Uttarakhand High Court
Madhu Bahuguna vs Uttarakhand Public Service ... on 9 January, 2020

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                                                                                    Reserved Judg
            IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
                         Writ Petition (S/B) No. 78 of 2019
     Madhu Bahuguna                                                                .......Petiti
                                         Versus
     Uttarakhand Public Service Commission & others                                .......Respon

                                   Writ Petition (S/B) No.82 of 2019

     Smt. Rashmi Nautiyal                                                          ..........Pet
                                                   Vs.
     Secretary, Uttarakhand Public Service
     Commission, Haridwar and others                                         ...........Respondent
     Mr. C.D. Bahuguna, Senior Advocate assisted by Mr. A.K. Verma, Advocate for the petition
     Petition (S/B) No.78 of 2019.
     Mr. S.S. Yadav, Advocate for the petitioner in Writ Petition (S/B) No.82 of 2019.
     Mr. Paresh Tripathi, C.S.C. with Mr. Pradeep Joshi, Standing Counsel for the State.
     Mr. B.D. Kandpal, Standing Counsel for the Uttarakhand Public Service Commission.
     Mr. Vikas Pande, Standing Counsel for the University Grants Commission.
     Mr. R.P. Singh, Advocate for the respondent nos.6 to 9 in Writ Petition (S/B) No.78 of 2
     Mr. Shobhit Saharia, Advocate for the private respondents in Writ Petition (S/B) No.82 o

                                              JUDGMENT
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Coram: Hon'ble Ramesh Ranganathan, C.J.

Hon'ble Alok Kumar Verma, J.

Judgment Reserved : 19.11.2019 Judgment Delivered :09.01.2020 Chronological list of cases referred :

1. (1987) 4 SCC 486

2. (1988) 3 SCR 302

3. (2000) 8 SCC 395

4. (2007) 11 SCC 10

5. (1990) 1 SCC 305

6. (2002) 9 SCC 765

7. (1999) 1 SCC 465

8. (1993) 1 SCC 17

9. (1964) 4 SCR 575

10. (2001) 3 SCC 110

11. AIR 1965 SC 1578

12. (2010) 12 SCC 609

13. (2001) 5 SCC 133

14. (2003) 1 SCC 18

15. (2005) 7 SCC 653

16. (2005) 8 SCC 252

17. (1988) 4 SCC 534

18. 2000 (2) GLR 1814

19. (1998) 7 SCC 66

20. (1999) 1 SCC 141

21. (2001) 3 SCC 208

22. (2001) 4 SCC 78

23. (2001) 8 SCC 676

24. (2013) 8 SCC 271

25. (2015) 6 SCC 363

26. (Judgment in W.P. (Civil) 19 of 2004 dated 11.02.2005)

27. (2009) 4 SCC 590

28. (2015) 8 SCC 129

29. (1963) 1 QB 275

30. (1967) 2 QB 482

31. (1976) 1 WLR 87

32. 1879(3) Exd. 214

33. (1989) 3 SCC 488

34. (1989) 4 SCC 378

35. (1920) 1 KB 563

36. 1959 Supp (2) SCR 660

37. (1971) 1 SCC 38

38. (1998) 8 SCC 188

39. (2005) 1 SCC 496

40. (1993) 4 SCC 441

41. (1995) 3 SCC 486

42. (1981) 4 SCC 159

43. (1985) 4 SCC 417

44. (1986) 1 SCC 671

45. (1981) 4 SCC 335

46. (2004) 6 SCC 786

47. (2003) 8 SCC 567

48. (1995) Supp. (1) SCC 206

49. (2007) 9 SCC 497

50. 1980 Supp SCC 524

51. AIR 1969 SC 118

52. (2003) 9 SCC 358

53. (1950) 1 SCR 869

54. (1951) 2 SCR 682

55. AIR 1959 SC 942

56. (1975) 1 SCC 166

57. AIR 1958 SC 538

58. (1980) 2 SCC 684

59. AIR 1960 SC 554

60. 2004 (1) ALT 659

61. 2003 (4) KLJ 453

62. AIR 1974 SC 1

63. (1997) 2 SCC 453

64. (2008) 5 SCC 33

65. (2013) 8 SCC 368

66. AIR 1961 SC 954

67. (2014) 8 SCC 682

68. (2017) 10 SCC 800

69. (1978) 2 SCC 1

70. (2005) 8 SCC 534

71. AIR 1968 SC 1

72. 1931 AC 275

73. (2008) 4 SCC 720

74. (1981) 1 SCC 722

75. (1998) 3 SCC 694

76. (1994) 1 SCC 150

77. AIR 1979 SC 429

78. (2005) 6 SCC 776

79. (2006) 3 SCC 581

80. 1987 Supp SCC 401

81. (2003) 2 SCC 132

82. (2003) 9 SCC 401

83. (2018) 3 SCC 55

84. (2006) 9 SCC 507

85. (2000) 3 SCC 588

86. (2016) 1 SCC 454

87. (order in Special Appeal No.97 of 2019 dated 07.11.2019)

88. (1998) 7 SCC 469

89. (1991) 1 SCC 47

90. (1996) 2 SCC 7

91. (2005) 9 SCC 22

92. (2001) 2 SCR 1183

93. (2007) 12 SCC 413

94. (2007) 8 SCC 161

95. (2008) 1 SCC 456

96. (1993) 2 SCC 573

97. (2006) 1 SCC 779

98. (2010) 12 SCC 576

99. (2017) 9 SCC 478

100. (2007) 8 SCC 100

101. (2006) 6 SCC 395

102. (1976) 3 SCC 585

103. (2013) 11 SCC 309

104. (2006) 10 SCC 261

105. AIR 1968 SC 647

106. 1901 AC 495

107. (1985) 1 SCC 345

108. (1983) 4 SCC 353

109. (1972) 2 WLR 537

110. (1998) 7 Supreme 579

111. (2005) 9 SCC 49

112. AIR 1959 SC 1376

113. AIR 1960 SC 468

114. (1988) 2 SCC 360

115. (1987) 4 SCC 611

116. (1969) 2 SCC 262

117. (2012) 6 SCC 369

118. (2004) 8 SCC 788

119. (2015) 3 SCC 251

120. (1910) 2 LR R 83, 89

121. (1908) 2 LR R 285

122. (1866) 1 QB 230

123. AIR 1955 Pat 345

124. (1875) 1 QBD 173

125. (1894) 2 QB 667

126. AIR 1991 SC 1260

127. AIR 1993 SC 2155

128. 1901 (2) KB 357

129. 1923 All E.R. 233

130. AIR 1957 SC 425

131. (1998) 5 SCC 513

132. AIR 1988 SC 2232

133. (1995) Supp (1) 21

134. AIR 1958 SC 86

135. (2000) 1 ALL ER 65

136. (2001) 1 SCC 182

137. (1974) 3 SCC 459

138. (1993) 2 ALL ER 724

139. (2002) 1 ALL ER 465

140. (2004) 1 All ER 187

141. (2011) 8 SCC 380

142. (2010) 13 SCC 427 RAMESH RANGANATHAN, C.J. (Per) The validity of the selection process, undertaken pursuant to the advertisement dated 04.08.2017, is under challenge both in WPSB No. 78 of 2019 and WPSB No. 82 of 2019.

The petitioner in Writ Petition (S/B) No. 78 of 2019, a Ph.D with nearly eight years of service as an Assistant Professor (Drawing and Painting), applied for the post of Assistant Professor (Drawing and Painting) pursuant to the advertisement issued by the Uttarakhand Public Service Commission (for short the 'Commission') dated 04.08.2017, on 12.08.2017. A screening test was held on 06.05.2018, the results of which were declared on 21.08.2018. The petitioner was among the candidates successful in the screening test, and was therefore called to appear before the interview board constituted by the Commission on 28.12.2018. The results of the interview were declared by the Commission on 04.01.2019, and respondent nos.6 to 9 were declared to have been selected ie two in the General category (ie respondent nos.7 and 9), and two in the Scheduled Castes category (ie respondent nos.6 and 8). The petitioner belongs to the General category. In the interview, respondent no.7 secured 74 marks and respondent no.9 secured 72 marks, whereas the petitioner was awarded only 57 marks resulting in her not being selected to the post of Assistant Professor (Drawing and Painting). Aggrieved thereby, the petitioner invoked the jurisdiction of this Court.

The petitioner in Writ Petition (S/B) No. 82 of 2019, a member of the Scheduled Tribes, is a Post Graduate in Commerce and has passed in NET and USET. She is teaching as a guest faculty lecturer, in Pt. Lalit Mohan Sharma Government P.G. College, Rishikesh, Dehradun since 20.11.2017, in the subject of Commerce, and takes up both undergraduate and Post-Graduate classes in commerce. She appeared for selection to the post of Assistant Professor (Commerce) pursuant to the advertisement dated 04.08.2017 in which category five posts were reserved in favour of the Scheduled Tribes. Among the three candidates, selected under the Scheduled Tribes category, is the fifth respondent. Respondent Nos.6 and 7 (who belong to the Other Backward Classes and General Category) impleaded themselves in the writ petition contending that, since the main challenge in the writ petition is regarding the failure of the Public Service Commission to ensure the presence of a member of the Scheduled Tribes in the Interview Board, while selecting candidates to the post of Assistant Professor (Commerce) reserved in favour of the Scheduled Tribes, there is no justification in the selection and appointment of others, who are not members of the Scheduled Tribes, being stayed.

2. Elaborate submissions were made by Mr. C.D. Bahuguna, learned Senior Counsel appearing for the petitioner in Writ Petition (S/B) No.78 of 2019, Mr. S.S. Yadav, learned counsel for the petitioner in Writ Petition (S/B) No.82 of 201, Mr. Paresh Tripathi, learned Chief Standing Counsel appearing on behalf of the State Government, Mr. B.D. Kandpal, learned Standing Counsel for the Uttarakhand State Public Service Commission, Mr. R. P. Singh, learned counsel for respondent nos.6 to 9 in Writ Petition (S/B) No.78 of 2019, and Mr. Shobhit Saharia, learned counsel for respondent nos.6 and 7 in Writ Petition (S/B) No.82 of 2019. It is convenient to examine the rival submissions, urged by learned Senior Counsel and learned counsel on either side, under different heads.

I. IMPROPER ASSESSMENT OF MERIT :

3. In the affidavit, filed in support of Writ Petition (S/B) No. 78 of 2019, the petitioner has detailed her achievements, both academic and otherwise, to contend that she was more meritorious than respondent nos. 6 to 9 in all aspects. Mr. C.D. Bahuguna, learned Senior Counsel appearing on behalf of the petitioner, would submit that the entire selection process stood vitiated as the petitioner's merit was ignored, and the Interview Committee failed to properly assess the relative merits of the candidates called for interview. While fairly stating that this Court would not take upon itself the task of making a comparative assessment of the relative merits of the eligible candidates, learned Senior Counsel would submit that the Commission was obligated to show, at least prima facie, that a proper assessment of the relative merits, of the candidates called for interview, was undertaken; despite the petitioner having detailed her achievements in the writ affidavit, and though she had pointed out therein that her academic and other qualifications were far superior to that of respondent nos.6 to 9, the counter- affidavit filed by the Uttarakhand Public Service Commission does not state why the petitioner was found less meritorious than respondent nos.6 to 9; and this clearly shows that the interview board had failed to make a proper assessment of the relative merits of the candidates called for interview, which would necessitate the entire selection process being declared as vitiated.

4. On the other hand Sri B.D. Kandpal, learned Standing Counsel for the Public Service Commission, would submit that, even in the Screening test, both respondents 7 and 9 had secured more marks than the petitioner in the general category; and this Court would not take upon itself the task of assessing the relative merits of the candidates who appeared for selection, since these are all matters which are exclusively within the province of the Selection Board.

5. Sri. R.P. Singh, learned counsel for respondents 6 to 9, would submit that the petitioner's claim of being more meritorious is wholly unjustified, since both the seventh and the ninth respondent had secured more marks than her, not just in the interview but also in the Screening Test held earlier to screen candidates and shortlist those who should be called upon to appear in the Interview.

6. While the educational qualifications and other academic achievements of the petitioner in Writ Petition (S/B) No.78 of 2019, as detailed in the writ affidavit, are no doubt impressive, it is not for the Court to make a comparative assessment of the relative merits of the candidates called for interview. It is for the duly constituted Interview Board/Selection Committee to assess the relative merits of all the eligible candidates and, while the academic and other achievements of the petitioner are no doubt relevant factors to be taken into consideration, it is the overall suitability of each of the candidates which is required to be assessed by the Interview Board. Whenever selection to a post is to be made on the basis of merit, no officer can claim selection as a matter of right. (State Bank of India and others v. Mohd. Mynuddin1). The Selection Committee is required to make an overall assessment of the performance of each candidate separately, but by adopting the same standards, yardsticks and norms. It is only when the process of assessment is vitiated either on the ground of bias, malafides or arbitrariness, would the selection call for interference. (Mohd. Mynuddin1; Union Public Service Commission v. Hiranyalal Dev2; Badrinath v. Government of Tamil Nadu3; and Union of India (UOI) and Ors. v. A.K. Narula4). Unless there is a strong case for

applying the wednesbury doctrine of unreasonableness, or there are mala fides, Courts and Tribunals would not interfere with the assessment made by the Selection Committees in regard to the merit or fitness for selection. (Badrinath3).

7. It is not the function of the Court to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. (Dalpat Abasaheb Solunke v. B.S. Mahajan5). Courts and Tribunals can neither sit in appeal nor substitute their views for that of Selection Committee. Undue interference by the Courts or Tribunals will result in paralysing the recommendations of the Selection Committees. (Badrinath3; Joginder Singh and others v. Roshan Lal and others6). The Court is not entitled to assess the respective merits of the candidates for adjudging their suitability for being selected. (Orissa Small Industries Corpn. Ltd. and Ors. v. Narasingha Charan Mohanty and Ors7). Adjusting equities in exercise of the extraordinary jurisdiction is one thing but assuming the role of a selection committee is another. The Court cannot substitute its opinion and devise its own method of evaluating fitness of a candidate for a particular post. It would be going too far if the Court itself evaluates the fitness or otherwise of a candidate. (Indian Airlines Corporation vs. K.C. Shukla and Ors8).

8. The Court is not, by its very nature, competent to appreciate the abilities, qualities or attributes necessary for the task, office or duty of every kind of post in the modern world, and it would be hazardous for it to undertake the responsibility of assessing whether a person is fit for being selected to a post which is to be filled up on merit. The method of evaluation of the abilities or the competence of persons to be selected for such posts have also become refined and sophisticated and such evaluation should therefore, in the public interest, ordinarily be left to be done by the individual or a committee consisting of persons who have the knowledge of the requirements of a given post, to be nominated by the employer. (Mohd. Mynuddin1). Normally it is wise and safe for the courts to leave the decision on academic matters to experts who are more familiar with the problems they face than the courts generally can be. (University of Mysore &Anr. v. C.D. Govinda Rao & Anr9; O.P. Lather and Ors. v. Satish Kumar Kakkar and Ors10). In the exercise of its power of judicial review, under Article 226 of the Constitution of India, the High Court would not take upon itself the task of adjudging the relative merits of the candidates. We see no reason, therefore, to undertaken any such exercise.

9. Likewise, we see no reason to express any opinion on the submission of the respondents that the petitioner had secured lesser marks than respondent nos.7 and 9 even in the screening test, and her self-professed claim of being more meritorious than them should be rejected, for these are all again matters for the Selection Committee to decide, and the Court would ordinarily defer to their wisdom in assessing the relative merits of the candidates. We see no reason, therefore, to sit in judgment over the decision of the Selection Committee in assessing the relative merits of the candidates who appeared for the interview or to hold that the petitioner was more meritorious than respondent nos.6 to 9. This contention, urged on behalf of the petitioner, therefore necessitates rejection.

II. IS ABSENCE OF A SPECIFIC PLEA, REGARDING THE 2016 AMENDMENT TO THE 2010 REGULATIONS, FATAL ?

10. Sri C.D. Bahuguna, learned Senior Counsel, would submit that the UGC norms, contained in the notification dated 04.05.2016, has not been followed; the contention that, since no such plea was taken in the Writ Affidavit, such a contention cannot be urged during the hearing of the Writ Petition must be rejected; in its interim order dated 06.03.2019, a Division Bench of this Court, while directing the respondents not to fill up four posts of Assistant Professor (Drawing and Painting) had referred extensively to the 2016 amendment to the 2010 Regulations; in none of the counter affidavits, filed on behalf of the respondents thereafter, has this plea of maintainability been taken; on the other hand, the State Government has, in its counter-affidavit, referred extensively to the 2016 Regulations, and has reiterated that the 2016 Regulations have been adopted in its entirety; in the rejoinder affidavit, filed on behalf of the petitioner, reference has been made specifically to the 2016 Regulations; there is a specific reference to the Scoring System in Paragraph no. 49 of the Writ Affidavit; and in the light of the law declared by the Supreme Court, in Subramania Desika Gnanasambanda Pandarasannadhi v. State of Madras and Ors11, such a contention can be raised even in the rejoinder affidavit.

11. On the other hand Sri Paresh Tripathi, learned Chief Standing Counsel, would submit that no plea has been raised in the Writ Petition regarding adoption of the 2016 UGC Regulations, and the petitioner cannot therefore find fault with the respondents for not specifically raising any such contention in their counter affidavit.

12. It is true that the plea, regarding either the failure to apply the scoring system in Appendix-III of the 2016 UGC Regulations or that it had been adopted by the State Government by its letter dated 29.12.2016, has not been specifically raised in the Writ Petition. The question which would, therefore, arise for consideration is whether, in the absence of a specific plea in this regard, this Court would be justified in examining whether or not the 2016 UGC Regulations would apply?

13. It is no doubt true that a party has to plead the case, and produce/adduce sufficient evidence to substantiate his submission made in the petition and, in case the pleadings are not complete, the Court is under no obligation to entertain the plea, (Rajasthan Pradesh Vaidya Samiti v. Union of India12) for findings, in the absence of necessary pleading and supporting evidence, cannot be sustained in law. (Atul Castings Ltd. v. Bawa Gurvachan Singh13; Rajasthan Pradesh Vaidya Samiti12; Vithal N. Shetti v. Prakash N. Rudrakar14; Devasahayam v. P. Savithramma15; and Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal16). When a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and, if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the Court will not entertain the point. There is a distinction between a pleading under the Code of Civil Procedure, and a writ petition or a counter-affidavit. While in a pleading i.e. a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded

and annexed to it. (Bharat Singh v. State of Haryana17; Rajasthan Pradesh Vaidya Samiti12; Larsen & Toubro Ltd. v. State of Gujarat18; National Buildings Construction Corpn. v. S. Raghunathan19; Ram Narain Arora v. Asha Rani20; Chitra Kumari v. Union of India21; and State of U.P. v. Chandra Prakash Pandey22).

14. The adoption order dated 29.12.2016, (the contents of which shall be detailed later in this order), was referred to by Mr. C.D. Bahuguna, learned Senior Counsel appearing on behalf of the petitioner, during the course of hearing on 06.03.2019 when an elaborate interim order was passed by a Division Bench of this Court. In its interim order dated 06.03.2019 the Division Bench observed that the proceedings of the Chief Secretary to the Government of Uttarakhand dated 29.12.2016, addressed to all Vice-Chancellors of the State Universities in the State of Uttarakhand, recorded that the State Government had granted approval for applying/adopting all the provisions/rules amended through the UGC notification dated 04.05.2016; along with it, the Governor had granted approval for applying/adopting the provisions of Rule 5.1.6 of the 2010 UGC Regulations; it was evident from this letter that the provisions of the UGC notification dated 04.05.2016 had been adopted by the State Government in its entirety; the 2016 UGC Regulations, as notified on 04.05.2016, were statutory in character as they were made by the UGC in the exercise of the power conferred on it under Section 26(1)(e) and (g) of the University Grants Commission Act, 1956; since the Government of Uttarakhand had adopted the 2016 UGC Regulations in its entirety, such adoption would, prima facie, include Appendix-III Table-II (B) of the 2016 UGC Regulations; since the advertisement, in the present case, was issued after adoption of the 2016 UGC Regulations, the Uttarakhand Public Service Commission was, prima facie, required to adhere to the 2016 UGC Regulations; and, prima facie, the Public Service Commission had acted contrary to Appendix- III Table-II (B) of the 2016 UGC Regulations in selecting candidates, and in recommending them for appointment to the posts of Assistant Professors (Drawing and Painting) only on the basis of interview.

15. It is only after the interim order was passed, did the respondents file their counter-affidavits. When they filed their respective counter-affidavits, the respondents were aware that appointment of the selected candidates was temporarily interdicted by this Court on the ground that the 2016 Amended Regulations had been adopted by the State Government by its proceedings dated 29.12.2016.

16. In Subramana Desika Gnanasambanda Pandarasannadhi11, the Supreme Court held that the view taken by the High Court, that the plea in question had not been raised by the appellant in his writ petition was no doubt technically right in the sense that this plea was not mentioned in the first affidavit filed by the appellant in support of his petition; but in the affidavit-in-rejoinder filed by the appellant, this plea has been expressly taken; when the matter was argued before the High Court, the respondents had full notice of the fact that one of the grounds on which the appellant had challenged the validity of the impugned Order was that he had not been given a chance to show cause why the said notification should not be issued; and they were, therefore, satisfied that the High Court was in error in assuming that the ground in question had not been taken at any stage by the appellant before the matter was argued before the High Court.

17. The petitioner has elaborately dealt with the 2016 UGC Regulations in her rejoinder-affidavit. The respondents were aware that, among the grounds put forth in challenge to the validity of the selection of candidates for the posts of Assistant Professor, was that 100% marks, being given for the Interview, was contrary to the table specified in Appendix-III of the 2016 UGC Regulations. We see no reason, therefore, to non-suit the petitioner on this ground.

18. Learned counsel for the respondents have also, even in the absence of sufficient pleadings in their counter-affidavits, put forth elaborate submissions on the scope and ambit of the G.O. dated 29.12.2016; and whether or not the 2016 UGC Regulations have been adopted in its entirety. Without being swayed by technicalities, we shall proceed to examine the question whether non-compliance, with the scoring system in Appendix-III to the 2016 UGC Regulations, vitiates the selection process. We shall examine the rival contentions urged on behalf of the petitioner regarding the applicability of the 2016 UGC Regulations, as also the construction placed, both on behalf of the petitioners and the respondents, on the scope and purport of the G.O. dated 29.12.2016, uninfluenced by the fact that such pleas have not been raised either in the writ affidavit filed by the petitioner, or in the counter-affidavits filed by the respondents.

III. HAS APPENDIX-III OF THE 2016 AMENDMENT TO THE 2010 REGULATIONS BEEN ADOPTED IN ITS ENTIRETY BY THE STATE GOVERNMENT ?

19. On the applicability of the 2016 amendment to the 2010 Regulations, as notified on 04.05.2016, to the present selection process, Mr. C.D. Bahuguna, learned Senior Counsel appearing on behalf of the petitioner, would submit that the Adoption Order dated 29.12.2016 itself records that approval was granted by the State Government for applying/adopting "all the provisions/Rules" amended through the UGC notification dated 04.05.2016; apart from adopting the 2016 Regulations in its entirety, the State Government had, by the Adoption Order dated 29.12.2016, also adopted Regulation 5.1.6 of the 2010 UGC Regulations, subject to the conditions stipulated thereunder; Appendix-III, of the 2016 amendment to the 2010 Regulations, provides for a Scoring System, and prescribes the minimum score for Academic Performance Indicators (APIs) for direct recruitment of teachers in Colleges, and for weightages to be given to them by the Selection Committee; the said Scoring System provides 50% marks for Academic Record and Research Performance, 30% marks for Assessment of Domain Knowledge and Teaching Skills, and 20% marks for Interview performance; on adoption of the 2016 Amendment to the 2010 UGC Regulations by the State Government, the 2016 Regulations acquires a mandatory character, and must be strictly followed; since the 2016 amendment to the 2010 Regulations is referable to Entry 66 of List I of the Seventh Schedule to the Constitution of India, any provision made by the State Legislature/Rule making authority contrary thereto, including the 2003 Rules, would no longer prevail; Entry 25 of List III of the VII Schedule to the Constitution of India is subject to Entry 66 of List I; since the Scoring System, prescribed in Appendix-III to the 2016 Regulations, has been adopted by the State Government in its entirety by its proceedings dated 29.12.2016, it should have been followed for selection to the posts of Assistant Professor in Government Degree Colleges; along with the letter, addressed by the State Government to the Uttarakhand Public Service Commission on 26.05.2017, a copy of the Government Order dated 29.12.2016, regarding applying/adopting the 2010 Regulations as amended as per notification dated 04.05.2016, was also forwarded; though they were aware that

the State Government had adopted the 2016 Amendment to the 2010 Regulations, the Uttarakhand Public Service Commission had illegally conducted the process of selection solely on the basis of interview; the contention that the Adoption Order dated 29.12.2016 makes no mention of Regulation 6 of the 2010 Regulations, and since Appendix-III is referable to Regulation 6 which has not been adopted, the Adoption Order, to the extent the 2016 Regulations were adopted, must be understood as referring only to the educational qualifications prescribed therein, is not tenable; while adopting the educational qualifications prescribed in Regulations 3.3.0 to 3.6.0 of the 2010 UGC Regulations, no reference has been made in the earlier Adoption Order dated 30.09.2011 to any specific Regulation; likewise, though the Adoption Order dated 29.12.2016 makes no reference to Regulation 6, it should be construed as having adopted Regulation 6 also, since the 2016 UGC Regulations have been adopted in its entirety; even otherwise, adoption of the 2016 Regulations in its entirety would mean that the State Government has atleast adopted the Scoring System prescribed in Appendix- III Table II-b; the said provision should, therefore, have governed selection of candidates to the posts of Assistant Professor; and their selection, only by way of an interview, was impermissible.

20. On the other hand Sri Paresh Tripathi, learned Chief Standing Counsel, would submit that what was adopted by the State Government, in its Adoption Order dated 29.12.2016, are only the educational qualifications prescribed in the UGC Regulations for selection and appointment to the post of Assistant Professors; the mode and manner of allotment of marks by the Selection Committee, in selecting candidates for appointment to these posts, is prescribed in Regulation 6 of the 2010 UGC Regulations; it is not in dispute that Regulation 6 of the 2010 UGC Regulations was neither adopted by the earlier Adoption Order dated 30.09.2011, nor by the present Adoption Order dated 29.12.2016; Appendix III is referable only to Regulation 6; since Regulation 6 has, admittedly, not been adopted, the mere fact that the Adoption Order dated 29.12.2016 refers to the adoption of the 2016 amended provisions/Regulations, would not justify the inference that the Scoring System in Appendix III has been adopted; it is only if the selection procedure, in Regulation 6, is adopted would the Scoring System in Appendix III automatically apply, and not the other way round; the 2016 Amendment, to the extent it related to the process of selection, has not been adopted; a conjoint reading of Regulations 6.1.0, 6.2.0, 6.0.9 and 6.0.10 of the 2010 UGC Regulations would show that the Scoring System is integrally connected with the process of selection (Regulation 6.0.9 and 6.0.10); since the selection process, prescribed under Regulation 6.0.0, has not been adopted, the question of merely adopting Appendix III Table II(b) does not arise; Clause 13 of the requisition sent by the State Government, to the Uttarakhand Public Service Commission on 31.07.2017, refers only to the eligibility criteria when referring to the Adoption Order dated 29.12.2016; this shows that it is only to the extent of the educational qualifications, prescribed for appointment to the posts of Assistant Professor, were the 2016 Regulations adopted, and not with regards the procedure for selection of, or the marks to be allotted to, candidates who participated in the selection, on different parameters; the comparison sought to be made between the Adoption Order dated 30.09.2011 and the subsequent Adoption Order dated 29.12.2016 does not merit acceptance; while the Adoption Order dated 30.09.2011 may not specifically refer to Regulation 3 of the 2010 Regulations, it not only mentions the minimum educational qualifications, but also extracts the applicable educational qualifications in its entirety; unlike the Adoption Order dated 30.09.2011, the subsequent Adoption Order dated 29.12.2016 neither makes any reference to Regulation 6 nor does it stipulate that the

selection procedure, prescribed under the 2010 UGC Regulations, should be followed; and it is evident, therefore, that the 2016 Regulations, in so far as it relates to the process of selection, and the marks to be awarded therefor, have not been adopted.

21. Sri B.D. Kandpal, learned Standing Counsel for the Public Service Commission, would submit that Regulation 2.2, of the 2016 amendment to the 2010 Regulations, stipulates that these Regulations apply to Universities established or incorporated under a State Act, as also to an affiliated college recognized by the UGC in consultation with the University concerned; no material has been placed on record, on behalf of the petitioner, to show that the subject Government degree Colleges have been recognized by the University Grants Commission; it is only on such recognition being granted, can it then be contended that the UGC Regulations apply to such colleges; Regulation 3.0.0 of the 2016 UGC Regulations relates to requirement and qualifications, and Regulation 4.4.0 to the educational qualifications prescribed for appointment to the posts of Assistant Professor; Regulation 4.4.2 prescribes the educational qualifications for appointment to the posts of Assistant Professor in Performing Arts; it is evident from the Adoption Order dated 29.12.2016 that what was adopted was only the educational qualifications, and not the process of selection; further, in terms of Regulation 6.0.2 of the 2010 UGC Regulations, mere adoption would not suffice, and the Government/University is obligated to make a law in terms thereof; admittedly no such law has been made by the University or by the Government; since the 2003 Rules have neither been amended to bring it in conformity with the 2016 amendment to the 2010 UGC Regulations, nor has Regulation 6 of the 2010 UGC Regulations, as amended by the 2016 UGC Regulations, been adopted, the Public Service Commission was justified in conducting selections solely on the basis of interview; Clause 14 of the requisition sent by the State Government on 31.07.2017 stipulates that the posts, sought to be filled up, were governed by the 2003 Rules; and both the State Government and the Uttarakhand Public Service Commission were ad-idem that Assistant Professors should be selected only on the basis of the 2003 Rules, and not the 2016 UGC Regulations.

22. Mr. Shobhit Saharia, learned counsel for respondent Nos. 6 & 7 in Writ Petition (S/B) No. 82 of 2019, would also refer to the covering note dated 30.06.2010 to the 2010 UGC Regulations to submit that the consequences of the failure of the University, to comply with the 2010 UGC Regulations, are provided in Section 14 of the UGC Act; that has nothing to do with the process of selection undertaken by the Public Service Commission; the 2010 UGC Regulations were amended in the year 2013, and a proviso was inserted to Regulation 6.0.1, which restricts the scope of Table II(b) in Appendix III; reference to the 2016 amendment to the 2010 UGC Regulations, in clause 13 of the Requisition dated 31.07.2017, is only in the context of the educational qualifications required to be considered for appointment to the posts of Assistant Professor; and, on a conjoint reading of Clause 4.4.1, 5.0.0, 6.0.0 and 6.0.1 of the 2010 UGC Regulations, as amended in the year 2013, it is amply clear that, since the selection process prescribed in the said Regulations have not been adopted by the State Government, and it is only the educational qualification which have been so adopted, the scoring system prescribed in Appendix III Table II(b), of the 2016 amendment to the 2010 UGC Regulations, has no application; and the specific averment, in the counter affidavit filed by respondent Nos. 6 & 7 in Writ Petition (S/B) No. 82 of 2019, that Regulation 6 of the 2013 amendment to the 2010 UGC Regulations has not been adopted by the State Government, has been admitted by the petitioner in Writ Petition (S/B) No. 82 of 2019 in her rejoinder affidavit.

23. The University Grants Commission Act, 1956 (for short the "1956 Act") is a law made by Parliament in the purported exercise of the powers envisaged in Entry 66 of List I of the Seventh Schedule to the Constitution of India. (Bharathidasan University and Ors. v. All India Council for Technical Education and Ors23; Association of Management of Private Colleges v. All India Council for Technical Education and Ors24; and Kalyani Mathivanan vs. K.V. Jeyaraj and Ors25). The 1956 Act, enacted to make provision for the co- ordination and determination of standards in Universities and for that purpose to establish a University Grants Commission, came into force on 01.11.1956.

24. Section 4 of the 1956 Act relates to the establishment of the University Grants Commission and under sub-section (1) thereof, with effect from such date as the Central Government may by notification in the Official Gazette appoint, there shall be established a Commission by the name of the University Grants Commission. Section 4(2) stipulates that the Commission shall be a body corporate having perpetual succession and a common seal, and shall by the said name sue and be sued. It is the duty and responsibility of the University Grants Commission, which is established by Section 4 of the UGC Act, to determine and co-ordinate the standard of teaching curriculum and also the level of examination in various universities in the country. (Professor Yaspal Vs. State of Chhattisgarh26).

25. Section 12 of the 1956 Act relates to the functions of the UGC and, thereunder, it shall be the general duty of the UGC to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities. Section 14 provides for the consequences of the failure of Universities to comply with the recommendations of the Commission; and, thereunder, if any University fails, within a reasonable time, to comply with any recommendation made by the Commission under Section 12 or Section 13 or contravenes the provision of any rule made under clause (f) or clause (g) of sub-section (2) of Section 25, or of any regulation made under clause (e) or clause (f) or clause (g) of Section 26, the UGC, after taking into consideration the cause if any shown by the University for such failure or contraventions, may withhold from the University the grants proposed to be made out of the fund of the Commission. The UGC has always had and has an accepted and well-merited role of primacy to play in shaping as well as stepping up a coordinated development and improvement in the standards of education and research in the sphere of education. (Bharathidasan University23).

26. Section 20 of the 1956 Act relates to directions by the Central Government and, under sub-section (1) thereof, the Commission shall be guided, in the discharge of its functions under the Act, by such directions, on questions of policy relating to national purposes, as may be given to it by the Central Government. Section 20(2) provides that, if any dispute arises between the Central Government and the Commission as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government shall be final.

27. Section 26(1) enables the University Grants Commission, by notification in the official gazette, to make Regulations consistent with the Act and the Rules made thereunder (e) defining the qualifications that should ordinarily be required of 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; and (g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities. Section 26(2) of the 1956 Act stipulates that no regulation shall be made under clause (a) or clause (b) or clause (c) or clause (d) or clause (h) or clause (i) or clause (j) of sub-section (1) except with the previous approval of the Central Government. Under Section 28 of the 1956 Act every regulation made under the 1956 Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days.

28. The provisions of the UGC Act are binding on all universities whether conventional or open. Its powers are very broad. The Regulations framed by it, in terms of clauses (e), (f), (g) and (h) of sub-section (1) of Section 26, are of wide amplitude. In the matter of higher education, it is necessary to maintain minimum standards of instruction. Such minimum standards of instruction are required to be defined by the UGC. Subordinate legislation, when validly made, becomes part of the UGC Act. (Annamalai University v. Information and Tourism Deptt.27; Kalyani Mathivanan25).

29. Section 26 of the UGC Act enables the Commission to make regulations only if they are consistent with the UGC Act. Such regulations must conform to Section 20 of the Act whereunder the Central Government is given the power to give directions on questions of policy relating to national purposes which shall guide the Commission in the discharge of its functions under the Act. (P. Suseela and Ors. vs. University Grants Commission and Ors.28). The regulation-making power of the UGC is subservient to the directions issued under Section 20 of the Act. The fact that the UGC is an expert body does not take the matter any further. The UGC Act contemplates that such expert body will have to act in accordance with the directions issued by the Central Government. (P. Suseela28).

30. In the exercise of the powers conferred by clause (e) and (g) of sub- section (1) of Section 26 of the University Grants Commission Act, 1956, and pursuant to MHRD (Government of India) O.M. dated 23.10.2008 read with Ministry of Finance (Department of Expenditure) O.M. dated 30.08.2008, in terms of the MHRD Notification issued on 31.12.2008, and in supersession of the University Grants Commission (Minimum Qualifications Requires for the Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) Regulations, 2000, together with all amendments made therein from time to time, the University Grants Commission framed the 2010 UGC Regulations.

31. Regulation 1.2 thereunder stipulates that the 2010 UGC Regulations shall apply to every university established or incorporated by or under a Central Act, Provincial Act or a State Act, every institution including a constituent or an affiliated college recognized by the Commission, in consultation with the University concerned under clause (f) of Section 2 of the 1956 Act, and every institution deemed to be a University under Section 3 of the 1956 Act. Enclosed as annexure to the proceedings of the Secretary, UGC dated 30.06.2010 are the 2010 UGC Regulations. Clause 3.0.0 thereof relates to recruitment and qualifications and, under Clause 3.1.0, direct recruitment to the posts of Assistant Professor, Associate Professor and Professor in the Universities and Colleges shall be on the basis of merit through an all India advertisement and selection by a duly constituted Selection Committee as per the provisions made under the 2010 UGC Regulations to be incorporated under the Statutes/ Ordinances of the concerned university. The composition of such

committees were to be prescribed by the UGC in the 2010 UGC Regulations. Clause 3.3.0 stipulates that the minimum requirements of a good academic record with 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the master's level and qualifying in the National Eligibility Test (NET), or an accredited test (State Level Eligibility Test-SLET/SET), shall remain the minimum educational qualifications for appointment as Assistant Professors. Clause 3.3.1 stipulates that NET/SLET/SET shall remain the minimum eligibility condition for recruitment and appointment as Assistant Professors in Universities/Colleges/ Institutions. Exemption is given under the proviso from the minimum eligibility criteria on fulfillment of the conditions stipulated therein.

32. Clause 3.4.0 of the 2010 UGC Regulations stipulates that a minimum of 55% marks would be required at the Master's level for those recruited as teachers at the entry level of Assistant Professors. Clause 3.4.1 provides for relaxation of 5% at the graduate and the master's level for the Scheduled Castes/Scheduled Tribes/Differently-abled etc. Clause 4.0.0 relates to direct recruitment and clause 4.4.0 relates to Assistant Professors. The qualifications, prescribed for being considered for appointment to the post of Assistant Professors in different subjects, are enumerated in Clauses 4.4.1 and 4.4.2. Clause 5.0.0 of the 2010 UGC Regulations relates to Selection Committees and the Guidelines on selection. Clause 5.1.0 prescribes the Selection Committee Specifications. The composition of the Section Committee for the post of Assistant Professor is as stipulated in Regulation 5.1.1(a) and (b). Clause 7.4.0 provides that the Universities/State Governments shall modify or amend the relevant Acts/Statutes of the Universities concerned within six months of adoption of the 2010 UGC Regulations.

33. Letter No. 1-32/2006-U.II/U.I(1)(i) dated 31-12-2008, issued by the Government of India, Ministry of Human Resource Development, was appended as Appendix I, and formed part of the UGC Regulations, 2010. This letter related to the revision of pay of teachers and equivalent cadres in universities and colleges, following the revision of pay scales of Central Government employees on the recommendations of the Sixth Central Pay Commission. Clause 8 related to other terms and conditions, and sub-clause (p) thereunder related to the applicability of the Scheme. Para 8(P)(1) stipulated that this Scheme shall be applicable to teachers and other equivalent cadres in all Central universities and colleges thereunder, and the institutions deemed to be universities whose maintenance expenditure is met by the UGC; and implementation of the revised scales shall be subject to the acceptance of all the conditions mentioned in this letter, as well as the Regulations to be framed by the UGC in this behalf. Universities, implementing this Scheme, were required to be advised by the UGC to amend their relevant statutes and ordinances in line with the UGC Regulations within three months from the date of issue of this letter.

34. Since the dispute, in the present writ proceedings, relates to the scoring system prescribed in Appendix-III of the 2010 UGC Regulations, which, in turn, is referrable only to Clause 6.0.0 thereof, it is necessary to refer to Clause 6 in its entirety. Clause 6.0.1 stipulates that the overall selection procedure shall incorporate a transparent, objective and credible methodology of analysis of the merits and credentials of the applicants based on weightages 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 the 2010 UGC Regulations in

Tables I to IX of Appendix III. In order to make the system more credible, universities are entitled to 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 are permitted to be followed for both direct recruitment and CAS (Career Advancement Scheme) promotions, wherever selection committees are prescribed in the 2010 UGC Regulations. Clause 6.0.2 requires the Universities to adopt the 2010 UGC Regulations for selection committees, and selection procedures, through their respective statutory bodies incorporating the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS) at the institutional level for University Departments and their Constituent colleges/ affiliated colleges (Government/Government-aided/Autonomous/ Private Colleges) to be followed transparently in all the selection processes. An indicative PBAS template proforma, for direct recruitment and for Career Advancement Schemes (CAS), based on API based PBAS, was required to be sent separately by the UGC to the universities. The universities were permitted to adopt the template proforma or to devise their own self-assessment cum performance appraisal forms for teachers in strict adherence to the API criteria based PBAS prescribed in the 2010 UGC Regulations. Clause 6.0.4 stipulated that, in all the Selection Committees for direct recruitment of teachers and other academic staff in universities and colleges provided in the 2010 UGC Regulations, an academician representing the Scheduled Castes/Scheduled Tribes/ OBC/ Minority/ Women/Differently-abled categories, if any of candidates representing these categories is the applicant; and, if any of the members of the selection committee do not belong to that category, such a member shall be nominated by the Vice Chancellor or Acting Vice Chancellor of the University, and in case of a college, the Vice Chancellor or Acting Vice Chancellor of the University to which the college is affiliated to. The academician, so nominated for this purpose, shall be one level above the cadre level of the applicant, and such nominee shall ensure that the norms of the Central Government or the concerned State Government, in relation to the categories mentioned, are strictly followed during the selection process.

35. Clause 6.0.5 (i) stipulates that, besides the indexed publications documented by various discipline-specific data-bases, the University concerned should draw through committee(s) of subject experts and ISBN / ISSN experts: (a) a comprehensive list of National /Regional level journals of quality in the concerned subject(s); and (b) a comprehensive list of Indian language journals / periodicals / official publication volumes of language bodies and upload them on the University website which are to be updated periodically. (ii) In respect of Indian language publications, equivalence in quality shall be prescribed for universities located in a State by a Co-ordination Committee of experts to be constituted by the Chancellor of the concerned State University. (iii) At the time of assessing the quality of publications of the candidates, during their appointments/promotions, the selection committees should be provided with the above two lists which could be considered by the selection committees along with the other discipline-specific data bases. (iv) The UGC shall constitute a Committee as soon as practicable, in so far as acceptability of the (list of) Indian language journals so developed by Universities / States, to arrive at equivalence in quality of such publications with otherwise accepted and recognized journals.

36. Clause 6.0.10 stipulates that, in the selection process for posts involving different nature of responsibilities in certain disciplines/areas, such as Music and Fine Arts, Visual arts and Performing

arts, Physical education and Library, greater emphasis may be laid on the nature of deliverables indicated against each of the posts in the 2010 UGC Regulations which need to be taken up by the concerned institution while developing API based PBAS proforma for both direct recruitment and CAS promotions. Clause 6.0.11 provides that a Internal Quality Assurance Cell (IQAC) shall be established in all Universities/Colleges as per UGC/ National Assessment Accreditation Council (NAAC) guidelines with the Vice Chancellor, as the Chairperson (in the case of universities), and Principal, as Chairperson (in case of colleges). The IQAC shall act as the documentation and record-keeping Cell for the institution including assistance in the development of the API criteria based PBAS proforma using the indicative template laid down in these Regulations. The IQAC may also introduce, wherever feasible, the student feedback system as per the NAAC guidelines on institutional parameters without incorporating the component of students' assessment of individual teachers.

37. Clause 6.1.0 (a) stipulates that tables I to III of Appendix III are applicable to the selection of Professors/Associate Professors/Assistant Professors in universities and colleges; 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. Clause 6.2.0 stipulates that table II(c) of Appendix-III shall provide norms for direct recruitment of teachers to different cadres. Clause 6.3.0 stipulates that API based PBAS will be progressively and prospectively rolled out.

Appendix-III, table II(c) reads as under:-

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

	Assistant Professor/equivalent cadres (Stage 1)	Associate Professor/equivalent cadres (Stage 4)	Professor/equi cadres (Stage
Minimum API Scores	Minimum Qualification as stipulated in these regulations	Consolidated API score requirement of 300 points from category III of APIs	Consolidated scores require 400 points category III o
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	e) A Background (20 f) performance ba API score and of publication g) Assessment Domain Knowled and Teaching S

(20%) (20%)
d) Interview performance (20%) Interview performance (20%)

Note: For universities/colleges for which Sixth PRC Awards (vide Appendix 2) are applicable, Stages 1, 4 and 5 correspond to scales with AGP of Rs. 6000, 9000 and 10000 respectively.

38. By letter dated 30.09.2011, the Chief Secretary, Government of Uttarakhand informed all Vice-Chancellors of State Universities and the Director, Higher Education, regarding adoption of the educational qualifications in the 2010 UGC Regulations for the post of Assistant Professor (Lecturer). The said letter records that, in terms of the 2010 UGC Regulations, he was directed to inform that, for the post of Assistant Professor (Lecturer), the educational qualifications prescribed by the UGC in its 2010 Regulations, which were published in the gazette on 18.09.2011, had been approved by the Governor, and was to be adopted by the State Universities and P.G. Colleges, for the posts of Assistant Professors. Para 2 of the said letter dated 30.09.2011 stipulates that, in terms of the 2010 UGC Regulations, the minimum educational qualifications for the post of Assistant Professor, were:-

> I. The minimum requirements of a good academic record, 55% marks (or an equivalent grade in a point scale wherever grading system is followed), at least master's level and qualifying in the National Eligibility Test (NET), or an accredited test (State Level Eligibility Test-SLET/SET), shall remain for the appointment of Assistant Professors.
>
> II. NET/SLET/SET shall remain the minimum eligibility condition for recruitment and appointment of Assistant Professors in Universities/Colleges/Institutions.
>
> Provided however, that candidates, who are or have been awarded a Ph.D. degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions. III. NET/SLET/SET shall not be required for such Masters Degree Programmes in disciplines for which NET/SLET/SET accredited test is not conducted.
>
> IV. A minimum of 55% marks (or an equivalent grade in a point scale wherever grading system is followed) will be required at the Master's level for those recruited as teachers at any level from industries and research institutions and at the entry level of Assistant Professors, Assistant Librarians, Assistant Directors of Physical Education and Sports. V. A relaxation of 5% may be provided at the graduate and master's level for the Scheduled Caste/Scheduled Tribes/Differently-abled (Physically and visually differently-abled) categories for the purpose of eligibility and for assessing good academic record during direct recruitment to teaching positions. The eligibility marks of 55% marks (or an equivalent grade in a point scale wherever

grading system is followed) and the relaxation of 5% to the categories mentioned above are permissible, based on only the qualifying marks without including any grace marks procedures.

IV. A relaxation of 5% may be provided, from 55% to 50% of the marks to the Ph.D. Degree holders, who have obtained their Master's Degree prior to 19 September, 1991.

V. Relevant grade which is regarded as equivalent of 55% wherever the grading system is followed by a recognized university shall also be considered eligible.

39. Para 3, of the letter dated 30.09.2011, stipulated that the applicant should have a good academic record with a minimum of 50% marks (45% marks for the Scheduled Castes and the Scheduled Tribes) in post-graduation; and 5% relaxation would be given in favour of the Scheduled Castes and the Scheduled Tribes. Para 4 stipulated that the minimum education qualifications, for appointment to the post of Professor, as provided in the earlier government orders, shall stand amended.

40. By its notification dated 13.06.2013, the UGC amended Clause 6.0.1 and 6.0.2 of the 2010 Regulations. While the notification dated 13.06.2013 erroneously refers to clause '6.0.1' as '6.1.0', the UGC issued a corrigendum in August, 2014 correcting the error. The amended Clause 6.0.1 stipulates that the overall selection procedure shall incorporate a transparent, objective and credible methodology of analysis of the merits and credentials of the applicants based on the weightage 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 the 2013 Regulations in Tables I to IX of Appendix-III. Under the proviso thereto, the API scores will be used for screening purpose only, and will have no bearing on expert assessment of candidates in Direct Recruitment/CAS. The second proviso thereto stipulates that the API score claim of each of the sub-categories in 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/ 15% Seminars etc.

41. In order to make the system more credible, universities were permitted to 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 were permitted to be followed for both direct recruitment and CAS promotions wherever selection committees were prescribed in these Regulations. Clause 6.0.2 of the 2010 Regulations was amended and was substituted. The substituted clause 6.0.2 stipulates that the Universities shall adopt the Regulations for selection committees and selection procedures through their respective statutory bodies incorporating the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS) at the institutional level for University Departments and their Constituent colleges/affiliated colleges (Government/ Government-aided/ Autonomous/ Private Colleges) to be followed transparently in all selection processes. An indicative PBAS

template proforma for direct recruitment and for Career Advancement Schemes (CAS) based on API based PBAS was annexed thereto as Appendix-III. The universities were entitled to adopt the template proforma or to devise their own self-assessment cum performance appraisal forms for teachers. While adopting this, universities were required not to change any of the categories or scores of the API given in Appendix-III. The universities could, if they so wished, increase the minimum required score or devise appropriate additional criteria for screening of candidates at any level of recruitment.

42. The 2010 UGC Regulations were again amended by notification dated 04.05.2016 called the "University Grants Commission on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education (3rd Amendment), Regulations, 2016 (for short the "2016 Regulations"). By the 2016 amendment, Regulation 3.0.0 to 3.9.0 and 4.4.0 to 4.6.3 of the 2010 UGC Regulations were amended prescribing different qualifications for appointment to various posts. Para 4 of the notification dated 04.05.2016 stipulates that the existing Tables I to IX, under Appendix-III of the 2010 Regulations regarding computation of API score for appointment and promotion of teachers and other academic staff in the Universities/Colleges/Institutions shall stand amended and be substituted by the revised Tables I to IX appended to the 3rd Amendment Regulations. Appendix-III Table-II(B) reads as under:

Assistant Professor Associate Professor Professor (Stage 5) (Stage 1) (Stage 4) Minimum API Scores Minimum Consolidated API Consolidated API Qualifications as score requirement of score requirement of stipulated in these 300 points from 400 points from regulations categories II & III of categories II & III of APIs (cumulative) APIs (cumulative) Selection Committee (a) Academic Record (a) Academic (a) Academic criteria/weightages and Research Background (20%) Background (20%) (Total Weightages: Performance (50%) (b) Research (b) Research

100) (b) Assessment of performance based performance based Domain Knowledge on API score and on API score and & Teaching Skills quality of quality of (30%) publications (40%) publications (40%).

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(c)       Interview   (c) Assessment of       (c) Assessmen
performance (20%)     Domain Knowledge        Domain knowle
                      and Teaching Skills     and Teaching
                      (20%)                   (20%)
                      (d)        Interview    (d)         I
                      performance (20%)       performance (
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43. By his letter dated 16.06.2016, the Director, Higher Education informed the Joint Secretary, Education Section-7(Higher Education) that, by Government letter dated 29.02.2016, regarding the UGC Regulation Notification, a clear report in respect of the UGC Regulation No.5-1-6(d) and the Universities letter dated 23.06.2015, had been directed to be made available to the Government;

and, in view of the aforesaid, the point-wise report was given as under:

> 1. Under Regulation 5-1-6(d) of the UGC letter dated 28.06.2010, the duration of appointment of the Principals is five years; this Regulation was made applicable with effect from 28.06.2010; therefore, the Principals appointed prior to 28.06.2010 would not be covered under this Regulation; on the aforesaid regulation being adopted by the Government, the term of the Principal would be governed from the date of issuance of the Government Order.
>
> 2. All the Provisions of the Regulations cannot be made applicable for the teachers and principals appointed prior to the gazette publication dated 30.06.2010; the provision contained under the U.P. State University Act, 1973 (as applicable in the State of Uttarakhand), would be applicable on teachers and principals appointed at that point of time; accordingly, for enforcing all the provisions of the regulations, the Government would have to issue a Government Order.
>
> 3. It was pertinent to point out that adoption of all the provisions of the regulations mentioned in the UGC letter dated 28.06.2010, would be in the interest of the department.

44. Thereafter, by letter dated 28.06.2016, regarding adoption of the UGC notification dated 04.05.2016 in the State, providing exemption for appointment of Assistant Professor/ Lecturer in the University/affiliated/ constituent colleges by amending the educational qualification for NET/SLET/SET, the Director stated that the University Grants Commission had issued notification dated 04.05.2016 by means of which the 3rd Amendment, 2016 has been introduced providing minimum eligible qualification for setting up higher education standards for appointment of teachers and academic staff; by means of the amendment, the minimum eligibility condition prescribed vide Regulation 2010, Para 3.3.1 had been amended as regards the selection and appointment of the Assistant Professor in University/Colleges/Institutes; the amendment had been made applicable with immediate effect; consequently, the aforesaid amendment would have to be adopted for being enforced in the State, and the Government Order dated 30.09.2011 would be required to be amended suitably. The Director, Higher Education requested the Additional Chief Secretary (Higher Education) to the State of Uttarakhand to issue the amended Government Order by adopting the notification issued by the UGC.

45. By proceedings dated 29.12.2016, the Chief Secretary, Government of Uttarakhand informed all Vice-Chancellors of State Universities in the State of Uttarakhand, and the Director, Directorate of Higher Education, Haldwani regarding applying/adopting University Grants Commission Regulations, 2010, and for applying/adopting the amended Regulations dated 04.05.2016. The said letter dated 29.12.2016 records that the Director, Higher Education had, by his letters dated 06.06.2016 and 28.06.2016, informed that, by Government Order dated 30.09.2011, the provisions relating to determination of educational qualifications, mentioned in the 2010 UGC Regulations, had been made applicable; therefore, in this respect, he was directed to state that, while granting approval for applying/adopting all the provisions/rules amended through University Grants

Commission notification dated 04.05.2016, the Governor, along with it, had granted approval for applying/adopting the provisions of Clause 5.1.6 of the 2010 UGC Regulations, subject to the conditions mentioned in the letter dated 29.12.2016. Para 4 of the letter dated 29.12.2016 stipulates that the Government orders issued earlier, regarding the minimum educational qualifications for the post of Lecturer (Assistant Professor), shall be deemed to be amended/changed.

46. Reliance is placed on these proceedings dated 29.12.2016, on behalf of the petitioner, to contend that, since in Para 3 of the said letter dated 29.12.2016 it is recorded that the Governor had granted approval for applying/adopting all the provisions/rules amended through the notification dated 04.05.2016, Appendix-III, as amended by the 2016 UGC Regulations, had also been adopted in its entirety or, in the alternative, the scoring system prescribed therein had been adopted; consequently, the scoring system prescribed in Appendix-III Table-II(B), for awarding marks in direct recruitment as Assistant Professors in Government Degree Colleges should have been adhered to by the Public Service Commission; and since, in the selection process, candidates were not selected on the basis of weightage of marks, but were considered solely on the basis of interview (100% marks for interview), the entire selection process stands vitiated.

47. The adoption order dated 29.12.2016 refers to the letters of the Director, Higher Education dated 16.06.2016 and 28.06.2016. The contents of the letter dated 28.06.2016 show that it is regarding adoption of the 2016 UGC Regulations in the State providing exemption for appointment of Assistant Professor/ Lecturer in the University/affiliated/ constituent colleges by amending the educational qualification for NET/SLET/SET. The said letter further records that the University Grants Commission had issued notification dated 04.05.2016 providing minimum eligible qualification for setting up higher education standards for appointment of teachers and academic staff; by means of the amendment, the minimum eligibility condition prescribed vide Regulation 2010, Para 3.3.1 had been amended as regards the selection and appointment of the Assistant Professor in University/Colleges/Institutes; the amendment had been made applicable with immediate effect; consequently, the aforesaid amendment would have to be adopted for being enforced in the State, and the Government Order dated 30.09.2011 would be required to be amended suitably.

48. By notification dated 04.05.2016, Regulation 3.0.0 to 3.9.0 and 4.4.0 to 4.6.3 of the 2010 Regulations were amended prescribing different qualifications for appointment to various posts. Para 4 of the notification dated 04.05.2016 stipulates that the existing Tables I to IX, under Appendix-III of the 2010 Regulations regarding computation of API score for appointment and promotion of teachers and other academic staff in the Universities/Colleges/Institutions also stood amended. The 2016 Regulations makes no reference to Regulations 6 of the 2010 UGC Regulations, and has left Regulation 6, of the 2010 UGC Regulations, as amended in 2013, unchanged.

49. The adoption order dated 29.12.2016 also refers to the Director, Higher Education having informed that, by Government Order dated 30.09.2011, the provisions relating to the determination of educational qualifications, mentioned in the 2010 UGC Regulations, had been made applicable. Para 4 of the said letter stipulates that the Government Order issued earlier (evidently the order dated 30.09.2011), regarding the minimum educational qualifications for the post of Lecturer

(Assistant Professor), shall be deemed to be amended/changed. While it is no doubt true that the adoption order dated 29.12.2016 states that the Governor had granted approval for applying/adopting all the provisions/Rules amended through the UGC notification dated 04.05.2016, one particular sentence in the Government order cannot be read out of context to mean that it is not the amendment to Clause 3 alone, but that the 2016 Regulations has been adopted in its entirety.

50. Clause 6.0.2 of the 2010 UGC Regulations was substituted by the 2013 Amendment and the substituted Clause 6.0.2 also required the University to adopt the Regulations for selection committees and selection procedures through their respective statutory bodies incorporating the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS) at the institutional level for University Departments and their Constituent colleges/ affiliated colleges (Government/ Government-aided/ Autonomous/ Private Colleges) to be followed transparently in all selection processes.

51. The scoring system proforma based on Academic Performance Indicator (API) as provided in Tables 1 to 9 of Appendix-III to the 2010 UGC Regulations as amended in 2016, are referrable to Clause 6.0.1 of the 2010 UGC Regulations.

52. An Appendix to Statutory Regulations is similar to a schedule to an enactment. It is well settled that the Schedule is as much a part of the statute, and is as much an enactment, as any other part. (Flower Freight Co. Ltd. v. Hammond29; R. v. Legal Aid Committee No. 1 (London) Legal Aid Area, ex p Rondel30; Metropolitan Police Commr. v. Curran31; Attorney General v. Lamplough32; Ujagar Prints (II) v. Union of India33). To simplify the presentation of statutes, it is the practice for their subject-matter to be divided, where appropriate, between Sections and Schedules, the former setting out matters of principle, and introducing the latter, and the latter containing all matters of detail. This is purely a matter of arrangement, and a Schedule is as much a part of the Statute, and as much an enactment, as is the Section by which it is introduced. (Halsbury's Laws of England, Third Edn., Vol. 36, para 551; Aphali Pharmaceuticals Ltd. v. State of Maharashtra34). Consequently, Appendix-III must be read together with Regulation 6 of the 2010 UGC Regulations as amended in 2013, and since Regulation 6 of the 2013 Regulation has not been adopted, Appendix-III cannot be said to have been adopted in isolation.

53. In this context, it must also be borne-in-mind that expressions in a Schedule cannot control or prevail against the express enactment, in case of any inconsistency between the Schedule and the enactment, the enactment would prevail, and if any part of the Schedule cannot be made to correspond it must yield to the Act. (Aphali Pharmaceuticals Ltd.34). There are two principles or rules of interpretation which ought to be applied to the combination of an Act and a Schedule, and a Statutory Rule/Regulation and its appendix. If the Act (Regulation) says that the Schedule (Appendix) is to be used for a certain purpose, then the Act and the Schedule (Regulation and its Appendix) must be read as though the Schedule (Appendix) were operating for that purpose and, if the language of the Section (Regulation) can be satisfied without extending it beyond that purpose, it ought to be done. (IRC v. Gittus35; Aphali Pharmaceuticals Ltd.34; CIT v. Calcutta National Bank Ltd.36). In case of a conflict between the body of the Act and the Schedule (or the body of the

Regulation and the Appendix), the former prevails. (Aphali Pharmaceuticals Ltd.34). It is only if Regulation 6 of the 2010 UGC Regulations, as amended in 2013, had been adopted by the Government Order dated 29.12.2016, can Appendix-III also be said to have been adopted, and not the opposite. Appendix-III could not have been adopted without adopting Regulation 6, nor was it so adopted.

54. In Kalyani Mathivanan25 the Supreme Court held that the provisions made for the first time under the UGC Regulations, 2010 were not applicable to Universities, colleges and other higher educational institutions coming under the purview of the State Legislature, unless the State Government wished to adopt and implement the Scheme subject to the terms and conditions therein; in this connection, reference could be made to Para 8(p)(v) of Appendix I dated 31-12- 2008 and Regulation 7.4.0 of the UGC Regulations, 2010; it was also not the case of the respondents that the Scheme, as contained in Appendix I to the Annexure of the UGC Regulations, 2010, had been adopted and implemented by the State Government; and it was also apparent that the State Universities Act had not been amended in terms of the UGC Regulations, 2010 nor was any action taken by UGC under Section 14 of the UGC Act, 1956 as a consequence of the failure of the University to comply with the recommendations of the Commission under Section 14 of the UGC Act, 1956.

55. The Supreme Court, in Kalyani Mathivanan25, concluded by holding that to the extent the State Legislation is in conflict with the Central Legislation, including Sub-ordinate Legislation made by the Central Legislation under Entry 25 of the Concurrent List, it shall be repugnant to the Central Legislation and would be inoperative; the UGC Regulations, though subordinate legislation, had a binding effect on the universities to which it applied; the UGC Regulations, 2010 were mandatory to teachers and other academic staff in all Central universities and colleges thereunder, and the institutions deemed to be universities whose maintenance expenditure is met by the UGC; the UGC Regulations, 2010 are directory for universities, colleges and other higher educational institutions under the purview of the State legislation as the matter has been left to the State Government to adopt and implement the Scheme; thus, the UGC Regulations, 2010 are partly mandatory and partly directory; where the UGC Regulations, 2010 have not been adopted by the State Govt., the question of conflict between the State legislation and the Statutes framed under the Central legislation does not arise;

once they are adopted by the State Government, the State legislation should be amended appropriately; and, in such a case also, there shall be no conflict between the State legislation and the Central legislation. Since Paragraph 6 of the 2010 Regulations, as amended in 2013, has not been adopted by the Government of Uttarakhand, the law laid down by the Supreme Court, in Kalyani Mathivanan25, would require the table in Appendix-III to the 2016 Regulations, prescribing a scoring system for selection of candidates for appointment to the posts of Assistant Professors, to be treated as directory and not mandatory in character.

56. Reliance placed on behalf of the petitioner on the letter of the State Government dated 26.05.2017 is also of no avail. The Additional Secretary, Government of Uttarakhand informed the Secretary, Public Service Commission, by his letter dated 26.05.2017, that, by the earlier letter dated

20.04.2017, a requisition for filling-up 877 vacant posts of Lecturers in different subjects in Government colleges, had been made; the requisition / proposal for filling up 877 posts, obtained through the Director, Higher Education, was being remitted in the prescribed proforma, enclosing thereto the Uttarakhand Higher Education Group- 'A' Service Rules, 2003 (with the amended service rules), and all other documents; and necessary steps be immediately taken to initiate the selection process in the light of the above requisition, keeping in view the shortage of Assistant Professors (Lecturers) in the Higher Education Department. Among the five enclosures, to the letter dated 26.05.2017, is also the Government order dated 29.12.2016 regarding adoption of the 2010 UGC Regulations, as amended by Notification dated 04.05.2016. Though the UGC notification dated 04.05.2016 is among the enclosures to the said letter, the contents of the letter dated 26.05.2017 does not expressly require the Public Service Commission to follow the 2016 Amendment to the 2010 UGC Regulations. This is made clear by the subsequent letter dated 31.07.2017, whereby the Director, Higher Education, Government of Uttarakhand informed the Additional Secretary, Higher Education, Government of Uttarakhand, Dehradun that the amended requisition Paper-1 was being sent, including certain points, after due deliberation, regarding the selection in question, pursuant to the meeting held in the office of the Commission today ie on 31st July, 2017. The Director requested that further proceedings be initiated, for the selection in question immediately, on the basis of the amended requisition. Clause 13 of the enclosed Requisition refers to the Government Order dated 29.12.2016 relating to the educational qualification for regular selection, to the posts of Assistant Professors, through the State Public Service Commission. Clause 14 of the said requisition states that the posts of Assistant Professors would be governed by the provisions of the 2003 Rules. While Clause 13 of the Requisition enclosed with the letter dated 31.07.2017, refers to the Government Order dated 29.12.2016 only regarding the educational qualifications for regular selection to the post of Assistant Professors and not to the scoring system prescribed in Appendix-III thereto, Clause 14 refers to Rule 15(3) of the 2003 Rules which stipulates that selection to the posts of Assistant Professors shall only be by way of interview. On a conjoint reading of Clauses 13 and 14 of the requisition, it is evident that the concerned officials were of the view that it is only the educational qualifications, in the 2016 UGC Regulations, which had been adopted.

57. As noted hereinabove, Clause 3.0.0 of the 2010 UGC Regulations relates to recruitment and qualifications, Clause 3.1.0 relates to direct recruitment to the post of Assistant Professors, Clause 3.30 prescribes the minimum educational qualifications for appointment as Assistant Professors, Clause 3.3.1 stipulates that NET/SLET/SET shall remain the minimum eligibility condition for recruitment and appointment as Assistant Professors in Universities/Colleges/ Institutions, and Clause 3.4.0 prescribes the minimum marks to be secured at the Master's level for appointment as Assistant Professors.

58. What was adopted by the order dated 30.09.2011 is only Clause 3 of the 2010 UGC Regulations. Unlike Regulation 3 of the 2010 UGC Regulations, which provides for the minimum educational qualifications required to be considered for appointment to the post of Assistant Professors, what Clause 6.0.1 stipulates is an overall selection procedure to incorporate a transparent, objective and credible methodology of analysis of the merits and credentials of the applicants based on weightages 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 the Tables I to IX of Appendix III to the 2010 UGC Regulations. Clause 6.0.2 of the 2010 UGC Regulations requires the Universities to adopt the 2010 Regulations for selection committees, and selection procedures, through their respective statutory bodies incorporating the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS) at the institutional level for University Departments and their Constituent colleges/ affiliated colleges (Government/Government-aided/Autonomous/ Private Colleges) to be followed transparently in all the selection processes. Admittedly, the State Universities, in the State of Uttarakhand, have not adopted Clause 6 of the 2010 UGC Regulations through their respective statutory bodies. As is evident from Clause 6.2.0 of the 2010 UGC Regulations, the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS) was not to be implemented immediately but to be progressively and prospectively rolled out, because they were required to be adopted by the Government/Universities before its implementation.

59. The contention, that the adoption order dated 30.09.2011 makes no reference to any specific regulations and, therefore, non-reference to Regulation 6 in the adoption order dated 29.12.2016 would not mean that Regulation 6 has not been adopted, is not tenable. While it is true that the adoption order dated 30.09.2011 does not specifically refer to Regulation 3.3.0 to 3.6.0 of the 2010 UGC Regulations, it extracts the conditions prescribed in the aforesaid clauses of the 2010 UGC Regulations. It was wholly unnecessary, therefore, to specifically refer to Clause 3.3.0 to 3.6.0 to the 2010 UGC Regulations in the adoption order dated 30.09.2011. Unlike the earlier adoption order dated 30.09.2011, the subsequent adoption order dated 29.12.2016 neither makes any reference to Regulation 6 or to Appendix-III nor does it extract its contents. We are satisfied, therefore, that what was adopted by the State Government, in its letter dated 29.12.2016, is only the educational qualifications stipulated in the 2010 UGC Regulations, and not the selection procedure prescribed therein or the scoring system detailed in Appendix-III of the 2016 Amendment to the 2010 UGC Regulations.

60. In the light of the law declared by the Supreme Court, in Kalyani Mathivanan25, as the University Statutes and the Government Rules have not been amended to bring it in conformity with the 2016 UGC Regulations, and as we are satisfied that neither Regulation 6 nor the scoring system in Appendix-III have been adopted by the State Government in its proceedings dated 29.12.2016, the scoring system prescribed in the Table to Appendix-III would not automatically apply in the recruitment of Assistant Professors to Government Degree Colleges. The contentions urged, on behalf of the petitioner, under this head necessitate rejection.

IV. APPLICABILITY OF THE 2009 UGC REGUULATIONS :

61. Sri C.D. Bahuguna, learned Senior Counsel, would submit that Regulation 6.0.2 of the 2010 UGC Regulations stipulates that the University should adopt the Regulations for selection committees, and selection procedures through their respective bodies incorporating the Academic Performance Indicator for affiliated colleges (Government/ Government-aided/ Autonomous/ Private Colleges); the UGC (Affiliation of Colleges by Universities) Regulations, 2009 would apply; on a conjoint reading of Regulation 3.1.4 thereof, which relates to the number of teaching and non-teaching staff as per the University norms, with Regulation 5.3 which stipulates that all teaching and non-teaching

staff are to be appointed permanently on the UGC/Government scales of pay, it is clear that the provisions of the 2010 UGC Regulations, as amended by the 2016 Regulations, would apply in the selection and appointment of Assistant Professors to Government Colleges; and the contention, that only the educational qualifications prescribed in the 2016 Regulations were adopted, would not necessitate rejection, since no such plea has been taken by the respondent-State Government in its counter affidavit.

62. On the other hand Sri Paresh Tripathi, learned Chief Standing Counsel, would submit that the UGC (Affiliation of Colleges by Universities) Regulations, 2009, as is evident from Regulation 1.2 thereof, applies only to colleges seeking affiliation, and those which are already affiliated, to Universities in India; Regulation 9 of the 2009 Regulations confers power on the University Grants Commission to impose a penalty on the University if it grants affiliation in contravention of the related provisions of the UGC Act and the Regulations; the "University" referred to therein is the University granting affiliation, and not the University Grants Commission; and the 2009 Regulations cannot form the basis for the submission that the 2016 Amendment, to the 2010 Regulations, have been adopted.

63. The University Grants Commission made the UGC (Affiliation of Colleges by Universities) Regulations, 2009 (for short the "2009 Regulations"). These Regulations were to apply to all colleges seeking affiliation, and to those already affiliated to Universities in India established or incorporated by or under a Central Act, a Provincial Act or a State Act. Regulation 3 of the 2009 Regulations relates to 'Eligibility Criteria for Temporary Affiliation', and Clause 3.1 thereunder requires the proposed college seeking affiliation, at the time of inspection by the university, to satisfy the stipulated requirements, or the requirements in respect of any of them prescribed by the Statutory / Regulatory body concerned, whichever is higher. Clause 3.1.4 thereof relates to the number of teaching and non-teaching staff as per University norms. Regulation 5.3 stipulates that all the teaching and non-teaching staff should be appointed on a permanent basis (appointed on a regular basis, in the case of a Government college) on the UGC / Government scales of pay. Regulation 9 thereof relates to penalties on the Universities granting affiliation to sub-standard colleges or the failure of Universities / colleges to comply with the Regulations of Commission. Regulation 9.1 stipulates that if any University grants affiliation to a college which does not fulfill the conditions / requirements for affiliation as per the Regulations, or if the University grants affiliation in contravention of the relevant provisions of the UGC Act and the Regulations, the Commission may take such action as it deems fit, including that of withholding the grants to the University and / or delisting the said University from the list of universities maintained by the Commission under Section 12B of the UGC Act.

64. All that Clause 3.1 of the 2009 Regulations stipulates is for the proposed College, seeking affiliation, to satisfy the stipulated requirement or the Regulations in respect of any of them prescribed by the Statutory/Regulatory body concerned. The "Statutory/Regulatory Body", referred to in Clause 3.1, is the Statutory/Regulatory body defined in Section 2.6 of the 2009 Regulations and thereunder a Statutory/Regulatory body means a body so constituted by a Central/State Government Act for setting and maintaining standards in the relevant areas of higher education, such as the All India Council for Technical Education (AICTE), the Medical Council of India (MCI),

the Dental Council of India (DCI), the National Council for Teacher Education (NCTE), the Bar Council of India (BCI), etc. The very fact that Clause 2.3 of the 2009 Regulations defines "Commission" to mean the University Grants Commission established under the UGC Act, would make it clear that the UGC would not fall within the definition of a Statutory/Regulatory body under Clause 2.6 of the said Regulations. Consequently, the 2016 UGC Regulations would not necessitate adherence in terms of clause 3.1 of the 2009 Regulations.

65. The obligation, cast under Regulation 9.1 of the 2009 Regulations, not to grant affiliation contrary to the provisions of the UGC Act and its Regulations would not mean that the 2016 Amendment to the 2010 Regulations automatically apply to Government Colleges in the State of Uttarakhand, for Clause 7.4.0. of the 2010 Regulations itself requires the Universities/State Governments to modify or amend the relevant Act/Statutes of the Universities concerned within six months of the adoption of the 2010 Regulations. It is only if the relevant Acts/Statutes are amended to bring it in conformity with the 2010 Regulations, would the 2010 Regulations thereafter necessitate compliance. As it is only the educational qualifications, prescribed in the 2016 Regulations, which have been adopted by the proceedings dated 29.12.2016, neither Regulation 6 of the 2010 UGC Regulations, nor the amended Appendix-III of the 2016 Regulations, would apply for selection of candidates for appointment to the posts of Assistant Professors in Government Degree Colleges, and the Public Service Commission cannot be faulted for adhering to Rule 15(3) of the 2003 Rules, in selecting candidates solely on the basis of interview without following the Screening System prescribed in Appendix-III of the 2010 UGC Regulations as amended by the 2016 UGC Regulations.

V. SHOULD WEIGHTAGE MARKS HAVE BEEN GIVEN FOR DIFFERENT PARAMETERS ?

66. Mr. C.D. Bahuguna, learned Senior Counsel, would submit that Rule 7(e), of the Uttarakhand Public Service Commission Examination Result Preparation Procedure Rules, 2012 (for short the '2012 Rules'), requires marks to be allocated by the interview board, after due consideration to the candidates present in the interview, on the basis of the subject knowledge along with personality, intellect, ability, power to take decision, power of expression, sensibility towards weaker sections of society, power of leadership, general awareness, power of acceptability of latest technology, knowledge about the State, intellectual and moral honesty, and suitability for the post; the interview board had failed to allocate marks separately to each of these categories; in the absence of separate marks being prescribed for each of these categories, the selection process stood vitiated in the light of the law declared by the Supreme Court in Minor A. Peeriakaruppan and vs. State of Tamil Nadu and Ors.37; even if the interview board is presumed not to be obligated in law to prescribe marks separately, for all the aforesaid 12 criteria stipulated in Rule 7(e) of the 2012 Rules, the very object of a scoring system is to make the selection process transparent; permitting the selection committee to award lump sum marks, for all the 12 criteria prescribed in Rule 7(e) put together, would result in the selection process being tainted by lack of transparency; it is evident that no guidelines have been prescribed as to how the interview board should allocate marks for each of these criteria; and the absence of guidelines would render the decision of the selection committee illegal. Learned Senior Counsel would rely on State of Kerala and Ors. vs. M/s. Travancore Chemicals and Manufacturing

Co. and Anr38; District Registrar and Collector, Hyderabad & another vs. Canara Bank & others39; and Supreme Court Advocates-on-Record Association and another vs. Union of India40.

67. On the other hand Sri Paresh Tripathi, learned Chief Standing Counsel, would submit that it was unnecessary for the Interview Board to allot marks separately for all the criteria referred to in Rule 7(e) of the 2012 Rules as amended in the year 2015; and the interview board had taken all the aspects, referred to therein, into consideration while awarding lump-sum marks to the interviewed candidates.

68. Sri B.D. Kandpal, learned Standing Counsel for the Public Service Commission, would submit that Rule 7(e) of the 2012 Rules also stipulates that marks would be allotted only on the basis of interview; Rule 7(e) does not require separate marks to be awarded on all the parameters stipulated therein; the requirement of the said Rule is for the Interview Board to bear in mind the stipulated parameters while awarding marks to the candidates appearing in the interview; since the Interview Board was made aware of these Rules, it is evident that they had allotted marks bearing these parameters in mind; the advertisement only stipulates that selection would be held on the basis of interview; it does not state that marks would be awarded separately for each of the 12 criteria; Clauses 13(1) and (2) of the advertisement dated 04.08.2017 refer to the Uttarakhand Public Service Commission (Procedure and Conduct of Business) Rules, 2013 and the Uttarakhand Examination Results Preparation Process Rules, 2012, as amended in 2013, 2014, 2015 and 2016, as the Rules governing the selection process; these Rules are available on the website of the Uttarakhand Public Service Commission; Rule 7(e) of the 2012 Rules prescribes that the process of selection shall be conducted only by way of interview; and, since the selection was undertaken strictly on the basis of the conditions stipulated in the Rules and the advertisement, no interference is called for.

69. Mr. Shobhit Saharia, learned counsel, would submit that the earlier judgment of the Supreme Court in A. Peeriakaruppan37 has been distinguished subsequently by the Supreme Court in Madan Lal and others vs. State of Jammu and Kashmir and Others41; and in the light of the law declared in the aforesaid judgment of the Supreme Court, the requirement of allotting separate marks, for each of the 12 criteria referred to in Rule 7(e) of the 2012 Rules, is unnecessary.

70. Before examining the question whether failure of the Interview Board to allot separate marks for the 12 different criteria prescribed in Rule 7(e) of the 2012 Rules is fatal, it is useful to refer to the relevant statutory provisions. The Uttar Pradesh State Public Service Commission (Regulation of Procedure) Act, 1985 (for short the '1985 Act') is an Act to provide for certain matters relating to the procedure of the State Public Service Commission, and the conduct of business. Section 11(1) thereof enables the Public Service Commission to make rules, not inconsistent with the provisions of the 1985 Act, for the regulation of its procedure. In the exercise of the powers conferred by Section 11(1) of the 1985 Act, the Uttarakhand Public Service Commission made the Uttarakhand Public Service Commission Preparation of Examination Procedure Rules, 2012 (for short the '2012 Rules'). Rule 7 of the 2012 Rules relates to the interview procedure. Rule 7(e) thereof relates to the 'Subject Expert' and provides that, keeping in view the aspect of maintaining confidentiality/sensibility in the interview examination, different subject experts, who may participate in the Interview Board, would be invited by the Examination Controller only; all the subject experts / advisors present, would be

advised, in the presence of all the members of the Commission, to assess the candidates on merits (without discriminating on the basis of caste, creed, religion, place of birth etc.), and shall be informed of the procedure of the Interview Board; questions relating to the name of the candidates, their father's name, their place of residence, caste, religion, sect etc. shall not be asked by the Interview Board; marks would be allocated by the Interview Board, after due consideration, to the candidates present in the interview, on the basis of subject knowledge along with personality, intellect, ability, power to take decision, power of expression, sensibility towards weaker sections of society, power of leadership, general awareness, power of acceptability of latest technology, knowledge about State, intellectual and moral honesty and suitability for the post; for maintaining faultless examination, the subject experts would be invited from renowned educational institutions; and the procedure, for allocating marks to the candidates, would be applied independently by the Chairman of the Interview Board, on obtaining advice from technical advisors, under the norms established as per rules.

71. What Rule 7(e) of the 2012 Rules requires is for marks to be allotted by the Interview Board after due consideration, to the candidates present in the interview on the basis of (i) subject knowledge; (ii) personality; (iii) intellect; (iv) ability; (v) power to take decision; (vi) power of expression; (vii) sensibility towards weaker sections of society; (viii) power of leadership; (ix) general awareness; (x) power to accept latest technology; (xi) knowledge about the State; and (xii) intellectual and moral honesty. The said Rule does not expressly state that separate marks should be awarded by the Interview Board for each of these 12 criteria. All that it requires is for the Interview Board to allocate marks after due consideration of (or, in other words, bearing in mind), the aforesaid 12 criteria.

72. In A. Peeriakaruppan37, on which reliance is placed on behalf of the petitioner, the Selection Committees were authorised to give a maximum of 75 marks in the interview and were asked to award these marks on the basis of the following tests: (1) Sports or National Cadet Corps activities; (2) Extra-Curricular special services; (3) General physical condition and endurance; (4) General ability, and (5) Aptitude; the committee neither divided the interview marks under various heads, nor were the marks given on an itemised basis. The marks list produced before the Court showed that marks were given in a lump-sum. It is in this context that the Supreme Court, while holding that this procedure was illegal, observed that the interview stood vitiated for the reason that the selection committee took into consideration irrelevant matters, and at the same time failed to take into consideration matters required to be taken into consideration; and it was clear from the affidavit, filed on behalf of the selection committee, that, at the time of interview, much attention had not been given to the general ability which test includes past performance of the applicants and the varied interests taken by them. The Supreme Court further held :

> "......It was next urged that no objective criterion was fixed for interview. We are unable to accept this contention as well. The selectors were asked to interview candidates on the basis of the five criterion prescribed to which we have made reference earlier. Those tests are sufficiently objective in character. Similar tests were held to be objective by this Court in Chitralekha case. It cannot be denied that extra-curricular activities like sports, NCC, special services, general physical condition and endurance and general ability are objective tests. The aptitude referred

to in the rule, in our opinion, is aptitude for medical profession.....

> ......It was next contended that separate marks had not been allotted for each one of the tests enumerated in the rule. A total of 75 interview marks were placed at the disposal of the selection committee and from out of those the committee could award marks according to its sweet will and pleasure. Such a power it was said is an arbitrary power. We were told that the entire 75 marks could have been given to a candidate even if he satisfied only one out of the five criterion prescribed. It is true that the rule did not prescribe separate marks for separate heads. But that in our opinion did not permit the selection committee to allot marks as it pleased. Each one of the tests prescribed had its own importance. As observed at footnote 20 at p. 485 of American Jurisprudence, Volume 15, that the interviewers need not record precise questions and answers when oral tests are used to apprise personality traits; it is sufficient if the examiner's findings are recorded on the appraisal sheet according to the personal qualifications itemised for measure...... (emphasis supplied)

73. In Madan Lal41, among the question, which arose for consideration before the Supreme Court, was whether the viva-voce test, conducted by the Commission, was illegal as there was nothing to show that the members, who conducted the test, had assigned separate marks faculty-wise for assessing the performance of the candidates concerned. Rule 10(1)(b) of the Rules laid down that the object of the viva voce examination was to assess the candidates' intelligence, general knowledge, personality, aptitude and suitability. It was contended that, when a candidate is orally interviewed, the members of the committee should assign separate marks for different faculties of the candidate concerned namely intelligence, general knowledge, etc., as laid down in the rule; that did not appear to have been done by the Interviewing Committee; and hence the entire viva-voce test was vitiated. Reliance was placed, on behalf of the petitioner on the earlier decision of the Supreme Court in A. Peeriakaruppan37.

74. It is in this context that the Supreme Court held that, in so far as Rule 10(1)(b) was concerned, it did not provide for any separate assessment of marks for candidates at the viva voce examination faculty-wise, that is on intelligence, general knowledge, etc., listed in the said rule; on the contrary, it appeared that as per the said rule, while conducting viva voce examination, the Committee had to keep in view the main object of assessing such candidates in the light of the guidelines given therein; in other words, the Interviewing Committee had to keep in view the overall performance of the candidates at the oral interview; while doing so their intelligence, general knowledge, personality, aptitude and suitability had to be kept in view; the rule merely laid down the object of assessing such candidates in the viva voce examination; it was a general guideline given to the Interviewing Committee members; therefore, it was not possible to agree that the members of the Interview Committee must separately assess and give marks on different listed topics faculty-wise as per the said rule; so far as the decision in A. Peeriakaruppan37 was concerned, it had to be kept in view that the Supreme Court was dealing with admissions to the MBBS course in the State of Tamil Nadu; the selection committee was constituted for assessing the merit of the applicants concerned for such admissions at the oral interview after the written test; 75 marks were assigned for the oral interview; the selection committee was asked to award these marks on the basis of the following five tests: (1)

Sports or National Cadet Corps activities; (2) Extra-curricular special services; (3) General physical condition and endurance; (4) General ability; and (5) Aptitude; when 75 marks were to be assigned to a candidate called for oral interview, on the basis of the aforesaid five types of performance by the candidate, the assessment on the first three tests would depend upon the documentary evidence regarding his career record which the candidates can furnish to the Interview Committee, while the last two tests will depend upon his performance at the interview; in view of this hybrid type of tests, for which assessment was to be made at the oral interview, the 75 marks, assigned for all these five tests, necessarily, had to be split up, and from the career record of the candidate, separate marks had to be assigned for the first three tests, and that necessarily required separate assessment of marks on the remaining two heads of tests; it is in the light of this requirement, of this peculiar type of marking at the oral interview, that it had been observed that it was clearly illegal to give marks in a lump sum, and that the Committee had neither divided the marks under various heads, nor on item-wise basis; it was also to be kept in view that, while selecting a student for admission in the MBBS course, what was more important was his performance in the written test; even at the oral interview his past record of performance had its own weight; a student, while undertaking study, was not required to perform any duty of a public office; but in the case of recruitment to the posts of Munsif he is required to work at the grass-root level of the State Judiciary; for candidates aspiring to be appointed in such a judicial office, apart from the written test, his overall performance at the oral interview is more important; consequently the split-up of marks under various sub-heads, at the oral interview of such a candidate, may not be strictly necessary unless the concerned rule, regulating such a viva voce test, expressly provided to that effect; Rule 10(1)(b) did not so prescribe, and hence it was open to the members of the Committee to make an overall assessment of the interviewed candidates keeping in view the various factors for such assessment as laid down by the said rule; and the decision of the Supreme Court, in A. Peeriakaruppan37, was considered in Lila Dhar v. State of Rajasthan42.

75. In Lila Dhar42 the Supreme Court distinguished its earlier decision in A. Peeriakaruppan37, and observed as under:

> "........It is true that in Peeriakaruppan37 the Court held that the non- allocation of marks under various heads in the interview test was illegal but that was because the instructions to the Selection Committee provided that marks were to be awarded at the interview on the basis of five distinct tests. It was thought that the failure to allocate marks under each head or distinct test was an illegality. But, in the case before us, the rule merely and generally indicates the criteria to be considered in the interview test without dividing the interview test into distinct, if we may so call them, sub-tests........."

76. The decision in Lila Dhar42 was approved by a Constitution Bench of the Supreme Court in Ashok Kumar Yadav v. State of Haryana43. This aspect was also considered later in Keshav Ram Pal (Dr) v. U.P. Higher Education Services Commission, Allahabad44. An identical contention concerning viva voce test conducted by the interview board, which had not sub-divided the total marks into sub-heads, was rejected in that case; and it was held that the Interview Board was not under any obligation to sub-divide the marks under various heads. The Supreme Court noted that

the basis of selection in that case was to assess the candidates' academic attainments, technical experience, administrative experience and suitability for the post of Principal; and, in the light of that rule, it was held by the Supreme Court, in the aforesaid decision, that the interview board was not under any obligation to sub-divide the marks under various heads. (Madan Lal42).

77. As noted hereinabove, the judgment of the Supreme Court, in A. Peeriakaruppan37, was subsequently considered by the Supreme Court, in Lila Dhar42, and in Madan Lal41. The decision in Lila Dhar42 was approved by a Constitution Bench of the Supreme Court in Ashok Kumar Yadav43, and later in Keshav Ram Pal (Dr)44.

78. Reliance placed on A. Peeriakaruppan37, to contend that separate marks for each of the 12 criteria should be awarded in the light of the aforesaid judgment is of no avail, more particularly since Rule 7(e) of the 2012 Rules does not specifically require marks to be awarded separately for each of the 12 criteria, and only requires the Interview Board to allot marks taking into consideration these 12 criteria.

79. Rule 7(e) of the 2012 Rules read with Rule 15(3) of the 2003 Rules, which require selection to be made solely on the basis of interview, confer wide discretion on the Interview Board in selecting candidates for appointment to the posts of Assistant Professors. It is true that a discretionary power may not necessarily be a discriminatory power, but where a statute confers a power on an authority to decide matters of moment without laying down any guidelines or principles or norms, the power has to be struck down as being violative of Article 14 (Air India v. Nergesh Meerza45; District Registrar and Collector39). It is also true that, in order to combat and deal with all controversies, issues and problems, which are always open for judicial interpretation, the Courts have to undertake an onerous mission in exploring the 'real intention' and 'original meaning' of the Constitution beyond all obscurities, expound the principles underlying the philosophy of the Constitution, and declare what the Constitution speaks about and mandates. (Supreme Court Advocates-on-Record Assn.40).

80. In Travancore Chemicals and Manufacturing Co.38, on which reliance was placed on behalf of the petitioner, it was contended on behalf of the appellants that Section 59-A of the Kerala General Sales Tax Act, 1963 was a piece of legislation conferring power on the Government to decide any question regarding the rate of tax; the Section furnished limitations subject to which the power could be exercised; and this power was in respect of classification under the Schedule, and not for levying a tax. It is in this context that the Supreme Court expressed its inability to agree with the submission that the Section furnished a limitation subject to which the power could be exercised; the Section did not contain any guidelines as to at what stage the power can be exercised nor does the exercise of such a power make it amenable to the appellate or revisional provisions provided by the Act.

81. While acknowledging that in certain enactments of other States, for example under Section 49 of the Delhi Sales Tax Act, 1975, the Government had the power, but such power was not unbridled, the Supreme Court observed that the aforesaid Section 49 of the Delhi Sales Tax Act itself provided that a question for determination must arise otherwise than in a proceeding before a Court, or

before the Commissioner has commenced assessment or reassessment; no such safeguard or guideline, as provided in Section 49 of the Delhi Sales Tax Act, was present in the main provision; they were in agreement with the view of the Kerala High Court that Section 59-A of the Act was violative of Article 14 of the Constitution; and the High Court was, therefore, right in striking down the said provision.

82. The question which arose for consideration before the Supreme Court, in Travancore Chemicals and Manufacturing Co.38, was whether Section 59-A of the Kerala General Sales Tax Act suffered from the vice of excessive delegation of essential legislative functions. In the case on hand, the vires of neither Rule 7(d) and (e) of the 2012 Rules nor Rule 15(3) of the 2003 Rules have been subjected to challenge. Even otherwise, in the absence of any statutory procedure, the authority concerned may follow its own procedure subject to the conditions that the same is not hit by Article 14 of the Constitution of India. (Inder Parkash Gupta v. State of J&K46; Chairman & MD, BPL Ltd. v. S.P. Gururaja47). Rule 7(e) of the 2012 Rules requires the Interview Board to bear in mind the twelve factors prescribed therein while interviewing candidates. These twelve factors provide sufficient guidance to the interview Board on the manner in which candidates should be interviewed for their selection and appointment as Assistant Professors.

The statutory prescription, under Rule 7(e) of the 2012 Rules, of having a subject expert on the interview board also ensures objectivity in the assessment of their academic qualifications and experience in the concerned subject. The contention urged on behalf of the petitioner, under this head, therefore necessitates rejection.

VI. IS THE PRESCRIPTION OF 100% MARKS, FOR INTERVIEW, FATAL ?

83. Mr. C.D. Bahuguna, learned Senior Counsel appearing on behalf of the petitioner, would submit that the Commission assessed the relative merits of, and had selected candidates solely on the basis of the marks awarded to them in the interview; the entire 100% marks was prescribed only for interview; it has been repeatedly held by the Supreme Court that awarding 100% marks for interview is irrational and arbitrary; the stipulation in Rule 15(3) of the Uttaranchal High Education (Group 'A') Service Rules, 2003 (for short the "2003 Rules"), that selection of candidate should be made on the basis of interview, violates the law laid down by the Supreme Court in Satpal Singh & another vs. State of Haryana48; Inder Parkash Gupta46, and P. Mohanan Pillai vs. State of Kerala and Ors.49; and, even in the absence of a challenge to Rule 15(3), this Court would be justified in setting the entire selection process at naught for having prescribed 100% marks for the interview.

84. On the other hand Sri Paresh Tripathi, learned Chief Standing Counsel, would submit that, as Regulation 6 of the 2010 UGC Regulations has not been adopted, it is the 2003 Rules which continue to govern selection and appointment to the post of Assistant Professors; Rule 15(3) of the 2003 Rules stipulates that selection should be made only on the basis of interview; the 2003 Rules, made in the exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and which are legislative in character, would prevail and necessitate compliance.

85. Sri B.D. Kandpal, learned Standing Counsel for the Public Service Commission, would submit that it is only if the 2003 Rules are repealed or suitably amended would these Rules cease to apply thereafter; since no such exercise has been undertaken, the requirement of Rule 15(3) necessitated compliance; the Commission was thereby obligated to conduct the selection process entirely by way of interview; there is a presumption regarding the constitutionality of statutes/Rules and, in the absence of a challenge to the 2003 Rules, the validity of said Rules cannot be examined in writ proceedings under Article 226 of the Constitution of India; the judgments relied upon by the petitioner, to contend that awarding 100% marks for interview was illegal, relate to cases in which the selection process consisted both of a written examination followed by an interview; and, in the case on hand, the Rules stipulate that the entire selection is based only on interview.

86. The relief sought for in Writ Petition (S/B) No.78 of 2019 is for a writ of certiorari to quash the order dated 04.01.2019 whereby details of the marks, obtained by the candidates in the interview, was published; a writ of mandamus to declare the entire selection process as vitiated for not assessing the suitability of the petitioner in terms of the 2010 UGC Regulations; a writ of mandamus commanding respondent nos.1 to 3 to consider the candidature of the petitioner for selection to the post of Assistant Professor (Drawing and Painting) in accordance with the provisions of the 2010 UGC Regulations; a writ of mandamus commanding respondent nos.1 to 3 to consider the suitability and comparative merits of the petitioner and respondent nos.6 and 9, for the post of Assistant Professor (Drawing and Painting), in accordance with the provisions of the 2010 UGC Regulations; and for a writ of mandamus commanding respondent nos.1 to 5 not to issue appointment letters, to respondent nos.6 to 9, on the strength of the order dated 04.01.2019. The petitioner has not sought a mandamus from this Court to declare Rule 15(3) of the Uttaranchal Higher Education (Group 'A') Service Rules, 2003 (for short the "2003 Rules"), as ultra vires Part-III of the Constitution.

87. In the exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Uttaranchal Higher Education (Group 'A') Service Rules, 2003 (the "2003 Rules" for short) were made and notified in the State Gazette on 25.08.2003. The proviso to Article 309 provides, in so far as material, that until the State legislature passes a law on the particular subject, it shall be competent to the Governor of the State to make rules regulating the recruitment and the conditions of service of officers of the State. The Governor thus steps in when the legislature does not act. The power exercised by the Governor under the proviso is thus a power which the legislature is competent to exercise, but has in fact not yet exercised. It partakes of the characteristics of the legislative, not executive, power. (B.S. Yadav v. State of Haryana50). The proviso to Article 309 clearly lays down that 'any rules so made shall have effect, subject to the provisions of any such Act'. That is, if the appropriate legislature has passed an Act under Article 309, the rules framed under the proviso thereto will have effect - subject to that Act; but, in the absence of any Act, of the appropriate legislature, on the matter, the rules, made by the President/Governor, are to have full effect both prospectively and retrospectively. The Rules made under the proviso to Article 309, unless they can be impeached on grounds such as breach of Part III, or any other Constitutional provision, must be enforced, if made by the appropriate authority. (B.S. Vadera v. Union of India51). The heading of Chapter IV of Part VI of the Constitution, in which Article 213 occurs, is significant: "Legislative Power of the Governor". The power of the Governor under the proviso to Article 309 to make appropriate rules is of the same kind. It is a legislative power. Under Article 213, he

substitutes for the legislature because the legislature is in recess. Under the proviso to Article 309, he substitutes for the legislature because the legislature has not yet exercised its power to pass an appropriate law on the subject. (B.S. Yadav50).

88. Part V of the 2003 Rules prescribes the procedure for recruitment. Rule 15, thereunder, prescribes the procedure for direct recruitment. Rule 15(1) requires applications, for being considered for selection, to be called by the Commission in the prescribed form which may be obtained from the Secretary to the Commission. Under Rule 15(2), the Commission shall, having regard to the need for securing the representation of candidates belonging to the Scheduled Castes, the Scheduled Tribes and other categories in accordance with Rule 6, call for interview such number of candidates, who fulfill the requisite qualifications, as it may deem fit. Rule 15(3) requires the Commission to prepare a list of candidates in the order of their proficiency as disclosed by the marks obtained by each candidate in the interview; if two or more candidates obtain equal marks, the Commission is required to arrange their names in the order of merit on the basis of their general suitability for service; the number of the names in the list shall be more (but not more than 25 percent) than the number of the vacancies; and the Commission shall forward the list to the Appointing Authority. Under the proviso thereto, candidates from the merit list shall be appointed only against those posts for which they were selected. It is evident, from a bare reading of Rule 15(3) of the 2003 Rules, that the Public Service Commission was required to prepare a list of candidates in the order of their proficiency only on the basis of the marks obtained by each candidate in the interview ie 100% marks in the interview.

89. A statute, or a statutory rule, is so construed as to make it effective and operative on the principle expressed in the maxim "ut res magis valeat quam pereat". (It is better to validate a thing than to invalidate it). There is a presumption that the legislature does not exceed its jurisdiction. The burden of establishing that the Act is not within the competence of the legislature, or that it has transgressed other constitutional mandates, such as those relating to fundamental rights, is always on the person who challenges its vires. If a case of violation of a constitutional provision is made out then the State must justify that the law can still be protected under a saving provision. The Courts strongly lean against reducing a statute or a statutory rule to a futility. As far as possible, the Courts shall act to make legislation effective and operative. (Principles of Statutory Interpretation by Justice G.P. Singh (8th Edn., 2001 at pp. 453-54 and 36; Welfare Assn, A.R.P. v. Ranjit P. Gohil52).

90. In examining the constitutionality of a statute or a statutory Rule, it must be assumed that the legislature or the Rule making authority understands and appreciates the need of the people and the laws/Rules it enacts are directed to problems which are made manifest by experience, and that the laws/Rules are enacted which are considered to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the constitutionality of an enactment or Rule. (Charanjit Lal Chowdhuri v. Union of India53; State of Bombay v. F.N. Bulsara54; Mahant Moti Das v. S.P. Saki55; B. Banerjee v. Anita Pan56; Ram Krishna Dalmia v. S.R. Tendolkar57; Bachan Singh v. State of Punjab58; Hamdard Dawakhana v. Union of India59). The burden of proving all the facts, which are requisite for the constitutional invalidity, is thus upon the person who challenges the constitutionality. (Ranga Reddy District Sarpanches Association v. Government of A.P.60; Karnataka Sugar Workers Federation, Bangalore v. State of Karnataka61; State of Jammu and

Kashmir v. T.N. Khosa62).

91. The approach of the Court, even while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The Court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it. The Court should not approach the enactment/rule with a view to pick holes or to search for defects of drafting, much less inexactitude of the language employed. Indeed, any such defects of drafting should be ironed out as part of the attempt to sustain the validity/constitutionality of the enactment/rule. The unconstitutionality must be plainly and clearly established before an enactment/Rule is declared void. (State of Bihar v. Bihar Distillery Ltd63). It is only when there is a clear violation of a constitutional provision beyond reasonable doubt, that the Court should declare a statutory provision, be it plenary or subordinate, to be unconstitutional. (Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat64).

92. It is the duty of the Court, as far as possible, to uphold the constitutional validity of a statute. (Charanjit Lal Chowdhury53 v. Union of India: AIR 1951 SC 41; Dharmendra Kirthal v. State of U.P.65). The Court must recognize the fundamental nature and importance of the legislative process, and accord due regard and deference to it, just as the legislature and the executive are expected to show due regard and deference to the judiciary. (Bihar Distillery Ltd.63).

93. Behind the view that there is a presumption of the constitutionality of a statute, and the onus to rebut the same lies on those who challenge the legislation, is the rationale of judicial restraint, a recognition of the limits of judicial review, a respect for the boundaries of legislative and judicial functions, and the judicial responsibility to guard the trespass from one side or the other. The primary function of the Courts is to interpret and apply the laws according to the will of those who made them, and not to transgress into the legislative domain of policy- making. "The job of a Judge is judging and not law-making." "Judges are the keepers of the law and the keepers of these boundaries cannot, also, be among outriders". (Bachan Singh58). Judges act not by hunch but on hard facts properly brought on record and sufficiently strong to rebuff the initial presumption of constitutionality of legislation. Nor is the court a third Chamber of the House to weigh whether it should draft the clause differently. (B. Banerjee56; Bachan Singh58).

94. Where the validity of a law made by a competent legislature is challenged in a Court of law, that Court is bound to presume in favour of its validity (Burrakur Coal Co. Ltd. v. Union of India66; Dharmendra Kirthal65), for it is its duty to sustain the legislation, to the extent possible. (Ram Krishna Dalmia57; Dharmendra Kirthal65; Bihar Distillery Ltd.63). The Court also needs to be mindful that a legislation does not become unconstitutional merely because there is another view or because another method may be considered to be as good or even more effective. Courts do not substitute their views on what the policy is. (Subramanian Swamy v. CBI67; Independent Thought v. Union of India68).

95. The Courts must show due deference to the Legislative process. (Independent Thought68). The legislature is in the best position to understand and appreciate the needs of the people as enjoined by the Constitution. The Court will, therefore, interfere in this process only when the statute is

clearly violative of the right conferred on the citizen under Part III of the Constitution or when the Act is beyond the legislative competence of the legislature or such other grounds. (Pathumma v. State of Kerala69; State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat70; Sub-Divisional Magistrate, Delhi v. Ram Kali71; Independent Thought68; and Dharmendra Kirthal65). Unless it becomes clear beyond reasonable doubt that the legislation in question transgresses the limits laid down by the organic law of the Constitution, it must be allowed to stand as the true expression of the national will. (Shell Co. of Australia v. Federal Commr. of Taxation72; Independent Thought68; State of A.P. v. P. Laxmi Devi73).

96. In the cases on hand the petitioners have not even challenged the constitutional validity of Rule 15(3) of the 2003 Rules. In the absence of even a challenge thereto, it would be wholly inappropriate for us to, suo motu, declare Rule 15(3) of the 2003 Rules unconstitutional, or as ultra vires Articles 14 and 16 of the Constitution of India.

97. Let us now take note of the judgments relied upon on behalf of the petitioner. In Satpal48, an advertisement was issued inviting applications from all eligible candidates to fill-up the existing 485 vacancies in the posts of Patwaris. The total number of vacancies was enlarged to around 1000. While the Haryana Subordinate Service Selection Board selected 2318 candidates, the Government of Haryana reduced the number to 1313 candidates. Six of the unsuccessful candidates challenged the selection on various grounds, including that the percentage of marks allotted for interview, being as high as 85%, left room for arbitrary pick and choose. Out of 100 marks, 15 marks were reserved for higher educational qualifications, sports, experience, etc. whereas 85 marks were reserved for the performance of the candidate at the viva-voce. The High Court had come to the conclusion that the high percentage of marks, reserved for the viva voce test, left room for arbitrary selection. It is in this context that the Supreme Court observed that out of 100 marks, 15 marks were reserved for higher educational qualifications, etc whereas 85 marks were reserved for performance of the candidate at the viva voce; the High Court had come to the conclusion that the high percentage of marks reserved for the viva voce test left room for arbitrary selection; the observation of the High Court could not be read as laying down a ratio that, notwithstanding the high percentage of marks reserved for interview, the rule laying down the same was unassailable; in Ajay Hasia vs. Khalid Mujib Sehravardi74, it was observed that allocation of more than 15% of the total marks for the oral interview was arbitrary and unreasonable, and was liable to be struck down, as constitutionally invalid; in Ashok Kumar Yadav43, it was reiterated that, where the marks allotted for viva voce test are disproportionally excessive, it would tend to arbitrariness; in the instant case, apart from the fact that the percentage of marks allocated for interview was as high as 85%, the fact that as many as 400 to 600 candidates were interviewed on a single day provided reason to believe that the selection process tended to be arbitrary; and, in any case, there was room for such suspicion to be reasonably entertained.

98. While the Supreme Court, in Satpal48, has no doubt held that a high percentage of 85% marks for interview may leave room for arbitrariness, it also observed that, apart from the fact that a high percentage of marks was allotted for interview, several hundred candidates were interviewed on a single day, which gave room for a suspicion to be reasonably entertained that the selection process tended towards arbitrariness.

99. In Inder Prakash Gupta46, an advertisement was issued by the Jammu and Kashmir Public Service Commission inviting applications for the posts of Lecturers in the Health and Medical Education Department. The Public Service Commission had framed the Jammu and Kashmir Public Service Commission (Conduct of Business and Procedure) Rules, 1980. Rule 51 thereof provided 100 marks for the viva-voce test, 25 marks for academic merit, 10 marks for experience and five marks for sports and games. The constitutional validity of Rule 51, which provided 100 marks for interview, was subjected to challenge before the Jammu and Kashmir High Court which held that prescribing 100 marks for viva voce was excessive; and that Rule 51 needed to be re-cast. It is in this context that the Supreme Court, following its earlier decisions in Union of India v. N. Chandrasekharan75; Capt. K.C. Shukla8; Anzar Ahmad v. State of Bihar76; and Satpal48, held that, in its opinion, the High Court was correct in holding that Rule 51, which provided for 100 marks for viva voce test against 40 for other criteria, was contrary to the law laid down in the earlier judgments of the Supreme Court.

100. In P. Mohanan Pillai49, a public sector undertaking invited applications from all workmen in the service of the company for the posts of watchmen/messengers/attenders. It was contended before the Supreme Court that, having regard to the nature of the duties required to be discharged by watchmen / messengers, 100 marks could not have been fixed for oral interview. It is in this context that the Supreme Court observed that, when allocation of such marks is made with an intention which is capable of being abused or misused in its exercise, it is liable to be struck down as ultra vires Article 14 of the Constitution of India; even if the Court proceeded on the assumption that the Commission was entitled to also take a viva voce test, the marks allotted therefor should indisputably be within a reasonable limit; in this case allocation of marks for interview was in fact misused; it not only contravened the ratio laid down in Ashok Kumar Yadav43, and subsequent cases, but in the facts and circumstances of the case, it was reasonable to draw an inference of favouritism; the power, in this case, had been used by the appointing authority for an unauthorised purpose; and when a power is exercised for an unauthorised purpose, the same would amount to malice in law. (Govt. Branch Press v. D.B. Belliappa77; Punjab SEB Ltd. v. Zora Singh78; and K.K. Bhalla v. State of M.P.79).

101. In Satpal48 and Inder Prakash Gupta46, the mode of selection was based on the marks prescribed for academic qualifications and other criteria besides a high percentage of marks for interview; and what was in issue was the high percentage of marks prescribed for interview. In P. Mohanan Pillai49, selection was for the last grade post of attenders / watchmen, and in Inder Prakash Gupta46, the constitutional validity of Rule 51 of the Jammu and Kashmir Public Service Commission (Conduct of Business and Procedure) Rules, 1980 was subjected to challenge.

102. Law on the proportion between written test and interview or evaluation on confidential entries and personality test have been laid down in a series of decisions of the Supreme Court commencing from Ajay Hasia74; Lila Dhar42; Ashok Kumar Yadav43 and State of U.P. v. Rafiquddin and Ors80, Distinction has been drawn in the interview held for competitive examination or admission in educational institutions and selection for higher posts. Effort has been made to eliminate scope of arbitrariness in the former by narrowing down the proportion as various factors are likely to creep in. But the same standards cannot be applied for higher selections. Lila Dhar42 brings it out fully. It

would be unsafe to strike down the rules as arbitrary when the evaluation is job oriented. (Capt. K.C. Shukla8).

103. In this context, it must be borne in mind that no hard-and-fast rule of universal application, which would meet the requirements of all cases, can be laid down regarding allocation of marks for a viva-voce test. However, when allocation of such marks is made with an intention which is capable of being abused or misused in its exercise, it is liable to be struck down as ultra vires Article 14 of the Constitution of India. (Inder Parkash Gupta46; Jasvinder Singh v. State of J&K81; and Vijay Syal v. State of Punjab82). In the present case the Public Service Commission had merely followed Rule 15(3) of the 2003 Rules, which rule is being uniformly applied for the past more than 15 years. Allocation of 100% marks, in the present case, is evidently not with an intention that such a rule be misused in its exercise. We are satisfied, therefore, that, in view of an absence of a challenge to the constitutional validity of Rule 15(3) of the 2003 Rules, and as the petitioner was aware of the conditions, of prescription of 100% marks for the interview, in the advertisement before she participated in the selection process, the challenge to the validity of the selection process on this ground must fail.

VII. WOULD THE PETITIONER'S SIGNING THE DECLARATION, IN THE ADVERTISEMENT, DISABLE HER FROM QUESTIONING THE PROCESS OF SELECTION ?

104. Mr. Paresh Tripathi, learned Chief Standing Counsel, would submit that the advertisement dated 04.08.2017 stipulates the mode of selection to be only by way of interview in at least three places. Mr. R.P. Singh, learned counsel appearing on behalf of respondents 6 to 9, would submit that the petitioner not only applied pursuant to the advertisement, but also furnished her declaration stating that she was well aware of the contents of the advertisement, and she would abide by such conditions; and it is not open to her, therefore, to challenge the process of selection later.

105. On the other hand Mr. C.D. Bahuguna, learned Senior Counsel appearing on behalf of the petitioner, would submit that, since there is a variance between the 2016 UGC Regulations and the conditions stipulated in the advertisement, it is the Regulations which would prevail over the advertisement, and not the other way round. Learned Senior Counsel would refer to Ashish Kumar v. State of U.P.83.

106. Clause 16 of the advertisement, issued by the Public Service Commission inviting applications for the posts of Assistant Professors, stipulated that a candidate would be selected only on the basis of the marks secured by him in the final selection (interview). The advertisement also provided that the entire selection process, to be conducted by the Commission, would be undertaken in terms of the provisions of the relevant service rules, prevalent Act / Rules / Manuals / Guiding principles and the decisions taken by the Commission, etc. as regards the posts from time to time; and the Uttarakhand Public Service Commission and Conduct of Business Rules, 2013 and its First Amendment, 2016, and the Uttarakhand Preparation Procedure of Examination Result Rules, 2012 as amended by the First Amendment, 2013, Second Amendment, 2014, Third Amendment, 2015 and Fourth Amendment, 2016, were available for candidates on the website of the Commission :

www.ukpsc.gov.in.

107. The application form, referred to in the advertisement, contains a declaration by the candidate that she had carefully read the contents of the advertisement and the application form; and that she declared that the particulars furnished in the application form were true and correct. It is evident, therefore, that all candidates were made aware that the selection would be based only on the marks secured by them in the interview in terms of Rule 15(3) of the 2003 Rules. It is in this context that the submission of the respondents that the petitioner, having participated in the selection process undertaken in terms of the advertisement, cannot, after being made aware that she was not selected, turn around and question the conditions in the advertisement based on which the selection process was undertaken, must be examined.

108. It is no doubt true that any part of the advertisement, which is contrary to the statutory rules, has to give way to the statutory prescription. When there is variance in the advertisement, and in the statutory rules, it is the statutory rules which take precedence. (Ashish Kumar83; Malik Mazhar Sultan v. U.P. Public Service Commission84). However, in the present case, there is no variance between the 2003 Rules and the advertisement, since both prescribe 100% marks for interview. It is only if Regulation 6 of the 2010 UGC Regulations as amended in 2013, and Appendix-III of the 2016 UGC Regulations, had been adopted, would it then have been open to the petitioner to contend that, since there is a variance between the 2016 UGC Regulations and the conditions in the advertisement, it is the 2016 UGC Regulations which would prevail. Since the 2016 UGC Regulations are not applicable, as they have not been adopted by the State Government, it is only the conditions mentioned in the advertisement which would prevail, and the petitioner, having signed the declaration form, would be barred from questioning the conditions stipulates in the advertisement on the grounds of acquiescence.

VIII. IS THE DOCTRINE OF ACQUIESCENCE OR WAIVER ATTRACTED ?

109. Mr. C.D. Bahuguna, learned Senior Counsel appearing on behalf of the petitioner, would submit the mere fact that the petitioner had participated in the selection process, and had approached this Court only after the results were declared, is of no consequence; the right to employment is a fundamental right guaranteed under Article 16(1) of the Constitution of India; the petitioner cannot waive her fundamental right under the Constitution; the doctrine of acquiescence would, therefore, not apply; the selection process, which is being questioned as being contrary to the 2016 UGC Regulations and to be vitiated by bias, is also arbitrary and in violation of Articles 14 and 16 of the Constitution of India; and, notwithstanding the petitioner having participated in the process of selection, she can always question the arbitrary action of the Uttarakhand Public Service Commission in giving a go-by to the applicable provisions under the 2016 Amendment to the 2010 UGC Regulations, and in proceeding with the appointment and selection of candidates. Learned Senior Counsel would rely upon Nar Singh Pal v. Union of India and others85 in this regard.

110. Sri C.D. Bahuguna, learned Senior Counsel, would further submit that the Supreme Court has entertained a challenge to the selection process by the unsuccessful candidates in P. Mohanlal

Pillai49; Inder Prakash Gupta46; Satpal48; and Ashish Kumar83; it is only because the successful candidates were entitled to question the process of selection, was the challenge to the process of selection examined by the Supreme Court at their behest; the petitioner cannot be non-suited on the ground of acquiescence and waiver; mere selection does not confer an indefeasible right to be appointed to a post; and since the selected candidates have no right to claim appointment merely because they were selected, they are disabled from questioning the petitioner's right to challenge the process of selection on the ground of acquiescence or waiver.

111. On the other hand Sri Paresh Tripathi, learned Chief Standing Counsel, would submit that the petitioner not only applied pursuant to the advertisement, and declared that she had read the contents of the advertisement in its entirety, but had also appeared in the Screening Test, and thereafter in the Interview, without demur or protest; having participated in the process of selection with her eyes wide open, it is not open to the petitioner, merely because she was not selected therein, to now turn around and question the selection process itself; if the petitioner was aggrieved by any of the conditions stipulated in the advertisement, she ought to have questioned the conditions stipulated therein before submitting her application pursuant thereto; and the petitioner must be non-suited on the ground of acquiescence and waiver. He would place reliance on Madras Institute of Development Studies and Ors. v. K. Sivasubramaniyan and Ors.86; and Ruchi Kandpal v. State of Uttarakhand and others87, to contend that the judgments relied on behalf of the petitioner, regarding a challenge to the selection process by the unsuccessful candidates being entertained by the Supreme Court, have no application since the question of acquiescence/waiver was neither raised nor considered therein.

112. Sri B.D. Kandpal, learned Standing Counsel for the Public Service Commission, would submit that the petitioner was well aware, when she applied pursuant to the advertisement, that the entire selection process would be held only on the basis of interview; after appearing in the Screening Test, and being declared successful therein, she appeared in the interview knowing fully well that the selection process would be undertaken only on the basis of interview, and not on the Scoring System prescribed in Appendix III; nothing prevented her from questioning the conditions stipulated in the advertisement before participating in the selection process; the petitioner's claim of her fundamental right, under Article 16(1) of the Constitution of India, having been violated is unfounded; the petitioner has not been denied her right of participation in the selection process; Article 16(1) of the Constitution of India confers a right only to be considered for selection, and not to be appointed; since no fundamental right of the petitioner has been violated thereby, the doctrine of acquiescence and waiver would apply; and the petitioner is disentitled from questioning the process of selection after having participated therein.

113. It is no doubt true that, on their selection, such candidates do not acquire any right to the post. (Laxmibai Kshetriya Vs. Chand Behari Kapoor and Ors.88; Shankarsan Dash vs. Union of India89; State of Bihar and Ors. vs. Md. Kalimuddin and Ors.90; and Punjab State Electricity Board and Ors. vs. Malkiat Singh91). By mere selection, the candidates acquire no indefeasible right for appointment even against existing vacancies. (All India SC & ST Employees' Association and Anr. vs. A. Arthur Jeen and Ors.92; Aryavrat Gramin Bank vs. Vijay Shankar Shukla93; State of Rajasthan and ors. vs. Jagdish Chopra94; State of M.P. and Ors. vs. Sanjay Kumar Pathak and Ors.95 and Asha

Kaul (Mrs.) and Anr. vs. State of Jammu and Kashmir and Ors.96). If a candidate has no right to claim appointment merely because he was selected/empanelled, there is no occasion to maintain a writ petition for enforcement of a non-existing right (Union of India (UOI) and Ors. vs. Kali Dass Batish and Ors.97). The fact, however, remains that it is not merely the selected candidates, but both the State Government and the Public Service Commission which have questioned the petitioner's right to challenge, the validity of the selection process, on the ground of acquiescence and waiver.

114. The conduct of the petitioner, in invoking the jurisdiction of the High Court under Article 226 of the Constitution of India, only after she found that her name does not figure in the merit list prepared by the Commission, disentitles her from questioning the selection. (Manish Kumar Shahi v. State of Bihar and others98; Ruchi Kandpal87). Once a person takes part in the process of selection, and is not found fit for appointment, the said person is estopped from challenging the process of selection. (D. Sarojakumari v. R. Helen Thilakom and others99). Candidates, who take part in the selection process knowing fully well the procedure laid down therein, are not entitled to question the same later. (Union of India and others v. S. Vinodh Kumar and others100; and K.H. Siraj v. High Court of Kerala and Ors.101). 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 selection was unfair or the Selection Committee was not properly constituted. (Madan Lal41; and G. Sarana (Dr.) v. University of Lucknow and others102; Ruchi Kandpal87).

115. After having taken part in the selection process, and having been found lower in merit, the applicant cannot, at that stage, be permitted to turn around and claim that the procedure adopted is illegal. (D. Sarojakumari99). Having taken part in the process of selection with full knowledge that the recruitment was being made as per the conditions of the advertisement, the applicant must be held to have waived her right to question the advertisement or the methodology adopted by the Board for making selection. (Ramesh Chandra Shah and others v. Anil Joshi and others103; and K. Sivasubramaniyan86). The doctrine of acquiescence would, undoubtedly, apply and the writ petitioner would, therefore, not be entitled to be granted any relief on this score also.

116. In Nar Singh Pal85, (on which reliance is placed on behalf of the petitioner to contend that the doctrine of acquiescence or waiver would not apply), both the Tribunal and the High Court were moved by the fact that the appellant had encashed the cheque through which retrenchment compensation was paid to him; and they took the view that once retrenchment compensation was accepted by the appellant, the chapter stood closed, and it was not open to the appellant thereafter to challenge his retrenchment. It is in this context that the Supreme Court held that this was wholly erroneous, and was not the correct approach; the appellant was a casual labourer who had attained "temporary" status after having put in ten years of service; like any other employee, he had to sustain himself, or maybe his family members, on the wages he got; on the termination of his services, there was no hope left for payment of salary in future; the retrenchment compensation paid to him, which was only a meagre amount of Rs 6350, was utilised by him to sustain himself; this did not mean that he had surrendered all his constitutional rights in favour of the respondents; fundamental rights, under the Constitution, could not be bartered away; and they could not be compromised, nor could there be any estoppel against the exercise of fundamental rights available

under the Constitution.

117. Reliance placed, on behalf of the petitioner, on the judgment of the Supreme Court in Nar Singh Pal85, is of no avail for what the Supreme Court held, in Nar Singh Pal85, is that the mere fact that a poor casual labourer had received and utilized the meager amount, received by him as retrenchment compensation, would not disable him from claiming that he was entitled to be appointed as a temporary employee, since he could not waive his fundamental right. A highly qualified candidate, who applies for appointment to the post of Assistant Professor, cannot equate herself with that of a casual labourer to contend that the mere fact that she had submitted her application, pursuant to the advertisement, would not disable her, after she was informed that she had not been selected, to question the validity of the selection process based solely on the marks secured in the interview.

118. It is true that the doctrine of acquiescence or waiver would not apply where fundamental rights are violated, but then the question which arises for consideration is whether any fundamental right of the petitioner has been violated? No candidate has a legal right to be appointed. In terms of Article 16 of the Constitution of India, he has only a right to be considered for selection and appointment. (Pitta Naveen Kumar and Ors. Vs. Raja Narasaiah Zangiti and Ors.104). The only right the employee has is a right of consideration. (Orissa Small Industries Corpn. Ltd. and Ors. vs. Narasingha Charan Mohanty and Ors105). Under Article 16 of the Constitution, the right to be 'considered' for selection is alone a fundamental right. (Badrinath3). Every officer has a right to be considered for selection under Article 16 to a post subject to eligibility.

(Badrinath3). The petitioner was considered for selection on the basis of the procedure prescribed by statutory rules, and the conditions stipulated in the advertisement. Her complaint of violation of her fundamental rights is not tenable, and the doctrine of acquiescence would apply disabling her from questioning the selection, being undertaken only by way of interview, after she was informed that she had not been not been selected.

119. The judgments relied by the petitioner in Satpal48; Inder Parkash Gupta46; Ashish Kumar83; and P. Mohanan Pillai49, are not applicable to the facts and circumstances of the present case. In none of the aforesaid cases did the question of acquiescence/waiver arise for consideration. In this context, it must be borne in mind that a decision of a Court is only an authority for what it actually decides. What is of the essence in a decision is its ratio, and not every observation found therein nor what logically follows from the various observations made in it. (State of Orissa v. Sudhansu Sekhar Mishra and others105; and Quinn v. Leathem106). Observations of judges are not to be read as Euclid's theorems, nor as provisions of Statutes. The observations must be read in the context in which they appear. (M/s Amar Nath Om Prakash v. State of Punjab107; Sreenivasa General Traders v. State of A.P.108). Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. There is always peril in treating the words of a speech or a judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. (Herrington v. British Railways Board109; M/s Amar Nath Om Prakash107).

120. Having participated in the selection process, knowing fully well that selection of candidates was to be made entirely on the basis of marks awarded in the interview, the petitioner cannot turn around and challenge this condition, merely because she was not selected.

IX. IS THE PRESENCE OF THE PRINCIPAL/HEAD OF THE DEPARTMENT OF THE COLLEGE, WHERE THE PETITIONER WORKED, AS A MEMBER OF THE INTERVIEW BOARD FATAL ?

121. Sri R.P. Singh, learned counsel for respondents 6 to 9, would submit that the experience certificate of the petitioner was issued by Professor D.S. Bisht who was also a member of the Interview Board; this fact is admitted by the petitioner in her Writ Petition; and, while ignoring the presence of Professor D.S. Bisht, the petitioner has only emphasized on the presence of Dr. Shekhar Joshi in the Interview Board.

122. On the other hand Mr. C.D. Bahuguna, learned Senior Counsel appearing on behalf of the petitioner, would submit that no plea, that Dr. D.S. Bisht is the Head of the Department in the College where the petitioner is working, has been taken in the counter affidavit filed by respondents 6 to 9; and, in the absence of any such plea, such a contention would not necessitate examination in the light of the law declared by the Supreme Court in Rajasthan Pradesh V.S. Sardarshahar and another v. Union of India and others110.

123. Likewise Sri S.S. Yadav, learned counsel, would submit that inclusion of the Principal of the College (where the petitioner is presently working as a Guest Lecturer) in the interview board vitiates the selection process on grounds of bias; the Principal is inimically disposed towards the petitioner, and was prejudiced against her; the petitioner has specifically stated in the writ petition that, since both were known to each other, there was a possibility of bias; and it is also against the Uttarakhand Public Service Commission Rules.

124. On the other hand Shri B.D. Kandpal, learned Standing Counsel for the Public Service Commission, would submit that the petitioner has not arrayed Dr. M.P. Maheshwari, Principal, as a respondent eo-nominee in this writ petition; this Court would examine allegations of bias only if the person, against whom bias is alleged, is arrayed as a respondent by name; and the mere fact that Dr. M.P. Maheshwari was the Principal of the College, where the petitioner is working as a Guest Faculty member, would not justify an inference of bias.

125. Bias, which would mean and imply "spite or ill will", must be proved by raising requisite plea in this behalf, and by adducing cogent and sufficient evidence in support thereof. Bias is a state of mind, and it shows pre-disposition. General statements would not meet the requirements of law. (Abraham Kuruvila v. S.C.T. Institute of Medical Sciences & Technology111).

126. There must be a real likelihood of bias and not mere suspicion of bias before the proceedings can be quashed on the ground that the person conducting the proceedings is disqualified by interest. (Gullapalli Nageswara Rao v. State of Andhra Pradesh112; Mineral Development Ltd. v. State of Bihar113; International Airports Authority v. K.D. Bali114; and Ranjit Thakur v. Union of India115). The real question is not whether he was biased. It is difficult to prove the state of mind of a person.

Therefore what has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. A mere suspicion of bias is not sufficient. In deciding the question of bias, human probabilities and ordinary course of human conduct should be taken into consideration. (A.K. Kraipak v. Union of India116; Chandra Kumar Chopra v. Union of India117; M.P. Special Police Establishment v. State of M.P.118; Board of Control for Cricket in India v. Cricket Association of Bihar119).

127. There must be reasonable evidence to satisfy the Court that there was a real likelihood of bias. Vague suspicions of whimsical, capricious and unreasonable people should not be made a standard to regulate action. It would be a different matter if suspicion rested on reasonable grounds -- was reasonably generated -- but certainly mere flimsy, elusive, morbid suspicions should not be permitted to form a ground of decision. (K.D. Bali114; Re Brien and Brien120; King (De Vosci) v. Justice of Queen's Country121; Queen v. Rand122; Ramnath v. Collector, Darbhanga123; Queen v. Meyer124; and Eckersley v. Mersey Docks and Harbour Board125). It is the reasonableness and the apprehension of an average honest man that must be taken note of. (K.D. Bali114). It is not every suspicion felt by a party which must lead to the conclusion that the authority hearing the proceedings is biased. The apprehension must be judged from a healthy, reasonable and average point of view, and not on mere apprehension of any whimsical person. (K.D. Bali114; Ranjit Thakur115).

128. Reliance is placed by Mr. R.P. Singh, learned counsel for respondent nos.6 to 9, on the experience certificate dated 04.09.2018, issued by Dr. D.S. Bisht, that the petitioner was an employee of the institution of which Dr. D.S. Bisht was the head of the department. There is not even a plea in this regard in the counter- affidavit filed by respondent nos.6 to 9 in Writ Petition (S/B) No.78 of 2019, and it is only on the basis of the documents filed by the petitioner herself, and the averment made in the affidavit filed in support of Writ Petition (S/B) No.78 of 2019, that a plea of bias is now sought to be raised against Dr. D.S. Bisht also. Very often experts on the Selection Committees have to be drawn from the teaching faculty, and most of them have to interview candidates who were at one or the other time associated with them. That, by itself, cannot disqualify them from being the members of the Selection Committees. (B.S. Mahajan5). The mere fact that Dr. M.P. Maheswari is the Principal of the college, where the petitioner in Writ Petition (S/B) No.82 of 2019 was employed as a Guest Lecturer, would also not vitiate the selection process on the ground of bias, since it would be difficult to find a subject expert who is not employed in an Institution where a candidate had studied or is working.

129. The allegation, whether Dr. M.P. Maheshwari was inimically disposed to the petitioner in Writ Petition (S/B) No.82 of 2019, could only have been ascertained if he had been arrayed a as respondent eo-nominee in the Writ Petition. It is well settled that the person, to whom malafides are imputed, should be impleaded eo-nomine as a party respondent to the proceedings, and should be given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it, itself, would be violative of principles of natural justice as it would amount to condemning a person without giving him an opportunity of being heard. (State of Bihar v. P.P. Sharma126). We see no reason, therefore, to interfere with the selection process on this ground.

X. IS FAILURE TO INCLUDE A MEMBER OF THE SCHEDULED TRIBES, IN THE INTERVIEW BOARD, FATAL ?

130. Placing reliance on Regulation 6.0.4 of the 2010 UGC Regulations, and the Office Memorandum issued by Government of India dated 04.06.2010, Mr. S.S. Yadav, learned counsel for the petitioner, would submit that, failure on the part of the Public Service Commission to include a member of the Scheduled Tribes in the interview board, for selecting candidates belonging to the Scheduled Tribes as Assistant Professor (Commerce), vitiates the selection process in its entirety.

131. On the other hand Sri B.D. Kandpal, learned Standing Counsel for the Public Service Commission, would submit that as Regulation 6.0.4 of the 2010 UGC Regulations has not been adopted by the State Government, the conditions stipulated therein are inapplicable to the current selection process; the Government of India's Office Memorandum is applicable only to employees working under the Central Government, and not to State Government employees, or for selection to the post of Assistant Professors in State Government Degree Colleges; absence of a member of the Scheduled Tribes in the Interview Board would not vitiate the selection process; and the fifth respondent, who was selected as an Assistant Professor (Commerce), is also a member of the Scheduled Tribes like the petitioner herein.

132. It is no doubt true that Regulation 6.0.4 of the 2010 UGC Regulations requires an academician, representing the Scheduled Tribes, to be a part of the Interview Board in case any of the candidates, representing this category, is an applicant. As noted hereinabove, the 2010 UGC Regulations would have applied to the subject recruitment only if the State Government had adopted the 2010 UGC Regulations including Regulation 6.0.4 thereof. Since Regulation 6.0.4 of the 2010 UGC Regulations have not been adopted by the State Government, in its proceedings dated 29.05.2016, the said Regulations do not automatically apply, and failure to adhere to Clause 6.0.4. of the 2010 UGC Regulations would not vitiate the selection process. Reliance placed on the Government of India memorandum dated 04.06.2010 is also misplaced since the said OM dated 04.06.2010 has no application to the recruitment of Assistant Professors for appointment in Government Degree Colleges in the State of Uttarakhand. Failure of the Public Service Commission to include a member of the Scheduled Tribes in the Interview Board, for interviewing candidates belonging to the Scheduled Tribes, would not, therefore, necessitate the selection process being set-aside.

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    XI.    IS FAILURE, TO AWARD                  ADDITIONAL          MARKS      FOR
           INTERVIEW, FATAL ?
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133. Sri S.S. Yadav, learned counsel for the petitioner, would submit that, though the petitioner had placed a copy of her experience certificate before them, the said experience certificate was not considered by the Interview Board; the petitioner was not awarded additional marks for her experience as a Contract Lecturer; clause 22, of the letter of requisition dated 31.07.2017, requires preference to be given to candidates employed on a contract basis; it is evident from clause 22 of the requisition that none of the eligible candidates were given grace marks for having worked as a Guest Lecturer/Contract Lecturer in Government degree colleges; failure to award such marks vitiates the selection process, since grace marks are required to be given for the services rendered as a Contract

Lecturer; and the petitioner had, in fact, submitted a copy of the experience certificate, as a Guest Lecturer, when she appeared before the Interview Board when interviews were conducted on 31.10.2018 and 01.11.2018; and, in terms of clause 4 of the advertisement dated 04.08.2017, 10% grace marks was required to be given to persons working as a Contract Lecturers, in addition to the marks awarded for all candidates by the Interview Board.

134. Sri B.D. Kandpal, learned Standing Counsel for the Public Service Commission, would submit that the petitioner was not engaged as a Contract Lecturer before the last date of submission of the application form; the petitioner did not claim the benefit of bonus marks, to be granted to Contract Lecturers, in her online application form; consequently, she was not awarded the 10% grace marks which Contract Lecturers were entitled to; the petitioner did not enclose, along with her online application form, any certificate disclosing that she was working as a Contract Lecturer on or prior to the last date of submission of her application form; she cannot, therefore, claim the benefit of 10% grace marks, which Contract Lecturers are alone entitled to; Rules 4(d) & (e) of the 2011 Amendment to the 2003 Rules stipulates that only candidates, who are working as a Visiting/ Contract Lecturer in Government Colleges are entitled to be granted 10% grace marks; the specific averment made by the Public Service Commission, in Para 30 of its counter affidavit, has not been denied by the petitioner in her rejoinder affidavit; no certificate has been filed along with the writ petition; clause 22 of the requisition makes it amply clear that no preference would be given to candidates engaged on a contract basis; this clause was inserted since the 2003 Rules were amended by the 2011 Rules providing for 10% grace marks to be given to those candidates who were engaged as Contract Lecturers, instead of giving them preference in appointment; it is admitted by the petitioner, in paragraph No. 15 of the writ petition, that she was engaged as a Guest Lecturer only from 25.11.2017; the advertisement dated 04.08.2017 stipulated that 29.08.2017 shall be the last date for submission of the online application form; it is because the petitioner was not even working as a Guest Lecturer on 29.08.2017 that she did not, and could not have submitted any documentary evidence to show that she was working as a Guest Lecturer/Contract Lecturer in a Government Degree college; the specific averment, in paragraph 15 of the writ petition, has been denied in paragraph 30 of the counter affidavit; and the denial in the counter affidavit has not being disputed in the rejoinder affidavit filed by the petitioner.

135. By his letter dated 31.07.2017 addressed to the Secretary, Public Service Commission, the Joint Secretary, Government of Uttarakhand sent a requisition for filling up the vacant posts of Assistant Professors. Clause 22 of the said requisition relates to other conditions and, thereunder, if the Public Service Commission conducts a Screening Test, then a Guest Lecturer working in the higher education department would not be exempt from appearing in the Screening Test; and as per the 2011 advertisement, candidates were required to be given 01% marks for each session when they worked as Lecturers. The Uttarakhand Higher Education (Group A) Service Rules, 2011 were notified on 16.11.2011 whereby the Governor, in the exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, amended the 2003 Rules. The preferential qualifications stipulated in the pre-amended Rule 9(d) of the 2003 Rules required candidates working, as Visiting Lecturers in Government Colleges of the State, to get a maximum five percent bonus marks of the total marks obtained in the examination/interview provided the candidates working as Visiting Lecturers possessed the minimum qualifications prescribed by the Government for the post of

Lecturer. The substituted Rule 9(d) required candidates, working as Visiting Lecturers/Contract Lecturers in Government Colleges of the State, to get a maximum of ten percent bonus marks of the total marks obtained in the examination/interview provided the candidates, working as Visiting Lecturers, possessed the minimum qualifications prescribed by the Government for the post of Lecturer. It is the amended Rule 9 of the 2003 Rules (in terms of the 2011 amendment) which would apply for the present recruitment, for which an advertisement was issued on 04.08.2017. In terms thereof, 10 percent grace marks are required to be given to those candidates who are employed as Guest Lecturers. The petitioner, in Writ Petition (S/B) No.82 of 2019, was appointed as a Guest Lecturer on 25.11.2017. It is for this reason that she did not claim the benefit, of bonus 10 percent grace marks, in the online application submitted by her. The advertisement dated 04.08.2017 stipulated 29.08.2017 as the last date for submission of the online application form, by which date the petitioner was not even working as a Guest Lecturer. Applicants were required to submit documentary evidence, of their working as Guest Lecturers, along with their applicant form to claim the benefit of 10% bonus marks. As she could not have, and did not in fact, claim the benefit of bonus marks, available to Guest Lecturers, while submitting her on-line application form, the Public Service Commission cannot be faulted for not awarding her the bonus marks. The fact that she informed the Interview Board of her working as a Guest Lecturer when she appeared for interview on 31.10.2018 and 01.11.2018 is of no consequence as it is only candidates, who have claimed such a benefit in their on-line application form and have filed documentary evidence along with it, to show that they were working as a Guest Lecturer, who are entitled to such a benefit.

XII. IS THE SELECTION PROCESS VITIATED BY FAVOURITISM ?

136. Mr. C.D. Bahuguna, learned Senior Counsel appearing on behalf of the petitioner, would submit that favoritism prevailed in the selection vitiating the entire process; favouritism was shown to Ms. Deepika Kandpal (seventh respondent herein) ; the petitioner has specifically alleged, in the affidavit filed in support of the Writ Petition, that Ms. Deepika Kandpal was doing her Ph.D. under the guidance of Dr. Shekhar Joshi who was, admittedly, a member of the Selection Board which interviewed both Ms. Deepika Kandpal and the petitioner; the presence of Dr. Shekhar Joshi, in the Interview Board, vitiates the entire selection process on the grounds of reasonable likelihood of bias; the very fact that Dr. Shekhar Joshi is her guide, and Ms. Deepika Kandpal continues to pursue her Ph.D. course under his guidance, would itself establish that the entire selection process is tainted by bias; and, even though he was one among the four members of the Interview Board, the presence and participation of Dr. Shekhar Joshi, as a member of the Selection Board, would vitiate the entire process of selection.

137. Sri C.D. Bahuguna, learned Senior Counsel, would further submit that, in the counter affidavits filed both by the Uttarakhand Public Service Commission and by respondents 7 to 9, the fact that Dr. Shekhar Joshi was a guide of Ms. Deepika Kandpal, she was pursuing her Ph.D. course under his guidance, and that Dr. Shekhar Joshi was a member of the Interview Board, has not been denied; failure to array Dr. Shekhar Joshi by name, as a respondent in the Writ Petition, is of no consequence, since the Chairman of the Interview Board has been arrayed as the third respondent; it is evident from the 2012 Rules that it is the Chairman who, in consultation with the members of the Interview Board, finally decides on the candidates to be selected; since the Chairman of the

Interview Board has been arrayed as a respondent, failure to array Dr. Shekhar Joshi, by name, is not fatal; it is only if the fact that Dr. Shekhar Joshi was a member of the Interview Board, or that he was, and continues to be, a guide of Ms. Deepika Kandpal, is disputed, would failure to array him, as a party respondent to the Writ Petition, be fatal; since these facts are not in dispute, failure to array him as a respondent-eo nomine in the Writ Petition is of no consequence; since the third respondent has not filed a counter-affidavit, Illustration (g) under Section 114 of the Indian Evidence Act would apply; and this Court must draw an adverse inference and proceed on the basis that the specific averments, made by the petitioner, in the affidavit filed in support of the Writ Petition, stand un-rebutted. Learned Senior Counsel would rely on A.K. Kraipak116; P. Mohanan Pillai49; Rajasthan Pradesh v. S. Sardarshahar110; and Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School and others127 in this regard.

138. On the other hand Sri B.D. Kandpal, learned Standing Counsel for the Public Service Commission, would submit that the 2012 Regulations require the Board not to disclose either to the candidates who the members of the Interview Board are, nor to the Interview Board as to who the candidates appearing before them are; consequently neither the candidates, nor the members of the Interview Board, were aware, at any time prior to the actual interview, about who the Interviewer or the Interviewee would be; this process has been adopted with a view to ensure that the process of selection is not questioned on the ground of bias; Dr. Shekhar Joshi was merely one of the four members of the Selection Committee; and all of them, including the Chairman, were unanimously of the view that Ms. Deepika Kandpal was more meritorious than the petitioner.

139. Sri B.D. Kandpal, learned Standing Counsel for the Public Service Commission, would further submit that the petitioner ought to have arrayed Dr. Shekhar Joshi eo-nominee as a respondent in the Writ Petition; and arraying the Chairman of the Interview Board would not suffice, since the allegations of bias are leveled not against the Interview Board in its entirety, but only against Dr. Shekhar Joshi.

140. Sri R.P. Singh, learned counsel for respondents 6 to 9, would submit that the mere fact that Ms. Deepika Kandpal was doing her Ph.D. under Dr. Shekhar Joshi would not necessitate an inference of bias being drawn.

141. In her writ affidavit, the petitioner in Writ Petition (S/B) No.78 of 2019 stated that Dr. D.S. Bisht, Head of the Department, (Drawing and Painting), H.N.B. Garhwal University, Srinagar, Garhwal, Dr. Shekhar Joshi, Head of the Department, Visual Arts, SSJ Campus, Almora and Dr. M.S. Mawari, Head of the Department, Visual Arts, DSB Campus, Nainital were among the members of the Interview Board; the selected candidates Ms. Jyoti and Ms. Deepika Kandpal had started their Ph.D course under Dr. Shekhar Joshi, Head of the Department, Visual Arts, SSJ Campus, Almora, who was one of the members of the Interview Board; even today both Ms. Jyoti and Ms. Deepika Kandpal continue to do Ph.D under the guidance of Dr. Shekhar Joshi, and their Ph.D courses have not been completed; selection of Ms. Jyoti and Ms. Deepika Kandpal stands vitiated on this ground, and their selection is liable to be quashed and set-aside; the RTI information furnished to the petitioner, by the Kumoan University, makes it clear that Ms. Jyoti and Ms. Deepika Kandpal were doing their Ph.D under the guidance of Dr. Shekhar Joshi, Head of the Department,

Visual Arts, SSJ Camps, Kumaon University, who was a member of the Interview Board; the possibility of Ms. Jyoti and Ms. Deepika Kandpal being favoured by the members of the Interview Board, in being awarded higher marks in the interview, cannot be ruled out; and the members of the Interview Board were biased against the petitioner, and interested in selecting respondent nos.6 to 9 for extraneous and unfair reasons.

142. In the counter-affidavit filed by the Public Service Commission, all that is stated, in reply thereto, is that, in the interview, marks were awarded with the consent of the members of the Interview Board, including the Chairman of the Board; interviews were conducted in accordance with the 2012 Rules; and neither the interviewer, nor the interviewee, are made aware who the interviewers and the interviewed candidates would be, till the actual interview. In the counter-affidavit, filed on behalf of respondent nos.6 to 9, it is stated that the only relationship highlighted in the writ petitioner is of students and a teacher; admittedly, there is no family relationship between the answering respondents and the members of the Interview Board; the pleadings are frivolous; and they have been raised with a view to cause prejudice.

143. The specific averment in the writ-affidavit, that respondent nos.6 and 7 were pursuing their Ph.D course under the guidance of Dr. Shekhar Joshi, a member of the Interview Board, and they continued to do so even on the date of interview, has not been denied either by the Public Service Commission, or on behalf of respondent nos.6 to 9 in their respective counter-affidavits. While it would, undoubtedly, have been appropriate if Dr. Shekhar Joshi had been arrayed as a respondent eo-nominee when bias on his part is alleged, what we are required to examine, on the undisputed facts on record, is whether the selection process is vitiated by bias. Before doing so, let us briefly take note of the judgments relied upon on behalf of the petitioner in this regard.

144. In A.K. Kraipak116, members of the selection board, other than Mr. Naqishbund, (the person against whom bias was alleged), had separately filed affidavits in the Supreme Court swearing that Mr. Naqishbund had, in no manner, influenced their decision in making the selections. In this context the Supreme Court held that, in a group deliberation, each member of the group is bound to influence the others, more so, if the member concerned is a person with special knowledge; his bias was likely to operate in a subtle manner; it was no wonder that the other members of the selection board were unaware of the extent to which his opinion influenced their conclusion; they were unable to accept the contention that, in adjudging the suitability of the candidates, the members of the board did not have any mutual discussion; it was not as if the records spoke for themselves; they were unable to believe that the members of selection board functioned like computers; there was no occasion for them to distrust the opinion expressed by Naqishbund; and hence the board, in making the selections, must necessarily have given weight to the opinion expressed by Naqishbund.

145. In Rattan Lal Sharma127, the Supreme Court held that, for appreciating a case of personal bias, or bias to the subject-matter, the test is whether there was a real likelihood of a bias even though such bias has not in fact taken place; De Smith in his Judicial Review of Administrative Action, (1980) at page 262 has observed that a real likelihood of bias means at least substantial possibility of bias; in R. v. Sunderland Justices128 it has been held that the court will have to judge the matter as a reasonable man would judge of any matter in the conduct of his own business; in R. v. Sussex

Justices129 it has been indicated that the answer to the question, whether there was a real likelihood of bias, depends not upon what actually was done, but upon what might appear to be done; in Halsbury's Laws of England, 4th Edn., Vol. 2, para 551, it has been indicated that the test of bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias; the same principle has also been accepted by the Supreme Court, in Manak Lal v. Dr Prem Chand130, wherein it was laid down that the test is not whether, in fact, bias has affected the judgment; and the test always is, and must be, whether a litigant could reasonably apprehend that a bias, attributable to a member of the tribunal, might have operated against him in the final decision of the tribunal.

146. Bias may be defined as a pre-conceived opinion or a pre-disposition or predetermination to decide an issue in a particular manner, so much so that such pre-disposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which renders the person unable to exercise impartiality in a particular case. (State of West Bengal v. Shivananda Pathak131). The deciding authority must be impartial and without bias. A predisposition to decide for or against one party, without proper regard to the true merits of the dispute, is bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias. (Secretary to Government, Transport Department v. Munuswamy Mudaliar132; Rattan Lal Sharma127).

147. If there are clear indicators that the decision-making process may have been compromised by bias, actual or apparent, this may lead to a decision, that has been reached, being challenged and nullified. The principal issue is not whether the decision itself is legitimate but whether the decision-maker ought to have taken the decision in the first place, as the possibility of bias would undermine its credibility. Even if a person believes that he is acting impartially and in good faith, his mind may be unconsciously affected by improper considerations that affect his judgment. In defining the scope of the rule against bias and its content, at least three requirements of public law are in play: The first seeks accuracy in public decision- making, the second seeks the absence of prejudice or partiality on the part of the decision-maker. An accurate decision is more likely to be achieved by a decision-

maker who is in fact impartial or disinterested in the outcome of the decision, and who puts aside any personal prejudices. The third requirement is for public confidence in the decision-making process. Even though the decision-maker may in fact be scrupulously impartial, the appearance of bias can itself call into question the legitimacy of the decision-making process. (Judicial Review of Administrative Action: de Smith, Woolf & Jowell: Fifth Edition).

148. The real question is not whether the member was biased. It is difficult to prove the state of mind of a person. It must, therefore, be seen whether there is reasonable ground for believing that he was likely to have been biased. A mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias, human probabilities and ordinary course of human conduct should be taken into consideration. (A.K. Kraipak116). In general, the rule against bias looks at the appearance or risk of bias rather than bias in fact, in order to ensure that "justice should not only be done, but should manifestly and undoubtedly be seen to be done". (Rattan Lal Sharma127; and Tilak Chand Magatram Obhan v. Kamala Prasad Shukla133). It is

difficult to prove the state of mind of a person. What has to be seen is whether there were reasonable grounds for believing that he was likely to have been biased.

149. A classic case of personal bias is in State of U.P. v. Mohd. Nooh134 wherein a departmental inquiry was held against an employee. One of the witnesses against the employee turned hostile. The officer holding the inquiry then left the inquiry, gave evidence against the employee and thereafter resumed to complete the inquiry and passed the order of dismissal. The Supreme Court quashed the order of dismissal holding, inter alia, that the rules of natural justice were grievously violated.

150. In Rattan Lal Sharma127, charge No. 12, levelled against the applicant, was that a particular sum, on account of amalgamated fund for a month, was given to the appellant by Shri Maru Ram who was the teacher in charge of the amalgamated fund. In the inquiry committee, comprising three members, Shri Maru Ram was taken as one of the members. He, himself, deposed to establish the said charge No. 12, and thereafter again joined the inquiry committee and submitted a report holding the appellant guilty of some of the charges including charge No. 12. It is in this context that the Supreme Court held that Shri Maru Ram was interested in establishing the said charge; from the charge itself, it was apparent that he had a pre-disposition to decide against the appellant; it was really unfortunate that, although the appellant raised an objection before the inquiry committee indicating that Shri Maru Ram was inimical towards him and he should not be a member in the inquiry committee, such objection was rejected on a very flimsy ground, namely, that, since Shri Maru Ram was one of the members of the Managing Committee, and was the representative of teachers in the Managing Committee, and it was necessary to include him in the inquiry committee; it was quite apparent that the inquiry committee could have been constituted with other members of the Managing Committee, and the rules of the inquiry were not such that Shri Maru Ram, being the teachers' representative, was required to be included in the said inquiry committee so that the doctrine of necessity may be attracted; if a person has a pecuniary interest, such interest, even if very small, disqualified such person; in the facts of the case, there was not only a reasonable apprehension in the mind of the appellant about the bias of one of the members of the inquiry committee, namely, the said Shri Maru Ram, but such apprehension became real when the said Shri Maru Ram appeared as a witness against the appellant to prove the said charge, and thereafter proceeded with the inquiry proceeding, as a member of the inquiry committee, to uphold the correctness of his deposition as a judge.

151. If it is evident that the decision-making body has made up its mind in advance of the hearing, this will naturally give rise to serious doubts about the validity of the selection process since any such procedure would be considered unfair. It is all too easy for the adjudicators to form a view on the basis of a multitude of factors, such as their previous proximate association with a candidate.

152. In Locobail (UK) Ltd. v. Bayfield Properties Ltd.135, the Court of Appeal held:-

> "...It would be dangerous and futile to attempt to define or list the factors, which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided. We cannot, however, conceive of circumstances in which an objection could be soundly based on the

religion, ethnic or national origin, gender, age class, means or sexual orientation of the judge. Nor, at any rate ordinarily, could an objection be soundly based on the judge's social or educational or service or employment background or history, nor that of any member of the judge's family; or previous political associations;

or membership of social or sporting or charitable bodies; or Masonic associations; or previous judicial decisions; or extra-curricular utterances(whether in textbooks, lectures, speeches, articles, interviews, reports or responses to consultation papers); or previous receipt of instructions to act for or against any party, solicitor or advocate engaged in a case before him; or membership of the same inn, circuit, local Law Society or chambers. By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind; or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issue before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat; every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be...." (Emphasis supplied)

153. In Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant136, the Supreme Court, while recording its concurrence with the view expressed by the Court of Appeal in Locabail135, held that the surrounding circumstances must and ought to be collated and necessary conclusions drawn therefrom.

154. In deciding the key question of what degree of suspicion determines when a decision should be set aside, on grounds of bias, Courts have developed different tests which were considered as alternatives. On the one hand, there is an investigation of the real likelihood of bias. This addresses the issue whether, given the circumstances, there is a real chance that the claimed conflict of interest might have had some effect on the decision-making process that in fact took place. As to the test of

likelihood of bias, what is relevant is the reasonableness of the apprehension in that regard in the mind of a party to the proceedings. The proper approach for the judge is not to look at his own mind and ask himself however honesty, "am I biased?", but to look at the mind of the party before him. (Ranjit Thakur115). The "Real likelihood" test focuses on the court's own evaluation of the probabilities of bias.

155. On the other hand, "reasonable suspicion" puts the test onto a somewhat higher plane. The idea here is that if any reasonable person would so much as suspect that bias might arise because of the conflict of interest, this will be enough to satisfy the test. The reviewing authority is required to make a determination, on the basis of the whole evidence before it, whether a reasonable man would, in the circumstances, infer that there is a real possibility of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but must be seen to be done. If right minded persons would think that there is a real likelihood of bias on the part of a judge or a quasi-judicial authority, he must not conduct the proceedings--there must exist circumstances from which reasonable men would think it probable or likely that the judge/quasi-judicial authority would be prejudiced. The court will not enquire whether he was really prejudiced. If a reasonable man would think, on the basis of existing circumstances, that he is likely to be prejudiced, that is sufficient to quash the decision. (S. Parthasarathi v. State of A.P137). The "reasonable suspicion" test looks mainly to outward appearances.

156. The test to be applied for determining bias was substantially standardized by the House of Lords in R v. Gough138 wherein it was held that, after ascertaining all relevant circumstances, the correct test to be applied was whether there was a "real danger" that the appellant had not had a fair hearing. This meant deciding whether there was a real danger in the sense of a real possibility, but less than a probability of bias on the part of the member of a Tribunal. It was held to be unnecessary, in formulating the test of bias, to look at the matter through the eyes of the reasonable man, because the court personifies the reasonable man in such cases. It was also pointed out that the test is not concerned with the actual state of mind of the person who is alleged to be biased, as bias is insidious and may not be present in the conscious mind. Public confidence demanded that justice had to be seen to be done. This meant that the court should examine all the necessary material so as to be satisfied that there was no danger that the alleged bias had created injustice.

157. The House of Lords, in Porter v. Magill139, suggested a modest adjustment of the test prescribed in R v. Gough138, and held that the Court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased, and must then ask whether those circumstances would lead of a fair minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the Tribunal was biased and that the question to be considered was whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Tribunal was biased.

158. The House of Lords, in Lawal v. Northern Spirit Ltd140, took note of the small but important shift provided in Porter139, which has as its core the need for "the confidence which must be inspired by the Courts in a democratic society", and held that public perception of the possibility of

unconscious bias was the key, that it was unnecessary to delve into the characteristics to be attributed to the fair minded and informed observer, what could confidently be said is that one is entitled to conclude that such an observer would adopt a balanced approach, and that "a reasonable member of the public is neither complacent nor unduly sensitive or suspicious".

159. The scales of justice should not only be held even, but they must not even be seen to be inclined. A person having interest in the subject-matter of the cause is precluded from acting as a Judge. To disqualify a person, from adjudicating on the ground of interest in the subject-matter of the lis, the test of real likelihood of bias should be applied. In other words, one must enquire whether there is a real danger of bias on the part of the person against whom such apprehension is expressed in the sense that he might favour or disfavour a party. In each case, the court should consider whether a fair-minded and informed person, having considered all the facts, would reasonably apprehend that the Judge would not act impartially. To put it differently, the test would be whether a reasonably intelligent man, fully apprised of all the facts, would have a serious apprehension of bias. In cases of non-pecuniary bias, the "real likelihood" test has been preferred over the "reasonable suspicion" test. In deciding the question of bias one has to take into consideration human probabilities and ordinary course of human conduct. Real likelihood of bias should appear not only from the material ascertained by the complaining party, but also from such other facts which it could have readily ascertained and easily verified by making reasonable inquiries. (P.D. Dinakaran (J) v. Judges Inquiry Committee141).

160. The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and whether the person was likely to be disposed to decide the matter only in a particular way. (Ranjit Thakur115; and P.D. Dinakaran (J)141). The reasonableness of the apprehension in that regard in the mind of the party is the test of likelihood of bias. (P.D. Dinakaran (J)141). Reasonable apprehension of bias in the mind of a reasonable man is the test. A pre-disposition to decide for or against one party, without proper regard to the true merits of the dispute, is bias. There must be reasonable apprehension of that pre-disposition which must be based on cogent material. (Munuswamy Mudaliar132; P.D. Dinakaran (J)141). The question to be asked is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias. (Mustill and Boyd, Commercial Arbitration, 1982 Edn., p. 214. Halsbury's Laws of England, 4th Edn., Vol. 2, para 551, p. 282; Munuswamy Mudaliar132; P.D. Dinakaran (J)141).

161. The Court does not inquire whether actual bias exists. The maxim that justice must not only be done but be seen to be done is applied, and the court gives effect to the maxim by examining all the material available, and then concludes whether there is a real possibility of bias. (P.D. Dinakaran (J)141).The test of disqualification by apparent bias is whether, having regard to the relevant circumstances, there is a real possibility of bias on the part of the relevant member of the tribunal in question, in the sense that he might unfairly regard with favour, or disfavour, the case of a party to the issue under consideration by him. In considering this question all the circumstances which have a bearing on the suggestion that the member is biased must be considered. The question is whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. (Halsbury's Laws of England [Vol. 29(2), 4th Edn.,

Reissue 2002, para 560, p. 379; P.D. Dinakaran (J)141). The test is whether there is a mere apprehension of bias or there is a real danger of bias, and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, the conclusion is otherwise inescapable that there exists a real danger of bias, the administrative action cannot be sustained. (Kumaon Mandal Vikas Nigam Ltd.136; Oryx Fisheries (P) Ltd.142).

162. It is neither possible, nor is it necessary, for the Court to determine with certainty whether Dr. Shekhar Joshi was, in fact, baised. It would suffice for the Court to be satisfied that there was a real likelihood of Dr. Joshi being biased. Applying the test of "reasonable likelihood of bias", from the stand point of a fair- minded and informed observer, it is clear that the presence of Dr. Shekhar Joshi in the Interview Board, with whom respondent nos.6 and 7 continued to prosecute their Ph.D course even during and after the interview, and their selection, for appointment as Assistant Professors by the Interview Board of which Dr. Shekhar Joshi was a member, is tainted by bias. Consequently, the selection process for selection of candidates for appointment as Assistant Professors (Drawing and Painting) stands vitiated and is liable to be set-aside.

163. Since reliance is placed on behalf of the Public Service Commission on Rule 7(d), it is necessary to take note of its contents. Rule 7(d) of the 2012 Rules relates to 'interview, and requires a list of candidates, called for interview, to be kept in a sealed cover by the concerned Section every day, as per the date and number of the Interview Board; in the said list, the roll number of the candidate, his educational qualifications, his preferential qualifications, experience (if provided in the Rule), and the date of his birth etc. would be mentioned; in the said description, the name of the candidate and the category / sub-category would not be mentioned; for interview examination, full marks / maximum marks would be determined as per the relevant service rules / examination scheme; if marks are not determined for the said examination, in that case, maximum marks for interview would be fixed as 100; on the date of interview, on presentation of the sealed cover envelops of the said list through the Secretary, the Chairman of the Commission would mention the number, of the interview board, on the said envelope on a random basis, in the presence of all the members, so that, before opening the said envelope, it would not be known to anybody which candidate will appear before which interview board; after endorsement regarding the interview board, on the said envelope, the envelope would be opened on the direction of the Chairman of the Commission, in the presence of the members of the Commission, and the Secretary, Examination/Controller; the board number would also be mentioned, on the list of candidates, so that all possibilities of a change of the board number would be completely removed; in this way, the endorsed list would be handed over to the Chairman of the interview board, for conducting interview; in the same way, on the list of the subject expert / advisor, supplied by the examination controller, the interview board number would be mentioned by the Chairman, as per the number of the interview board, in front of the name of the subject expert, on a random basis; and if interview examination is scheduled to be held for more than one day, then each day, different interview boards would be allotted to the subject experts.

164. While it is true that, in terms of Rule 7(e) the 2012 Rules, the member appointed to the Interview Board is not made aware who the candidates appearing before the Interview Board would be, it is obligatory on a member of the Interview Board to recuse from participation in the process of

interview on coming to know that the interviewee is a person undergoing her Ph.D course under his guidance even on the date of interview. The contention, that the Interview Board consists of several members, Dr. Shekhar Joshi was just one among them, and his participation would not justify the inference that the entire Interview Board was biased, does not merit acceptance. As held by the Supreme Court, in A.K. Kraipak116, the very presence of Dr. Shekhar Joshi, as a subject expert in the Interview Board, would undoubtedly have influenced the decision of the Interview Board in selecting respondent nos.6 and 7, for in a group deliberation, each member of the group is bound to influence the others, more so, if the member concerned is a person with special knowledge; his bias was likely to operate in a subtle manner; and there was no occasion for the other members of the selection board to distrust the opinion expressed by Dr. Shekhar Joshi. Viewed from any angle, we are satisfied that the selection process, for selecting Assistant Professors (Drawing and Painting), is vitiated by the real likelihood of bias, and the selection of respondent nos.6 to 9, in Writ Petition (S/B) No.78 of 2019, as Assistant Professors (Drawing and Painting) is liable to be set-aside.

XIII. CONCLUSION :

165. In the light of what we have held here in above, selection of respondent nos.6 to 9 in Writ Petition (S/B) No.78 of 2019, as Assistant Professors (Drawing and Painting), is set-aside as the presence of Dr. Shekhar Joshi, in the Interview Board, has resulted in the entire selection process being vitiated by bias. Writ Petition (S/B) No.78 of 2019 is allowed to this limited extent. For the reasons stated hereinabove, Writ Petition (S/B) No.82 of 2019 is dismissed. However, in the circumstances, without costs.

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    (Alok Kumar Verma, J.)                    (Ramesh Ranganathan, C. J.)
         09.01.2020                                   09.01.2020
NISHANT
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