

(2017) 05 OHC CK 0024

In the Orissa High Court

Case No : 14105 of 2017

Snigdha Panigrahi

APPELLANT

Vs

State of Odisha, & Ors.

RESPONDENT

Date of Decision : 18-05-2017

Acts Referred:

[Constitution of India](#), [Article 245](#), [Article 309](#), [Article 16](#), [Article 246](#), [Article 254](#), [Article 244](#) - Extent o

Citation : (2017) 05 OHC CK 0024

Hon'ble Judges : Sanju Panda, Sujit Narayan Prasad

Bench : DIVISION BENCH

Advocate : Budhadev Routray, S. Das, R.P. Dalai, S. Jena, A.K. Mohanty, S.K. Samal, S.P. Nath, S.D. Routray, Pradipta Kumar Mohanty, D.N. Mohapatra, J. Mohanty, P.K. Nayak, S.N. Das, A. Das, P.K. Pasayat, R.K. Rath, Pami Rath, N.R. Rout, J.P. Behera, M.S. Sahoo, Jag

Judgement

1. In all these writ petitions since similar question is involved, as such directed to be heard together, accordingly the matters have been heard together and are being disposed of by this common order. In these writ petitions the orders passed by the Odisha Administrative Tribunal in several original applications dated 25.7.2016 are under judicial scrutiny wherein the Tribunal has adjudicated the legality and propriety of condition no.6 of the advertisement in question and the process of selection made in pursuance thereto, (the original applications are O.A. Nos.744, 767, 794, 767, 768, 688, 601, 254(C), 137, 138, 605, 619, 953(C), 2156(C) and 2270 of 2015). 2. The facts leading to the instant writ petitions are that one advertisement was issued on 24.06.2013 inviting applications for recruitment of 281 posts of Lecturers in different disciplines under Group-A of Odisha Education Service (College Branch) of Government Degree Colleges of the State under the Department of Higher Education in the scale of pay of Rs. 15,600/-39,100/- carrying Academic Grade Pay of Rs. 6,000/- with usual dearness allowances as may be sanctioned by the State Government

from time to time reflecting therein the different numbers of vacancies in different disciplines with the reference of minimum educational qualification, method of selection and other conditions stipulated therein. The advertisement which contains the method of selection provides that the selection of candidates for recruitment to the posts will be made on the basis of career assessment and viva voice. The Commission at their discretion has preserved their rights to shortlist the candidates to a reasonable number for conducting interview by making a preliminary selection on the basis of evaluation of their academic career taking into account the requisite minimum educational qualification. The eligible candidates have submitted their online application in terms of the advertisement in question being advertisement No.5 of 2013-14 published by Odisha Public Service Commission (in short the Commission). The Commission has followed the method of selection by screening the number of candidates on the basis of evaluation of their academic career and thereafter called upon the candidates who have been found to be up to mark on the basis of evaluation of their career taking into account the requisite minimum educational qualification. The candidates, who have been screened out, have not been called upon to appear in the interview, as such they being aggrieved with the decision of the Commission for screening them out, have approached the Tribunal challenging the Clause No.6 of the advertisement in question, as also questioning the decision of the Commission with regard to the process adopted by it to screen out their candidature taking into account the academic qualification from Matriculation till Post Graduate, ignoring higher qualification such as Ph.D, Research Activities, M.Phil Degree and teaching experience, which according to them was in violation of the University Grants Commission guidelines which are mandatorily to be followed, as such rejection of their candidature is illegal. 3. The candidates who approached the Tribunal against the rejection of their candidature have taken the ground before it that the advertisement in question stipulates a condition under the heading "Educational Qualification" that a candidate should possess Master's Degree in the concerned subject from a recognized University with at least 55% of marks or its equivalent grade with a 2nd Class in Bachelor's Degree along with NET, Ph.D Degree as required under the University Grants Commission (Minimum Standards and Procedure for award of Ph.D Degree) Regulations, 2009 and as such rejecting their candidature is in violation of the University Grants Commission Regulations, 2010 (in short UGC Regulations, 2009). The other ground assailing the decision of the Commission in rejecting their candidature is that the reliance put by the Commission under the Orissa Education Service (College Branch) Recruitment Rules, 1990 is absolutely illegal being not in consonance with the UGC Regulations, 2010, as such giving go bye to the UGC Regulations, in consideration of their candidature and putting reliance upon the Recruitment Rules, 1990 is incorrect decision of the authorities due to which they have suffered since their candidature has been rejected at the thresh hold on the basis of the condition mentioned in clause No.6 and as such they have also assailed the condition No.6 of the advertisement in question, whereby and where under their screening out has been done by evaluating their

academic career. It has been urged that the UGC Regulations, will prevail upon the statute in view of the fact that UGC regulation is applicable 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 University U/s.3 of the said Act, and since the advertisement has been published inviting online applications to fill up the post of Lecturers in the Government Colleges, hence the provision of UGC Regulations, 2009 will be applicable, which provides the method of selection under clause No.6.1.0 which will be transparent, objective and credible methodology of analysis of merits and credentials of the applicants based on weightages given to the performance of candidates in different relevant dimensions and his/her performance on a scoring system proforma, based on the Academic Performance Indicators (API) as provided in the regulations in tables I to IX of Appendix III, provided that API scores will be used for screening purpose only and will have no bearing on expert assessment of candidates in Direct Recruitment/CAS, provided further that the API score claim of each of the sub-categories in the Category III will have the cap to calculate the total API score claim for Direct Recruitment category wise, as such according to the candidates whose candidature has been screened out, the Commission ought to have taken into consideration while screening out their candidature on the basis of API in place of evaluating it by their Academic career. On these grounds the rejected candidates have approached the tribunal. The tribunal has formulated four issues, while approving the action of the Commission for short listing of candidates, the procedure of preliminary selection adopted by the Commission has been quashed holding the process of screening out to be incorrect. 4. The said order has been challenged by the Public Service Commission in series of writ petitions on the ground that the Tribunal, while fixing the four issues, while answering the issue to the effect as to whether the impugned para 6 of the advertisement dated 24.06.2013 issued by the OPSC prescribing short listing is violating of Recruitment Rules, 1990 as amended from time to time, the same has been answered in favour of the candidates whose candidature has been rejected by holding that the procedure adopted for short listing the candidature of candidates is not in accordance with para 6 of the advertisement, the Commission has challenged the said order on this specific finding since the other issues have been answered in its favour. The ground of challenge is that the advertisement has been published on 24.6.2013 inviting online applications to fill up the post of Lecturers in different discipline. The advertisement contains the minimum educational qualification under clause no.3 and the method of selection is under clause no.6 by which the discretion has been given to the Commission to short list the candidates to a reasonable number for conducting interview by making a preliminary selection on the basis of evaluation of their Academic career. According to him clause No.6 of the advertisement is in consonance with the provision of Recruitment Rules, 1990 wherein under Rule 4(d) the minimum

qualification has been provided to the effect that he/she should have a Master's Degree in the relevant subject from a recognized University with at least 55% of marks or its equivalent grade and good Academic record, while Rule 5 provides the power to select through the Commission by screening out applications for calling candidates to appear in the interview. By putting reliance upon these two provisions of law, it has been submitted that the statute provides to assess the candidature of one or the other candidates along with the minimum qualification with good Academic record with the power to adopt a procedure to screen out applications for calling candidates to appear in the interview and this statutory provision has not been amended in the subsequent amended Rules notified on 25th February, 1993, 8th December, 1995 and as such the Commission has followed the procedure to assess the candidature of one or the other candidates for short listing, has adopted the principle to assess their academic career and on the basis of the same the candidature of the candidates have been rejected, thereafter the candidates who have found to be up to mark after evaluation of their academic career, have been called upon to participate in the interview and subsequently they have been found to be successful, hence it cannot be said that the Commission has acted arbitrarily and without any authority of law. Submission has been made that the procedure adopted by the Commission is for all in a uniform way, hence it cannot be said that the Commission has adopted pick and choose policy, rather the Commission, in a very transparent and fair way, has stipulated the said condition in clause No.6 of the advertisement in question, but the candidates whose candidature has been rejected, have never questioned the said clause of the advertisement before participating in the selection process and when their candidature has been rejected, then only they have challenged the very clause before the Tribunal and the same has been entertained by it which according to the learned Senior Counsel representing the Commission, cannot be said to be proper on the part of the Tribunal on the basis of the principle that once a candidate has participated in the selection process he will cease to challenge the terms and conditions of the advertisement. He submits that the clause No.6 of the advertisement in question is in terms of the provision of Recruitment Rules, 1990 under its provision of Rule 4(2)(d) and Rule 5 as also UGC Regulations, as such the Commission has acted within its authority. He further submits that the Tribunal, however, has given finding while answering the issue regarding applicability of the UGC Regulation, but travelled in wrong direction regarding applicability of UGC Regulation so far as it has been adopted by the State but the legal proposition is settled that only in case of repugnance the Central Rule will be applicable. According to him there is no inconsistency in between the State Rule and UGC Regulation regarding the educational qualification as well as process of selection. He submits that on the one hand the clause 6 of the advertisement has been refused to be interfered with while on the other the Tribunal has questioned the parameter fixed for screening out the candidates, hence to that effect the order passed by the Tribunal is not proper. 5. Learned Senior Counsel appearing for the candidates whose candidature has been rejected, who are opposite parties in some of the

writ petitions and also petitioners in some cases, while questioning the finding of the Tribunal so far as it relates to applicability of the provision of UGC Regulations, submits that the provision of UGC Regulations is binding upon the Commission being the selecting body in view of the provision of UGC Regulations, 2010 which is applicable to all the universities recognized by the Commission under the provision of clause (f) of Section 2 of the University Grants Commission Act, 1956 and subsequent thereto the University Grants Commission Regulation, 2013 has come which contains a provision for overall selection process which shall be made on the basis of Academic Performance Indicators as provided under the regulation and table 1 to 11 of Appendix III, as such the Commission, while screening out the candidature of such candidates, ought to have taken into consideration the provision of screening out as per the UGC Regulation. He submits that the Tribunal has given erroneous finding with respect to the issue framed by it regarding applicability of UGC Regulation over and above the Recruitment Rules enshrined by the State in exercise of power conferred under Article 309. According to him, the provision of UGC regulation will be applicable over and above the Recruitment Rule, but the Tribunal, without appreciating this aspect of the matter, has adjudicated issue No.(a) against the candidates whose candidature has been rejected. He further submits that since the vacancy is for the post of Lecturer, as such screening out the candidature of the candidates on the basis of Academic career giving go bye to the minimum educational qualification cannot be said to be just and proper. So far as the finding of the Tribunal relating to the procedure adopted by the Commission to reject the candidature of the candidates on the basis of evaluation of Academic career, learned Sr. Counsel has submitted that the Tribunal is right in saying this while answering the issue in their favour and which according to him is in consonance with the UGC regulation. 6. The learned Sr. Counsel Mr. R. K. Rath who has argued on behalf of the candidates who have been found to be successful, has submitted that the finding of the Tribunal, so far as it relates to the procedure adopted by the Commission regarding screening out the candidature of the candidates is absolutely legal since the Commission has followed the statutory provision as contained in Recruitment Rules, 1990 and in pursuance to the provision of Rule 5 it is the discretion of the Commission being the constitutional body to follow the procedure to screen out the candidature of the candidates on the basis of good Academic record. He further submits that since it is a question of entry in the higher education service as Lecturer, ignoring the Academic career to assess the candidature of one or the other candidates cannot be said to be proper selection process. He has also relied upon one judgment passed by a coordinate Bench of this court rendered in the case of Dr. Tophan Pati v. State of Orissa and Others, reported in 1998 (II) OLR 502. 7. Mr. Biswambar Mohanty, learned Counsel representing some of the selected candidates, in addition to the argument advanced on behalf of the learned Sr. Counsel for the Commission and Sr. Counsel Mr. R. K. Rath, has submitted that the reliance which has been put upon the provision of UGC Regulation 2010 or 2013 in its provision contained in 6.1.0 regarding assessment of the performance

on the basis of Academic Performance Indicators, but the same is not applicable for the post of Lecturer as would be evident that the said provision provides assessment on the basis of Academic Performance Indicator as provided in tables I to IX of Appendix - III and from its perusal it is evident that there is no reference of post of Lecturer rather it starts from consideration of candidature of one or the other candidate on the basis of score for APIs is from the post of Asst. professor/equivalent cadre onward, reason being that the Lecturer being the basic entry post cannot be governed on the basis of the performance through Academic Performance Indicators giving go bye to the good Academic records, hence the argument advanced on behalf of the learned Sr. Counsel Mr. B. Routray in this regard cannot be said to be applicable with respect to the post of Lecturer.

8. Learned Sr. Counsel appearing for the University Grants Commission has submitted that the question involved in this case is only regarding repugnance and it is settled that wherever there is inconsistency of the statutory provision in between Central and State legislation, the Central Act will prevail over the State and this is the paramount question which is to be decided by this court. He submits that since the education is coming under the field of concurrent list, as such the U.G.C. regulation regulated under the provision of Section 26 of the U.G.C. Act, 1956 will prevail upon the Rule/Regulation formulated by the state Government in case of any inconsistency.

9. Learned Additional government Advocate appearing for State of Odisha has adopted the argument advanced on behalf of the Odisha Public Service Commission.

10. We have heard the learned counsels for the parties and perused the documents available on record. We thought it proper before entering into the factual aspect to deal with the statutory provisions which is relevant for the present issue, i.e.- (i) The state of Odisha has come out with a notification on 20th March, 1990 by exercising its power conferred by the proviso to Article 309 of the Constitution of India to regulate recruitment of persons appointed to the Odisha Education Service (College Branch) known as Orissa Education Service (College Branch) Recruitment Rules, 1990 wherein the provision for direct recruitment to the post of lecturer has been given under Rule 4 which is being reflected herein below:-

"4. Direct Recruitment to the post of Lecturer.- (1) Recruitment's to the service shall be made directly to the grade of Lecturers through the Commission. (2). Xxxxx xxxxxx xxxx (d) He/she should have Master's Degree in the relevant subject from a recognized University with at least 55% of marks or its equivalent grade and good academic record. xxx xxxxxxxx xxxxxx" We are concern here with the provision of Rule 4(2)(d) which provides the minimum educational qualification providing therein that a candidate should have a Master's Degree in the relevant subject from a recognized University with at least 55% of marks or its equivalent grade and good academic record. Rule 5 provides selection by the Commission which speaks as follows:-

"5. Selection by the Commission - (1) The vacancies in the post of lecturer occurring in a year shall be notified to the Commission by the Government to recommend the names of eligible persons considered suitable by them for appointment to the posts. The Commission shall invite applications through open advertisement from eligible candidates and after

conducting interview forward to the Government in respect of each subject a list of suitable candidates in order of merit for which requisition has been made. The Commission may screen out application for calling candidates to appear in the interview to be conducted by them. The selection of eligible candidates shall be made on the basis of merit. (2). XXXXXXXXXXXX (3). XXXXXXXXXXXX" Rule 5(1) confers power upon the commission to invite application through open advertisement from eligible candidates and after conducting interview forward to the Government in respect of each subject a list of suitable candidates in order of merit for which requisition has been made. The Commission may screen out applications for calling candidates to appear in the interview to be conducted by them. The selection of eligible candidates shall be made on the basis of merit. This provision confers power upon the Commission to adopt the process to screen out the applications to invite the candidates to appear in the interview and thereafter the selection is to be made on the basis of merit. The Recruitment Rules, 1990 also provides the different educational qualifications for the post of reader and for being eligible to the post of reader the first requirement is that the candidate must have possess the post of lecturer having Ph.D. degree from a recognized university in the concerned discipline and completed 8 years of service in the senior scale. The provision of Recruitment Rules, 1990 reflects regarding selection procedure for the post of lecturer and reader. The Government of Odisha has again come out with another notification on 25th February 1993 known as Odisha Education Service (College Branch) Recruitment (Amendment) Rules, 1993 whereby and where under certain provisions of the Recruitment Rules, 1990 has been amended but so far as it relates to the provision as contained in Rule 4(2)(d) and Rule 5 it has remained un-amended. The State of Odisha has again come out with another amendment by issuing notification dated 8th December, 1995 known as Odisha Education Service (College Branch) Recruitment (Amendment) Rules, 1995 by which also the provision as contained in Rule 4(2)(d) and Rule 5 has not been amended. Again by virtue of notification dated 14th September, 2012 another amendment has come known as Orissa Education Service (College Branch) Recruitment (Amendment) Rules, 2012 by which under the provision of Rule 4 in sub-rule 2 some provisions to clause (d) has been added to the following effect:- "Provided that candidates belonging to the Scheduled Castes and Scheduled Tribes shall possess a Master's Degree in the concerned subject from a recognized University with at least 50% marks or its equivalent grade." It is evident that the provision of Rule 4(2)(d) has not been substituted, rather certain educational qualification has been added meaning thereby the original provision regarding having Master's Degree in the relevant subject from a recognized University with at least 55% of marks or its equivalent grade and good academic career remained un-altered. One another notification issued on 29th October, 2013 by which the provision of Rule 5 for sub-Rule (1) has been substituted which is being referred herein below:- "5. Selection by the Commission - (1) The vacancies in the post of Lecturer occurring in a year shall be notified to the Commission by the Government. The Commission shall invite applications through open

advertisement from eligible candidates and after conducting interview forward to the Government in respect of each subject a list of suitable candidates in order of merit for which requisition has been made. The selection of eligible candidates shall be made on the basis of merit." The difference in between the amendment having been made under the provision of Rule 5 in the Amended Rules, 2013 and the original Rule of 1990 is that the power conferred to the Commission to adopt the procedure of screening out application for calling candidates who appear in the interview to be conducted by them has been deleted. It is herein clarified that the advertisement has been issued on 24th June, 2013 and as such the amendment brought out by the State by virtue of Notification dated 29th October, 2013 will not be applicable so far as the present recruitment process is concerned on the basis of the principle that once the recruitment process has been set on motion, it will be governed by the Rule which was in vogue at the time when the advertisement has been issued, admittedly, the Amended Rules, 2013 has been notified on 29th October, 2013, hence it cannot govern the procedure of appointment for an advertisement which has been issued prior to the said notification. Hence, the provision as contained in Rule 5(i) will be of paramount consideration so far as the advertisement in question is concerned in the instant case. 11. The Government of India has come out with an Act to make provision for coordination and determination of standards in university and for that purpose a Commission has been established known as University Grants Commission by virtue of enactment of the University Grants Commission Act, 1956. The Act 1956 provides power upon the University Grants Commission to make rules and regulation under the provision of Section 25 and 26. The University Grants Commission from time to time, in exercise of power conferred U/s.26, has made out regulations defining the qualification required to be possessed by any person to be appointed as teaching staff of the University having regard to the branch of education and regulating the maintenance of standards and coordination of facilities in the university. The University Grants Commission, in supersession to the earlier regulations, has come out with the regulations time to time, one of it is known as University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) Regulation 2009. The said regulation contains provision for recruitment and qualifications under the provision of regulation 3.0.0 wherein under 3.1.0 the process of direct recruitment to the posts of Asst. Professors, Associate Professors and Professors in the Universities and Colleges have been directed to be made on the basis of merit through 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 minimum educational qualification for the post of Asst. Professors and onward will be prescribed by the UGC in the regulations. The minimum requirement of a good academic record, 55% marks 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 Asst. Professors which will be the minimum eligibility condition for recruitment and appointment of Asst. professors in the Universities/Colleges/ Institutions, as would be evident from the UGC Regulation, 2009, for better appreciation the qualification prescribed for Asst. Professor for one of the disciplines is referred herein below:- "4.4.0 Assistant Professor 4.4.1. Arts, Humanities, Sciences, Social Sciences, Commerce, Education, Languages, Law, Journalism and Mass Communication. i. Good academic record as defined by the concerned university with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign university. ii. Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET. iii. Notwithstanding anything contained in sub-clauses (i) and (ii) to this Clause 4.4.1. 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 for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/ Institutions. iv. NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not conducted." Likewise the qualification for the post of professor by way of direct recruitment, Principal, Associate Professors has been prescribed. The University Grants Commission Regulation, 2013 has come which contains a provision under regulation 6.1.0 which is also there in the Regulation 2010. Under the Regulations, 2010 the Academic Performance Indicators have been provided for selection to the post of Associate Professors and onward. For better appreciation the provision of 6.1.0 of the regulation 2010 is reflected herein below:- "6.1.0 While the API: (a) Tables I and III of Appendix III are applicable to the selection of Professors/Associate professors/Assistant Professors in Universities and Colleges; (b) Tables IV, V and VI of Appendix III are applicable to Directors/ Deputy Directors/Assistant Directors of Physical Education and Sports; and (c) Tables VII, VIII and IX of Appendix III are applicable to Librarians/Deputy Librarians and Assistant Librarians for both direct recruitment as well as Career Advancement Promotions, the ratio/percentage of minimum requirement of category-wise API Score to each of the cadres shall vary from those for university teachers and for UG/PG College Teachers, as given in these Tables of Appendix-III" After the Regulations, 2010 having been amended by virtue of notification issued on 13th June 2013, the following provision has been made under 6.1.0 which is being reflected herein below:- "6.1.0. The overall selection procedure shall incorporate transparent, objective and credible methodology of analysis of the merits and credentials of the applicants based on weight-ages given to the performance of the candidate in different relevant dimensions and his/her performance on a scoring system proforma, based on the Academic Performance Indicators (API) as provided in this Regulations in Tables I to IX of

Appendix-III. Provided that API scores will be used for screening purpose only and will have no bearing on expert assessment of candidates in Direct Recruitment/CAS. Provided also that the API score claim of each of the sub-categories in the Category III (Research and Publications and Academic Contributions) will have the following cap to calculate the total API score claim for Direct Recruitment/CAS.

Sub-Category Cap as % of API cumulative score in application

III (A) Research papers (Journals, etc.) 30%

III (B) Research publications, (Books etc) 25%

III (C) Research Projects 20%

III (D) Research Guidance 10%

III (E) Training Courses and Conference/Seminar, etc. 15%

In order to make the system more credible, universities may assess the ability for teaching and/or research aptitude through a seminar or lecture in a class room situation or discussion on the capacity to use latest technology in teaching and research at the interview stage. These procedures can be followed for both direct recruitment and CAS promotions wherever selection committees are prescribed in these Regulations." It is evident from the provision as contained in regulation 6.1.0 that the overall selection procedure based on academic performance indicators as provided in this regulation in table I to IX of Appendix-III is applicable from the post of Asst. Professor and onward, the same is evident from the following tabular chart:-

Assistant Professor/equivalent cadres (Stage 1)	Associate Professor/equivalent cadres (stage 4)	Professor/equivalent cadres (Stage 5)
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Minimum API Scores	Minimum Qualification as stipulated in these regulations
Consolidated API score requirement of 300 points from category III of APIs	Consolidated API Score requirement of 400 points from category III of APIs

SELECTION COMMITTEE criteria/weightages (Total Weightages = 100) a) Academic Record and Research Performance (50%) b) Assessment of Domain Knowledge and Teaching Skills (30%) c) Interview performance (20%) a) Academic Background (20%) b) Research performance based on API score and quality of publications (40%) c) Assessment of Domain Knowledge and Teaching Skills (20%) d) Interview performance (20%) e) Academic Background (20%) f) Research performance based on API score and quality of publications (40%) g) Assessment of Domain Knowledge and Teaching Skills (20%) Interview performance (20%)

12. We have gathered from these two regulations that everywhere the academic record has been given paramount importance and that is for the obvious reason

that if a candidate is having no good academic record from H.S.C. to the graduation level and if he obtained good marks in the post graduate level and thereafter, he cannot be said to be a perfect candidate and it will not be proper to ignore the educational qualification right from the HSC to the graduation level, this is for the reason that the post is to impart teaching in the higher education. A candidate having no good academic record cannot impart teaching in the best way in order to maintain standard in the education and that is the reason each and everywhere either in the State Law or the University Grants Commission Regulation a good academic record has been given much emphasis apart from the minimum educational qualification. This contention also gets support from the division bench judgment passed by this court in the case of Dr. Tophan Pati (supra) although the fact pertains to the appointment of Lecturer in the Medical College but the ratio laid down therein at paragraph 40 makes the position very clear that in order to evaluate the performance of one or the other candidates, the entire academic record is necessary to be seen, the said process having been adopted by the Public Service Commission, was questioned before this court, but this court affirming the process adopted by the Commission to assess the candidature of such candidates on the basis of good academic record has been refused to be interfered with. 13. So far as the facts of the case in hand is concerned, the admitted position is that the advertisement has been published on 24.6.2013 inviting online applications for appointment as Lecturer in different disciplines. Under the provision of clause 3 the educational qualifications have been prescribed which is referred herein below:- "3. Educational Qualification : - A candidate should possess a Master's Degree in the concerned subject from a recognized University with at least 55% of marks or its equivalent grade with a 2nd Class in the Bachelor's Degree. Provided that candidates belonging to the Scheduled castes and Scheduled Tribes shall possess a Master's Degree in the concerned subject from a recognized University with at least 50% marks or its equivalent grade with a 2nd Class in the Bachelor's Degree. NET shall remain the compulsory requirement for appointment as Lecturer for those with post-graduate degree, but the candidates having Ph.D. Degree in accordance with the provisions of the University Grant Commission (Minimum Standards and Procedure for award of Ph.D. Degree) Regulations, 2009 on the concerned subjects shall be exempted from the requirement of the minimum eligibility conditions of NET/SLET/SET." Under clause 6 the method of selection has been provided which is being reproduced herein below:- "6. Method of Selection : The selection of candidates for recruitment to the posts will be made on the basis of career assessment and Viva Voice. The Commission at their discretion may short-list the candidates to a reasonable number, for conducting interview by making a preliminary selection on the basis of evaluation of their academic career taking into account the requisite minimum educational qualification." The candidates have filled up their application form for consideration of their candidature. The Commission has initiated the process of screening out the candidature of the candidates on the basis of provision as made under clause 6 of the advertisement and accordingly rejected the candidature of candidates whose

names are figuring at page 48 of writ petition under the heading "List of candidates who have not been considered by the commission for interview". Those candidates have approached before the Tribunal questioning the legality and propriety of the clause 6 of the advertisement as also cancellation of their candidature by screening out on the basis of evaluation of their marks obtained in academic career. The Commission has appeared before the Tribunal and filed a detail counter affidavit stating therein that the Commission has not committed any illegality. The provision of Recruitment Rules, 1990 as well as UGC Regulations have been followed in its strict sense. The condition of screening out the candidates has been enshrined in the advertisement in pursuance to the provision of Rule 5 of the Recruitment Rules, 1990. The candidature has been evaluated on the basis of minimum qualification and good academic record as contained in rule 4 (2)(d) of the Rules, 1990. The specific statement made in the counter affidavit at paragraph 4 which is being reflected herein below:- "4. That, accepting the conditions of the aforesaid advertisement, the applicant had submitted her application for recruitment to the post of Lecturer in Anthropology. The Commission while taking steps for conducting direct recruitment of the aforesaid discipline had as per the condition of the advertisement cited supra based on the principle of academic career taking into account the requisite minimum educational qualification and called the candidates for interview. In absence of any provision in the recruitment rules to that effect, the Commission had at their discretion taken the following decision:- No. of candidates called for V.V. test:- Where the number of vacancies up to 2(two), the number of candidates to be called for interview may be 5(five), where the number of vacancies exceeds 2, the number of candidates to be called for the interview may be twice the number of vacancies. Career weight-age for Lecturer (College Branch):-

HSC - 20% weightage

+2 - 20% weightage

Degree - 20% weightage

PG Degree - 40% weightage

Although the applicant was a candidate for the aforesaid post, she was not called to the interview/V.V. test due to her lower position/rank in the career assessment. Being aggrieved, she has filed this O.A. challenging the selection procedure of the O.P.S.C. with a prayer to declare the same as illegal and unconstitutional." The tribunal after framing four issues has finally disposed of the original application. The issues are:- (a) Whether UGC Act and Regulation made thereunder are binding on the State - respondents and the OPSC while recruiting Lecturers in degree Colleges; (b) Whether the impugned para 6 of the advertisement dated 24.6.2013 prescribing procedure for short listing issued by the OPSC is violative of Rules, 1990; (c) Whether the procedure of short listing is rational and reasonable and has been done as per para 6 of the advertisement;

(d) Whether the applicants, those who are ad hoc appointees are to be regularized after obtaining concurrence of O.P.S.C.; (e) Some other points as applicable to individual applicants. 14. We thought it proper to discuss the finding of the Tribunal issue-wise in order to see the legality and propriety of the same. We have taken the issue no.(a) which pertains as to whether UGC Act and regulation made thereunder are binding upon the state - respondent and the OPSC while recruiting lecturers in degree colleges. It is not in dispute that the Constitution provides the concurrent list under which the education comes. It is also the constitutional mandate that in case of inconsistency between the State Law and the Central Law, the Central Legislation will prevail. We have discussed herein above the purpose for enactment of University Grants Commission Act, 1956 which is solely for the purpose to maintain standard in the education system across the country and for that purpose the provision has been made therein U/s.25 and 26 to formulate rules and regulations in order to maintain uniformity in the educational system in the country. Rule 26 of the University Grants Commission Act, 1956 empowered the Commission to formulate regulations to define the qualification that should ordinarily be required by any person to be appointed to the teaching staff of the university having regard to the branch of education in which he is expected to give instruction, i.e. under the provision of regulation 26(1)(e). The University Grants Commission from time to time has formulated regulation issued in the year 1998, then in the year 2000, 2002, 2010 and 2013 known as University Grants Commission regulation providing the educational qualification for the candidates who intend to be considered for different posts in the University, i.e. Asst. Professor, Associate Professor, Professor, etc. It is also to be noted that the post of Lecturer is under the category of Asst. Professor consisting of the post of Lecturer, Lecturer Senior Scale, Lecturer Senior Grade, Lecturer Selection Grade having different pay scales. The State of Odisha has formulated the Recruitment Rules, 1990 known as Orissa Education Service (College Branch) Recruitment Rules, 1990 wherein the educational qualification for the post of Lecturer has been provided under Section 4(2)(d) according to which 55% marks in the Master's Degree is the minimum education qualification for a candidate to be eligible to be considered for the post of lecturer. The Recruitment Rules, 1990 has been amended in the year 1993, 1995 and in the year 2012 the educational qualification as per the University Grants Commission regulation has been incorporated making it mandatorily to be possessed by the candidates for consideration of their candidature to hold the posts of Lecturer or the posts onward. It is evident that after the Amendment Rule, 2012 the minimum educational qualification which were in the Recruitment Rules, 1990 i.e. possessing 55% minimum marks in the Master's Degree has been added with other qualification as per the UGC norms i.e. possessing NET/SLET etc. It is also evident from different recruitment rules enacted by the State that the provision of Section 4(2)(d) so far as it relates to good academic record has not been altered and there cannot be any reason to alter for the reason that even in the UGC regulation for each and every post apart from the minimum educational qualification the good academic record is

mandatorily to be possessed by one or the other candidate which would be evident from the UGC regulation wherein the reference of good academic record is there for each and every post apart from the minimum educational qualification. It is also not in dispute that even under UGC regulation, under the "minimum educational qualification" good academic record as defined by the concerned university with at least 55% marks at the Master's Degree has been provided to be minimum eligibility condition. 15. We have appreciated the argument advanced on behalf of learned counsel for University Grants Commission regarding the principle of repugnancy, it is not in dispute that the law relating to the doctrine of repugnancy is under part XI of the Indian Constitution which describes the legislative relationship between the State and the Centre. Further, Article 244 establishes the doctrine of repugnancy which acts as a safeguard to solve disputes arising between the States and the Union. The term repugnancy means inconsistency between the State made law and the Union made law. Chapter one of Part-XI of the constitution deals with the subject of distribution of legislative power of the Parliament and the legislature of the state. Article 245 of the constitution provides that the parliament may make laws for the whole or any part of the territory of India and the legislature of the state may make laws for the whole or any part of the State. The legislative field of the parliament and the State legislature has been specified in Article 246 of the Constitution of India which reads as follows:- "Art.246. - (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List"). (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List") (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in the Constitution, referred to as the "State List") (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List." Art. 254 of the Constitution which contains a mechanism for resolution of conflict between the Centre and State Legislature enacted with respect to any matter enumerated in list III of the 7th Schedule read as under :- "254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States :- (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. (2) Where a law made by

the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State." This issue has been dealt with by the Hon"ble Apex Court in the case of *M. Karunanidhi v. Union of India and Another*, reported in (1979) 3 SCC 431 in the said case, the principle to be applied for determining repugnancy between a law made by a Parliament and the law made by the State Legislature were considered by the Constitution Bench of the Hon"ble Apex Court and at paragraph 8 the Hon"ble Apex Court has been pleased to hold as follows:- "8. It would be seen that so far as clause (1) of Article 254 is concerned it clearly lays down that where there is a direct collision between a provision of a law made by the State and that made by Parliament with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the State law would be void to the extent of the repugnancy. This naturally means that where both the State and Parliament occupy the field contemplated by the Concurrent List then the Act passed by Parliament being prior in point of time will prevail and consequently the State Act will have to yield to the Central Act. In fact, the scheme of the Constitution is a scientific and equitable distribution of legislative powers between Parliament and the State Legislatures. First, regarding the matters contained in List I, i.e. the Union List to the Seventh Schedule, Parliament alone is empowered to legislate and the State Legislatures have no authority to make any law in respect of the Entries contained in List I. Secondly, so far as the Concurrent List is concerned, both Parliament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the condition laid down by Article 254(1) discussed above. Thirdly, so far as the matters in List II, i.e., the State List are concerned, the State Legislatures alone are competent to legislate on them and only under certain conditions Parliament can do so. It is, therefore, obvious that in such matters repugnancy may result from the following circumstances :- 1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy. 2. Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254. 3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it

appears that by and large the law falls within the four corners of the State List an entrenchment, if any, is purely incidental or inconsequential. 4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254. So far as the present State Act is concerned we are called upon to consider the various shades of the constitutional validity of the same under Article 254(2) of the Constitution." Thereafter the Hon"ble Apex Court, after referring to catena of judgments have laid down the following propositions at paragraph 38:- "38. Craies in his Interpretation on Statute Law 6th Ed. p. 369 observes as follows:- "Many earlier statutes contain clauses similar in effect to the general rule, but without the confusing words as to contrary intention. These statutes, of some of which a list is given below, seem not to be affected by the above rule, save so far as it enables the revisers of the statute-book to excise the particular clauses. In accordance with this rule, penalties imposed by statute for offences already punishable under a prior statute are regarded as cumulative or alternative and not as replacing the penalty to which the offender was previously liable." Such an intention is clearly discernible from the provisions of section 29 of the State Act. Mr. Venu Gopal tried to rebut this argument on the ground that section 29 would have no application where the inconsistency between the dominant statute and the subordinate statute is direct and complete. We have already found on a discussion of the various provisions of the State Act that there is no direct inconsistency at all between the State Act and the Central Acts, and this affords a sufficient answer to the argument of Mr. Venu Gopal. Having, therefore, given our anxious consideration to the import and ambit of section 29 it seems to us that the provisions of section 29 would be presumptive proof of the fact that there is no repugnancy between the State Act and the Central Acts nor did either the legislature or the President intend to create any repugnancy between these Acts as a result of which the criticism regarding the repugnancy is completely obliterated in the instant case and we, therefore, hold that the State legislature never intended to occupy the same field covered by the Central Acts." In the case of Government of Andhra Pradesh v. J. B. Educational Society and Another, reported in (2005) 3 SCC 212, the Hon"ble Apex Court, while discussing the scope of Article 246 and 254 and considering the proposition laid down by it in the case of M. Karunanidhi (supra) with respect to the situation in case of repugnancy arises has been pleased to hold at paragraph 9 as follows:- "9. Parliament has exclusive power to legislate with respect to any of the matters enumerated in List I, notwithstanding anything contained in clauses (2) and (3) of Article 246. The non obstante clause under Article 246(1) indicates the

predominance or supremacy of the law made by the Union Legislature in the event of an overlap of the law made by Parliament with respect to a matter enumerated in List I and a law made by the State legislature with respect to a matter enumerated in List II of the Seventh Schedule." In the case of *National Engineering Industries Ltd. v. Shri kishan Bhageria and Others*, reported in 1988 (Supp) SCC 82 it has been opined by their Lordships therein that the best test of repugnancy is that if one prevails the other cannot prevail. In the light of this proposition we have examined the issue as to whether there is any inconsistency in between the provision of the recruitment Rules 1990 and its subsequent amendments enacted upon by the State Government vis-a-vis the UGC regulations issued by the University Grants Commission in exercise of power conferred under Section 26 of the said Act. On close scrutiny of both these provisions regarding the educational qualification we have not found anything inconsistent since in both the provision the minimum educational qualification with good academic record with at least 55% marks at the master's degree besides that the candidate must have cleared the National Eligibility Test conducted by UGC, CSIR or similar test accredited by the University Grants Commission like SLET/SET. In view of such a situation there is no inconsistency in between both the provisions so far as educational qualification is concerned. So far as the process of selection is concerned, we have also examined the issue. Under the recruitment Rules, 1990 the procedure for selection has been provided under Rule 5 which confers power upon the Commission to screen out the candidates. We have gone through the notification dated 13th June 2013 issued by the University Grants Commission incorporating therein a provision under regulation 6.1.0 which has been quoted above, on its perusal it is evident that the University Grants Commission makes a provision for overall selection procedure which shall incorporate transparent, objective and credible methodology of analysis of the merits and credentials of the applicants based on weight-ages given to the performance of the candidate in different relevant dimensions and his/her performance on a scoring system proforma, based on the Academic Performance Indicators (API) as provided in this Regulations in Tables I to IX of the Appendix-III, provided that API scores will be used for screening purpose only and will have no bearing on expert assessment of candidates in Direct Recruitment/CAS. It is evident from the said provision that while selecting, the overall selection procedure is to be made to assess the performance of candidates in different relevant dimensions and performance on scoring system based on API, meaning thereby the overall assessment on the basis of the academic record which comes under different relevant dimensions apart from that the academic performance indicators is to be seen and that would be the parameter to screen out the candidates. It is also clear from the said provision that the selection procedure by assessing the candidates on different relevant dimensions and academic performance indicators will be used only for screening purpose having no bearing on expert assessment of candidates in direct recruitment. This provision if read together along with the provision as contained in Rule 5 of the Recruitment Rules, 1990, makes the position very clear that even

for screening out, the process is to be made by assessing the performance of one or the other candidate on the basis of different relevant dimensions and if it will be read together with the minimum educational qualification of the post of Asst. Professor under which the Lecturer comes, the good academic record is also to be possessed by one or the other candidate apart from the minimum educational qualification and as such the entire performance of the candidate is to be seen while assessing their performance. In view of the discussion having been made herein above and the principle of repugnancy as has been discussed in the preceding paragraphs basing upon the provision of Articles 246 and 254 of the Constitution of India and the judgments rendered by Hon'ble Apex Court, we are of the considered view that there is no inconsistency in between these two provisions. After having discussed this aspect, we are of the considered view that the Tribunal, has formulated the point no.(d) which was not required to be formulated, reason being that if any statute has been made by the Central Legislation and the State Legislation is inconsistent with each other, admittedly whether adopted by the state or not the Central Legislation will prevail, that is the constitutional mandate as discussed above. Since we have already held herein above that both the statutes are having consistent provision so far as the minimum educational qualification is concerned or the procedure for selection, hence there is no question of any adoption by the state legislation or the enactment formulated under the regulation by the University Grants Commission. According to us, the UGC regulation under its provision as contained in regulation no.6.1.0 of the notification dated 13th June, 2013 the overall selection procedure is to depend upon the performance of the candidates in different relevant dimensions and his performance on scoring system proforma based on the academic performance indicators and the assessment of API will have no bearing on expert opinion, further the minimum educational qualification is good academic record along with 55% marks in the Master's Degree level with Ph.D./ NET etc., if the provision of 6.1.0 of the notification dated 13.6.2013 as contained in regulation 6.1.0 will be read together with the minimum educational qualification of the post, it would be evident that the overall performance of a candidate will depend upon good academic record, minimum educational qualification and the annual performance indicator and thereafter the candidate is to appear before the expert committee for their assessment of performance for finally being selected and engaged. The provision of Section 5 of the Recruitment Rules, 1990 enshrined by the State Government in exercise of power conferred under Article 309 of the Constitution of India is still in vogue, however amended time to time, the last amendment having been done by notification dated 29th October, 2013 wherein the power of discretion for screening out the candidates which has been vested upon the commission under the provision of Rule 5 has been amended and the said power has been repealed but the notification dated 29.10.2013 will not be applicable for the present reason being that the advertisement is dated 24.6.2013 hence the effect of notification dated 29.10.2013 will not be given so far as the advertisement in question is concerned. Even if the part of the power of screening out the candidates as

provided under Rule 5 of the recruitment Rules, 1990 has been deleted, then also it makes no difference since the U.G.C. regulation speaks for screening out and as such the amended Rule, 2013 will be said to be inconsistent with the U.G.C. regulation, hence the provision of U.G.C. regulation will prevail on the principle of repugnancy which provides under the provision of regulation 6.1.0 to assess the performance of one or the other candidate by assessing on different relevant dimensions and the academic performance indicators. 16. So far as the case in hand is concerned, an advertisement has been issued incorporating a condition under condition no.6 reserving power to screen out the candidates on the basis of the evaluation of career marks and the candidates after knowing about the said condition as contained in condition no.6, have made their applications, but when their candidature has been rejected on comparative evaluation of academic record along with the minimum educational qualification, they have approached the Tribunal. We after going through the rival submission, statutory provision as well as the regulation as also the judgments rendered by Hon"ble Apex Court are of the considered view that both on the point of educational qualification and procedure of selection there is no inconsistency in the regulation formulated by the UGC and the recruitment rules, 1990. It is settled that while fulfilling the post, the recruiting agency is supposed to follow the statutory provision. We have to see here that whether the commission has followed the statutory provision issued by the University Grants Commission and the State. We, on examination of the factual aspect having been discussed herein above at length, are of the considered view that inserting a condition under condition no.6 of the advertisement cannot be said to be an illegal exercise of the Commission which the tribunal has held that there is no infirmity with the condition no.6 of the advertisement. The tribunal, however, has declared the decision of the commission regarding the process of assessment on the basis of academic record by holding in the impugned order that it should have been done on the basis of the marks obtained in the minimum educational qualification leaving apart the good academic record, we have to see the legality and propriety of this finding of the tribunal. We, after discussing in detail the provision of rule 5 of the recruitment rules, 1990 vis-a-vis the provision of regulation 6.1.0 of the University Grants Commission notification dated 13th June 2013 have already held herein above that the statute provides method for screening out and according to our considered view, the condition contained under condition no.6 of the advertisement in question, the same is in pursuance to the provision of recruitment rule 1990 as well as the provision of regulation 6.1.0 of notification dated 13th June, 2013, hence the finding given by the Tribunal so far as it relates to deprecating the method of process evolved by the commission for screening out the candidates on the basis of evaluation of career academic marks is not proper and the same has been given without appreciating the provision of UGC regulation vis-a-vis the recruitment rules, 1990 wherein the screening is to be made on the basis of overall performance including the good academic record otherwise the minimum qualification providing for the post of having good academic record would be redundant and it is settled that in the rule

no word will be said to be redundant rather each and every word has got its implication. It is further settled that when the wide advertisement is being made in pursuance to the recruitment rule, the prime object is to select more suitable and the selection of more suitable would only be done if the overall performance of a candidate would be scrutinized as per the minimum educational qualification as provided under the statute governing the field, herein the minimum educational qualification to be possessed by a candidate is of having good academic record along with 55% marks in the post graduation with NET /SLET, etc. as also the annual performance indicator (API) for screening out and thereafter the candidate is supposed to be assessed by the expert committee, we find from the regulation 6.1.0 of the notification dated 13th June, 2013 that there will be two stages of scrutiny, i.e. the first would be said to be preliminary and the second would be final and in the preliminary stage the good academic record, the minimum educational qualification and the annual performance indicator are of paramount consideration and only then the screening-in candidate would be called upon to participate in the interview before the expert committee. We, after going into the details as discussed herein above, are of the considered view that the tribunal has given wrong finding in this regard. 17. The other finding of the tribunal is also bad in the eye of law wherein it has been observed in the order that the process of evaluation on the basis of evaluation of academic record is not in consonance with the recruitment rule, we have already discussed in detail that the process which has been reflected in the advertisement for screening out the candidate on the basis of evaluation of academic marks is based upon the recruitment rules, 1990 vis-a-vis UGC regulation 2013 issued by the University Grants Commission. 18. Mr. B. Mohanty arguing for one of the successful candidate, has submitted that the annual performance indicator is only meant for the post of Asst. Professor onward, since the post is of Lecturer, hence the principle evolved by the UGC to assess the candidature of one or the other candidate on the basis of annual performance indicator will not be applicable for the post of lecturer, but according to us this argument has got no substance in view of the fact that the post of Asst. Lecturer is under the category of Asst. Professor having four grades, i.e. Lecturer, Lecture Sr. Scale, Lecturer Sr. Grade and Lecturer Selection Grade having different pay scales and as such it cannot be said that the annual performance indicator will not be applicable for the post of lecturer. 19. The intervener has relied upon the judgment rendered in the case of Jagdish Prasad Sharma and Others v. State of Bihar and Others, reported in 2013 8 SCC 633, that judgment also pertains to the principle of repugnancy which we have already dealt in detail in the preceding paragraphs of this judgment. The judgment rendered in the case of P. Suseela & Others v. University Grants Commission & Others, reported in AIR 2015 SC 1976 the same pertains to the minimum educational qualification provided by the UGC under its regulation which has been held to be not bad on the ground that they followed dictate of the central govt. which we have already discussed in detail, more over it is not a case of having no qualification of one or the other candidate. 20. It is settled that if no procedure is provided for making a

selection, the selection body is authorized to adopt their selection process but it should be fair, transparent and may not suffer from malice and if this conditions are not there, the procedure of selection cannot be judicially reviewed by the court of law, but certainly if the process of recruitment is not fair, transparent and suffers with malice, certainly it is amenable to the judicial review by the court of law. The proposition settled in this regard as has been laid down by the constitution bench of Hon"ble Apex Court in the case of Ashok Kumar Yadav and Others v. State of Haryana and Others, reported in 1985 4 SCC 417 wherein their lordships have been pleased to hold that the procedure for selection are only be looked into under the power of judicial review by a court of law having its competency wherein the process suffers from vice of malice and arbitrariness, but we have not found anything on record that any malice or biasness has been committed by the commission, rather right from the day when the advertisement has been issued the condition has been inserted under condition no.6 to apprise the candidates that this is the procedure for selection, hence it cannot be said that the selection process is illegal or the selection process suffers from bias or malice and in absence thereof the selection process cannot be said to be illegal. In the case of Osmania University, represented by its Registrar, Hyderabad, A.P. v. Abdul Rayees Khan and Another, reported in (1997) 3 SCC 124 it has been held by their Lordships at paragraph 9 as follows:- "9. XXXXXXXX generally the court may not interfere with the selection, relating to educational affairs, and academic matters may be left to the expert body to select best of the talent on objective criteria. What is the objective criteria is a question of fact in each case. Each case depends upon its own facts and the circumstances in which the respective claims of competing candidates has come up for consideration. No absolute rule in that behalf could be laid. Each case requires to be considered on its own merit and in its own setting, giving due consideration to the views expressed by the educational experts in the affairs of their administration or selection of the candidates." In the case of Vijendra Kumar Verma v. Public Service Commission, Uttarakhand and Others, reported in (2011) 1 SCC 150 wherein the issue raised for assessing the suitability of one or the other candidate and the Hon"ble apex court while dealing with such situation has held at paragraphs 29, 30 and 31 as follows:- "29. Now, while deciding the submission of the counsel appearing for the appellant that judging the suitability of the candidate by laying down the benchmark of basic knowledge of computer operation being sufficient or insufficient is vague, we are of the opinion that possessing of basic knowledge of computer operation is one of the criteria for selection and in order to judge such knowledge, an expert on the subject was available at the time when the candidate was facing the Interview Board. In order to ascertain the candidate's knowledge of computer operation, he put questions and thereafter he gave remarks that the candidate has sufficient knowledge or that he does not have sufficient knowledge. 30. It is also to be considered that the Indian judiciary is taking steps to apply e-governance for efficient management of courts. In the near future, all the courts in the country will be computerized. In that respect, the new judges who are being appointed

are expected to have basic knowledge of the computer operation. It will be unfair to overlook basic knowledge of computer operation to be an essential condition for being a judge in view of the recent development being adopted. Therefore, we are of the considered opinion that requirement of having basic knowledge of computer operation should not be diluted. We also deem fit not to comment over the standard applied by the expert in judging the said knowledge as the same is his subjective satisfaction. However directions can be recommended to make the procedure more transparent. The directions in respect of same have already been given by the High Court we do not think proper to prescribe the directions for the same separately. 31. The aforesaid procedure for testing the knowledge may not be foolproof but at the same time it cannot be said that the same was not reasonable or that it was arbitrary. Therefore, after giving very thoughtful consideration to the issues, we are of the opinion that the appellant has failed to make out any case before us for interference with the orders passed by the High Court. We find no merit in this appeal and the same is dismissed." The other issue fell for consideration before the Hon''ble Apex court in the case of Arunachal Pradesh Public Service Commission and Another v. Tage habung and Others, reported in AIR 2013 SC 1601 wherein the question of decision of selection committee in selecting one or the other candidate fell for consideration and by taking note of the broader aspect, the Hon''ble apex court considering the suitability/merit of one or the other candidate have observed at paragraph 28 as under:- "28. There cannot be any dispute that the merit of a candidate and his suitability is always assessed with reference to his performance at the examination. For the purpose of adjudging the merit and suitability of a candidate, the Commission has to fix minimum qualifying marks in the written examination in order to qualify in the viva voice test. It is now well settled that fixing the qualifying marks in the viva voice test after the commencement of the process of selection is not justified but fixing some criteria for qualifying a candidate in the written examination is necessary in order to shortlist the candidates for participating in the interview." 21. There is no dispute about the settled proposition that a person who consciously takes part in a process of selection cannot turn around and question the method of selection as has been held by Hon''ble Apex Court in the case of Dr. G. Sarana v. University of Lucknow & Others, reported in (1976) 3 SCC 585 wherein the three judges bench of the Hon''ble Apex Court has been pleased to hold at paragraph 15 as follows:- "15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in Manak Lal's case where in more or less similar circumstances, it was held that the failure of the appellant to take the identical

plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting: "It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point." In the case of *Madan Lal & Ors. v. State of Jammu and Kashmir and Ors.*, reported in (1995) 3 SCC 486 similar view has been taken by Hon"ble apex court which held that:- "9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla* it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner." In the case of *Manish Kumar Shahi v. State of Bihar*, reported in (2010) 12 SCC 576 Hon"ble Apex Court has reiterated the principle laid down in the earlier judgments and observed as follows:- "We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voice test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition." In view of the settled proposition and comparing with the facts of the case, since the candidates whose candidature has been rejected by screening out on the basis of the provision as contained in condition no.6 of the advertisement and only after being screened out they have challenged the condition no.6, hence on the basis of the principle settled that once the candidate participates in the selection process, cannot turn around and question the method of selection. We have

considered the factual aspect in the light of the legal settled proposition and have found that the Commission has not committed any unfairness or non-transparency rather the statute has been followed for making the selection and the same was within the knowledge of the candidate from its inception but they have not chosen to question the same rather they have participated by making applications. In view thereof we are of the considered view that the Commission has not erred in adopting the process for screening out the candidates. The Commission rather has bifurcated the selection process in 2 stages only for the purpose of scrutinizing the candidature of one or the other candidates to give focus upon the more meritorious candidates to choose best amongst all and that is the purpose of Article 16 of the Constitution of India to make wide publication so that best amongst all be chosen to advance the efficiency and merit in the system, that is the intent of the University Grants Commission Act, 1956. We have also taken into consideration prejudice part whether caused to the candidates whose candidature has been rejected. Even assuming the contention of the such candidates would be accepted that the screening of their candidature was incorrect, then also no prejudice will be said to be caused to them reason being that even if at the time of interview if the comparative merit of one or the other candidate would have been prepared on the basis of good academic record with the minimum educational qualification, then also they will be ranked below than such candidates who have been found to be suitable to participate in the interview otherwise if they would have been best they would not have been screened out at the preliminary stage. The Commission only bifurcated this into two parts, first pre-interview and thereafter the consideration on the basis of minimum education qualification, hence according to us no prejudice is said to be caused to such candidates, rather the Commission, by following the said procedure, has acted with all fairness and transparency. 22. Learned Sr. Counsel has also advanced argument that the candidature should have been considered only on the basis of minimum educational qualification that is having minimum 55% marks along with NET SLET, etc. but that is not acceptable to us in view of the educational qualification having been adopted by the recruitment rule under its amendment brought in the year 2012 and the UGC regulation, containing the minimum educational qualification having good academic record and the provision of regulation 6.1.0 of the notification dated 13th June 2013 upon which the emphasis has been laid down by the learned Sr. Counsel, but if the provision as contained in the said regulation will be scrutinized minutely, it would be evident that the same also speaks with respect to two stages of selection, the first stage is the pre-interview stage and the other stage is the after screening out of the candidate. So far as the first stage is concerned, the screening cannot be made only on the basis of the minimum educational qualification otherwise there would be no meaning of having good academic record inserted in the minimum educational qualification which finds support from the provision of regulation 6.1.0 which provides the method of selection procedure by assessing the performance of one or the other candidate on the basis of different relevant dimensions and the annual performance indicators, the different relevant

dimensions to assess the performance of one or the other candidates will certainly include the good academic record and as such the argument advanced in this regard is not sustainable. 23. In the entirety of facts and circumstances of the case the finding of the Tribunal so far as it relates to point no. (a) as well as point no.(d) are not sustainable accordingly set aside. So far as other findings are concerned, that also covers on the basis of our detailed discussion made herein above. 24. In the result the process adopted by the OPSC for selecting the Lecturer in pursuance to the advertisement No.5 of 2013-14 so far as it relates to process adopted for screening out the candidates is hereby approved. 25. We have been informed that the process of recruitment of the post of Lecturer is at hold, hence we direct the OPSC to proceed with the matter. Accordingly all the writ petitions stand disposed of. Petition Accordingly Disposed of.