

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION NO. 9773 of 2015****With****SPECIAL CIVIL APPLICATION NO. 10153 of 2015****With****SPECIAL CIVIL APPLICATION NO. 10155 of 2015****With****SPECIAL CIVIL APPLICATION NO. 10461 of 2015****With****SPECIAL CIVIL APPLICATION NO. 10882 of 2015****With****SPECIAL CIVIL APPLICATION NO. 11013 of 2015****With****SPECIAL CIVIL APPLICATION NO. 11016 of 2015****With****SPECIAL CIVIL APPLICATION NO. 11207 of 2015****With****CIVIL APPLICATION NO. 7150 of 2015****In****SPECIAL CIVIL APPLICATION NO. 9773 of 2015**

सत्यमेव जयते

**FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE J.B.PARDIWALA**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

RAVIKANT PRABHUNATH SHARMA....Petitioner(s)

Versus

STATE OF GUJARAT & 22....Respondent(s)

**Appearance:**

HCLS COMMITTEE, ADVOCATE for the Petitioner(s) No. 1

MR JEET J BHATT, MR PA JADEJA, JIGAR PATEL, ZUBIN BHARDA,

MR PS GOGIA, ADVOCATES for the respective Petitioner(s) No. 1

MS SANGITA VISHEN AGP for the Respondent(s) No. 1

MR SHIVANG J SHUKLA, ADVOCATE for the Respondent(s) No. 4

MR VAIBHAV A VYAS, ADVOCATE for the Respondent(s) No. 5 – 23

MR MITUL K SHELAT, MR SHIVANG J SHUKLA, MR PY DIVYESHWAR, MR ANUJ H  
DAVE, ADVOCATES for the Respect respondents

NOTICE SERVED BY DS for the Respondent(s) No. 1 - 3

**CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA**

**Date : 03/05/2016**

**CAV COMMON JUDGMENT**

1 Since the issues raised, in all the captioned writ applications, are more or less the same, those were heard analogously, and are being disposed of by this common judgment and order.

2 For the sake of convenience, the Special Civil Application No.9773 of 2015 is treated as the lead matter.

3 By this writ application, under Article 226 of the Constitution of India, the petitioner desirous of seeking appointment on the post of the “Adhyapak Sahayak” in the grant-in-aid colleges within the State of Gujarat has prayed for the following reliefs:

“17 (A) Be pleased to admit this petition,

(B) *be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the decision of the respondent authorities in rejecting the application of the petitioner for recruitment to the post of Adhyapak Sahayak;*

(C) *Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondent authorities to consider the case of the petitioner for appointment to the post of Adhyapak Sahayak.*

(D) *Pending admission and final hearing of the present petition, be pleased to direct the respondent authorities to stay the further recruitment process for the Adhyapak Sahayak in Economics subject.*

(E) *Pending admission and final hearing of the present petition, be pleased to direct the respondent authorities to keep one post of Adhyapak Sahayak vacant in Ahmedabad and Gandhinagar District for the petitioner;*

(F) *Be pleased to pass such other and further orders as may be deemed fit and proper.”*

4 The case of the petitioner may be summarized as under:

4.1 The respondent No.1 – State of Gujarat issued a public advertisement dated 29<sup>th</sup> April, 2015 for filling up 496 vacant posts of the “Adhyapak Sahayak” in the grant-in-aid colleges situated in the State of Gujarat.

4.2 The advertisement stated that the recruitment process would be undertaken according to the University Grants Commission Regulations of 2009 and the resolutions issued by the Education Department, Government of Gujarat, from time to time.

4.3 With respect to the educational qualifications, the advertisement stated that a candidate must possess minimum 55% in the relevant subject at the Post Graduation level with a good academic record according to the University Grants Commission Regulations, 2010.

4.4 The Government Resolution dated 14<sup>th</sup> September 2011, with respect to the centralized recruitment of the Assistant Supervisors in the Non-Governmental grant-in-aid colleges, provides that the minimum educational qualification for the post of the Assistant Professor would be as prescribed in the U.G.C. Regulations, 2010. The U.G.C. Regulations, 2010 prescribes that a candidate must possess minimum 55% in the relevant subject at the Post Graduation level with a good academic record amongst other things.

4.5 It is the case of the petitioner that he being eligible, according to the U.G.C. Regulations, 2010, applied for the post of the Assistant Professor in the subject of Economics, for which, total 86 posts were to be filled. It is his case that he completed his B.Com. in the year 2007 from the Delhi University with Economics as the principal subject. He studied Micro Economics in the first year, Macro Economics in the second year and Indian Economics and Statistics in the third year of the Graduation. Thereafter, he got enrolled for the Post Graduation in M.A. with Economics. He studies 16 subjects of Economics (four subjects per Semester). It is his case that he was awarded the Degree of M.A. in Economics with a Gold Medal in the year 2010.

4.6 The petitioner thereafter appeared in the National Eligibility Test in the subject of Economics, and cleared the same in the year 2012. Thereafter, he enrolled himself in the course of the Master in Philosophy (M.Phil.) in the subject of Economics, which is considered as an advanced Post Graduate Research Degree. He completed the said course in the year 2013. The petitioner was awarded the Degree of M.Phil. in the year 2013.

4.7 The petitioner thereafter got enrolled for Ph.D. in the year 2013,

and is working with his thesis in the subject of Economics.

4.8 It is his case that he has worked as the “Vyakhyata Sahayak” in the subject of Economics, on contractual basis, in the Government college.

4.9 It is the case of the petitioner that pursuant to the application made by him, for the post of the Assistant Professor, in the subject of Economics, he was called for verification of the documents on 22<sup>nd</sup> May, 2015. At that time, the application of the petitioner was rejected on the ground that the petitioner’s U.G. Degree is in the Commerce, whereas the Post Graduation Degree is in the Arts.

4.10 It is his case that at that point of time, there was no addendum or amendment brought out in the advertisement or in any of the Government Resolutions in that regard.

4.11 It is his case that the decision of the Selection Committee was not based upon any formal/written decision taken by any authority, except by the office of the Commissioner of Higher Education, which is neither the appointing authority nor the competent authority in law to lay down any qualifications at its own whims.

4.12 Hence, this petition.

5 So far as the other petitioners are concerned, the position is as stated hereinbelow.

6 **SPECIAL CIVIL APPLICATION NO.12042 OF 2015:**

Qualifications of the petitioner is as under:

Name of the petitioner	Degree at under Graduation	Degree at Post Graduation	NET/SLAT	M.Phil	Ph.D

	level	Level			
Vipulkumar Ramubhai Patel	B.Com with Commerce	M.Com in Commerce	SLAT Commerce	In management (which is a branch of Commerce)	Nil

According to the office of the Commissioner of Higher Education, the petitioner was holding the required qualifications and was also included in the merit list for being appointed as an “Adhyapak Sahayak” in the Commerce subject, but while assessing the marks, as per the resolution bearing No.NGC-112010-3269-B dated 14<sup>th</sup> September, 2011, according to the Commissioner of Higher Education, he was not entitled to five marks for the M.Phil Degree even though he possesses the said degree, and the justification sought to be offered is that the petitioner should have an M.Phil Degree in Commerce and not in Management. Therefore, while calculating the marks, out of 110, despite he was awarded only 40.28 marks instead of 45.28 marks as claimed (at Annexure: ‘F’ to this petition, page 40).

7 **SPECIAL CIVIL APPLICATION NO.10882 OF 2015:**

Subject	Commerce
Qualification	1. U.G. In BBA (percentage 58.37%) 2. P.G. (M.Com) in Marketing (percentage 59.00%) 3. GSET (Accredited by UGC) in Commerce
Other Experience	1) At present working as full time Professor in the subject of Commerce (Management) in Rajkot Kelvani Mandal. Appointment was approved by Saurashtra University. (10 years of total teaching experience)  2) Published book with ISBN  3) Research published in Journal  4) Computer linteracy  5) Pursuing Ph.d.
Ground for rejection of	That UG in BBA and PG in Commerce.

Application	
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**8 SPECIAL CIVIL APPLICATION NO.10153 OF 2015:**

Name of the petitioner	Degree at Under Graduation level	Degree at Post Graduation level	NET/SLET or Ph.D
Deepaben Natwarlal Solanki	B.Com (Advance Accountancy & Auditing)	M.Com. Statistics	SLET Commerce
Badalkumar Puranmal Mehta	B.Com (Advance Accountancy & Auditing)	M.Com Statistics	SLET Commerce
Vishvanath Yuvrajbhai Borse	B.Com (Auditing & Auditing Management) and double Graduation in Statistics	M.Com. Advanced Statistics	NET in Commerce & NET in Population study

**9 SPECIAL CIVIL APPLICATION NO.10155 OF 2015:**

Name of the petitioner	Degree at Under Graduation level	Degree at Post Graduation level	NET/ SLET or Ph.D.
Dr. Bharat K. Jotva	B.B.A.	M. Com. Commerce	Ph.D. Commerce

● **SUBMISSIONS ON BEHALF OF THE PETITIONERS:**

10 The action on the part of the office of the Joint Commissioner, in not considering the applications of the petitioners for appointment on the posts of the “Adhyapak Sahayaks” on the ground that although the petitioners have applied for a particular subject, yet as they are not possessing the requisite qualifications at the Under Graduation, Post Graduation level as well as Ph.D., M.Phil in that particular subject, is arbitrary, illegal and not in consonance with the University Grants Commission Regulations, 2010 (“the Regulations of 2010”, for short) and Resolutions/Advertisement of the State Government.

11 It was not open for the office of the Joint Commissioner, Higher Education, to change the rules of the game once it had started. As per the advertisement, the required educational qualifications of the candidate were that the candidate must possess a minimum 55% in the relevant subject at the Post Graduation level with a good academic record as per the Regulations of 2010. In the present case, the office of the Joint Commissioner, on the basis of the recommendations of the Expert Committee constituted to look into the grievances, has deviated from the educational qualifications by insisting for degrees at the UG and PG level in the same subject.

12 The action on the part of the office of the Joint Commissioner, Higher Education, is without jurisdiction, inasmuch as the office of the Joint Commissioner has no power to come out with such a requirement in view of the Entry 25 of the concurrent list, which is subject to the Entry 66 of the Union List of the 7<sup>th</sup> Schedule of the Constitution of India. The decision of the Expert Committee has not been translated into any Government Resolution, and thus, the same is not in tune with the Article 162 of the Constitution of India rendering it nugatory in the eye of law.

13 The members of the Committee are not experts in the field of education, and in such circumstances, acceptance of the recommendations dated 9<sup>th</sup> June, 2015 of the Expert Committee is misplaced. The recommendation of the Expert Committee is in the nature of deviation and against the spirit of the Regulations of 2010, and thus, bad and without authority. There exists variance in the recommendation dated 8<sup>th</sup> June, 2015 and the recommendation dated 9<sup>th</sup> June, 2015 of the Expert Committee. The recommendation dated 8<sup>th</sup> June, 2015 should be followed as the same is in the right earnest and in

tune with the regulations applicable in the matter of appointment of the “Adhyapak Sahayak”.

14 In the earlier recruitments, the requirement of possessing degrees, at the UG and PG level, in the same subject, was not made applicable, and for the first time, such a requirement has been introduced and the insistence of which is detrimental to the interest of the petitioners. The said action on the part of the respondents authorities is arbitrary and illegal.

15 The Universities have permitted the candidates to change the stream by giving admission at the Post Graduation level in the different subjects, and thus, now it is not open to the State Government not to accept the qualifications / degrees possessed by the candidates in different disciplines at the UG, PG and Ph.D. level.

● **STANCE OF THE STATE GOVERNMENT:**

16 On behalf of the respondent No.2, an affidavit-in-reply has been filed duly affirmed by the Joint Director (College), Office of the Commissioner, Higher Education *inter alia* stating as under:

“6 I say and submit that so far as the advertisement dated 29.04.2015 is concerned, the same was issued by the Commissioner of Higher Education for 496 vacant posts of “Adhyapak Sahayak” in the grant-in-aid colleges against the NOC issued by the Commissioner of Higher Education, Gandhinagar as per the consent give by the college Governing Body for the centralized recruitment in various subjects of Arts, Commerce and Home Science Stream. I say and submit that the deponent herein provides a platform for the recruitment to the posts of Adhyapak Sahayak by conducting Centralized On-line Selection Procedure for the posts against which clear NOC is granted by the Commissioner of Higher Education. I say and submit that the entire selection procedure is based on Centralized

*Recruitment Process subject to the policy and instructions given by the Government of Gujarat time to time.*

7 *I say and submit that pursuant to the advertisement issued by the respondent herein, the petitioner applied for the post of Adhyapak Sahayak for Economics. The petitioner possesses qualifications of B.Com., M.A. and M.Phil. the petitioner is studying for Ph.D, but is yet to be completed.*

8 *I say and submit that pursuant to the advertisement issued by the respondent authorities, the petitioner applied for the post of Adhyapak Sahayak for the subject of Economics. I say and submit that all the candidates are required to submit their applications online and submit their details. Accordingly, the petitioner also submitted his application online.*

9 *I say and submit that when the petitioner was called for verification and scrutiny, it was found that the petitioner did not possess the degrees to meet with the qualification required. The petitioner possesses a graduate degree of B.Com whereas, he has obtained masters degrees in Arts i.e. M.A. with Economics and M. Phil in Economics.*

10 *I say and submit that upon scrutiny it was found that the combination of degrees that the petitioner possesses is that of different discipline i.e. Graduation in Commerce Discipline and Post Graduation in Arts Discipline. I say and submit that there cannot be any restriction by the authorities if any individual wants to study or obtain a higher degree in another discipline. However, when the question comes to teach the students any particular subject, the respondent authorities can have preference to choose such candidates who have specialization in the concerned subject in their Under Graduate and Post Graduate level. The petitioner herein has altogether obtained different degree in a different discipline i.e. of B.Com whereas, he has done Post Graduation in altogether a different discipline i.e. M.A. in Arts.*

11 *I say and submit that though the petitioner possesses Masters Degree in relevant subject i.e. Economics, it is relevant to note that the petitioner has not studied Economics or have not specialized in Economics at the under graduate level. I say and submit that as Adhyapak Sahayak for Economics, the petitioner would be required impart education and teach Economics to the students of under graduate level. Therefore, when the petitioner himself has not studied the subject of Economics at his under graduate level for specialization, a core question which came up before the authorities for considering the application of the petitioner was that how can the petitioner teach the subject when he himself has not studied the same in depth or via specialization.*

12 I say and submit that merely because the petitioner has studied the subject at this post graduate level for a period of 2 years, the petitioner cannot claim his application to be considered for appointment as Adhyapak Sahayak in Economics. I further say and submit that the petitioner is required to teach the subject at under graduate level and therefore, the authorities would expect to appoint such candidates who have specialization in the concerned subject. The authorities are required to look from the point of view of students at large to whom the Adhyaka Sahayak would be imparting education. Therefore, when the question of future of the students is concerned, the authorities can expect higher standards for such posts.

13 I say and submit that there were few such cases as that of the petitioners which had come up before the authorities. Therefore, the grievances which were received at the selection committee were placed before the Expert Committee which comprised of following members having expertise:

- (1) Joint Commissioner of Higher Education (G.S.)
- (2) Principal Registrar, M.S. University, Surendranagar
- (3) Former Registrar, M.S. University, Vadodara &
- (4) Registrar, North Gujarat, University, Patan.
- (5) Professor and Director, Commerce Faculty, Gujarat University, Ahmedabad

I say and submit that the Expert Committee in its meeting held on 08-06-2015 and 09.06.2015 held that the minimum provisions under the NOC Regulations, 2010 should be applied but with placing greater emphasis on relevance to the subject at UG and PG levels. The Expert Committee also recommended that the candidate is expected to teach at UG level hence, a UG Degree also in the relevant subject should be emphasized over and above the provisions of UGC. A copy of the proceedings of the grievance Redressal Committee held on 08.06.2015 and 09.06.2015 is annexed herewith and marked as Annexure-R-I. I say and submit that the petitioner was accordingly informed about the decision of the Expert Committee.

14 I say and submit that based upon the recommendations of the Expert Committee which also emphasized on the Degree in the relevant subject as well as for placing reliance on the concerned UG and PG Degree reliance on the concerned UG and PG Degree apart from the UGC Regulations, 2010 the respondent authorities have not considered the case of the petitioner.

15 I say and submit that when it comes to teaching and under graduate the respondent authorities are bound to maintain higher standards so far as the qualifications of the Adhyapak Sahayak concerned.

*The UGC Regulations, 2010 provide for minimum qualifications to be followed by the authorities while recruiting the candidates. The authorities based on the recommendations of the Expert Committee have opted for relevance in the concerned subjects with higher standards.*

16 *I say and submit that the entire selection procedure is based on Centralized Recruitment Process subject to the policy and instructions given by the Government of Gujarat time to time. The petitioner by way of the present petition has sought direction from the Hon'ble Court to stay the entire selection process. The present recruitment process is going on for 496 posts in different subjects. Such a massive drive for recruitment may not be stayed at the behest of the petitioner who does not meet with the required criteria on account of his qualifications."*

17 On behalf of the respondents Nos.1, 2 and 3, an affidavit-in-reply has been filed duly affirmed by the Joint Director (College), Office of the Commissioner of Higher Education, Gandhinagar, *inter alia* stating as under:

"1 *I state that I am filing the present affidavit only with a view to place on record communication dated 11.08.2015 of the University dated 11.08.2015 of the University Grants Commission addressed to the Commissioner Higher Education pursuant to the order dated 30.07.2015 passed by this Hon'ble Court in the group of petitions.*

2 *I say and submit that this Hon'ble Court had vide order dated 30.07.2015 directed the Commissioner of Higher Education to take up the issue with the UGC and seek its opinion or clarifications in the subject. The Hon'ble Court had also directed the UGC to place the report on record for its perusal since UGC is joined as a party respondent in some of the petitions. I say and submit that the Hon'ble Court had directed the State Government to frame an appropriate query with all necessary information and forward the same to the UGC with a copy of each of the writ applications. The Hon'ble Court had directed the UGC to study the query of the State Government and to give its report on or before 12<sup>th</sup> August, 2015.*

3 *I say and submit that pursuant to the directions of the Hon'ble Court, the Commissioner of Higher Education had forwarded the queries in each of the petitions with specific queries and copies of writ petitions for the perusal of the UGC on 03.08.2015.*

4 *I say and submit that the UGCV has vide its communication dated 11.08.2015 given a report addressing to the Commissioner of Higher Education which the deponent herein places on record by way of the*

*present affidavit. A copy of the report dated 11.08.2015 issued by the UGC is annexed herewith and marked as Annexure R I.”*

18 Ms. Sangita Vishen, the learned Assistant Government Pleader appearing for the State respondent made the following submissions:

18.1 The Regulations of 2010 are mandatory in nature and the State Government and its authorities are bound to follow the same. In the present case, there is no question of any addition, change or raising of the qualifications for the post of the “Adhyapak Sahayak”. However, what was implicit in the requirement, has been made explicit. In other words, the Committee of Experts constituted, vide order dated 6<sup>th</sup> June, 2015, has clarified the issue to the effect that it should be mandatory for the candidate concerned to possess degrees at the UG, PG and Ph.D. level in the same subject. The committee was of the opinion that promotion of quality in Higher Education must be given the top priority. The committee observed in its report dated 9<sup>th</sup> June, 2015 as under:

*“The committee addressed the individual grievances received at the selection committee. The grievances were identified and resolved in accordance with the policy prescribed under UGC regulation 2010, and definition of degree as per UGC Act, 1956, and GoI notification on the Nomenclature of Degrees in the Gazette dated 11.7.2014. The committee held the view that promotion of qualify in higher education must be at the top priority. It was suggested that the Asst. Professor to be selected is likely to be appointed at any of the colleges. The committee held the view that the minimum provisions under the UGC regulations, 2010 should be applied but with placing grater emphasis on relevance to the subject at UG and PG levels. The candidate is expected to teach at UG level, hence, a UG degree also in the relevant subject should be emphasized over and above the provisions of the UGC regulations, 2010. The committee also suggested that the PG degree as well as NET/SLET examination must be in the relevant subject as per UGC regulation.”*

18.2 A bare perusal of the aforesaid recommendation by the

Expert Committee would indicate that the minimum standards prescribed under the Regulations of 2010 should be applied, but by placing greater emphasis on the relevance of the subject at the UG and PG level. The qualifications required were very much implicit which was made explicit, and thus, it cannot be said that there has been any change in the rules after the game started.

18.3 The opinion / clarification of the Expert Committee dated 9<sup>th</sup> June, 2015, is purely in tune with the objective sought to be achieved, i.e. maintaining the standards of Higher Education. The said opinion is supported by the notification issued by the University Grants Commission in March, 2015, published in the Gazette of India, on 14<sup>th</sup> July, 2014, indicating specification of the degrees. The said notification, *inter alia*, provides the broad discipline-wise nomenclature of the degrees at all level of the Higher Education. Along side the nomenclature of the degrees, the minimum entry level qualifications and duration of programmes have been categorically provided. The said notification has compartmentalized all the disciplines, and thus, rendering the transfer prohibited, from one discipline at the UG level to the other discipline at the PG level. To illustrate, if a candidate concerned is desirous of pursuing his/her studies in the discipline of Master of Commerce, then in that case, the entry level qualification is compulsorily the Bachelor of Commerce.

18.4 The aforesaid stance of the Committee is supported by the University Grants Commission, which is clear from the clarification given by it vide letter dated 11<sup>th</sup> August, 2015, categorically stating that the relevance of the subject or interdisciplinary nature of subject is required to be decided by the concerned University / appointing authority with the help of subject experts in the concerned / related field as per its

requirement. In this view of the matter, when the determination of the norms for the appointment of teachers at the UG level is totally left to the appointing authority, it is not permissible and open for anyone to raise any grievance about the prescription clarified by the Expert Committee.

18.5 The object behind insisting for such requirement is to see that the teacher, who is to teach the students at the UG level, is equipped and possesses the expertise in that particular subject. If the teacher concerned is not possessing the said requirement or has not undertaken the studies at the Under Graduate level and Post Graduate level in the same subject, then he / she will not be in a position to teach the subject in depth and with clarity, which would be detrimental in the interest of the student community at large.

18.6 Any University permitting candidate to change the discipline at the PG level, is purely a discretion of the University governed by the respective statutes to prescribe its mode and manner of the admission. However, the change of discipline by the University at the PG level, is no bar for the State Government to insist for particular qualifications for the purpose of appointment of the “Adhyapak Sahayak” in the grant-in-aid colleges. Thus, it is not open for the petitioners to confuse the issue of pursuing studies for a professional requirement on one hand and for academic requirement on the other. It is fundamental that if a candidate wants to pursue his/her career in the academic, then the candidate concerned should possess the requisite qualifications as per the specification of degrees provided by the University Grants Commission vide its Notification of March 2015, published in the Gazette of India in July 2015. In other words, the discretion of the University granting admission, at the UG level or PG

level, for the purpose of studies on one hand and prescription of requirement by the State Government on the other, for the purpose of appointment, are totally two distinct and different aspects not capable of being mixed up. Permitting the inter-disciplinary education is within the domain of the respective Universities and that cannot impinge upon the authority of the State Government to prescribe qualifications which do not recognize the inter-disciplinary qualifications.

18.7 The Colleges / Universities have not objected to or raised any doubt and/or grievance as regards the qualifications prescribed and/or appointment procedure. In that view of the matter, the petitioners have no fundamental right, much less any legal right to insist for the prescription of qualifications of their choice. Further, the petitioners have prayed for a mandamus without indicating any legal right in their favour vis-a-vis corresponding duty on the part of the State Government to fulfill the same. In the absence of such legal right in favour of the petitioners and corresponding duty on the part of the State Government, this Court may not entertain the writ applications.

19 The learned counsel appearing for the petitioners placed reliance on the decision of the Supreme Court in the case of **Dr. Krushna Chandra Sahu v. State of Orissa [1995 (6) SCC 1]**.

20 On the other hand, on behalf of the respondents, reliance has been placed on the decision of the Supreme Court in the case of **State of Tamil Nadu v. S.V. Bratheep [(2004 (4) SCC 513)]**.

21 Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the petitioners are entitled to the reliefs

prayed for in all the writ applications.

22 It is no doubt true that in the advertisement it was only stated that the candidates should possess minimum 55% in the relevant subject at the Post Graduation level. It appears from the materials on record that the concerned advertisement invited on-line applications for 496 posts of the “Adhyapak Sahayak” for 14 subjects in the grant-in-aid colleges.

23 In all, 1731 applications were received for the respective subjects as under:

- (i) Commerce – 464 applications,
- (ii) Statistics – 35 applications,
- (iii) Economics – 157 applications
- (iv) English – 114 applications
- (v) Gujarati – 398 applications
- (vi) Sanskrit – 183 applications
- (vii) Geography – 7 applications
- (viii) Political Science – 14 applications
- (ix) Home Science – 15 applications
- (x) History – 98 applications
- (xi) Sociology – 118 applications
- (xii) Indian Culture – 0 application
- (xiii) Defence Study – 7 applications
- (xiv) Psychology – 121 applications.

24 The scrutiny committee of the office of the Commissioner of Higher Education scrutinized the documents during the period between 21<sup>st</sup> May, 2015 to 27<sup>th</sup> May, 2015. Out of 1731 applications, 134 applications were outright rejected as the candidates concerned were

not fulfilling the eligibility criteria prescribed by the University Grants Commission.

25 It appears that all of a sudden, an issue cropped up as to what would be the position if a candidate is possessing the Post Graduation Degree in the relevant subject with minimum 55%, but the relevant subject for the Post Graduation level was not the subject at the Under Graduation level.

26 By order dated 6<sup>th</sup> June, 2015, an Expert Committee consisting of five members was constituted to address the issue and consider the grievances, which were raised by the petitioners during the stage of the verification of the documents. It appears that on 8<sup>th</sup> June, 2015, out of four members, only two members could remain present. The proceedings of the Grievance Redressal Committee dated 8<sup>th</sup> June, 2015 are as under:

***“Proceedings of the Grievance Redressal Committee***

*Formed by the Commissioner Higher Education (GS) for appointment of Adhyapak Sahayak seating II on date 08-06-2015 3.00 pm at KCG, Ahmedabad Office*

*The expert committee to address the issues raised as grievance during the document verification of selection for the post of Adhyapak Sahayak was formed vide the CHE order dated 06-06-2015. The committee met today and the following members who have signed were present at the meeting.*

- 1. Dr. RU Purohit, Jt Commissioner, Comm. Higher Education (GS)*
- 2. Prof V Chari, School of Commerce, Gujarat University, Ahmedabad*
- 3. Prin. SU Vora, Principal, MP Shah Arts and Science College, Surendranagar*
- 4. Shri Amit Dholakia, Former Registrar, MS University, Vadodara*
- 5. Shri Dilip Patel, Registrar, H North Gujarat University, Patan.*

*The members at 2 and 3 were present and submitted their views, whereas remaining members requested for another date. It was decided that the proceedings shall be continued at next meeting on 07-06-2015 with this resolution being read. The committee addressed the individual grievances received at the selection committee. The grievances were identified and resolved in accordance with the policy prescribed under the UGC regulations 2010, and definition of degree as per UGC Act, 1956, and GoI notification on the Nomenclature of Degrees in the Gazette dated 11-Jul-2014. Also in the larger interest of the higher education system and promotion of quality was given prime importance in recommending justful solution to the grievances. The following recommendation were made with regarded to nature of grievances submitted by the candidates.*

- 1. BBA degree is no bar for Commerce with PG and NET/PhD are in Commerce*
- 2. BA degree in Sanskrit with MA/PhD in Gujarati is acceptable for Gujarati subject*
- 3. MA degree in English backed by Bcom or Bsc is not eligible to each in English subject*
- 4. Degree of PhD in Management with background on Bcom and Mcom should be eligible in Commerce*
- 5. Degree of Bcom, Mcom (Stat) and SLET in Commerce are eligible for Commerce*
- 6. Degree of MBA/MPM is not eligible for the subject Commerce*
- 7. Degree of PhD is accepted even if is from any faculty, provided is in the relevant subject*
- 8. Degree of Phd in Statistics OR NET/GSET in Population Statistics is eligible for subject Statistics confined to Commerce / Arts faculty only*

*Prof. V Chari.”*

27 Thus, it could be seen that only one member signed the proceedings, namely, Professor V. Chari. Thereafter, on the next date, i.e. 9<sup>th</sup> June, 2015, again the committee met and the proceedings recorded are as under:

***“Proceedings of the Grievance Redressal Committee***

*Formed by the Commissioner Higher Education (GS) for appointment of Adhyapak Sahayak seating II on date 09-06-2015 11.30 am at KCG, Ahmedabad Office*

*The expert committee called upon the second day to recommend the policy to address the grievance raised during the document verification of selection for the post of Adhyapak Sahayak met today. The committee formed vide the CHE order dated 06-06-2015 was attended further by the following members who have signed and who were present at the meeting.*

- 1. Dr. RU Purohit, Jt Commissioner, Comm. Higher Education (GS)*

2. Prof V Chari, School of Commerce, Gujarat University, Ahmedabad (on leave)
3. Prin. SU Vora, Principal, MP Shah Arts and Science College, Surendranagar
4. Shri Amit Dholakia, Former Registrar, MS University, Vadodara
5. Shri Dilip Patel, Registrar, H North Gujarat University, Patan.

All the members except at 2 were present and discussed the issues at length. The committee also read the proceedings of the earlier meeting dated 08-06-2015 and made recommendations.

The committee addressed the individual grievances received at the selection committee. The grievance were identified and resolved in accordance with the policy prescribed under the UGC regulation 2010, and definition of degree as per UGC Act, 1956, and GoI notification on the Nomenclature of Degrees in the Gazette dated 11-Jul-2014. The committee held the view that promotion of quality in higher education must be at the top priority. It was suggested that the Asst. Professor to be selected is likely to be appointed at any of the colleges. The committee held the view that the minimum provisions under the UGC regulations. The committee held the view that the minimum provisions under the UGC regulations, 2010 should be applied but with placing greater emphasis on relevance to the subject at UG and PG levels. The candidate is expected to over and above the provisions of the UGC regulations, 2010. The committee also suggested that the PG degree as well as NET/SLET examination must be in the relevant subject as per UGC regulation.

1. Dr. RU Purohit, Jt Commissioner, Comm. Higher Education (GS)
2. Prin. SU Vora, Principal, MP Shah Arts and Science College, Surendranagar
3. Shri Amit Dholakia, Former Registrar, MS University, Vadodara
4. Shri Dilip Patel, Registrar, H North Gujarat University, Patan.”

28 From a bare perusal of the opinion of the committee, it is clear that the minimum standards prescribed under the Regulations of 2010 has to be applied, but with placing greater emphasis on the relevance of the subject at the UG and PG level.

29 On 30<sup>th</sup> July, 2015, this Court passed the following order:

*“Since the issues falling for my consideration in all the captioned writ-applications, more or less, are the same, those were heard analogously today at length.*

*It appears that each of the petitioners before me applied on-line for the posts of Adhyapak Sahayak in the grant-in-aid colleges pursuant to an advertisement issued by the Commissioner of Higher Education, State of Gujarat.*

*It appears that earlier such recruitments were being made by the respective grant-in-aid colleges. However, the State Government, vide Education Department Notification No.NGC-112010-3269-KH dated 14<sup>th</sup> September 2011, decided to have a centralized recruitment for the posts of Adhyapak Sahayak. The educational qualification prescribed in the advertisement referred to above is as under :*

- 1. Candidates must be an Indian Citizen.*
- 2. The recruitment process will be carried out as per UGC Regulations 2009 and the resolutions issued by Education Department, Govt. of Gujarat, from time to time.*
- 3. Only those degree will be considered valid for educational qualification issued by any recognized University which was established by Central Govt. of India or State Govt. through legal procedure.*
- 4. Candidates must possess minimum 55% in relevant subject at post graduate level with good academic record as per UGC Regulations-2010.*
- 5. Candidates must have cleared NET or GSET examination conducted by UGC-CSIR or equivalent Institute. Candidates with Ph.D. Qualification as per University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009, will be exempted from NET/SLET qualification. Such candidates with Ph.D. Qualification as per University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009 have to produce a certificate from the competent authority of the respective University in this regard.*
- 6. The candidates having prescribed educational qualifications as on the last date of submission of application shall be eligible.*

*The petitioners' candidatures have been rejected mainly on the ground that although they possessed the minimum 55% in the relevant subject at the post-graduation level, yet they had not cleared their under-graduation from that very relevant subject. To put it in simple words, if a candidate had secured 55% or more at the post-graduation level in the subject of Commerce, then according to the State Government as a*

*condition precedent he should have done his under-graduation with the Commerce subject itself. To put it again in other words, if a candidate has done his post-graduation with M.Com., he should have done his under-graduation with B.Com. This is being explained by way of an illustration.*

*The State Government has made it very clear that the educational qualifications which have been prescribed in the advertisement is according to the recommendations of the University Grants Commission Regulations, 2010.*

*As on today, each of the petitioners are serving past almost 15 years in the self-financed colleges. Some of the petitioners did their under-graduation in the Commerce Stream and thereafter the post-graduation with M.Sc. For example, they cleared B.Com. with Accountancy and Statistics as a subsidiary subject, whereas at the post-graduation level they did M.Sc. with Statistics. In short, they did study the subject of Statistics.*

*It appears that the State Government thought fit to seek the opinion of an expert committee. The expert committee constituted by the State Government gave its final opinion as under :*

*The committee addressed the individual grievances received at the selection committee. The grievances were identified and resolved in accordance with the policy prescribed under the UGC regulation 2010, and definition of degree as per UGC Act 1956, and GOI notification on the nomenclature of degrees in the Gazette dated 11-JUL-2014. The committee held the view that promotion of quality in higher education must be at the top priority. It was suggested that the Asst. Professor to be selected is likely to be appointed at any of the colleges. The committee held the view that the minimum provisions under the UGC regulations, 2010 should be applied but with placing greater emphasis on relevance to the subject at UG and PG levels. The candidate is expected to teach at UG level, hence, a UG degree also in the relevant subject should be emphasized over and above the provisions of the UGC regulations, 2010. The committee also suggested that the PG degree as well as NET/SLET examination must be in the relevant subject as per UGC regulation.*

*Thus, prima facie, it appears from the opinion expressed by the expert committee that since a candidate is expected to teach at the U.G. level, a U.G. degree in the relevant subject is mandatory. They have said so specifying that this would be over and above the provisions of the U.G.C. Regulations, 2010. The committee also opined that the P.G. Degree as well as NET/SLET exams must be in the relevant subject according to the U.G.C. Regulations.*

*The stance of the State Government is that since they are the recruiting authority, they have a right to impose such conditions although they might not be there in the advertisement in so many words. To put it in different words, even if the U.G.C. has not said anything regarding the same, it is within their power to impose such a restriction after the issue of the advertisement.*

*The principal argument on behalf of the petitioners is that the Government could not have gone beyond what the U.G.C. has recommended and prescribed.*

*Prima facie, I am of the view that instead of constituting an expert committee, the State Government, at the earliest, should have consulted the U.G.C. in this regard.*

*In such circumstances, I direct the State Government i.e. the Commissioner of Higher Education to immediately take up this issue with the U.G.C. and seek its opinion or clarification on the subject. In four writ-applications before me, the U.G.C. is a party respondent but, it appears that the learned counsel Mr.Mitul Shelat who ordinarily appears for the U.G.C. has not received any instructions from his client till this point of time. I, therefore, requested Mr.Shelat to immediately get in touch with the U.G.C. and apprise them of the controversy that has cropped up in the matter. Mr.Shelat has assured that he would speak to his client at the earliest and see to it that the necessary clarification is made in this regard and communicated to the State Government. Mr.Shelat also assured that a report in this regard of the U.G.C. shall be placed before this Court for its perusal.*

*The State Government shall frame an appropriate query with all the necessary information and forward the same to the U.G.C. with one copy of each of the writ-applications. The U.G.C. shall study the query of the State Government and shall also peruse the writ-applications filed by the respective petitioners.*

*The U.G.C. is requested to give top priority to these matters and see to it that it places its report on or before 12<sup>th</sup> August 2015. The State Government shall see to it that the U.G.C. receives all the relevant papers by 3<sup>rd</sup> August 2015. If necessary, a special messenger be sent to NewDelhi.*

*The matters are treated as part-heard. Let these matters appear before J.B.Pardiwala, J. on 19<sup>th</sup> August 2015.*

*It is further clarified that the Government shall not finalize the process of selection till the final disposal of these writ-applications pursuant to the advertisement referred to above.*

*The Government may be in a hurry to complete the recruitment but, at the same time, here is a larger question involving the career of many such candidates like the present petitioners and, therefore, this issue must be set at rest once and for all.*

*A copy of this order be provided to Ms.Shruti Pathak, the learned AGP, for its onward communication and also to Mr.Mitul Shelat, the learned advocate appearing for the U.G.C.*

*This order has been passed in presence of Mr.B.M.Solanki, Joint Director, Commissionerate of Higher Education, Gandhinagar.*

*Direct service is permitted.”*

30 In response to the order passed by this Court referred to above, the University Grants Commission looked into the matter, and by a letter dated 11<sup>th</sup> August, 2015 addressed to the Commissioner, Higher Education Office, answered the queries as under:

“Query	Clarification
<p>1. Is the State of Gujarat empowered to raise the qualifying standards prescribed under the regulations?</p> <p>2. Is the State of Gujarat empowered to incorporate additional qualifying standards over and above those prescribed under the regulations of UGC?</p>	<p>UGC has prescribed the minimum qualifications for appointment of teachers through its petitioners titled “UGC Regulations 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 2010” amended from time to time. The Appointing Authority may raise the qualifying standards without deviation from the minimum qualifications prescribed by UGC, if it so desires.</p>
<p>3. When UGC Regulation only provides for minimum 55% at post level in the relevant subject, does the State Govt. have powers to insist that the candidates must possess qualification in relevant subject at the undergraduate level? While assessing academic background of a candidate as per Table-2(c) of appendix-III should a bachelor degree be considered or not. If considered, should that be in relevant subject or any subject or discipline? (SCA No.9773/2015, 10155/2015).</p>	<p>The ‘Good Academic Record’ has been left to be defined by the concerned University / Appointing Authority.</p>
<p>4. What does relevant subject mean by</p>	<p>The relevance of subject or inter-disciplinary</p>

<p>provision in para 4.4.p? When recruiting a candidate for 'Commerce' subject; does a candidate having done MBA (Management subject) become relevant subject for Commerce? (SCA No.11207/2015).</p>	<p>nature of subject is required to be decided by the concerned University / Appointing Authority with the help of subject experts in the concerned/related field and as per its requirement. UGC has not prescribed any norms on the subject matter.</p>
<p>5. While considering good academic record when a candidate has changed discipline at different levels of UG/PG/NET/Ph.D; should that be considered? 9Say B.Sc. (Biology) and MA with English NET (English) should this case be considered?</p>	<p>As clarified under Point No.3 &amp; 4 above.</p>
<p>6. Is the State Govt. empowered not to accede to the regulation under local circumstances, on the condition of bearing entire establishment cost?</p>	<p>The UGC Regulations are mandatory in nature and are required to be followed in their letter and spirit without any deviation therefrom.</p>
<p>7. How many of the petitioners listed on the Attachment(H) are fulfilling qualifying requirements for the post of Assistant Professor in the subject applied under the regulations?</p> <p>8. How many of the petitioners listed on the Attachment(H) are in reality suitable for the post of Assistant Professor in the subject applied, considering their different subjects at UP/PG level and the regulation aimed at promoting standards of higher education?</p>	<p>The candidatures mentioned in enclosure-H have been perused. All the cases pertain to relevance of subject / interdisciplinary nature of subject and 'Good Academic Record'. These cases are required to be decided as clarified under Point No.3 &amp; 4 above.</p>
<p>9. A declaration on incorporation of additional selection criteria amounts to 'change in rules of the game subsequently and unacceptable in the eyes of the UGC?</p>	<p>As clarified under Point No.1 &amp; 2 above.</p>
<p>10. How 'good academic recorded' at UG level is defined in the context of present UGC Regulations? Does Master Degree have any relevance with undergraduate degree or both are to be considered with no relevance with each other?</p>	<p>'Good Academic Record' is mandatorily required to be considered for the appointment of Assistant Professor. However, relevance may be decided as clarified under Point No.1 and 2 above.</p>
<p>11. For conferring a master degree, is it prerequisite that a candidate must hold bachelor degree at least in that relevant subject?</p>	<p>As per UGC (Minimum Standards of Instructions for the Grant of the Master's Degree through Formal Education) Regulations, 2003 no student shall be eligible for admission to a Master's Degree programme in any of the faculties unless he/she has successfully completed three years of an undergraduate degree and as clarified under Point No.4 with regard to relevance of subject.</p>
<p>12. When NET examination is conducted by the UGC/CSIR in the subject of 'Mathematical Sciences' covers substantial portion of</p>	<p>As clarified under Point No.3 and 4 above."</p>

<p><i>Statistics, does candidate become eligible in Statistics subject (a) by way of having passed NET examination in unrelated 'Population Studies' or NET in commerce subject (b) by way of exemption from NET examination on account of such examination not conducted in the subject of 'Statistics'? (SCA No.10153/2015, 10461/2015)</i></p>	
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31 A bare perusal of the above referred letter of the University Grants Commission makes two things clear; first, the relevance of the subject needs to be decided by the concerned University / appointing authority with the help of experts in the related field and the University Grants Commission has not prescribed any norms in that regard. Secondly, according to the University Grants Commission, no student shall be eligible for admission to a Master's Degree programme in any of the faculties unless he/she has successfully completed three years of an Under Graduation Degree with regard to the relevance of the subject.

32 Let me at this stage deal with the principal argument canvassed by the learned counsel appearing for the respective petitioners that it was not open for the Joint Commissioner, Higher Education, to change the rules of the game once the game had started. To put it in other words, the contention is that in the advertisement, the requirement was minimum 55% marks in the relevant subject at the Post Graduation level with a good academic record in accordance with the University Grants Commission Regulations, 2010. In such circumstances, the State Government, on its own, could not have taken a policy decision at the last minute that the UG Degree and the PG Degree should be in the same subject.

33 It is a well-known principle in the service jurisprudence that it is

not permissible for the employer to change the rules of the game after the selection process has commenced.

34 The Supreme Court in **Ramesh Kumar v. High Court of Delhi & Another**, [AIR 2010 SC 3714] held as under:

“11. In *Durgacharan Misra v. State of Orissa & Ors.* AIR 1987 SC 2267, this Court considered the Orissa Judicial Service Rules which did not provide for prescribing the minimum cut-off marks in interview for the purpose of selection. This Court held that in absence of the enabling provision for fixation of minimum marks in interview would amount to amending the rules itself. While deciding the said case, the Court placed reliance upon its earlier judgments in *B.S. Yadav & Ors v. State of Haryana & Ors.* AIR 1981 SC 561; *P.K. Ramachandra Iyer & Ors. V Union of India & Ors.* AIR 1984 SC 541; and *Umesh Chandra Shukla v. Union of India & Ors* AIR 1985 SC 1351, wherein it had been held that there was no "inherent jurisdiction" of the Selection Committee/Authority lay down such norms for selection in addition to the procedure prescribed by the Rules. Selection is to be made giving strict adherence to the statutory provisions and if such power i.e. "inherent jurisdiction" is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm.

12. Similarly, in *K. Manjusree v. State of Andhra Pradesh & Anr* AIR 2008 SC 1470, this Court held that selection criteria has to be adopted and declared at the time of commencement of the recruitment process. The rules of the game cannot be changed after the game is over. The competent authority, if the statutory rules do not restrain, is fully competent to prescribe the minimum qualifying marks for written examination as well as for interview. But such prescription must be done at the time of initiation of selection process. Change of criteria of selection in the midst of selection process is not permissible.

13. Thus, law on the issue can be summarised to the effect that in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specify the minimum Bench Marks for written test as well as for viva-voce.”

35 In **Himani Malhotra v. High Court of Delhi** [AIR 2008 SC

2103], the Supreme Court held that it was not permissible for the employer to change the criteria of selection in the midst of selection process. (See also: *Tamil Nadu Computer Science BEd Graduate Teachers Welfare Society (1) v. Higher Secondary School Computer Teachers Association & Ors.*, (2009) 14 SCC 517; *State of Bihar & Ors. v. Mithilesh Kumar*, (2010) 13 SCC 467; and *Arunachal Pradesh Public Service Commission & Anr. v. Tage Habung & Ors.*, AIR 2013 SC 1601).

36 In *P. Mohanan Pillai v. State of Kerala & Ors.* [AIR 2007 SC 2840], the Supreme Court held as under :

*“It is now well-settled that ordinarily rules which were prevailing at the time, when the vacancies arose would be adhered to. The qualification must be fixed at that time. The eligibility criteria as also the procedures as was prevailing on the date of vacancy should ordinarily be followed.”*

37 The issue of the change of rule of the game has been referred to the Larger Bench as is evident from the judgment in *Tej Prakash Pathak & Ors. v. Rajasthan High Court & Ors.*, [(2013) 4 SCC 540].

38 I am not impressed by the submission canvassed on behalf of the petitioners that the case in hand is one wherein the rules of the game were changed at the last minute. The reliance placed on the decision of the Supreme Court in the case of *Dr. Krushna Chandra Sahu (supra)* is also of no avail to the petitioners. In *Dr. Krushna Sahu (supra)*, the selection committee, on its own, decided to consider the confidential character rolls of the candidates who were already employed as the Homeopathic Medical Officers as the basis for determining their suitability. The Supreme Court took the view that if it was a mere matter

of transition from one service to another service of the similar nature as, for example, from the Provincial forest service to the All India Forest Service or from the Provincial civil service to the Indian Administrative Service, the confidential character rolls could have constituted a valid basis for selection either on merit or suitability. However, in the said case, the appointments were made on the posts in a entire new service, though the educational qualifications required to be possessed by the candidates were the same as what was required to be possessed in their earlier service. The Supreme Court further observed that the Director had neither issued any administrative instructions nor had it supplied the omission with regard to the criteria on the basis of which the suitability of the candidates was to be determined. The members of the selection board had no jurisdiction to lay down the criteria for selection unless they were authorized specifically in that regard by the rules made under Article 309 of the Constitution.

39 In the case in hand, the selection committee undertook the process of recruitment strictly adhering to the criteria prescribed under the resolution dated 14<sup>th</sup> September, 2011 as well as the advertisement without any deviation or altering the State Government's criteria.

40 According to the Government Resolution dated 14<sup>th</sup> September, 2011, it is the office of the Commissioner, Higher Education, who has to manage the recruitment through the centralized recruitment process, and it owes a duty to see that a transparent procedure is followed in the grant-in-aid colleges and thereby offering all the candidates a common platform for being recruited in the colleges of their choice.

41 With a view to facilitate the recruitment process in a transparent manner, the office of the Commissioner, Higher Education thought fit to

constitute a committee of experts in the field of academics for the purpose of guidance and opinion having regard to the grievances raised by the candidates as regards requirement of possessing the degrees at the Under Graduate level and Post Graduate level in the same subject. Thus, the expert committee merely gave its opinion and clarified making it explicit. It could not be said that the experts committee altered the suitability criteria after the selection process had commenced.

42 The selection committee has not compromised with the requirements as prescribed by the University Grants Commission. In my view, it cannot be said that the opinion of the experts committee was a policy decision in the matter of appointing the Adhyapak Sahayaks and such policy decision should have been in the form of Resolution / Notification under the provisions of Article 162 of the Constitution of India. What was implicit in the resolution of 2010 read in juxtaposition with the specifications of degrees published in the Gazette of India dated 14<sup>th</sup> July, 2014 was made explicit.

43 It also deserves to be stated that possessing of minimum 55% marks in the relevant subject at the Post Graduate level by a candidate was not the sole criteria, but the requirement was also of a “good academic record” with at least 55% marks in the Master’s Degree according to the Regulation 4.4.0 of the University Grants Commission Regulations 2010. A “good academic record” implies the entire record, including the degree at the Under Graduate level, which has to be necessarily in the relevant subject. According to the provisions of the Government Resolution dated 14<sup>th</sup> September 2011, the Condition No.9, Point No.2 of the table, 10 marks are to be given to the candidate, if he has secured first rank at the Under Graduate level in the University. Thus, the candidate would be assigned 10 marks having secured first

rank at the Under Graduate level. The insistence for the requirement of securing a degree at the Under Graduate level and Post Graduate level in the same subject is very much in tune with the regulations of the University Grants Commission read with the Notification issued by the University Grants Commission in March 2014 and published in the Gazette of India dated 14<sup>th</sup> July 2014 indicating specifications of the degrees.

44 Let me quote the relevant portion of the specifications of the degrees as prescribed by the University Grants Commission.

*“UNIVERSITY GRANTS COMMISSION  
SPECIFICATIONS OF DEGREES  
NEW DELHI, March, 2014*

*NO.F.5-1/2013 (CPP-II) – In exercise of the powers conferred by sub-Section (3) of Section 22 of the University Grants Commission Act, 1956 (3 of 1956) and in supersession of all earlier Gazette Notification pertaining to specification of degrees, the University Grants Commission (UGC) with the approval of the Central Government hereby specifies the nomenclature of degree for the purposes of the said section.*

*SPECIFIED DEGREES*

*Broad discipline-wise nomenclature of degrees at all levels of higher education should be taken as the specified degree, which the universities/institutions must adhere to, are given below. Alongside the nomenclature of the degrees, minimum entry-level qualifications and duration of the programmes have also been indicated. The information is presented in a tabular for for clarity. In the bottom-most row of each table, nomenclature of degrees that are presently in vogue in some institutions were found to be neither conventional, nor reflective of a real innovation in knowledge and are de-specified with the suggestion that the same may be restructured/changed as suggested therein.*

<b>Arts/Humanities/Social Sciences:</b>						
		<i>Specified Degrees</i>		<i>Level</i>	<i>Minimum Duration (years)</i>	<i>Entry Qualification</i>
	<i>Abbreviated</i>	<i>Expanded</i>				
18	<i>BA/ B.A. (Hons)</i>	<i>Bachelor of Arts/ Bachelor of Arts (Hons)</i>		<i>BACHELOR'S</i>	<i>3</i>	<i>10+2</i>

19	MA	Masters of Arts	MASTER'S	2	BACHELOR'S
20	BSW	Bachelor of Social Work	BACHELOR'S	3	10+2
21	MSW	Master of Social Work	MASTER'S	2	BACHELOR'S
22	BRS	Bachelor of Rural Studies	BACHELOR'S	3	10+2
23	MRS	Maser of Rural Studies	MASTER'S	2	BACHELOR'S

<b>Education Training</b>					
Specified Degrees					
	Abbreviated	Expanded	Level	Minimum Duration (years)	Eligibility Qualification
24	B.Ed.	Bachelor of Education	BACHELOR'S	1	BACHELOR'S
25	B.El. Ed.	Bachelor of Elementary Education	BACHELOR'S	4	10+2
26	M.Ed.	Master of Education	MASTER'S	1	B.Ed.
27	BPed	Bachelor of Physical Education	BACHELOR'S	1	BACHELOR'S
28	MPed.	Master of Physical Education	MASTER'S	1	BPed
BPE be restructured as BPed MPE be restructured as MPed					

<b>Business Administration/Commerce/Management/Finance</b>					
Specified Degrees					
	Abbreviated	Expanded	Level	Minimum Duration (years)	Entry Qualification
32	B.Com/ B.Com (Hons)	Bachelor of Commerce/ Bachelor of Commerce (Hons)	BACHELOR'S	3	10+2
33	M.Com.	Master of Commerce	MASTER'S	2	BACHELOR'S
34	BBA	Bachelor of Business Administration	BACHELOR'S	3	10+2
35	MBA	Master of Business Administration	MASTER'S	2	BACHELOR'S

<b>Sciences</b>					
Specified Degrees					
	Abbreviated	Expanded	Level	Minimum Duration (years)	Entry Qualification

54	B.Sc. B.Sc. (Hons)	Bachelor of Science / Bachelor of Science (Hons)	BACHELOR' S	3	10+2
55	M.Sc.	Master of Science	MASTER'S	2	BACHELOR'S

### **Guiding Principles:**

*Degrees should be specified in generic terms and their nomenclatures should be such that are generally recognised globally acknowledged and widely accepted and are indicative of the level of the degrees and the broad subject/discipline/knowledge are university/institution, in curricular innovation shall have the freedom to indicate uniqueness/specification in parentheses against the specified generic degrees.*

### **General Instructions:**

2. *The above specified degrees shall be awarded by a University established or incorporated by or under a Central Act, a Provincial Act or a State or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees under section 22 of the UGC Act, 1956.*

3. *No University shall confer a degree in violation of the provision of this Notification. It shall be mandatory for the Universities to adhere to the approved nomenclature of the degree(s) and ensure the observance of the minimum standards of instructions before award of a degree as hereinafter prescribed.*

### **Specification of New Degrees**

7. *Henceforth, the Universities shall not introduce any new nomenclature of degrees unless there is a very strong and genuine reason. Should a University intend to introduce a new nomenclature, it shall approach the UGC for its specification at least six months prior to stating the degree programme along with the details of the course of study prescribed for the degree as approved by the respective academic bodies of the university / institutions, such as – Board of Studies, Academic Council and Governing Council.*

8. *All the Universities (including affiliated colleges thereto) shall observe minimum standards of instructions and prescribed norms for the grant of a degree which shall be imparted by the duly qualified teaching staff and appropriate academic physical infrastructure facilities as prescribed by the concerned statutory/regulating bodies, such as University Grants Commission (UGC), All India Council for Technical Education (AICTE), Medical Council of India (MCI), Pharmacy Council of India (PCI), Council for Architecture (COA), Bar Council of India (BCI), National Council for Teachers Education (NCTE), Dental Council of India (DCI), Indian Nursing Council (INC), etc, in their respective notifications/regulations.*

9. *The specified degrees offered by a University and the minimum standards*

*of instructions and norms prescribed as laid down by the concerned statutory / regulatory bodies shall be prominently published in the admission brochure of concerned University / affiliated college and shall also be made available in their website.”*

45 In **Bihar Public Service Commission v. Kamini and others [(2007) 5 SCC 519]**, an almost identical issue fell for consideration before the Supreme Court. In that case, Ms. Kamini passed her B.Sc. (Honours) in the year 1989 in Chemistry with Zoology and Botany in first class from a University in the State of Bihar. Her principal/main subject in B.Sc. degree was Chemistry, along with Zoology and Botany as subsidiary/optional subjects. An advertisement was issued on 21<sup>st</sup> December, 1999 by the Commission inviting applications from eligible candidates for appointment to the post of the District Fisheries Officer-cum-Chief Executive Officer. It was stated therein that the candidate must have qualification of B.Sc., Zoology with a two years diploma in Fisheries Science from the Central Institute of Fisheries Education, Mumbai or a graduate degree in Fisheries Science (BFSC) from a recognized University or M.Sc. (Inland Fisheries Administration and Management) with Zoology from the Central Institute of Fisheries Education, Mumbai. On scrutiny of the marksheet of Ms. Kamini, it was found that she was not having the Honours Degree in Zoology and was not eligible for the post. When she appeared for the interview, she was informed that she was not possessing the requisite educational qualifications and her candidature had been rejected. Since there were many such cases an expert committee was constituted by the Commission to consider the question whether a student can be called a Graduate in Zoology subject if he/she had cleared the degree examination with Zoology as a subsidiary/optional subject and not as the principal subject. The committee submitted its report on 24<sup>th</sup> November, 2002. According to the said report, a student would be

considered a Graduate in the subject if he/she had obtained the degree in that subject at the Graduate level. Ms. Kamini, according to the said report, was found ineligible.

Ms. Kamini challenged the said decision by filing a writ petition in the High Court at Patna. A learned Single Judge dismissed the petition, but the Letters Patent Appeal was allowed by the High Court. The Commission challenged the said decision of the Division Bench before the Supreme Court. The Supreme Court, while allowing the appeal filed by the Commission, observed in para -8 as under:

*“8. Again, it is well settled that in the field of education, a Court of Law cannot act as an expert. Normally, therefore, whether or not a student/candidate possesses requisite qualifications should better be left to educational institutions [vide **University of Mysore v. Govinda Rao, (1964) 4 SCR 576 : AIR 1965 SC 591**]. This is particularly so when it is supported by an Expert Committee. The Expert Committee considered the matter and observed that a person can be said to be Honours in the subject if at the Graduate level, he/she studies such subject as the principal subject having eight papers and not a subsidiary, optional or side subject having two papers. Such a decision, in our judgment, cannot be termed arbitrary or otherwise objectionable. The learned Single Judge, in our opinion, was, therefore, right in dismissing the petition relying upon the Report of the Committee and in upholding the objection of the Commission. The Division Bench was in error in ignoring the well considered report of the Expert Committee and in setting aside the decision of the learned Single Judge. The Division Bench, while allowing the appeal, observed that the 'litmus test' was the admission granted to the first respondent by the Central Institute of Fisheries Education, Mumbai. According to the Division Bench, if the first respondent did not possess Bachelor of Science Degree with Zoology, the Institute would not have admitted her to the said course. The Division Bench observed that not only the first respondent was admitted to the said course, she had passed it with "flying colours". In our opinion, the Division Bench was not right in applying 'litmus test' of admission of the first respondent by Central Institute of Fisheries Education, Mumbai. The controversy before the Court was whether the first respondent was eligible for the post of District Fisheries Officer, Class II. The correct test, therefore, was not admission by Mumbai Institution. If the requirement was of Honours in B.Sc. with Zoology and if the first respondent had cleared B.Sc. Honours with Chemistry, it could not be said that she was eligible to the post having requisite educational*

*qualifications. By not treating her eligible, therefore, the Commission had not committed any illegality.”*

46 Let me give a fine example of a case wherein it can be said that the rule of the game has been changed after the commencement of the selection process.

47 In **Mohd Sohrab Khan v. Aligarh Muslim University and others [(2009) 4 SCC 555]**, the Aligarh Muslim University issued an advertisement, whereby it called for the applications for filling up about 79 posts in the University. One of the said posts, which was advertised, was the post of a Lecturer in Chemistry in the University Polytechnic, Aligarh Muslim University. The qualification, that was laid down by the University as essential qualification, was a first class Master’s Degree in the appropriate branch of teaching post in the Humanities and Sciences. Both Mohd. Sohrab Khan as also Merajuddin Ahmad submitted their applications to be considered as against the said post which was advertised, namely, Lecturer in Chemistry. Mohd. Sohrab Khan had a First Class Master’s Degree in Chemistry (Pure) whereas Merajuddin Ahmad was holding a First Class Master’s Degree in Industrial Chemistry. The University authority accepted the recommendation of the selection committee and issued an order of appointment in favour of Merajuddin Ahmad.

Mohd. Sohrab Khan, being aggrieved by the said order passed by the Aligarh Muslim University filed a writ petition in the High Court of Allahabad. A Division Bench of the High Court heard the writ petition and allowed the same holding that the appointment of Merajuddin Ahmad on the post in question was not legal as he did not possess the minimum qualification. The High Court, while coming to the necessary

conclusion, recorded that the University award degrees separately in both the subjects i.e. Chemistry as well as Industrial Chemistry and both the subjects were distinct and separate. Before the High Court, it was contended that the selection committee being constituted of experts on the subjects was the only competent authority to decide that a person holding a Master's Degree in the Industrial Chemistry was best suited for teaching the subject for which the advertisement was issued and the High Court should not have interfered with such opinion of the experts by substituting its own decision. It was also submitted that the Master's Degree in the Industrial Chemistry is as good as the Master's Degree in Chemistry for the post for which the advertisement was issued, and that a person having a Master's Degree in the Industrial Chemistry was better suited for teaching the said subject.

The Supreme Court, while upholding the decision of the High Court, observed in paras 12 to 22 as under:

*“12. Many more posts advertised in the said advertisement specifically indicate that whenever the University desired to have a post filled up in a particular branch of the Humanities and Science Department, it specifically indicated as such in the said advertisement. If it was necessary for the University to fill up the post from the stream of Industrial Chemistry, it would have so indicated in the advertisement itself for in subsequent years, we find specific advertisement has been issued by the same University for filling up the post of Lecturer in Industrial Chemistry by issuing an advertisement specifically in that regard.*”

*13. There is no doubt with regard to the fact that it is the University Authority who knows best as to what is their requirement. Aligarh Muslim University was founded by Central Act called the Aligarh Muslim University Act. It also has a statute made under Section 28 (1) of the said Act. Statute 22 of the University deals with the Boards of Studies. One of the functions of the said Board of Studies is to recommend to the Faculty in the manner prescribed in the ordinances, the field of study of each post at the time of its creation.*

*14. Statute 21 on the other hand deals with the powers and functions*

of the Faculties. The aforesaid recommendation of the Board of Studies is to be decided by the Faculties at Statute 21 of the University and therefore, it is confirmed by the Academic Council under Statute 19 of the University, and therefore it is to be approved by the Executive Council under Statute 17(2)(1) of the University. After such a repeated multi-tier exercise, the essential qualification is earmarked for a particular post and then it is advertised. It is also established from the records and there is no dispute with regard to the fact that pure Chemistry and Industrial Chemistry are two different and separate subjects.

15. Learned counsel appearing for Merajuddin Ahmad strongly relied upon the course contents. A bare look at the same would indicate that what is dealt therein is not Industrial Chemistry but Engineering Chemistry. We are not informed as to whether Engineering Chemistry is considered to be at par with Industrial Chemistry.

16. Learned Counsel appearing for the University on our enquiry fairly stated before us that the aforesaid post which was advertised to be filled up in the aforesaid manner is at present vacant and the same is being manned by appointing a Guest Lecturer who holds a Masters Degree in pure Chemistry.

17. If the requirement was to have a person having Masters Degree in Industrial Chemistry, then in that event the post would have been manned through a Guest Lecturer from the Industrial Chemistry stream. Therefore, it cannot be accepted that the person holding a Masters Degree in Industrial Chemistry would be better suited for appointment as against the said post.

18. The post advertised was meant for a person belonging to the pure Chemistry Department for if it was otherwise, then it would have been so mentioned in the advertisement itself that a person holding a Masters Degree in Industrial Chemistry should only apply or that a person holding such a degree could also apply along with other persons. It was not so mentioned in the advertisement and therefore, except for Merajuddin Ahmad, no other degree holder in Industrial Chemistry had applied for becoming a candidate as against the aforesaid post.

19. According to us, the Selection Committee as also the University changed the rule in the midstream which was not permissible. The University can always have a person as a Lecturer in a particular discipline that it desires to have, but the same must be specifically stated in the advertisement itself, so that there is no confusion and all persons who

could be intending candidates, should know as to what is the subject which the person is required to teach and what essential qualification the person must possess to be suitable for making application for filling up the said post.

20. We are not disputing the fact that in the matter of selection of candidates, opinion of the Selection Committee should be final, but at the same time, the Selection Committee cannot act arbitrarily and cannot change the criteria/qualification in the selection process during its midstream. Merajuddin Ahmad did not possess a degree in pure Chemistry and therefore, it was rightly held by the High Court that he did not possess the minimum qualification required for filling up the post of Lecturer Chemistry, for pure Chemistry and Industrial Chemistry are two different subjects.

21. The advertisement which was issued for filling up the post of Lecturer in Chemistry could not have been filled up by a person belonging to the subject of Industrial Chemistry when the same having been specifically not mentioned in the advertisement that a Masters Degree holder in the said subject would also be suitable for being considered.

There could have been intending candidates who would have applied for becoming candidate as against the said advertised post, had they known and were informed through advertisement that Industrial Chemistry is also one of the qualifications for filling up the said post. The Selection Committee during the stage of selection, which is midway could not have changed the essential qualification laid down in the advertisement and at that stage held that a Masters Degree Holder in Industrial Chemistry would be better suited for manning the said post without there being any specific advertisement in that regard. The very fact that the University is now manning the said post by having a person from the discipline of pure Chemistry also leads to the conclusion that the said post at that stage when it was advertised was meant to be filled up by a person belonging to pure Chemistry stream.

22. In *Secy., A.P. Public Service Commission v. B. Swapna*, [(2005) 4 SCC 154] at para 14 it was held by this Court that norms of selection cannot be altered after commencement of selection process and the rules regarding qualification for appointment, if amended, during continuation of the process of selection do not affect the same. Further at para 15 it was held that the power to relax the eligibility condition, if any, to the selection must be clearly spelt out and cannot be otherwise exercised. The said observations are extracted herein below:

"14. The High Court has committed an error in holding that the amended rule was operative. As has been fairly conceded by learned counsel for Respondent 1 applicant it was the unamended rule which was applicable. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criterion e.g. minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the rules showing the intention to affect existing rights the rule must be held to be prospective. If the rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as prospective only. (See **P. Mahendran v. state of Karnataka (1990) 1 SCC 411** and **Gopal Krushna Rath v. M.A.A. Baig (1999) 1 SCC 544.**)

15. Another aspect which this Court has highlighted is scope for relaxation of norms. Although the Court must look with respect upon the performance of duties by experts in the respective fields, it cannot abdicate its functions of ushering in a society based on rule of law. Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated. In **P.K. Ramachandra Iyer v. Union of India\_ (1984) 2 SCC 141** this Court held that once it is established that there is no power to relax essential qualification, the entire process of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised."

In **Krushna Chandra Sahu (Dr.) v. State of Orissa, [(1995) 6 SCC 1]**, at para 34 it was held by this Court the Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. In the said case reference was made to the decision in **P.K. Ramachandra Iyer v. Union of India, [(1984) 2 SCC 141]**, wherein at para 44 it was observed:

*"By necessary inference, there was no such power in the ASRB to add to the required qualifications. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm."*

48 The decision of the Supreme Court referred to above is the best example, I can cite of the principle that the rule of the game cannot be changed, after the process of selection has commenced. In the case in hand, no rule came to be changed by the State Government in the midst of the selection process. As pointed out by me earlier that the decision had to be taken as the issue cropped up at the last minute. It is true that in the advertisement, it has not been stated that the degree at the Post Graduation level should be the same at the Under Graduation level. However, this, by itself, is not sufficient to say that the office of the Commissioner could not have taken an appropriate decision after seeking opinion of the experts in the field keeping in mind the quality of Higher Education.

49 In **Yogesh Yadav v. Union of India and others [(2013) 4 SCC 623]**, the matter pertained to the appointment to the post of the Deputy Director (Law) in the Other Backward Class (OBC category). According to the appellant, there non-selection was the result of altering the prescribed mode of selection midway i.e. after the initiation of recruitment process which was impermissible. The respondents fixed the benchmark of 70 marks for the general category and 65 marks for the reserved category candidates. It was such fixation of the benchmark which agitated the appellant and according to them it amounted to change selection procedure midway, which is illegal. It was argued before the High Court of Delhi by filing a writ petition that the selection criteria was changed arbitrarily that too after the advertisement and the

law did not permit the respondents to change the rules of the game after the game had started. On the other hand, it was argued by the respondents that such a course of action was permissible and it was not a case where the mode of selection, at any time was changed and insofar as fixation of benchmark is concerned that was the prerogative of the employer.

The issue before the Supreme Court was whether the fixation of the benchmark would amount to change in the criteria of selection in the midstream when there was no such stipulation in that regard in the advertisements. The Supreme Court, while dismissing the appeals, held as under in paras 13, 14 and 15:

*“13. Instant is not a case where no minimum marks prescribed for viva voce and this is sought to be done after the written test. As noted above, the instructions to the examinees provided that written test will carry 80% marks and 20% marks were assigned for the interview. It was also provided that candidates who secured minimum 50% marks in the general category and minimum 40% marks in the reserved categories in the written test would qualify for the interview. **Entire selection was undertaken in accordance with the aforesaid criterion which was laid down at the time of recruitment process.** After conducting the interview, marks of the written test and viva voce were to be added. However, since benchmark was not stipulated for giving the appointment. What is done in the instant case is that a decision is taken to give appointments only to those persons who have secured 70% marks or above marks in the unreserved category and 65% or above marks in the reserved category. **In the absence of any rule on this aspect in the first instance, this does not amount to changing the “rules of the game”.** The High Court has rightly held that it is not a situation where securing of minimum marks was introduced which was not stipulated in the advertisement, standard was fixed for the purpose of selection. **Therefore, it is not a case of changing the rules of game. On the contrary in the instant case a decision is taken to give appointment to only those who fulfilled the benchmark prescribed.** Fixation of such a benchmark is permissible in law. This is an altogether different situation not covered by Hemani Malhotra case.*

*14. The decision taken in the instant case amounts to short listing of candidates for the purpose of selection/appointment which is always permissible. For this course of action of the CCI, justification is found by*

the High Court noticing the judgment of this Court in the State of Haryana vs. Subash Chander Marwaha & Ors (1974) 3 SCC 220. In that case, Rule 8 of the Punjab Civil Service (Judicial Branch) Service Rules was the subject matter of interpretation. This rule stipulated consideration of candidates who secured 45% marks in aggregate. Notwithstanding the same, the High Court recommended the names of candidates who had secured 55% marks and the Government accepted the same. However, later on it changed its mind and High Court issued Mandamus directing appointment to be given to those who had secured 45% and above marks instead of 55% marks. In appeal, the judgment of the High Court was set aside holding as under:

*“12....It is contended that the State Government have acted arbitrarily in fixing 55 per cent as the minimum for selection and this is contrary to the rule referred to above. The argument has no force. Rule 8 is a step in the preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit. The one higher in rank is deemed to be more meritorious than the one who is lower in rank. It could never be said that one who tops the list is equal in merit to the one who is at the bottom of the list. Except that they are all mentioned in one list, each one of them stands on a separate level of competence as compared with another. That is why Rule 10(ii), Part C speaks of “selection for appointment”. Even as there is no constraint on the State Government in respect of the number of appointment to be made, there is no constraint on the State Government in respect of the number of appointments to be made, there is no constraint on the Government fixing a higher score of marks for the purpose of selection. In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high-standards of competence to fix a score which is much higher than the one required for mere eligibility.”*

15. **Another weighty reason given by the High Court in the instant case, while approving the aforesaid action of the CCI, is that the intention of the CCI was to get more meritorious candidates.** There was no change of norm or procedure and no mandate was fixed that a candidate should secure minimum marks in the interview. In order to have meritorious persons for those posts, fixation of minimum 65% marks for selecting a person from the OBC category and minimum 70% for general category, was legitimate giving a demarcating choice to the employer. In the words of the High Court:

*“In the case at hand, as we perceive, the intention of the Commission was to get more meritorious candidates. There has*

*been no change of norm or procedure. No mandate was fixed that a candidate should secure minimum marks in the interview. Obtaining of 65% marks was thought as a guidelines for selecting the candidate from the OBC category. The objective is to have the best hands in the field of law. According to us, fixation of such marks is legitimate and gives a demarcating choice to the employer. It has to be borne in mind that the requirement of the job in a Competition Commission demands a well structured selection process. **Such a selection would advance the cause of efficiency.** Thus scrutinized, we do not perceive any error in the fixation of marks at 65% by the Commission which has been uniformly applied. The said action of the Commission cannot be treated to be illegal, irrational or illegitimate.”*

50 In the case in hand also, it could be said that there was no rule which came to be changed when the decision was taken that the subject at the UG and PG level should be the same.

51 I am not impressed by the submission canvassed on behalf of the petitioners that the decision in question could not have been taken by the office of the Joint Commissioner in view of the entry 25 of the concurrent list, which is subject to the entry 66 of the Union list of the 7<sup>th</sup> Schedule of the Constitution of India. In fact, this contention has been answered by me while dealing with the contention as regards failure on the part of the Government to issue a resolution under Article 162 of the Constitution of India. However, let me deal with the same in my own way.

52 It is now well settled that fixation of qualifications of the Adhyapak Sahayaks in the grant-in-aid colleges will definitely have relation to standards of education in the institutions for higher education.

53 The issue in hand relates to the competence of the State

Government to prescribe eligibility criteria for the purpose of appointment / selection on the posts of the Adhyapak Sahayaks. In other words, whether the State Government was entitled to lay down an eligibility criteria that the candidate must possess degrees at the UG level and PG level in the same subject.

54 Let me look into the fews decisions of the Supreme Court in this regard.

55 Of Course, all the decisions, which I propose to look into, are relating to prescribing conditions or eligibility for the purpose of admission in colleges run by the Government. However, the ratio will definitely apply to the case in hand.

56 In the case of **(Shri Ram Krishna Dalmia v. S.R. Tendolkar)**<sup>5</sup>, **1959 S.C.R. 279** : A.I.R. 1958 S.C. 538 the Supreme Court has observed as under:-

*"Article 14 forbids class legislation; it does not forbid reasonable classification. In other words to pass the test of permissible classification two conditions must be fulfilled, (i) that the classification is founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that differentia must have a rational relation to the object sought to be achieved. The first group of persons for whom seats have been reserved are the sons and daughters of residents of Union territories other than Delhi. These areas are well known to be comparatively backward and with the exception of Himachal Pradesh they do not have any Medical College of their own. It was necessary that persons desirous of receiving medical education from these areas should be provided some facility for doing so. As regards the sons and daughters of Central Government servants posted in Indian Missions abroad it is equally well known that due to exigencies of their service these persons are faced with lot of difficulties in the matter of education. Apart from the problems of language, it is not easy or always possible to get admission into institutions imparting medical education in foreign countries. The Cultural, Colombo Plan and Thailand scholars are given admission in medical institutions in this country by reason of*

*reciprocal arrangements of educational and cultural nature. Regarding Jammu & Kashmir scholars it must be remembered that the problems relating to them are of a peculiar nature and there do not exist adequate arrangements for medical education in the State itself for its residents. The classification in all these cases is based on intelligible differentia which distinguishes them from the group to which the appellants belong."*

57 In the case of **(Kumari Chitra Ghosh and another v. Union of India and others)**<sup>6</sup>, A.I.R. 1970 S.C. 35 the Supreme Court has noticed the aforesaid case and has observed, as under ;

*"9. It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial geographical or other reasonable basis it is not for the Courts to interfere with the manner and method of making the classification."*

*"10. The next question that has to be determined is whether the differentia on which classification has been made has rational relation with the object to be achieved. The main purpose of admission to a medical college is to impart education in the theory and practice of medicine. As noticed before the sources from which students have to be drawn are primarily determined by the authorities who maintain and run the institution, e.g., the Central Government in the present case. In (P. Rajendran v. State of Madras)<sup>7</sup>, A.I.R. 1968 S.C. 1012 it has been stated that the object of selection for admission is to secure the best possible material. This can surely be achieved by making proper rules in the matter of selection but there can be no doubt that such selection has to be confined to the sources that are intended to supply the material. If the sources have been classified in the manner done in the present case it is difficult to see how that classification has no rational nexus with the object of imparting medical education and also of selection for the purpose."*

58 In the case of **(D.N. Chanchala etc. v. The State of Mysore and others etc.)**<sup>8</sup>, A.I.R. 1971 S.C. 1762, the Supreme Court has observed, as under:

"14. In view of this consequence, Counsel for the petitioner made three submissions; (1) that once the petitioner was eligible for admission to a medical college affiliated to the Karnataka University according to the Ordinances of that university, the State Government could not make rules, the effect of which was to deprive her of admission; (2) that the universitywise distribution of seats provided under Rule 9(1) was discriminatory and being without any rational basis violated Article 14 of the Constitution ; and (3) that the reservation of seats under Rules. 4 and 5 for the various categories of persons set out therein was far more excessive than permitted by the decisions of this Court and was in violation of Article 15(4). Consequently, Rules 4 and 5 laying down such reservation should be held invalid."

"15. We propose to deal with these submissions in the order in which they were placed before us by Counsel. As seen earlier, there are two sets of provisions dealing with the teaching of medical courses. The first consists of Ordinances of the Universities, and the second consists of the rules framed by the Government for selection of candidates for admission to the Pre-Professional/B.Sc. Part I leading to M.B.B.S. degree. The Ordinances framed by the three universities are made under the different Universities Act setting up those universities and under the powers reserved to them under them. These Ordinances are made for the purposes set out in those Acts and for carrying out those purposes. One of such purposes would be the maintenance of certain academic standards in the various faculties taught in the colleges affiliated to the universities. For the purposes of maintaining such standards the universities lay down certain minimum qualifications for eligibility for entrance in those faculties. These Ordinances and regulations made under the Acts lay down the minimum qualifications required for eligibility and are not to be confused with rules for admission. A candidate may have the minimum qualification so as to make him eligible for entrance in a particular faculty. That does not mean that his being eligible necessarily makes him entitled to admission in that faculty. For, admission can only be commensurate with the number of available seats in such a faculty."

"16. The medical colleges in question are not university colleges but have been set up and are being maintained by the State Government from out of public funds. Since they are affiliated to one or the other of the three universities, the Government cannot frame rules or act inconsistently with the Ordinances or the regulations of the universities laying down standards of eligibility. It is nobody's case that the Government has made rules which are in any way inconsistent with the rules for eligibility laid down in such Ordinances and regulations."

"17. Since the Government has set up these colleges and maintains them, it has prima facie the power to regulate admission in its own institutions.

*Counsel for the petitioner pointed out to us no provision from the University Acts which deprives the Government of the power of making rules for admission in its own colleges. That being so, it cannot be said that the Government has no power to regulate admission in its own colleges or that because a student is eligible for admission under the University Ordinances, he automatically gets a right to admission which he can enforce in a Court of law."*

*"22. ... .. Further, the Government which bears the financial burden of running the Government colleges is entitled to lay down criteria for admission in its own colleges and to decide the sources from which admission would be made, provided of course, such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the rules. So long as there is no discrimination within each of such sources, the validity of the rules laying down such sources cannot be successfully challenged. See Chitra Ghosh v. Union of India, (1970)1 S.C.R. 413 at p. 418 : A.I.R. 1970 S.C. 35. In our view, the rules lay down a valid classification. Candidates passing through the qualifying examination held by a university form a class by themselves as distinguished from those passing through such examination from the other two universities. Such a classification has a reasonable nexus with the object of the rules, namely, to cater to the needs of candidates who would naturally look to their own university to advance their training in technical studies, such as medical studies. In our opinion, the rules cannot justly be attacked on the ground of hostile discrimination or as being otherwise in breach of Article 14."*

*"23. The last challenge to the validity of these rules was based on the allegation that they lay down excessive reservation for certain categories of candidates. As already stated, under Clauses (a) to (i) of Rule 4, sixty, out of the present aggregate of 765 seats at the disposal of the Government, are set apart for the various categories of persons therein mentioned. As aforesaid, the Government is entitled to lay down sources from which selection for admission would be made. A provision laying down such sources is strictly speaking not a reservation. It is not a reservation as understood by Article 15 against which objection can be taken on the ground that it is excessive. The reservation, as contemplated by Article 15, is the one which is made under Rule 5. ... .."*

59 In the case of **(State of Andhra Pradesh and another v. Lavu Narendra Nath and others etc.)**9, A.I.R. 1971 S.C. 2560 the Supreme Court has observed, as under:

*"7. We have therefore to examine whether the Government had a right to*

*prescribe a test for making a selection of a number of candidates from out of the large body of applicants for admission into the first year M.B.B.S. course and whether such action of the Government contravened any provision already made by the legislature in that respect. Under Article 162 of the Constitution the executive power of a State extends to the matters with respect to which the legislature of a State has power to make laws but this is subject to the provisions of the Constitution. As the Government runs these colleges, it undoubtedly has a right and a duty to make a selection from the number of applicants applying for admission if all could not be admitted. If there was no legislation covering this field Government would undoubtedly be competent to prescribe a test itself to screen the best candidates. We have next to scrutinise the provisions of the Andhra University Act relied on by the High Court to see whether the action of the Government ran counter to any of those provisions. Under section 23 of the Act it was a body known as the Academic Council of the University which had the power by regulations of prescribing all courses of study and of determining curricula and the general control of teaching within the university and was responsible for the maintenance of the standards thereof. Under sub-section (2)(h) of the Act these powers include the power to make regulations regarding the admission of students to the university or prescribing examinations to be recognised as equivalent to university examinations or the further qualifications mentioned in sub-section (1) of section 33 for admission to the degree courses of the university. Under section 33 no student was to be eligible for admission to a course of study qualifying for admission to a post-matriculation university examination unless he had passed the examination prescribed as qualifying for admission to such course or an examination recognised by the Academic Council with the previous sanction of the State Government as equivalent thereto and possessed such further qualifications, if any, as might be prescribed. Sri Venkateswara University, the only other University functioning in this area, was constituted under a similar statute and had almost identical provisions as those mentioned above."*

*"8. The above provisions of law do not make it incumbent upon the Government to make their selection in accordance with the marks obtained by the applicant-candidates at the qualifying examination. Obtaining 50% of the marks at the qualifying examinations was the first hurdle to be crossed by any candidate before he could submit an application for admission into a medical college. The Government which ran the colleges had the right to make a selection out of a large number of candidates and for this purpose they could prescribe a test of their own which was not against any law. Merely because they tried to supplement the eligibility rule by a written test in subjects with which the candidates were already familiar, their action cannot be impeached nor was there anything unfair in the test prescribed. The test prescribed by the Government must be considered in the light of a second hurdle for the*

*purpose of a screening to find out who of all the candidates applying should be admitted and who should be rejected. Merely because the university had made regulations regarding the admission of students to its degree courses, it did not mean that anyone who had passed the qualifying examination such as the P.U.C. or H.S.C. was ipso facto to be entitled to admission to such courses of study. If the number of candidates applying for such admission far exceeds the number of seats available the university can have to make its choice out of the applicants to find out who should be admitted and if instead of judging the candidates by the number of marks obtained by them in the qualifying examination the university thinks fit to prescribe another test for admission no objection can be taken thereto. What the university can do in the matter of admissions to the degree courses can certainly be done by the Government in the matter of admission to the M.B.B.S. course."*

*"9. In our view the test prescribed by the Government in no way militates against the power of Parliament under Entry 66 of List I of the Seventh Schedule to the Constitution. The said entry provides:*

*" Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."*

*"The above entry gives Parliament power to make laws for laying down how standards in an institution for higher education are to be determined and how they can be co-ordinated. It has no relation to a test prescribed by a Government or by a university for selection of a number of students from out of a large number applying for admission to a particular course of study even if it be for higher education in any particular subject."*

*"15. In our view there is no substance in any of the contentions as will be apparent from our conclusions noted above and the decisions of this Court bearing on this point. The University Act, as pointed out, merely prescribed a minimum qualification for entry into the higher courses of study. There was no regulation to the effect that admission to higher course of study was guaranteed by the securing of eligibility. The Executive have a power to make any regulation which would have the effect of a law so long as it does not contravene any legislation already covering the field and the Government order in this case in no way affected the rights of candidates with regard to eligibility for admission; the test prescribed was a further hurdle by way of competition when mere eligibility could not be made the determining factor."*

60 In the case of **(Dr. Ambesh Kumar v. Principal, L.L.R.M. Medical College Meerut and others)**<sup>10</sup>, 1986 Supp. S.C.C. 543, it has been observed, as under :

"12. In accordance with the said Government Order dated December 15, 1982, a candidate in order to be eligible for consideration for admission to the Post-graduate course on merit must have secured 55 per cent marks for admission to Post-graduate degree course and 52 per cent marks for admission to the Post-graduate diploma course. Thus a candidate having not secured the requisite marks in M.B.B.S. examination will be ineligible for consideration on the basis of merit for admission to the various Post-graduate course in medical college. The unsuccessful candidates who are not eligible for consideration according to this Government order have questioned the power of the State Government in making the aforesaid order on the ground that the Medical Council by its regulations has already laid down the requisite criteria or standards for admission to the Post-graduate courses in the Medical Colleges in accordance with the merits of the candidates concerned and as such the State Government is not competent to lay down further eligibility qualification for the candidates for being considered for admission in the Post-graduate courses - both in the degree and diploma courses. It has also been contended that the State Government is not competent to lay down or prescribe the said qualification which, it is alleged, encroaches upon the power of the Central Government as provided in Entry 66 of List I of the Seventh Schedule. It has also been pleaded in the petition that Entry 25 of List III of Seventh Schedule to the Constitution is subject to the provisions of Entry 66 of List I and as such the said Government order being repugnant to the Regulations made by the Indian Medical Council and approved by the Central Government pursuant to section 33 of the Indian Medical Council Act, is invalid."

"18. The said order modifies to a certain extent the earlier notification issued on October 15, 1982 inviting applications for admission to the Post-graduate courses as per notification dated December 3, 1980. In the notification dated December 3, 1980, the criteria for admission to the Post-graduate courses was on the basis of merit only. In para 2 of the said orders the manner how the merit is to be determined has been laid down. In that order there was no such criteria laid down as mentioned in the Government Order dated December 15, 1982. Two questions arise for our consideration which are firstly whether the State Government is competent to make the aforesaid order in question in exercise of its executive powers under Article 162 of the Constitution. This Article specifically provides that the executive powers of the State shall extend to matters with respect to which the legislature of the State has power to make laws. Entry 25 of the Concurrent List i.e List III of the Seventh Schedule to the Constitution provides as follows :"

"19. The State Government can in exercise of its executive power make an order relating to matters referred to in Entry 25 of the Concurrent List in the absence of any law made by the State legislature. The impugned order

*made by the State Government pursuant to its executive powers laying down the eligibility qualification for the candidates to be considered on merits for admission to the Post-graduate courses in Medical Colleges in the State, is valid and it cannot be assailed on the ground that it is beyond the competence of the State Government to make such order provided it does not encroach upon or infringe the power of the Central Government as well as the Parliament provided in Entry 66 of List I. Entry 66 of List I is in the following terms :"*

*"Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."*

*"21. The impugned Government Order dated December 15, 1982 lays down the criteria or eligibility qualification i.e. obtaining of 55 per cent marks by candidates seeking admission in the Post-graduate degree course and obtaining of 52 per cent marks by candidates seeking admission to Post-graduate diploma course for being considered for selection. Entry 25 confers on the State Government as well as the State legislature the powers to make orders in respect of matters mentioned in Entry 25 of List III of the Seventh Schedule to the Constitution i.e. with regard to medical education the only limitation being that such order of the State legislature will be subject to the provisions of Entry 66 List I i.e. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. The order in question merely specifies a further eligibility qualification for being considered for selection for admission to the Post-graduate courses (degree and diploma ) in the Medical Colleges in the State in accordance with the criteria laid down by Indian Medical Council. This does not in any way encroach upon the regulations that have been framed under the provisions of section 33 of the Indian Medical Council Act. On the other hand in order to promote and further the determination of standards in institutions for higher education, the State Government who runs these colleges provide an additional eligibility qualification. ... .."*

*"22. In the instant case the number of seats for admission to various Post-graduate courses both degree and diploma in Medical Colleges is limited and a large number of candidates undoubtedly apply for admission to these course of study. In such circumstances the impugned order laying down the qualification for a candidate to be eligible for being considered for selection for admission to the said courses on the basis of the merit as specified by regulations made under the Indian Medical Council Act, cannot be said to be in conflict with the said regulations or in any way repugnant to the said regulations. It does not in any way encroach upon the standards prescribed by the said regulations. On the other hand by laying down a further qualification of eligibility it promotes and furthers the standard in an institution."*

"23. The Government who runs these colleges has the right to prescribe a test of eligibility as has been held by this Court in the case referred to above."

"26. On a consideration of the aforesaid decisions we are unable to hold that the impugned order dated December 15, 1982 has in any way contravened or encroached upon the power of the Central legislature to make laws or the Central Government to make orders in regard to matters provided in Entry 66 of List I of Seventh Schedule to the Constitution. There is no conflict between the regulations and also the order in question. The State Government by laying down the eligibility qualifications namely the obtaining of certain minimum marks in the M.B.B.S. examination by the candidates has not in any way encroached upon the Regulations made under the Indian Medical Council Act nor does it infringe the Central power provided in the Entry 66 of List I of the Seventh Schedule to the Constitution. The order merely provides an additional eligibility qualification. We are in full agreement with the reasoning and conclusion of the High Court in this respect. This contention, therefore, in our considered opinion, is without any merit."

61 In the case of **(Ajay Kumar Singh and others v. State of Bihar and others)**<sup>11</sup>, 1994(4) S.C.C. 401, the Supreme Court has observed, as under :

"18. A review of the provisions of the Act clearly shows that among other things, the Act is concerned with the determination and co-ordination of standards of education and training in medical institutions. Sections 16, 17, 18 and 19 all speak of "the courses of study and examinations to be undergone" to obtain the recognised medical qualification. They do not speak of admission to such courses, section 19-A expressly empowers the Council to "prescribe the minimum standards of medical education" required for granting undergraduate medical qualification. So does section 20 empower the Council to prescribe standards of postgraduate medical education but "for the guidance of universities" only. It further says that the Council "may also advise universities in the matter of securing uniform standards for postgraduate medical education throughout India". (The distinction between the language of section 19-A and section 20 is also a relevant factor, as would be explained later.) Clause (j) of section 33 particularises the subjects with respect to which Regulations can be made by the Council. It speaks of the courses and period of study and the practical training to be undergone by the students, the subjects of examination which they must pass and the standards of proficiency they must attain to obtain the recognised medical qualifications but it does not speak of admission to such courses of study. Indeed, none of the sections aforementioned empower the Council to regulate or prescribe

*qualifications or conditions for admission to such courses of study. No other provision in the Act does. It is thus clear that the Act does not purport to deal with, regulate or provide for admission to graduate or postgraduate medical courses. Indeed, insofar as Postgraduate courses are concerned, the power of the Indian Medical Council to "prescribe the minimum standards of medical education" is only advisory in nature and not a binding character. In such a situation, it would be rather curious to say that the regulations made under the Act are binding upon them. The Regulations made under the Act cannot also provide for or regulate admission to Postgraduate courses in any event."*

*"19. The Regulations made by the Medical Council in 1971 (revised up to January 1978 (sic 1988) speak generally of students for postgraduate training being selected "strictly on merit judged on the basis of academic record in the undergraduate course". This is more in the nature of advice and not a binding direction. The regulation does not say that no reservations can be provided under Article 15(4). The power conferred upon the State by Clause (4) of Article 15 is a constitutional power. The said power obviously could not have been overridden or superseded by a Regulation made by the Indian Medical Council under the Act. The Regulation must be read consistent with Article 15(4) and if so read, it means that the students shall be admitted to postgraduate training strictly on the basis of merit in each of the relevant classes or categories, as the case may be. Any other construction seeking to give an absolute meaning to the said Regulation would render it invalid both on the ground of travelling beyond the Act. It may also fall foul of Article 15(4)....."*

*"24. In our opinion, the situation in the case before us is no different. The State will regulate the admission policy and at the same time adhere to the standards determined by the Indian Medical Council."*

*"26. Even if one relates the Indian Medical Council Act to Entry 25 of List III in addition to Entry 66 of List I, even then the position is no different- for the Indian Medical Act does not purport to regulate the admissions or admission policy to postgraduate medical courses. The field is thus left free to be regulated by the State. The State can make a law or an executive rule; in this case it has chosen to make an executive rule."*

62 In the case of **(State of M.P. v. Nivedita Jain)12, 1981(4) S.C.C. 296**, while dealing with the regulation framed by the Indian Medical Council, relaxing the minimum qualifying marks for Scheduled Castes and Scheduled Tribes candidates for admission, the Supreme Court has proceeded to observe, as under :

*"Entry 66 in List I (Union List) of the 7th Schedule to the Constitution relates to 'coordination and determination of standard in institutions for higher education or research and scientific and technical institutions'. This entry by itself does not have any bearing on the question of selection of candidates to the Medical Colleges from amongst candidates who are eligible for such admission. On the other hand, Entry 25 in List III (Concurrent List) of the same Schedule speaks of 'education, including technical education, medical education in universities, subject to Entries 63, 64, 65 and 66 of List I .... vocational and technical training of labour'. This entry is wide enough to include within its ambit the question of selection of candidates to medical colleges and there is nothing in the Entries 63, 64 and 65 of List I to suggest to the contrary. We are, therefore, of the opinion that Regulation II of the Council which is merely directory and in the nature of a recommendation has no such statutory force as to render the order in question which contravenes the said regulation illegal, invalid and unconstitutional."*

63 From the aforesaid decision, it is clear that the State has ample power and authority to prescribe conditions for admission to the Under Graduate and Post Graduate medical course. In the same manner, the State has ample power and authority to prescribe eligibility for the purpose of appointments on the posts of the Adhyapak Sahayaks. The same, in no way, impeaches upon the power of the Central Government conferred under Entry 66 in list I (Union List) of the 7<sup>th</sup> Schedule of the Constitution. The said entry deals merely with the coordination and determination of standards institutions for higher education or research and scientific and technical institution. The same does not deal with laying down conditions for appointment of candidates on the posts of the Adhyapak Sahayaks. This, the State Government, can legitimately provide for, in exercise of power conferred by Article 162. The same would be within its competence under Entry 25 in List III (concurrent List) of the 7<sup>th</sup> Schedule. The Regulations framed by the University Grants Commission provide for laying down of standards of education. They do not provide for conditions for appointments on the posts, like Professor, Lecturer, Adhyapak Sahayak, etc. The Government owes a

duty to see that the quality of higher education is maintained. It has, therefore, every authority to prescribe conditions of eligibility for appointments on the posts in question.

64 The object behind insisting that the subject should be same at the Under Graduate and Post Graduate level has some nexus with the object sought to be achieved. It has a rational nexus to the object sought to be achieved, and hence, there is no violation of the principles of equality enunciated under Article 14 of the Constitution. At the cost of repetition, once the experts in the field say so, then the Court should be loath in disturbing such opinion unless the Court finds the opinion to be absolutely perverse or unreasonable.

65 At the cost of repetition, I state that the standards of education as prescribed by the University Grants Commission has not been compromised in any manner. It is not the case in hand wherein a legislation made by the State Government on the qualifications of the Adhyapak Sahayaks is in conflict with the prescription regarding such qualifications prescribed by the University Grants Commission, and if there is any conflict, then definitely the regulations of the University Grants Commission would prevail. The Article 25 of the Concurrent List and the Entry 66 of the Union List has nothing to do so far as the case in hand is concerned.

66 In the case in hand, there is nothing on record to show any *mala fide* which could be attributed against the members of the experts committee or the office of the higher education. In this view of the matter and in the absence of any *mala fide* and in view of the discussion made hereinabove, the recommendations made by the experts committee and acted upon by the State Government cannot be said to be

illegal, invalid and without jurisdiction.

67 In **Ganapath Singh Gangaram Singh Rajput v. Gulbarga University** [2014 (3) SCC 767], the Supreme Court observed in para 17 as under:

*“17.....when the view taken by the expert body is one of the possible views, the same is fit to be accepted. Further, the yardstick would be different when it concerns eligibility conditions pertaining to ‘qualification’ and ‘experience’. In case of experience it is best known to the expert body in the field in regard to the actual work done and, therefore, its opinion is of higher degree deserving acceptance ordinarily. Hence, in our opinion, this judgment did not fetter the power of the High Court.”*

68 In **Tariq Islam vs. Aligarh Muslim University and Ors.** (2001) 8 SCC 546, following its earlier decision in the Constitution Bench of the Supreme Court in **University of Mysore vs. C.D. Govinda Rao, AIR 1965 SC 491**, the Supreme Court observed that "normally it is wise and safe for the Courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the courts generally are".

69 A similar view has been expressed in several decisions of the Supreme Court e.g. **Dr. Uma Kant vs. Dr. Bhika Lal Jain** JT 1991 (4) SC 75 (para 9), **Bhushan Uttam Khare vs. The Dean, B.J. Medical College and Ors.** JT 1992 (1) SC 583 (para 8), **Rajender Prasad Mathur vs. Karnataka University and Anr.** AIR 1986 SC 1448 (para 7) : 1986 Supp SCC 740 (para 7); **P.M. Bhargava and Ors. vs. U.G.C. and Anr.**, 2004 (6) SCC 661 (para 13); **Chairman, J.andK. State Board of Education vs. Feyaz Ahmed Malik and Ors** (2000) 3 SCC 59; **Varanaseya Sanskrit Vishwa-vidyalaya and Anr. Vs. Dr. Raj -kishore Tripathi and Anr.** (1977) 1 SCC 279 (para 12); **Medical Council of India vs. Sarang and**

**Ors. (2001) 8 SCC 427 (para 6); Bhagwan Singh and Anr. vs. State of Punjab and Ors. (1999) 9 SCC 573 (para 6).**

70 On a clarification sought from the University Grants Commission as regards the meaning of the term “ relevant subject”, it was clarified that the relevance of subject or inter-disciplinary nature of subject should be decided by the appointing authority with the help of subject experts as the University Grants Commission had not prescribed any norms on the subject matter. Thus, this is the view of the matter of the University Grants Commission, which is an expert in academic matters and the Court should not set in appeal over its opinion and take a contrary view.

71 In **Rajput Dalal v. Chaudhary Dala University [2008 (9) SCC 284]**, the Supreme Court observed thus in paras 30 to 33:

*“30. Learned counsel for the appellant has also pointed out that a large number of universities in this country have a single department for both the subjects of Political Science and Public Administration, and this also demonstrates that the subjects Political Science and Public Administration are inter-changeable and inter-related. Political Science is the mother subject and Public Administration is the offshoot of the same.*

*31. We agree with Mr. Patwalia, learned counsel, that it is not appropriate for this Court to sit in appeal over the opinion of the experts who are of the view that Political Science and Public Administration are inter-related and inter-changeable subjects, and hence a candidate who possesses Master's degree in Public Administration is eligible for the post of Lecturer in Political Science and vice-versa. We are told that a large number of persons having qualifications in the inter-changeable/inter-related subjects have been appointed Readers/Professors/Lecturers and are continuing as such in various colleges and Universities in the State.*

*32. In para 5 of the counter-affidavit filed by the respondent-University before the High Court, it has been specifically stated therein that Public Administration is one of the branches of Political Science, and the appellant was selected by a Selection Committee consisting of eminent*

*experts after evaluating his qualifications and work.*

33. *As regards the decision in Dr. Bhanu Prasad Panda vs. Chancellor, Sambalpur University (supra), we have carefully perused the same. In paragraph 5 of the said judgment it has been observed :*

*"Though the Department concerned for which the appointment is to be made is that of 'Political Science and Public Administration', the appointment with which we are concerned, is of Lecturer in Political Science and not Public Administration and subject-matter-wise they are different and not one and the same. It is not in controversy that the posts of Lecturers in Public Administration and in Political Science are distinct and separate and on selection the appellant could not have been appointed as Lecturer in Public Administration."*

72 Let me now deal with the last submission that in the absence of any Government Resolution or order in exercise of power under Article 162 of the Constitution, no such decision could have been taken. In my view, as such Article 162 of the Constitution has no application at all. Article 309 of the Constitution of India is a rule making power. That power must be exercised by the Governor, on advice of the cabinet or rule made for that exercise of power. On the other hand, Article 162 does not provide for making any rules. It provides for issuing administrative instructions which are normally done in the form of Government Resolutions. Secondly, the exercise of the executive instructions has to be done in the manner contemplated under Article 166 of the Constitution. That Article provides that all the executive action of the Government of a State shall be expressed to be taken in the name of the Governor. Article 166(2), then sets out that the Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified by Rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor. Sub-rule

(3) sets out that the Governor shall make Rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion. In other words, a conjoint reading of Articles 162 and 166 would show that the Executive power of the State must be exercised in the manner laid down under the business rules. In the absence of power being of the administrative power of the State to have binding effect as Law. It is true that merely because some officers issue some instructions, by itself cannot be said to be pursuant to an exercise of executive powers of the State as understood under article 162. Any other exercise would be an exercise of administrative powers which an officer may exercise considering the post held and the duties which such officer has to exercise. That cannot be equated with the exercise of executive power which is extensive with the legislative powers under Article 162.

73 In the case in hand, the office of the Commissioner having regard to the grievances raised by the candidates had to constitute a committee of experts for its opinion and on receipt of the report, it though fit to take a decision that the degree at the UG level and PG level should be same, because a candidate, who would be appointed, would be teaching even at the UG level, and if the subject he would be teaching at the UG level was not his principal subject, then that would amount to compromising with the quality of higher education. In fact, for taking such a decision, power under Article 162 need not be exercised. Therefore, the insistence on the part of the petitioners that there should be an order or a Government Resolution under Article 162 of the Constitution of India, is not tenable in law.

74 In the overall view of the matter, I have reached to the conclusion that it is not possible to grant any relief as prayed for in these writ applications.

75 In the result, all the writ applications fail and are hereby rejected. Notice discharged. The ad-interim order, if any, stands vacated forthwith.

76 In view of the order passed in the main matters, the connected civil applications, if any, are also disposed of.

chandresh

**(J.B.PARDIWALA, J.)**

