thesis in the concerned subject up to 31.12.1993 was exempted from appearing in the Net/set examination. The 2nd Amendment came to be introduced by UGC on 14/06/2006. By this amendment NET shall remain compulsory requirement for appointment as Lecture even for those with Post Graduate Degree. However, the candidates having Ph.D degree in the concerned subject are exempted from NET for PG level and UG level teaching. The third amendment introduced by the UGC on 11.07.2009 also contemplates that, passing of Net examination is similar eligibility condition for the requirement of appointment as lecturer in the University, Colleges and Institutions; provided that, though the candidates, who are possessing Ph.D. degree in compliance with the UGC (Minimum Standard Procedure for awarding Ph.D. degree) Regulation Act, 2009 shall be exempted from the requirement of minimum eligibility condition of passing of Net/Set examination for the recruitment or appointment as Assistant Professor or equivalent posts in the Universities, Colleges and Institutions. The learned counsel further submitted that, petitioner No. 1 acquired M.Phil qualification on 22.06.2009, the Petitioner No. -2 acquired M.Phil qualification on 30.06.2009 and the petitioner No. 3 acquired M.Phil qualification on 30.03.2009. According to the UGC norms, the regulation and resolutions issued by the State of Maharashtra from time to time, the petitioners are not entitled for approval or continuation on the post of teaching, in view of the fact that, the scheme for appointing candidates on contract basis came to an end as per the communication dated 06.07.2007. As per said communication, the scheme came to an end on or about June 2008. All these petitioners have acquired their M.Phil qualification after June, 2008. Therefore, they have not been given approval. In view of the communication dated 06.07.2007, the services of the petitioners impliedly stands terminated or they are not eligible to continue in service/contract basis after the completion of re-appointment period i.e. 11 months. Therefore, there is no question of grant of any approval or continuation by the Respondent No. 3 to the petitioners.

19. The learned counsel submitted that, the petitioner No. 1 came to be appointed on 26.07.2002 on the contract basis, the petitioner No. 2 is appointed on 30.08.2001 and the petitioner No. 3 is appointed on 10.08.2001. All these candidates are not having required qualification of passing of Net/Set examination. The petitioner No. 1 has acquired M.Phil degree, subsequently, on 22.06.2009 and petitioner Nos. 2 and 3 on 30.06.2009. The learned counsel further submitted that, according to the UGC regulations, Govt. resolutions and communications issued from time to time, even they cannot get any benefit of continuation based on subsequent acquisition of M.Phil degree on 22.06.2009 and on 30.06.2009. The learned counsel submitted that, the respondent - University granted approval to the appointments of the petitioners on contractual basis as per communication dated 4/5 July, 2006. This approval itself was granted stating the period of only two years from the date of joining. All the petitioners joined the services on contractual basis on 27.01.2004 and their

approval is upto 26.01.2006 only. The Respondent - University thereafter, as per the communication dated 23/24 of Oct. 2007, further communicated the approval of the petitioners for further two years from the date of completion of earlier two years period i.e. from 26.01.2006. As such, the approval for the appointment on contractual basis is granted till 26.01.2008 only. The learned counsel submitted that, the scheme for re-appointing the candidate on the contractual basis came to an end on or about June, 2008 as per the communication dated 06.07.2007. The learned counsel submitted that, after completion of approval period upto 26.01.2008, there was no proposal from the appointing authority for the continuation or re-appointment of the petitioners on contractual basis, apart from the fact that, the scheme for appointing persons or candidate on contract basis came to an end on June, 2008. The learned counsel submitted that, even for the sake of argument, if we consider that, the appointing authority has submitted proposal for the continuation or re-appointment of petitioners for 11 months period after 26.01.2008, the petitioners would have been continued till 26.12.2008 i.e. for 11 months, as per communication dated 06.07.2007, apart from the fact that, the petitioners have acquired M.Phil qualification on 22.06.2009 and 30.06.2009 respectively, the acquisition of M.Phil is beyond the period of contractual appointment.

20. The learned counsel submitted that, the respondent - University issued communication on 27.05.2009 to all the principals of affiliated colleges in view of the fact that, the certain proposals have been forwarded to the UGC for relaxing the condition of passing of Net/Set examination. The proposal for the relaxation of condition of passing of Net/Set examination has been turned down by the UGC in view of order dated 30.03.2010 issued by the Joint Secretary, Human Recourses Department, Union of India. The learned counsel invited our attention to the copy of order dated 30.03.2010 issued by the Joint Secretary, Human Resources Dept. Union of India from the compilation of the Affidavit in Reply.

The learned counsel appearing for the Respondent No. 3 submitted that, in view of the order dated 30.03.2010 issued by the Joint Secretary, Human Recourses Department, Union of India, the respondent University issued communication on 27/28th January, 2011, referring to the earlier communication dated 27.05.2009. By the said communication, the respondent University has taken decision and communicated it to all the principals of affiliated colleges that, the communication dated 27.05.2009 stands cancelled and the Respondent University will not grant approval to the candidates, appointed on contractual basis. The learned counsel appearing for Respondent No. 3 invited our attention to the copy of communication dated 27/28 of January, 2001 issued by the respondent - University, which is placed on record with the compilation of the Affidavit in Reply. The learned counsel appearing for the Respondent No. 3 therefore, submits that, there is no merit in the Writ Petition and same may kindly be dismissed.

21. The learned counsel appearing for Respondent No. 6 invited our attention to

the public notice dated 12th October, 2012 issued by the U.G.C. wherein, it has been clarified that, the resolution of the Commission in 471st and 472nd meeting of the UGC held on 12.08.2010 and 27.09.2010, has not been accepted by the Central Government, and the same cannot be implemented.

22. We have heard the learned counsel appearing for the parties at length. With their able assistance, we have perused the pleadings in the Petition, annexures thereto, affidavit in reply filed by Respondent No. 3 and documents placed on record by other respondents. Upon perusal of the pleadings in the Petition, it appears that, initially the petitioners were appointed on the post of lecturers in their respective subjects and their proposal was forwarded with Respondent No. 3- University for approval. It appears that, in the year 2009, the petitioners have completed their M.Phil course and at the relevant time of their appointments, the petitioners were possessing the Master's Degree in their respective subjects. The University by communication dated 19th March, 2004 was pleased to grant approval to the services of the petitioners on clock hour basis for the academic year 2003-2004. According to the petitioners, they were appointed on clear vacant and permanent posts. However, it is the contention of the learned counsel for the respondent No. 3 that, the appointment of the petitioners were on contractual basis for a particular period. It further appears that, on 05.07.2006, Respondent No. 3 - University was pleased to grant approval to the petitioners on contract basis. Thereafter also the approval was granted for two years vide communication dated 24th October, 2007. According to the petitioners, they are discharging their duties continuously till date.

It appears that, the advertisement was issued on 4th August, 2001 inviting applications for filling in the posts of lecturers. In pursuant to the said advertisement, the petitioners did apply for the appointment on the post of lecturers in their respective subjects and accordingly, they were appointed, however, on contractual basis for a particular period, and therefore, the Respondent No. 3 - University also granted approval to their services for a particular period. It is the contention of the petitioners that, since they have completed M.Phil in the year 2009, and therefore, the University should have granted permanent approval to their services. It appears from the material placed on record i.e. the copy of the advertisement at Exhibit-B page 45 of the compilation of the Petition that, the advertisement was issued by Respondent No. 5 college, wherein the posts were advertised, however, note given in the said advertisement mentions that, eligible candidates for the subjects mentioned in the said advertisement will be given appointment as per the Rules/Regulations of the U.G.C. and the University. Therefore, it follows from the said note given in the advertisement, and also it is not in dispute that, the appointment of the petitioners, and also service conditions are governed by the Rules, and Regulations framed by the U.G.C. and University, and amendment brought to the said Regulations from time to time.

23. Upon perusal of the initial appointment orders of the petitioners, it appears

that, the appointment orders are issued in the pay scale, however, purely on temporary basis for the academic year. These appointment orders are issued to the petitioners for one year from the academic year 2001 to 2003. Thereafter, again it appears that, the advertisement was given on 07.11.2003. In the said advertisement also, it was mentioned that, the appointments will be made keeping in view the regulations of the U.G.C. and University. The appointment orders in pursuant to the said advertisement were also for the academic year 2003-2004. The petitioners have claimed that, when they were initially appointed, those appointments were in pursuant to the advertisement and by properly constituted Selection Committee. Therefore, it becomes relevant to find out what was the minimum qualifications required for the appointment to the post of lecturer at the relevant time. In that respect, it is apt to reproduce hereinbelow the relevant gazette publication issued by the Secretary, U.G.C. in the Gazette of India on 11th July, 2009, which reads thus:--

"UGC (MINIMUM QUALIFICATIONS REQUIRED FOR THE APPOINTMENT AND CAREER ADVANCEMENT OF TEACHERS IN UNIVERSITIES AND INSTITUTIONS AFFILIATED TO IT) (3rd AMENDMENT), REGULATION 2009

F.1-1/2002 (PS) Exemp. - In exercise of the powers conferred by clause (e) & (g) of sub-section (1) of Section 26 read with section 14 of University Grants Commission Act 1956 (3 of 1956), and in supersession of the University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions Affiliated to it) (1st Amendment), Regulation, 2002 dated 31st July, 2002 and University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) (2nd Amendment), Regulation 2006 dated 14.06.2006, the University Grants Commission hereby makes the following Regulations to amend the University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) Regulation, 2000, namely:--

Short Title, Application and Commencement:

1. These regulations may be called University Grants Commission (Minimum qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) (3rd Amendment), Regulation, 2009.
2. They shall apply to every University established or incorporated by or under a Central Act, Provincial Act or a State Act, every Institution including a constituent or an affiliated college recognized by the Commission, in consultation with the University concerned under clause (f) of Section 2 of the University Grants Commission Act 1956, and every Institution deemed to be a University under section 3 of the said Act.
3. They shall come into force with effect from the date of their publication in the

Gazette of India.

4. In the ANNEXURE to the University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) Regulation, 2000, the following was provided in the Note to Regulation 1.3.3, 1.4.3, 1.5.3. and 1.6.1:

"NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. Degree. However, the candidates who have completed M.Phil degree or have submitted Ph.D. Thesis in the concerned subject upto 31st December, 1993 are exempted from appearing in the NET examination."

The said Note to Regulation 1.3.3, 1.4.3, 1.5.3 and 1.6.1 was substituted by the following para, vide University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) (1st Amendment), Regulation 2002:

"NET shall remain compulsory requirement for appointment as Lecturer even for candidates having Ph.D. Degree. However, the candidates who have completed M.Phil. Degree by 31st December, 1993 or have submitted Ph.D. thesis to the University in the concerned subject on or before 31st December, 2002 are exempted from appearing in the NET examination. In case such candidates fail to obtain Ph.D. Degree, they shall have to pass the NET examination.

Further, the above provision brought in to effect by the University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) (1st Amendment), Regulation, 2002, was further substituted by the following provision of the University Grants Commission (Minimum Qualifications required for the appointment and Career Advancement of teachers in Universities and Institutions affiliated to it) (2nd Amendment), Regulation 2006:

"NET shall remain compulsory requirement for appointment as Lecturer even for those with Post Graduate Degree. However, the candidates having Ph.D. Degree in the concerned subject are exempted from NET for PG level and UG level teaching. The candidates having M.Phil. Degree in the concerned subject are exempted from NET for UG level teaching only."

Now, the above provision shall be substituted by the following paragraph:

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

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

Colleges/Institutions."

R.K. CHAUHAN Secy. U.G.C." (Underlines added)

24. Upon careful perusal of the contents of the aforementioned requirement of minimum qualification qua the petitioners, since according to them their appointments were from the year 2001 onwards, the clause (4) of the aforementioned minimum qualification would be relevant. The Regulations 2000 as mentioned in the clause of the aforementioned Gazette publication, it is mentioned that, NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidates who have completed M.Phil degree or have submitted Ph.D. thesis in the concerned subject upto 31st December, 1993 are exempted from appearing in the NET examination. If the further Regulation, 2002 are perused, in that also the candidates who have completed the M.Phil by 31st December, 1993 were exempted from appearing passing NET examination. Thereafter, there was second amendment and as per the Regulation 2006, NET shall remain compulsory requirement for appointment as Lecturer even for those with Post Graduate Degree. However, the candidates having Ph.D. Degree in the concerned subject are exempted from NET for PG level and UG level teaching. If the petitioners' cases are carefully considered in the light of the aforementioned relevant clause of the Regulations 2000, 2002 or 2006, the petitioners were not possessing the M.Phil qualification at the relevant time of their appointments, though they were possessing Master's degree in their respective subjects. The relevant date for considering the qualification of the petitioners for the appointment on the post of Lecturers was governed by Regulations 2000 and 2002 as the petitioners claimed that, their selection was by properly constituted Selection Committee. At the relevant time, admittedly, the petitioners neither completed M.Phil, nor they were having Ph.D. degree. As per information placed on record by the petitioners themselves, first time in the year 2009, they completed M.Phil. Therefore, the petitioners case is not covered by the judgment of the Bombay High Court, bench at Nagpur in the case of Sudhir S/o Sharadrao Hunge and another v. The State of Maharashtra and others in Writ Petition No. 1489 of 2010, decided on 02.07.2010. In the facts of that case, the Division bench of the Bombay High Court bench at Nagpur was considering all together different fact situation, in as much as, soon before 3rd amendment Regulation 2009, the petitioners in that case were possessing M.Phil qualification, and in pursuant to the advertisement they did apply for the post of lecturers, and at the time of actual issuance of appointment letters, the Regulations came into force making the NET qualification compulsory for the appointment of lecturers. Therefore, the Division Bench keeping in view the facts of that case, held that, the eligibility of the petitioners would relate back to the date of first advertisement and the new conditions/qualifications introduced by the Regulation 2009 would not apply in the cases of those petitioners, who were already fulfilling the M.Phil qualification on the date of advertisement and filing application for appointment on the post of lecturers.

25. The Respondent No. 3 has brought on record, and which is not disputed by the petitioners that, as per the first amendment of Regulation 2002, the date for submission of Ph.D. thesis was extended from 31st December, 1993 to 31st December, 2002. The candidates, who have completed M.Phil degree or have submitted Ph.D. thesis in the concerned subject upto 31.12.1993 were exempted from appearing in the Net/Set examination. Even by subsequent 2nd amendment to Regulations, the same position continued and those who are having Ph.D. degree and acquired M.Phil before the cut of date mentioned in the said Regulations were granted exemption from passing NET examination. As already observed, at the relevant time the petitioners were not possessing M.Phil before cut of date prescribed in the regulations, at the time of their appointments. All the petitioners have acquired their M.Phil qualification after June, 2008. Upon perusal of the documents placed on record, it is clearly seen that, the petitioners were appointed on contract basis. The petitioner No. 1 was appointed on 26th July, 2002, the petitioner No. 2 was appointed on 30th August, 2001 and the petitioner No. 3 was appointed on 3rd August, 2001, and at the relevant time, they were not having required qualification of passing NET/SET examination. It is also brought on record by Respondent No. 3 that, the approval for appointment on contractual basis is granted to the appointments of the petitioners till 26th January, 2008, and the scheme for appointing the candidates on the contractual basis came to an end on or about June, 2008. However, it appears that, Respondent - college continued the petitioners as lecturers as contended by the petitioners in the Petition. The proposal of the petitioners for the continuation for eleven months was submitted, however, the University has declined to grant approval since according to the learned counsel appearing for the Respondent - University, the scheme for reappointing the candidates on contractual basis came to an end on or about June, 2008.

26. We have also considered the submission of the learned counsel appearing for the petitioners that, those candidates who have completed M.Phil degree on or before 10th July, 2009, shall remain exempted from the requirement of NET for the purpose of appointment as Lecturer/Assistant Professor as resolved by the Commission in 471st and 472nd meeting of the UGC held on 12.08.2010 and 27.09.2010. However, the said suggestion of the Commission has not been accepted by the Central Government. Therefore, if case of the petitioners is considered in its entirety, at the relevant time, when the petitioners were appointed, they were not possessing the requisite qualification prescribed under the relevant Regulations issued by the U.G.C. governing the field during the relevant period. The contention of the learned counsel appearing for the petitioners that, the petitioners have completed more than 10 years service, and therefore, the University may be directed to grant approval to their services, cannot be accepted, in the light of the discussion in foregoing paragraphs. It is true that, the petitioners have rendered more than 10 years service, however, once there was communication from the Government of Maharashtra to the University and all the colleges not to continue the contractual appointment any

further from June, 2008, merely because the Respondent - College contrary to the instructions issued by the University and Government of Maharashtra continued the petitioners on the post of lecturers, cannot be ground to direct Respondent No. 3 to grant approval to the services of the petitioners. In that view of the matter, we are unable to persuade ourselves to issue directions to Respondent No. 3, to grant permanent approval to the petitioners' services.

27. However, the Hon"ble Supreme Court in para 53 of the judgment in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, has observed thus:--

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

28. In the light of the discussion in foregoing paras 2 to 26, the Petition fails and same stands rejected. Rule stands discharged.

However, we make it clear that, rejection of this Petition cannot be construed as an impediment, in case, the Respondents wish to take sympathetic view, keeping in view the length of service of the petitioners, so as to grant approval to their services as the special case or one time measure, which can be done by the Respondents keeping in view the observations of the Hon"ble Supreme Court in para 53 of the judgment in the case of Secretary, State of Karnataka and others (supra).