

(2016) 01 GAU CK 0007
In the Gauhati High Court
Case No : W.P.(C) No. 3696 and 3776 of 2014

Umesh Chandra Kalita (Dr.)	Vs	APPELLANT
State of Assam and others		RESPONDENT

Date of Decision : 25-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 GauLJ 178 : (2016) 2 GauLT 760

Hon'ble Judges : A.K. Goswami, J.

Bench : Single Bench

Advocate : A. Buragohain, Ag, H.M. Phukan, GA, D. Saikia, Sr. Advocate, N. Dutta, Sr. Advocate, P. Goswami and I. Choudhury, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Goswami, J. - Heard Mr. K.N. Choudhury, learned Senior Counsel for the petitioners in WP(C) 3776/2014 and for the petitioner in WP(C) 3696/2014. Also heard Mr. A. Buragohain, learned Advocate General, Assam, appearing for respondent Nos. 1, 2, 3 and 6 in WP(C) 3776/2014 and for respondent Nos. 1, 2 and 3 in WP(C) 3696/2014; Mr. N. Dutta, learned Senior counsel as well as Mr. P. Goswami, learned counsel, appearing for respondent No. 10 in WP(C) 3776/2014 and for respondent No. 5 in WP(C) 3696/2014; Mr. D. Saikia, learned Senior counsel appearing for respondent Nos. 4, 5 and 7 in WP(C) 3776/2014 and for respondent No. 4 in WP(C) 3696/2014; and Mr. I. Choudhury, learned counsel, appearing for respondent No. 8 in WP(C) 3776/2014. None appears for respondent No. 9 in WP(C) 3776/2014.

2. WP(C) 3696/2014 is filed by the petitioner, who is serving as Principal Scientist, Plant Breeding, National Seed Project (Crops), Assam Agricultural University (for short, "AAU"), with eight years of experience as Professor. He was also a former General Secretary of AAU Teachers' Association, Faculty of Agriculture, Jorhat. The writ petition is filed praying for a writ in the nature of quo-warranto as well as writ in the nature of prohibition to prevent and prohibit

the respondent No. 5 from holding and continuing in the post of Vice-Chancellor (for short, "VC"), AAU, Jorhat. The proximate cause for filing the writ petition was an order of the Chancellor, AAU, dated 25.07.2014, granting extension to the respondent No. 5, who would have completed his term of five years on 26.07.2014, on the ground that there is no provision in the Assam Agricultural University Act, 1969 (for short, the "AAU Act"), for grant of such extension.

3. In WP(C) 3696/2014, affidavit was filed by respondent No. 1 as well as by respondent No. 4.

4. Two writ petitioners had filed a writ application under Article 226 of the Constitution of India, registered as WP(C) 3776/2014 praying for a writ of certiorari to set aside and quash (a) the advertisement (Annexure-2 to the writ petition) published by the respondents on 27.06.2014 in the website of the AAU inviting applications for the post of VC, AAU, Jorhat, (b) recommendations made by the Selection Committee recommending the name of the respondent No. 10 for appointment to the post of VC, AAU, Jorhat, (c) Notification No. GSA.90/2008/04-A dated 01.08.2014 (Annexure-7) issued by the Chancellor of the AAU appointing respondent No. 10 as the VC of AAU, Jorhat, and (d) Notification No. 2.4(1)-08-RG-14-15 dated 01.08.2014, issued by the Registrar of the AAU, Jorhat, notifying the taking over of charge by respondent No. 10 as VC, AAU, Jorhat.

5. For the sake of convenience, it is considered expedient to advert to the pleadings in WP(C) 3776/2014, which include developments subsequent to filing of WP(C) 3696/2014, as also the factual matrix leading to filing of WP(C) 3696/2014.

6. The petitioner No. 1 is the Principal Scientist in the Department of Livestock Produce Technology, Faculty of Veterinary Science, AAU, Khanapara, and the petitioner No. 2 is the Principal Scientist of the Directorate of Weed Science Research Centre, Department of Agronomy, AAU, Jorhat. As the five year tenure of the respondent No. 10 as VC, AAU, Jorhat, was coming to an end on 26.07.2014, in exercise of power conferred under Section 19(1) of the AAU Act, the Chancellor, AAU, Jorhat, by a notification dated 19.05.2014 constituted a three-member Selection Committee for the purpose of appointing the new VC of AAU, Jorhat, and the committee was entrusted with the responsibility of recommending a panel of three persons for appointment to the post of VC. The advertisement was issued by the Chairman of the said Selection Committee on 27.06.2014 only in the website of the AAU, Jorhat, inviting applications for the post of VC, AAU. The petitioners filed a writ application before this Court, which was registered and numbered as WP(C) 3483/2014, wherein they had prayed for setting aside and quashing the advertisement dated 27.06.2014 and for issuing a direction to the respondent authorities to issue a fresh advertisement giving wide publicity of the same. The said writ petition was disposed of by judgment and order dated 23.07.2014 as premature by making certain observations and providing that the writ petitioners could also offer their candidature for the post

of VC, AAU. By the aforesaid judgment and order dated 23.07.2014, opportunity was granted to the petitioners to challenge the recommendations of the Selection Committee, if the same were approved by the Chancellor and the petitioners were aggrieved in any manner. The petitioners, being interested to offer their candidature, issued letters dated 25.07.2014 to, amongst others, the Chancellor of the AAU and also to the Selection Committee stating that they were desirous of offering their candidature for selection to the post of VC, but as they had not received the certified copy of the judgment and order dated 23.07.2014, they were not in a position to offer their candidature and, therefore, some reasonable time might be granted to them to submit a certified copy of the judgment and order as well as their applications offering their candidature. Averments are made that though the certified copy of the judgment and order was received by the clerk of the counsel in the late evening of 25.07.2014, the same was handed over to their counsel on 30.07.2014 and that they had also received the certified copy on that date. Learned counsel for the petitioners also sent an e-mail to the Director General, Indian Council of Agricultural Research (for short, "DG, ICAR"), on 30.07.2014, informing him that certified copy of the judgment and order dated 23.07.2014 had been received and the petitioners would offer their candidature within a reasonable time.

7. Before the term of the respondent No. 10, as VC, AAU, Jorhat, expired on 26.07.2014, on 25.07.2014, the Chancellor of the AAU, Jorhat, allowed the respondent No. 10 to continue in the office of the VC till a new VC was appointed and, challenging the said order of the Chancellor dated 25.07.2014, a writ petition was filed by Dr. Umesh Chandra Kalita, which was registered as WP(C) 3696/2014. The respondent No. 10 was, thereafter, selected by the Selection Committee for an additional term of five years and the Chancellor of the AAU also approved the name of respondent No. 10 as VC and a notification dated 01.08.2014 was issued by the Chancellor, AAU, Jorhat, appointing the respondent No. 10 as the VC for a period of five years. On 01.08.2014, a notification was issued by the Registrar, AAU, Jorhat, notifying respondent No. 10 as the VC.

8. It is pleaded that large-scale irregularities and illegalities were committed by the respondent No. 10 and, highlighting his misdeeds, many representations were submitted to various authorities, including the Chief Minister and the Chancellor of the AAU, Jorhat, but no action was taken on the same and, on the contrary, the respondent No. 10 was favoured with a second term as the VC. In order to favour the respondent No. 10, after the last date of submission of candidature in terms of the advertisement was over on 15.07.2014, the Government of Assam took a decision to enhance the age of retirement of the VC, AAU, from existing 65 years to 70 years and such notification was not even gazetted. It is also pleaded that the entire process of selection of VC from the very inception of issuing the advertisement to the selection and appointment of respondent No. 10 as the VC is vitiated by mala fide and arbitrariness. It is pleaded that respondent No. 8 was granted honorary Ph.D. Degree by the AAU in

the year 2011 and respondent No. 9 was proposed to be conferred with honorary Ph.D. Degree in the 19th Convocation of the AAU proposed to be held in the month of November, 2014, and he was also invited as the Chief Guest in the 18th Convocation of the AAU held on 12.11.2012. The respondent No. 10 had become also very close to the Chief Minister of Assam after the Chief Minister of Assam was conferred with honorary Ph.D. Degree in the year 2011 and, in order to facilitate selection of the respondent No. 10 as the VC, the respondent No. 7, who is the Adviser of the Chief Minister, had been made the Chairman of the Selection Committee.

9. In the affidavit filed by the State of Assam, i.e., respondent No. 1, it is stated that the nominee of the State Government in the Selection Committee was made in terms of Section 19(1) of the AAU Act. The age of superannuation of Professors of AAU was raised from 60 years to 65 years vide notification dated 01.06.2013 with effect from 19.09.2012 in pursuance of a cabinet decision dated 19.09.2012. The Registrar of the AAU had forwarded a proposal, vide letter dated 06.05.2014, for enhancement of the age of superannuation of VC from existing 65 years to 70 years like that of Central Universities, which was authorised by letter dated 30.03.2007 subject to amendment in the respective statutes with the approval of the competent authority. The State of Tamilnadu had enhanced the age of superannuation of the VCs of nine State Universities to 70 years. The ICAR had also suggested enhancement of the age of superannuation of VCs of the State Agricultural Universities. The State Cabinet, in its meeting held on 16.07.2014, approved the enhancement of the age of superannuation of the VC, AAU, from 65 years to 70 years and, accordingly, the Assam Agricultural University (Amendment) Ordinance, 2014, was promulgated and notified in the Assam Gazette (Extra-ordinary) dated 23.07.2014. The Ordinance was replaced by a Bill in the subsequent Assam Legislative Assembly Session held on 29.08.2014 and was published in the Gazette on 19.09.2014. The Selection Committee was constituted by the Chancellor on 19.05.2014. On 11.06.2014, a letter was received from the Chairman of the Selection Committee seeking clarification regarding minimum and maximum age of the applicant for the post of VC, AAU, as on 01.07.2014, and also regarding taking of a decision on the minimum period available to a candidate if appointed to the post of VC, though there was no mention of either the minimum or maximum age of the applicants in Section 19 of the AAU Act, 1968. Thereafter, by a letter dated 26.06.2014, the Chairman of the Selection Committee was informed that candidates up to the age of 64 years on the date of advertisement may apply for the post of VC, AAU. After the selection process was over, the respondent No. 10 was appointed by the Chancellor vide notification dated 01.08.2014.

10. In the affidavit of respondent 4, it is stated that since the early period of service careers of the petitioners, they had been engaging themselves in activities which are detrimental to the interest of AAU and whenever any VC had taken note of such activities and had decided to proceed against them, attempts were made by the petitioners to remove the VC. Disciplinary proceeding was

initiated against the petitioner No. 1 as he was found indulging in plagiarism and, in the disciplinary proceeding, the allegation of plagiarism was found to be proved and, accordingly, by an order dated 04.07.2011, he was imposed with the penalty of censure. Another departmental proceeding was initiated by a show-cause notice dated 03.01.2014 in respect of another act of plagiarism. A disciplinary proceeding was also initiated against petitioner No. 2 vide show-cause notice dated 16.07.2014 for maligning the VC through media by supplying information received through an application made under the RTI Act, 2005 in a distorted manner. When a clarification was issued by the VC, the petitioners instituted a civil suit against him contending that the clarification was defamatory. The petitioner No. 2 was also warned, by letter dated 17.07.2014, for undertaking a tour defying a decision of the authorities not to accord approval to such a tour. The petitioner No. 1 had submitted application for the post of Head of the Department of Livestock Products Technology, Faculty of Veterinary Science, but could not come out successful. The petitioner No. 2, though had applied for the post of Dean in the year 2012, yet he did not participate in the process of selection. It is stated that in addition to the website of the AAU, the advertisement was also sent to the website of the ICAR. 64 years as the outer limit for responding to the advertisement had been fixed as per the direction of the Government of Assam, in the Agriculture Department, communicated vide letter dated 26.06.2014. Though the petitioners were permitted to offer their candidature vide judgement and order dated 23.07.2014, passed in WP(C) 3483/2014, they did not offer their candidature taking a false plea that copy of the judgement was not received by them up to 30.07.2014. Asserting that the copy of the judgement was received on 25.07.2014, it is averred that the counsel for the petitioners also made an incorrect statement in the e-mail dated 30.07.2014, addressed to the Director General, ICAR, that he had not received the certified copy of the judgment as the certified copy, bearing Sl. No. 285122, was already enclosed in WP(C) 3696/2014, which had been notarised on 29.07.2014. Without even the copy of the judgement, the petitioners could have offered their candidature and they did not do so as they were not interested in offering their candidature, but was interested only in sabotaging the process of selection and, accordingly, raised the plea of locus standi of the writ petitioners to maintain the writ petition as they did not participate in the selection process. The plea of mala fide is denounced and it is stated that after the petitioner in WP(C) 3696/2014 had ceased to be the General Secretary of the Teachers' Association, no unnecessary and unreasonable objections had been raised and, on the contrary, the Teachers' Association had deprecated the malicious design of the interested quarters to malign the image and reputation of the respondent No. 10 and, in fact, the Teachers' Association had requested the Chancellor of the AAU and the Chief Minister of Assam to give a second tenure to the respondent No. 10. It is also stated that the decision to enhance the age of retirement of VC from 65 years to 70 years was notified in the Official Gazette dated 23.07.2014. The age of superannuation of the VC was 65 years when the age of superannuation of Professors was 60 years and the age of superannuation

of Professors having been enhanced from 60 to 65 years, the age of superannuation of VC is also enhanced from 65 years to 70 years. It is pleaded that in view of the judgment and order dated 23.07.2014 of this Court in WP(C) 3483/2014 the petitioners are estopped, on the principle of *res judicata*, from raising the issues which were already decided and that they can maintain a challenge only with regard to the recommendation of the Selection Committee and the approval thereof by the Chancellor. It is also pleaded that there are instances when the VC had held office for a period less than five years.

11. The respondent No. 7, while denying the allegation that respondent No. 10 had been selected in a *mala fide* manner in connivance with other Government authorities and in violation of the judgement and order dated 23.07.2014 passed in WP(C) 3483/2014, states that the selection of respondent No. 10 was made in a free, fair and transparent manner by adhering to the provisions of the AAU Act. The allegation that there was any unwritten direction to the Selection Committee to select respondent No. 10 is denied. As imputation of *mala fide* is made against the Chief Minister of Assam, it is pleaded that the Chief Minister is a necessary party and as he is not made a party respondent, the writ petition is liable to be dismissed being not maintainable.

12. In his affidavit, the respondent No. 8 has stated that an advertisement was published in the website of AAU as well as in the website of the ICAR and the validity of the advertisement as also the issue relating to the prescription of 64 years as the maximum age to enable the candidates to offer their candidature were already upheld by the Court in the previous litigation and therefore, the petitioners are estopped from challenging the advertisement. The petitioners did not avail the opportunity granted to offer their candidature. The Selection Committee conducted the selection in an unbiased, free and independent matter. He has also stated that under the stewardship of respondent No. 10, there had been phenomenal all round development of AAU and the prestigious Sardar Patel Outstanding Institution Award was conferred on the AAU based on its performance in the last five years, and the respondent No. 10 was recommended purely on the basis of merit, past record, performance and his achievements and he was found to be the best suitable candidate. It is further pleaded that age of superannuation and its enhancement is a condition of service and not a condition of eligibility and the Selection Committee, at no point of time, deviated from the criteria of selection holding the field.

13. In his affidavit, it is stated by the respondent No. 10 that he was appointed VC, AAU, on 06.12.2008 and he seeks to highlight the steps taken by him to enhance the status of AAU. Averments are made with regard to disciplinary proceedings initiated against the petitioners. He has taken a stand similar to the one taken by the respondent No. 4. Reference is made to PIL No. 54/2014, which is pending before this Court, wherein prayer for an investigation by the CBI against the respondent No. 10 is made. It is pleaded that complaint dated 23.11.2013, which was relied on in the PIL, had been gone into by the Board of

Management of the AAU and it found no irregularity or lapses as projected in the media. It is stated that he had given a clarification on 21.06.2014 to the Chancellor in response to the Memorandum submitted by some citizens of Assam and the Chancellor, being satisfied, had closed the issue at that stage. As no interim order was passed in the PIL, on 29.12.2014, seven persons again submitted a representation before the Chancellor, copy of which was served upon the AAU by the petitioner No. 1. The allegations made in the representation and the documents submitted are also identical with the PIL and it is averred that it is apparent that the representation had been submitted at the behest of the petitioners. On receipt of the representation, the respondent No. 10 was called for a discussion where none of the signatories of the representation was present. However, the petitioner No. 1 along with another Professor of the AAU was present. The respondent No. 10 had also submitted detailed reply on 07.03.2015, but, without considering the reply, the Chancellor had ordered an enquiry, which was notified by the respondent No. 3 on 18.04.2015, against him in respect of the representation dated 29.12.2014. The said notification was challenged in WP(C) 2452/2015 and this Court had suspended the operation of the notification by an order dated 27.04.2015.

14. Respondent No. 10 had filed an additional affidavit bringing on record the stand of the Teachers' Association to deprecate the malicious design of the petitioners. It is also pleaded that Sardar Patel Outstanding Institute Award for the year 2014 was conferred on the AAU and that the award was presented by the Prime Minister on ICAR foundation day. On being selected for such a coveted award, the Chancellor had also sent him, i.e., respondent No. 10, a congratulatory message. It is averred that granting of such award demonstrates the falsity of the case presented by the petitioners regarding irregularities and illegalities in the AAU, Jorhat.

15. The petitioner had filed an affidavit-in-reply to the affidavit of respondent No. 7 stating that the chain of events, from the time of constitution of the Selection Committee to the date of appointment of respondent No. 10 as VC, makes it explicitly clear that the entire selection process was tailor-made to select the respondent No. 10. It is stated that the respondent No. 10 was made eligible to participate in the selection process by fixing 64 years as the maximum age and, then, by enhancing the age of superannuation from 65 years to 70 years during the selection process.

16. Mr. K.N. Choudhury, learned Senior counsel for the petitioners, has submitted that despite the writ petitioners being permitted by this Court, vide order dated 23.07.2014 passed in WP(C) 3483/2014, they were denied the opportunity to offer their candidature and the Selection Committee had proceeded to hold the Selection Committee meeting in their absence and, therefore, the very selection of the respondent No. 10 is vitiated. It is submitted by him that the petitioners could not offer their candidature in absence of the certified copy of the judgment and order dated 23.07.2014 and the said fact was also communicated on

25.07.2014. Drawing attention to Section 24(3) of the Model Act for Agricultural Universities of India, published by the ICAR (Annexure-F to the writ petition), the learned Senior counsel submits that the advertisement inviting applications for the post of VC should have been widely published by the Search Committee/ Selection Committee. Placing reliance on page No. 174 of the records produced by Mr. Buragohain, which is a note of the Chairman of the Selection Committee, dated 04.06.2014, Mr. Choudhury submits that the Chairman of the Selection Committee had addressed the said note to the Commissioner and Secretary to the Government of Assam referring to his discussions with the Deputy Secretary, Governor's Secretariat, observing that the procedure as indicated therein could be followed if the same was approved by the Chancellor of the AAU, Jorhat. In the said note, it was observed by the Chairman of the Selection Committee that an advertisement shall be issued by the Registrar, AAU, Jorhat, at least, in two National newspapers and also through the website of the AAU, Jorhat, if such website existed. Referring to page No. 176 of the records produced by Mr. Buragohain, Mr. Choudhury submits that the Chancellor had also approved the procedure and, as such, it was obligatory on the part of the Selection Committee to have issued the advertisement in two National newspapers, but, admittedly, no advertisement was issued in any National newspaper and the advertisement was issued only in the website of the AAU, Jorhat, and, therefore, the selection process is entirely vitiated. It is submitted by Mr. Choudhury that Section 19(3) of the AAU Act holds the key in the instant case and that Section 19(3) of the AAU Act prescribes that the VC shall normally hold the office for a term of five years and shall be eligible for re-appointment for one additional term of five years. He contends that in the first term, the tenure is normally of five years but it can be less than that. However, so far as the additional tenure of five years is concerned, a candidate can be considered only if he is eligible to hold the office for an additional term of full five years and the respondent No. 10 was not eligible in terms of the advertisement dated 27.06.2014 as he had only 1 year 4 months left to attain 65 years, i.e., the age of superannuation. However, in an attempt to favour the respondent No. 10, the age of retirement of only VC, AAU, Jorhat, out of 9 universities in Assam, was enhanced from existing 65 years to 70 years and, that too, after the last date of submission of candidature was over on 15.07.2014 and thereby, the rules of the game had been changed mid-stream. The Selection Committee must have also been given some information that the retirement age of the VC was going to be increased from the existing 65 years to 70 years as otherwise it is inexplicable as to why in the advertisement it had to be mentioned that the tenure of the post of VC would be five years subject to the maximum age as is prescribed, or as may be prescribed under the relevant Act, he submits. Mr. Choudhury submits that such increase in the age of retirement could not have been made applicable in respect of respondent No. 10, once the advertisement had been issued for selection of the VC. He further submits that after the tenure of the VC had expired on 26.07.2014, in terms of Section 19(5) of the AAU Act, the Dean ought to have been allowed to continue with the routine duties of the office of the VC. Even at that stage, the Minister of

Agriculture, Assam, had initiated a move to allow the respondent No. 10 to continue as VC till the next VC was appointed, but such proposal was rejected by the Chancellor. However, in spite of that, the respondent No. 10 was allowed to continue till the next VC was appointed and, therefore, WP(C) 3696/2014 had to be filed. It is submitted by him that the order by which the respondent No. 10 was allowed to continue as VC till the next VC was appointed, is arbitrary and the same is wholly unsustainable in law.

17. By drawing attention of this Court to Page No. 46 (Annexure-8 to the writ petition), learned Senior counsel submits that eminent personalities in the State of Assam had submitted a Memorandum to the Governor of Assam and the Chancellor, AAU, Jorhat, to institute a high level independent commission to enquire and probe into the allegations of financial and administrative irregularities in the AAU, Jorhat. This Memorandum depicts the sorry state of affairs prevalent in the AAU, Jorhat, he laments. Learned Senior counsel for the petitioners has also drawn attention of the Court to Page No. 48 (Annexure-9 to the writ petition) to submit that the same demonstrates a subtle attempt made by the respondent No. 10 to ingratiate himself to the powers that be. Referring to the affidavit of respondent No. 8, the learned Senior counsel submits that even though the Selection Committee had recommended three names, in his anxiety to sub-serve the interest of the respondent No. 10, it was pleaded by him that the respondent No. 10 was selected on merit. All these factors leave no manner of doubt that the selection process was a farce and selection of the respondent No. 10 was a foregone conclusion.

18. Mr. Choudhury submits that the chain of events manifested by the grant of extension to the VC, lack of adequate publicity of the advertisement, which is also inconsistent with the rules, enhancement of the age of retirement of the VC from 65 years to 70 years, that too, after the selection process had already commenced as well as the composition of the Selection Committee go to show that malice in law is writ large and the selection process is entirely vitiated. In support of his submissions, Mr. K.N. Choudhury, learned Senior counsel, has placed reliance on the following judgments: (i) E.P. Royappa v. State of Tamil Nadu and Another, reported in (1974) 4 SCC 3, (ii) Ashok Kumar Sharma and Others v. Chander Shekhar and Another, reported in (1997) 4 SCC 18, (iii) Tej Prakash Pathak and Others v. Rajasthan High Court and Others, reported in (2013) 4 SCC 540, (iv) Gopal Krushna Rath v. M.A.A. Baig (Dead) by Lrs. And others, reported in (1999) 1 SCC 544, (v) Madan Mohan Sharma and Another v. State of Rajasthan and Others, reported in (2008) 3 SCC 724, (vi) State of Bihar v. Upendra Narayan Singh and Others, reported in (2009) 5 SCC 65, (vii) Shanker Raju v. Union of India, reported in (2011) 2 SCC 132 and State of Punjab v. Ramjilal and Others, reported in (1970) 3 SCC 602.

19. Mr. N. Dutta, learned Senior counsel, appearing for the respondent No. 10, responded by submitting that the respondent No. 10 was not the author of the document in question (Annexure-9 at page 48 of the writ petition), which is a

notification dated 12.04.2012, by which the son of the Chief Minister was invited as a social worker to interact with the 4th year students of the AAU, Jorhat, in a programme organised by the Directorate of Extension Education, AAU, and the author of the said document is the Dean, faculty of Agriculture, who Mr. Choudhury wanted to be entrusted with the duties of the VC after the term of the respondent No. 10 had expired for the first time. Without commenting on the said notification, learned Senior counsel submits that the respondent No. 10 cannot be linked to the said notification. With regard to the Memorandum at Annexure-8 to the writ petition, learned Senior counsel submits that by the said Memorandum a request was only made for an enquiry and, therefore, nothing much should be read into the same. He has, however, contended that the writ petitioners are the initiators of a vilification campaign. He has submitted that on a disciplinary proceeding initiated against the petitioner No. 1, the allegation of plagiarism against him was found to be proved and, accordingly, he was imposed with the penalty of censure. Another departmental proceeding is pending against him in respect of an allegation that in his Annual Report, he had incorporated an exact copy of a thesis of one Dr. Ankur Das. For an act of insubordination, the Director of Research, AAU, had also warned the petitioner No. 1. Disciplinary proceeding was also initiated against the petitioner No. 2 for supplying distorted information to the media, which was eventually printed, denting the image and reputation of the AAU. The Chancellor of the AAU, on being satisfied with the reply given by the respondent No. 10 against the Memorandum (Annexure-8), had closed the chapter. He has submitted that even though this Court, vide order dated 23.07.2014, allowed the petitioners to participate in the selection process initiated vide advertisement dated 27.06.2014, they did not appear in the selection process taking a false plea that they had received the certified copy of the judgement dated 23.07.2014 on 30.07.2014 although the copy was available with the petitioners on 25.07.2014. He submits that one more representation was filed before the Chancellor, AAU, on 29.12.2014 by seven persons without any addresses and the same was also the handiwork of the petitioners as is demonstrated by the fact that copy of the representation was submitted by the petitioner No. 1 to the AAU. The Chancellor of the University had summoned the respondent No. 10 for a discussion in which none of the complainants was present, but the petitioner No. 1 along with another Professor was present. Subsequently, on 18.04.2015, based on the aforesaid complaint dated 29.12.2014, without asking the respondent No. 10 to give his reply, an enquiry committee was constituted to look into the allegations made in the complaint dated 29.12.2014 as against which the respondent No. 10 approached this Court in WP(C) 2452/2015, and this Court had suspended the operation of the notification dated 18.04.2015.

20. Learned Senior counsel submits that the age of superannuation of Professors of AAU was enhanced from 60 years to 65 years by a notification dated 01.06.2013 pursuant to a cabinet decision taken on 19.09.2012. Much before the AAU had issued the impugned advertisement, the Central Government had

already authorised the Central Universities, by a letter dated 30.03.2007, to take necessary steps in the matter of enhancement of the age of superannuation of the VCs of the Central Universities. In a cabinet meeting held on 16.07.2014, the Government of Assam had decided to enhance the age of superannuation of the VC of the AAU from 65 years to 70 years and an ordinance was also published in the Extra-ordinary Gazette on 23.07.2014 and thereafter, Section 19 of the AAU Act was amended substituting 65 years by 70 years which was notified vide Gazette notification dated 19.09.2014. It is submitted by him that this Court having permitted the writ petitioners to submit their candidature after last date as fixed by the advertisement was over, it must be held that the last date as fixed by the advertisement stood extended. He has submitted that there was nothing wrong in the Selection Committee indicating in the advertisement that the tenure of the post of VC is 5 years subject to the maximum age as is prescribed or as may be prescribed under the relevant Act as a proposal was pending to facilitate a Cabinet decision to increase the retirement age of VC from 65 years to 70 years and which was likely to fructify. Placing reliance on the affidavit of respondent No. 4 and, more particularly, to the letter dated 26.06.2014 of the Secretary to the Government of Assam, Agriculture Department, the learned Senior counsel submits that on the basis of a query raised by the Chairman of the Selection Committee, the Selection Committee was informed that candidates up to the age of 64 years on the date of advertisement may apply for the post of VC.

21. It is further submitted by Mr. Dutta that personal allegations have been levelled against the Chief Minister by imputing that respondent No. 7 had been made the Chairman of the Selection Committee with the stated objective of ensuring selection of the respondent No. 10 as the VC. However, the Chief Minister was not made a party respondent. He has pointed out that the Director General, ICAR, i.e., the respondent No. 9, is an eminent agricultural scientist and, therefore, he being the Chief Guest in the Convocation of 2012, cannot be construed to have vitiated the constitution of the Selection Committee. The procedure for conferment of honorary degree is prescribed under the AAU Act and the VC is not the sole authority to decide on whom an honorary degree is to be conferred and, therefore, the allegation that the VC, i.e., respondent No. 10, had a larger design in conferring honorary degrees, is unfounded. It is further submitted that in the context of the post which is sought to be filled up, an advertisement published in the website has a better reach and, at any rate, for non-publication of the advertisement in newspapers no prejudice had been caused to the petitioners. He submits that non-publication of the advertisement in two National newspapers will not ipso facto invalidate the selection process in absence of any prejudice caused. That apart, none has also approached this Court complaining that because of non-publication of the advertisement in the two National newspapers, they could not offer their candidature. Even though the Chairman of the Selection Committee had proposed a broad course of action including publication of the advertisement in two National newspapers as also in

the website of the AAU, if there existed one, and though the same was also approved by the Chancellor, approval for such course of action is in the realm of administrative instructions, which are not enforceable in the writ jurisdiction. He has also submitted that the writ petitioners cannot be permitted to argue on the validity of the advertisement in view of the judgement rendered by this Court in WP(C) 3483/2014. Further contention of Mr. Dutta is that the prescription of maximum age limit of 64 years, in view of the decision of this Court in WP(C) 3483/2014, is also not open to challenge. Mr. Dutta has also submitted that this Court had also recorded a categorical finding in WP(C) 3483/2014 that the VC can hold office for a period less than 5 years. In the course of his submission, Mr. Dutta has drawn the attention of this Court to Section 9, 10, 11(I) and 12 of the AAU Act. He submits that in terms of the advertisement, the respondent No. 10 was eligible to offer his candidature as he would have attained the age of 65 years only on 11.11.2015 and that before his appointment on 01.08.2014, the Ordinance, enhancing the age of retirement of VC from 65 years to 70 years, had been passed. He further contends that the enhancement of retirement age from 65 years to 70 years is a condition of service and not an eligibility condition and the argument of Mr. Choudhury that the eligibility condition was tweaked after the advertisement had been issued to facilitate the candidature of respondent No. 10 is absolutely unfounded. He submits that, subsequently, Section 19 of the AAU Act was also amended providing that no person shall hold the office of the VC beyond the age of 70 years. The argument of Mr. Choudhury that the age of retirement of VC was enhanced from 65 years to 70 years mala fide in order to sub-serve the interest of respondent No. 10 is not tenable as no mala fide can be attributed to the legislative function, he submits. In this regard, Mr. Dutta has placed reliance in the case of *G.C. Kanungo v. State of Orissa*, reported in (1995) 5 SCC 96.

22. Mr. D. Saikia, learned Senior counsel, appearing for respondents No. 4, 5 and 7 has submitted that there is no surviving cause of action in WP(C) 3696/2014 and the said writ petition has been rendered infructuous with the appointment of respondent No. 10 as a regular VC. It is submitted by him that any adjudication on the legality or otherwise of the order dated 25.07.2014, permitting the respondent No. 10, whose term as VC was to expire on 26.07.2014, to continue in the office of the VC, AAU, with effect from 27.07.2014 till the next VC was appointed, will be purely of academic interest and, therefore, on the established principles of law, this Court will not embark upon a journey to record a finding either way. He has submitted that the writ petitioners in WP(C) 3776/2014, even after having been given liberty to submit their candidature, did not avail the opportunity and, as such, they are not aggrieved persons in the selection of respondent No. 10 and, therefore, the writ petition filed at their instance is not maintainable. Mr. Saikia has submitted that apart from the fact that the issue relating to the issuance and publication of the advertisement had already been adjudicated in the previous round of litigation, in the instant writ petition it is not even the pleaded case of the petitioners that the advertisement was defective as

the same was not published in two National newspapers. Non-publication of the advertisement in two National newspapers had not resulted in any statutory violation and there was wide publicity as the same was published in the websites of the AAU as well as the ICAR. He has further submitted that thirteen candidates had participated in the selection process and, therefore, it cannot be said that the process of selection of the VC was restricted to a few. He submits that the writ petition is liable to be dismissed for non-joinder of the Chief Minister, against whom allegation of mala fide had been made. Mr. Saikia has relied on the judgements of the Apex Court rendered in *Chairman, Bhartiya Education Society and Another v. State of Himachal Pradesh and Others*, reported in (2011) 4 SCC 527, *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra and Others*, reported in (2013) 4 SCC 465, *R. K. Jain v. Union of India*, reported in (1993) 4 SCC 119 and *State of Punjab v. Salil Sabhlok and Others*, reported in (2013) 5 SCC 1.

23. Mr. I. Choudhury, learned counsel, appearing for respondent No. 9, has drawn the attention of the Court to the first statute under the AAU Act to impress upon the Court that no honorary degree can be conferred unless the proposal has received 2/3rd majority vote in both the Academic Council and the Board of Studies and, therefore, the argument of the learned counsel for the petitioners that the respondent No. 10 was instrumental in conferring honorary degree to the respondent No. 9, or for that matter to others, is wholly misconceived. He has also referred to the judgement of the Apex Court in the case of *S. Chandramohan Nair v. George Joseph and Others*, reported in (2010) 12 SCC 687.

24. Mr. P.N. Goswami, learned counsel appearing for respondent No. 10, has submitted that the petitioner in WP(C) 3696/2014 was not a candidate for the post of VC and he has sought to invoke public law domain to settle personal scores. It is contended by him that WP(C) 3696/2014 has been rendered infructuous. He has also submitted that Section 19(5) of the AAU deals with both temporary absence in the post of VC as well as the post of VC falling vacant permanently and that only in case of temporary absence of the VC, the senior-most officer amongst the Deans should be allowed to carry on the routine duties of the office of the VC. The tenure of the VC having come to an end on 26.07.2014, a permanent vacancy had arisen in the office of the VC and, therefore, the post of VC had to be filled up in accordance with the provisions of Section 19(1) of the AAU Act and the respondent No. 10 was appointed by following the provisions of the AAU Act. The learned counsel submits that the respondent No. 10 was not re-appointed under Section 19(3) but was appointed by following the provision of Section 19(1) of the AAU Act. Mr. Goswami has relied on the judgements of the Apex Court in *S. Chandramohan Nair (supra)* and *B. Srinivasa Reddy v. Karnataka Urban Water Supply and Drainage Board Employees' Assn. and Others*, reported in (2006) 11 SCC 731 (II).

25. In his reply, Mr. Choudhury has submitted that in the absence of the VC for

whatever reasons, the senior-most officer amongst the Deans should temporarily carry on the routine duties of the office of the VC and, therefore, the extension granted to the respondent No. 10 after his superannuation is de hors the provisions of the AAU Act. It is further contended by Mr. Choudhury that in terms of the advertisement and under the provisions of the AAU Act, respondent No. 10 was not eligible to submit his candidature as he could not have held the office for a full term of five years. It is also submitted that the judgement rendered by this Court on 23.04.2015, in WP(C) 3483/2014, could not have been made the basis and foundation to extend the last date of receipt of application, as is sought to be contended by Mr. Dutta.

26. I have considered the submissions of the learned counsel for the parties and have perused the materials on record. I have also examined the records produced by Mr. Buragohain.

27. It appears from the record that a proposal was mooted by the State Government for extending the term of appointment of the respondent No. 10 till his attaining the age of 65 years on 10.11.2016. A note was put up before the Chancellor on 21.01.2014 by the respondent No. 3 to the effect that there was no provision for extension of term of appointment of the VC and that a VC may be eligible for re-appointment for one additional term of five years. The Chancellor passed an order on 21.01.2014 itself directing a Search Committee to be appointed to suggest three names out of which one would be selected. It was also observed that the question of VC's re-appointment did not arise and it was observed that if the name of the VC was there amongst the candidates recommended by the Selection Committee, he would have a chance to be selected. It also appears that in the 236th meeting of the Board of Management of the AAU held on 18.06.2014, the Board had taken a resolution for re-appointment of the VC for another term. A note was put up by the respondent No. 3 on 02.07.2014 to the Hon'ble Governor on the basis of the said resolution with an observation that the request may be ignored as Selection/Search Committee had already been appointed as per his order. The note was approved by the Chancellor on 07.07.2014. It also appears from the record that on 24.07.2014, the Minister of Agriculture put up a note to the Chief Minister that as the selection process for selecting the VC, AAU, will not be completed before 27.07.2014 and as the term of the VC, AAU, was going to be over on 26.07.2014, the Hon'ble Governor may be requested to allow the VC to continue as he had not attained the superannuation age of 65 years. On the basis thereon, a request was made by the Chief Minister to the Chancellor and, accordingly, the Governor of Assam, who is also the Chancellor, allowed the present VC to continue to look after the responsibilities of the VC, AAU, till a new VC was selected with a direction to issue an order to that effect by 25.07.2014.

28. The respondent No. 10 in WP(C) 3776/2014 had completed his term of office as VC on 26.07.2014 and the Governor of Assam and Vice-Chancellor, AAU, had allowed the respondent No. 10 to continue in the office of the VC with effect from

27.07.2014 till the new VC was appointed and, to that effect, the Commissioner and Secretary to the Governor of Assam had issued a notification dated 25.07.2014 [Annexure-3 to WP(C) 3696/2014]. It is also on record that the advertisement dated 27.06.2014 was issued by the Selection Committee which had been constituted on 19.05.2014 for filling up the post of VC [Annexure 2 to WP(C) 3776/2014] pursuant to which the respondent No. 10 in WP(C) 3776/2014 was appointed as VC on 01.08.2014.

29. In *Bhartia Education Society (supra)*, the Apex Court did not consider the issues which had become purely academic and dismissed the appeals raising such issues as having become infructuous.

30. There can be no manner of doubt that after the respondent No. 5 in WP(C) 3696/2014 had been appointed as VC after completion of the selection process on 01.08.2014, the notification dated 25.07.2014 [Annexure 3 to WP(C) 3696/2014] had spent its force and there is no live issue for adjudication. The issue had become purely academic and it is an established proposition of law that a writ court will not proceed to decide academic issues and would leave the same to be adjudicated in a more appropriate case. Accordingly, I am of the considered opinion that WP(C) 3696/2014 has been rendered infructuous.

31. In *B. Srinivas Reddy (supra)*, the Apex Court had laid down that the strict rules of locus standi are relaxed to a great extent in a quo warranto proceeding and that jurisdiction of the High Court to issue a writ of quo warranto is a limited one, which can only be issued when the appointment is contrary to the statutory rules. In the cases of *Salil Sabhlok (supra)* and *Chandramohan Nair (supra)*, the Apex Court dwelt upon scope and ambit of writ of quo warranto. As this Court had already held that WP(C) No. 3696/2014 has been rendered infructuous, a detailed consideration of these cases dealing with nature, scope and ambit of a writ of quo warranto is not warranted.

32. In *Ayaaubkhan Noorkhan (supra)*, the Apex Court had stated that "legal right" means an entitlement arising out of regal rules and that the expression "person aggrieved" does not include a person who suffers from a psychological or imaginary injury and a "person aggrieved" must necessarily be one, whose right or interest have been adversely affected or jeopardised.

33. The expression "aggrieved person" cannot be explained in a straight-jacket formula and the same is not capable of being described with a comprehensive definition. The expression "aggrieved person" has different hues depending on many variable factors, such as the circumstance of the case, the content and intent of the statute of which contravention is alleged, the nature and extent of the right of the complainant, and the extent of prejudice and the injury suffered by the complainant.

34. It is not in dispute that this Court, by judgement and order dated 23.07.2014, passed in WP(C) 3483/2014, had permitted the writ petitioners in WP(C) 3776/2014 to offer their candidature without prejudice to their rights and

contentions. It is on record that the writ petitioners did not submit their candidature. While the respondents articulated that the writ petitioners never wanted to participate in the selection process and were only interested to subvert the process of selection for the post of VC, the argument of the writ petitioners is that they have been robbed of the opportunity to take part in the selection process despite their willingness to submit their candidature. In such circumstance, the issue as to whether the petitioners have been denied the opportunity to participate in the selection process has to be considered and, therefore, I am of the considered opinion that WP(C) 3776/2014 cannot be held to be not maintainable at the instance of the writ petitioners. The reliance placed by Mr. Saikia in R.K. Jain (supra) to contend that only a non-appointee can assail the legality of the offending action and the petitioners, having not participated in the selection process, cannot question the selection of respondent No. 10 and that the writ petition is not maintainable, cannot be accepted.

35. At this stage, it will be most relevant to quote paragraphs 17, 18, 19, 20, 22 and 23 of the judgement dated 23.07.2014, passed in WP(C) 3483/2014 as they have great significance and relevance for the purpose of this case.

"17. As regards the prescription of maximum age limit of 64 years, the petitioners cannot be said to be aggrieved persons. It is not their case that they having exceeded the age of 64 years, because of the said prescription they are now ineligible to offer their candidatures. Although the impugned advertisement has been issued by the Chairman of the Selection Committee with the said prescription of maximum age limit of 64 years, but it appears that the same is on the basis of recommendation made by the Government of Assam in the Agriculture Department (Annexure-O to the counter affidavit).

18. It was argued that having regard to the prescription of normal tenure of 5(five) years, the selected Vice-Chancellor must be of such age so as to enable him to hold office for five years and thus the respondent No. 6 upon his selection will not be entitled to hold office for five years as he is about to reach the age of 64 years. Apart from the fact that the provisions of the Act do not provide for any such stipulation of minimum five years of service, it has also been brought on record that earlier Vice-Chancellors had held office with the terms of less than four years. Section 19(3) of the Act makes the position clear when it uses the expression "normally". Thus, while the Vice-Chancellor shall normally hold the office for a term of five years but it could be less or more than that. Thus, it cannot be said that the prescription of age limit of 64 years has been incorporated only to suit the respondent No. 6.

19. Above apart, had it been the intention of the respondents to favour the respondent No. 6 with the selection, they would not have made the provision in the advertisement permitting consideration of any other eligible person other than the applicant for the post.

20. The selection has not yet been conducted. At this stage, it is not certain as to

whose candidatures would be accepted after conducting the selection, the Selection Committee will have to prepare a panel containing 3 (three) names and as per the requirement the same will have to be placed before the Chancellor for his approval etc. In fact as per the provisions of the amended Section 19 of the Act, it is the Chancellor who on the basis of a panel consisting of 3 (three) names submitted by the Selection Committee, shall have the power to appoint one of them.

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22. As in the said case in the instant case also the selection is yet to be conducted. Thereafter the Selection Committee will have to recommend three names. It is only thereafter the Chancellor will have to make appointment in consideration of the same. Thus, there are ifs and buts, and the respondent No. 6 may or may not be selected. Thereafter recommendation in his favour, if any, will again have to be gone into by the Chancellor.

23. Thus, in my considered view, the writ petition is pre-mature but I hasten to add that it will always be open for the petitioners to challenge the recommendation of the Selection Committee, if approved by the Chancellor and the petitioners are aggrieved by the same, subject however, the legal issue that might be raised by others. No opinion is expressed in this regard at this stage. It will also be open to the petitioners to offer their candidatures without prejudice to their rights and contentions. It is further directed that the Selection Committee shall conduct the selection strictly in accordance with the provisions of the Act."

36. Section 19 of the AAU Act, which Mr. Choudhury has relied upon, reads as follows:

"Section 19: The Vice-Chancellor.

(1) The Vice-Chancellor shall be a whole time officer of the university. He shall be an eminent scholar and administrator with background of agriculture, Animal Husbandry and Veterinary Education, Research and Development. The first Vice-Chancellor after the commencement of this Act shall be appointed by the Chancellor for a period not exceeding five years and on such terms and conditions as the Chancellor may determine. Subsequent Vice-Chancellors shall be appointed by the Chancellor from a panel of three names submitted by a Selection Committee consisting of -

(a) One eminent Agricultural Scientist or educationist nominated by the Board;

(b) The Director-General of Indian Council of Agricultural Research;

(c) A nominee by the State Government (1a) Notwithstanding anything contained in the Act or any contract expressed or implied, the existing appointment of the Vice-Chancellor shall cease to be operative after the commencement of this Act and the Chancellor shall proceed to appoint the Vice-

Chancellor in accordance with the provisions of this Act.

(2) A member of the Selection Committee shall not be the member of the Board of Management of Employees of the University.

(3) The Vice-Chancellor shall normally hold office for a term of five years and shall be eligible for re-appointment for one additional term of five years. The emoluments and other conditions of service of the Vice-Chancellor shall be such as may be determined by the Chancellor.

Provided that no person shall hold the office of the Vice-Chancellor beyond the age of 65 years.

(4) The Vice-Chancellor may by writing under the hand addressed to the Chancellor, resign his office. The resignation shall be delivered to the Chancellor ordinarily at least 60 days prior to the date on which the Vice-Chancellor wishes to be relieved from his office, but the Chancellor may relieve him earlier. The resignation shall take effect from the date of relief.

(5) In the temporary absence of the Vice-Chancellor, the senior-most officer amongst the Deans should temporarily carry on the routine duties of the office. Where the post of Vice-Chancellor falls permanently vacant either by resignation or otherwise, the vacancy shall be filled by the Chancellor in accordance with the provisions of sub-section (1) of this section and the Vice-Chancellor so appointed shall hold office for full term of five years."

37. It is an admitted position that the writ petitioners in WP(C) 3776/2014 did not take part in the selection process though permitted vide judgement and order dated 23.07.2014 rendered in WP(C) 3483/2014. The plea taken by the petitioners for not being able to offer their candidature was that till 30.07.2014 they had not received the certified copy of the order dated 23.07.2014. When the judgement and order dated 23.07.2014 was rendered in presence of the parties, even without the certified copy of the judgement and order the petitioners could have, by referring to the aforesaid judgement and order, offered their candidature and if the authorities had rejected their candidature for not furnishing certified copy of the judgement, on the strength of which they had submitted their candidature beyond the period fixed in the advertisement, the position would have been entirely different and a view could have been taken that the writ petitioners had been unjustifiably debarred from participating in the selection process. That apart, it is admitted by the writ petitioners also that certified copy of the judgement was taken delivery by the clerk on 25.07.2014. It was known to the writ petitioners that the term of the VC was going to expire on 26.07.2014 and the matter of selection of the VC could not brook any delay. Even if it is held that the writ petitioners did not physically have the certified copy before 30.07.2014, they have to blame none other but themselves as it was incumbent on their part to have taken prompt steps. It also appears that one of the counsel, appearing for the petitioners, had also made a statement, may be inadvertently, in a letter addressed to the authorities concerned seeking more

time for enabling the petitioners to offer their candidature, that the certified copy was received on 30.07.2014. The record reveals that the very same certified copy was annexed in WP(C) 3696/2014, which had been notarized on 29.07.2014. It appears that the Selection Committee meeting was proposed to be held on 30.07.2014 and, accordingly, a Selection Committee meeting was held on 30.07.2014. In the facts and circumstances of the case, it cannot be countenanced that the writ petitioners were not allowed to participate in the selection process arbitrarily by the respondent authorities or by the Selection Committee.,

38. In Upendra Narayan Singh (supra), while dealing with the provisions of Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 and, more particularly, Section 4 thereof, the Apex Court had emphasised that every public employer is duty bound to notify the vacancies to the employment exchange and also to advertise the same in the newspapers so as to have wider circulation. Though arguments have been advanced by Mr. Choudhury that the advertisement having not been issued in two newspapers, as proposed by the Chairman of the Selection Committee and approved by the Chancellor, the entire selection process is vitiated, the issue cannot be re-opened now in view of the judgement and order dated 23.07.2014, rendered in WP(C) 3483/2014, wherein the impugned advertisement dated 27.06.2014 was also under challenge. In fact, in the writ petition, though prayer was made for setting aside advertisement dated 27.06.2014, there is no pleading or submission that the advertisement was bad for non-publication in two newspapers. None else has approached this Court complaining that because of non-publication of the advertisement in the newspapers, he/she could not respond to the advertisement and it is on record that 13 candidates had responded to the advertisement published in the websites. Not only that, in the said judgement and order dated 23.07.2014, this Court had also observed that as the selection process had not yet been conducted, it was not certain as to whose candidature would be accepted after conducting the selection process. The impugned advertisement was not interfered with and, on the contrary, the petitioners were permitted to take part in the selection process and therefore, it is too late in the day for the writ petitioners to contend that the advertisement dated 27.06.2014 is bad in law and the selection made on the basis thereon is, accordingly, vitiated.

39. The observation of this Court, in the judgement and order dated 23.07.2014, that the writ petition is pre-mature has to be understood in the context in which it is observed. It was observed that the Selection Committee would have to prepare a panel of three names and it is only the Chancellor, who will have to make the appointment on consideration of the recommendations made by the Selection Committee. This Court also observed that respondent No. 10 (respondent No. 6 therein) may or may not be selected. As this Court had observed that it would be open for the petitioners to challenge the recommendation of the Selection Committee, if approved by the Chancellor, it is manifest that the observations made in the judgement and order dated

23.07.2014 that the writ petition is pre-mature is relatable to the issue relating to selection or non-selection of the respondent No. 10 (respondent No. 6 therein). This Court had repelled the contention of the writ petitioners that the prescription of age limit of 64 years had also been incorporated only to suit the respondent No. 10 (respondent No. 6 therein). The contentions relating to the advertisement prescribing the maximum age limit of 64 years and that the respondent No. 10 being not eligible in terms of the advertisement dated 27.06.2014, as he had only 1 year 4 months left to attain the age of 65 years and thus not in a position to hold office for a full term of five years, were also considered and rejected in the earlier round of litigation wherein this Court had recorded the finding that the provisions of the AAU Act do not provide for any stipulation of minimum five years of service and also that though the VC shall normally hold the office for a term of five years, holding of office could be less or more than that. Even then, it will be appropriate to refer to Shanker Raju (supra), which was cited by Mr. Choudhury. In that case, while interpreting sub-Section (2) of Section 8 of the Administrative Tribunals Act, 1985, as amended, the Apex Court had observed that where a Member, whose term of office of five years is extended for a further period of five years, cannot hold such office if he has attained the age of 65 years during the extended period of five years. This case does not support the contention of the petitioners that to be eligible for re-appointment, the VC must be able to complete an additional term of five years. The reliance placed on Ramjilal (supra) is also equally misplaced. In paragraph 9 of Ramjilal (supra), it was stated as follows:

"9. The State Government has undoubtedly to act through its officers. What matters were considered, what matter were placed before the final authority, and who acted on behalf of the State Government in issuing the order in the name of the Governor, are all within the knowledge of the State Government, and it would be placing an intolerable burden in proof of a just claim to require a party alleging mala fides of State action to aver in his petition and to prove by positive evidence that a particular officer was responsible for misusing the authority of the State by taking action for a collateral purpose."

40. The aforesaid observations of the Apex Court was in the context of the contention advanced by the State of Punjab that the action of the State was not bona fide cannot be said to be established unless the party alleging that case names the officer or officers guilty of conduct which justifies an inference that the official act was done for a collateral purpose. The proposition laid down in Ramjilal (supra) is clearly distinguishable in the facts of this case.

41. In Ashok Kumar Sharma (supra), the Apex Court had held that eligibility of the candidates shall have to be judged with reference to the last date fixed for filing of the application. In Tej Prakash Pathak (supra), the Apex Court had held that it is a salutary principle not to permit the State or its instrumentalities to tinker with the rules of the game so far as the prescription of eligibility criteria is concerned. In Gopal Krushna Rath (supra), the Apex Court had laid down that

when the selection process had actually commenced and the last date for inviting applications is over, any subsequent change in the requirements regarding qualifications by the University Grants Commission will not affect the process of selection, which had already commenced as, otherwise, it would involve issuing a fresh advertisement with new qualifications. In *Madan Mohan Sharma (supra)*, the Apex Court had held that once the advertisement had been issued on the basis of a circular obtaining at that particular time, the effect would be that the selection process should continue on the basis of the criteria, which were laid down and it cannot be on the basis of the criteria which has been made subsequently. The aforesaid cases were cited by Mr. Choudhury to contend that in an attempt to make the respondent No. 10 eligible in terms of the advertisement, the age of retirement had been enhanced from existing 65 years to 70 years and, that too, after the last date of submission of candidature was over on 15.07.2014. Enhancement of retirement age from 65 years to 70 years is a condition of service and not a condition of eligibility. That apart, it was already held in the first round of litigation that the respondent No. 10 was eligible to offer his candidature even when age of retirement was 65 years. Therefore, the cases cited by Mr. Choudhury are not applicable in the facts and circumstances of this case.

42. Respondent No. 10 was appointed as VC on 01.08.2014 and it is on record that on 23.07.2014, an Ordinance was published enhancing the age of superannuation of VC of AAU from 65 years to 70 years. By the time respondent No. 10 was appointed as VC, in view of the Ordinance dated 23.07.2014, the age of superannuation of the VC of AAU had become 70 years. It is also not in dispute that, subsequently, Section 19 of the AAU Act was amended on 19.09.2014 in the light of the Ordinance dated 23.07.2014.

43. Under Article 213 of the Constitution of India, the Governor has power to promulgate ordinances during recess of legislature. Article 213 is in Chapter IV under the heading "Legislative Power of the Governor". The power is plenary within its field like the power of the State Legislature to pass laws and there are no limitations upon that power except those to which the legislative power of the State Legislature is subject.

44. In *G.C. Kanungo (supra)*, the Apex Court held that no mala fide can be attributed to a legislative function. It was held as follows:

"11. The argument advanced on behalf of the petitioners that the 1991 Amendment Act was enacted by the Orissa State Legislature which was actuated by mala fides and hence the same is unconstitutional, is difficult of acceptance. That mala fides or ulterior motives attributed to a State Legislature in making a law within its competence can never make such law unconstitutional, is well settled. In *K. Nagaraj v. State of A.P.*, (1985) 1 SCC 523, while dealing with the mala fides attributed to a legislature in which it had competence to make the law, this Court said thus:

"The legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. Its reasons for passing a law are those that are stated in the Objects and Reasons and if, none are so stated, as appear from the provisions enacted by it. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law mala fide. This kind of "transferred malice" is unknown in the field of legislation."

12. Hence, we have no hesitation in finding that the 1991 Amendment Act cannot be held to be unconstitutional because of the ulterior motive and the mala fides attributed to the Orissa State Legislature."

45. The contention of Mr. Choudhury with regard to notification dated 12.04.2012 (Annexure-9 of the writ petition), by which the son of the Chief Minister was invited as a social worker to interact with the 4th year students of the AAU, Jorhat, in a programme organised by the Directorate of Extension Education, AAU, that the respondent No. 10 was going overboard to please the powers that be is found to be without any merit. Not even a copy of the aforesaid notification was given to the VC and the notification was issued by the Dean, Faculty of Agriculture, AAU. The insinuations made that the respondent No. 10 was instrumental in conferring honorary Ph.D. Degree to the respondent 8 and to the Chief Minister of Assam in the year 2011 and also in proposing conferment of honorary Ph.D. Degree to the respondent No. 9, do not merit more than a passing reference. The VC is not the authority to confer honorary degree. Under the First Statute of the AAU Act, provision is made that no honorary degree shall be conferred unless the proposal had received 2/3rd majority vote in both the Academic Council and the Board of Management. It is to be noticed that all other questions to be considered in a meeting of the Academic Council and the Board are required to be decided by a majority of votes of the Members present. Every proposal to confer an honorary degree is also subject to the confirmation of the Chancellor under Section 18(3) of the AAU Act. Thus, elaborate safeguards have been made in the matter of conferment of honorary degrees under the AAU Act and the First Statute made there under.

46. While it is contended by the petitioners that there are allegations of mismanagement etc. against the respondent No. 10 for which enquiry was also instituted, it is countered by the respondents by submitting that these are the handiwork of the writ petitioners. It is also pleaded and argued that under the stewardship of the respondent No. 10, prestigious awards have been conferred upon the AAU. This Court is of the considered opinion that the allegations and counter-allegations will not having any bearing on the selection process undertaken by the Selection Committee. Similarly, imposition of penalty or drawal of disciplinary proceedings against the writ petitioners are also not relevant issues for the purpose of this case.

47. It is to be borne in mind that none of the 13 candidates, who had applied pursuant to the advertisement and had participated in the selection process, has

raised any grievance alleging that the Selection Committee was biased towards respondent No. 10 and he was recommended by the Selection Committee only because of inherent bias. It is also to be remembered that the Selection Committee had recommended three persons not in order of merit, but they were recommended as per alphabetical order of their surnames as is noticed from the proceedings of the Selection Committee, which is available at page 201 and 202 of the records produced by Mr. Buragohain and, going by the surnames, the name of respondent No. 10 figured at Sl. No. 1. It was entirely for the Chancellor to appoint the VC from the panel of three names submitted by the Selection Committee and, in the instant case, the Chancellor appointed respondent No. 10 as the VC. No malice, either in law or in fact, is attributed to the Chancellor in the appointment of respondent No. 10.

48. The allegation made by the petitioners that respondent No. 7 was appointed as the Chairman of the Selection Committee only to facilitate the selection of respondent No. 10 because of the fact that the respondent No. 10 became close to the Chief Minister by conferring honorary Ph.D. Degree to the Chief Minister in the year 2011, is a bald allegation without any material to even remotely suggest any such attempt. Apart from that, the Chief Minister is also not made a party respondent. Even if the writ petition is entertained in absence of the Chief Minister as a party respondent, on the basis of the foundation of the allegation made against the Chief Minister, the Court cannot give judicial imprimatur that the appointment of the respondent No. 7 as the Chairman of the Selection Committee is tainted. The arguments advanced that the composition of the Selection Committee is vitiated is not worthy of acceptance.

49. The reliance placed by Mr. Choudhury on E.P. Royappa (supra) to highlight that where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16 of the Constitution of India, is not attracted in the factual matrix of this case.

50. In view of the above discussions, I find no merit in WP(C) 3776/2014. Consequently, both the writ petitions are dismissed. No cost.

51. Let the records produced by Mr. Buragohain be returned back to him.