

SUPREME COURT OF INDIA

Kalyani Mathivanan

Vs.

K.V.Jeyaraj

C.A.Nos.5946-5947 of 2014

(Sudhansu Jyoti Mukhopadhaya and N.V.Ramana JJ.)

11.03.2015

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA,J

1. These appeals have been preferred by the appellants against a common judgment and order dated 26th June, 2014 passed by the Division Bench of the Madras High Court, Madurai Bench in Writ Petition (MD) No.11350 of 2012 and Writ Petition (MD) No.3318 of 2013.

The aforesaid writ petitions were preferred by K.V. Jeyaraj and I. Ismail respondents/writ petitioners praying for issuance of a writ of quo warranto directing the appellant - Dr. Kalyani Mathivanan to show cause under what authority she continues to hold the office of the Vice- Chancellor, Madurai Kamaraj University.

2. By the impugned judgment the High Court held that the appellant-Dr. Kalyani Mathivanan did not satisfy the eligibility criteria stipulated by the UGC Regulations of 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 (hereinafter referred to as the 'UGC Regulations, 2010') for appointment as Vice-Chancellor and non- fulfilment of such eligibility criteria cannot be completely white washed on the specious plea that the University Grants Commission Regulations, 2010 are not mandatory. The High Court set aside the order of appointment of the appellant-Dr. Kalyani Mathivanan and allowed the writ petitions.

3. The factual matrix of the case is as follows:

The post of Vice-Chancellor in Madurai Kamaraj University (hereinafter referred to as the 'University') fell vacant in the year 2011- 2012 and the Government constituted a search Committee to appoint a suitable candidate. All together names of 104 persons were considered by the search Committee and finally three persons namely (1) Dr. R. Jayaraman, Professor of Management Studies (Retd.), Member Secretary, Centre for Entrepreneurship Development, Madurai, (2)Dr. Kalyani Mathivanan, Head of the Department of English, Ethiraj College for Women, Chennai and (3)Dr. T. Ramasamy, Professor of History (on lien) Registrar, Bharathidasan University, Tiruchirapalli were short listed. On the basis of the recommendation of the search Committee, the appellant-Dr. Kalyani Mathivanan was selected and appointed as Vice-Chancellor by G.O.(1D)No.80, Higher Education (H2)Department, Government of Tamil Nadu dated 9th April, 2012 for a period of three years with effect from the date of assumption of office.

4. Challenging the selection of the appellant-Dr. Kalyani Mathivanan, two separate writ petitions were preferred by Dr. K.V. Jeyaraj, and Dr. I. Ismail, who were aspirants to the said post-respondents herein. The said challenge was mainly on the ground that as per UGC Regulations, 2010, the person to be appointed as Vice-Chancellor, should be a distinguished academician, with a minimum of 10 years experience as Professor in a University system or 10 years of experience in an equivalent position in a reputed research/academic organization and Dr. Kalyani Mathivanan does not satisfy the said criteria. The High Court took up both the writ petitions together for disposal and by the judgment and order allowed the writ petitions and set aside the appointment order of appellant-Dr. Kalyani Mathivanan as Vice-Chancellor.

5. The appellant-Dr. Kalyani Mathivanan on notice appeared before the High Court and brought to the notice of the Court the following facts:

She was appointed as Assistant Professor in Ethiraj College on 16th January, 1981. The Government of Tamil Nadu on 5th December, 1983 redesignated the post of Assistant Professor as Lecturer and Professor as Lecturer [Senior Scale/Selection Grade]. She was promoted as Lecturer (Senior Scale) in Ethiraj College on 22nd August, 1991. Since, 1995, the appellant has been a recognized Guide for M.Phil. candidates in the University of Madras. The appellant was promoted as Lecturer (Selection Grade)/Reader on 7th May, 1998 and since then she has been a Recognized Guide for Ph.D candidate in the University of Madras. In 2008, She was promoted as Head of the English

Department, Ethiraj College. On 9th September, 2009, the Department of Higher Education, Government of Tamil Nadu based on the report of the Official Committee constituted to examine the recommendations of the G.K. Chadha Committee, passed an order that there shall be only three designations in respect of Teachers in Universities and Colleges, namely, Assistant Professors, Associate Professors and Professors. It was further ordered that the posts of Professors shall be created for under-Graduate and Post-Graduate Colleges on the basis of guidelines prescribed therein. However, this direction has not been implemented till date in the State of Tamil Nadu.

6. On behalf of the appellant-Dr. Kalyani Mathivanan, it was further contended that she is qualified for appointment as Vice-Chancellor of the University as per the Madurai Kamaraj University Act, 1965 (hereinafter referred to as the 'University Act, 1965'). It was further contended that the UGC Regulations, 2010 are not mandatory but directory and cannot override the provisions of the University Act, 1965.

7. The High Court by the impugned order framed the following questions for consideration, namely:

(i) whether the post of Associate Professor held by the appellant-Dr. Kalyani Mathivanan in a private aided College can be considered as an equivalent post, satisfying requirement of paragraph 7.3.0 of the UGC Regulations, 2010;

(ii) whether the prescriptions contained in paragraph 7.3.0 of the Annexure to the UGC Regulations, 2010 is mandatory or directory; and whether the U.G.C. Regulation, 2010 would override the provisions of the University Act, 1965 and the Statute framed thereunder.

8. The High Court after taking into consideration the qualification laid down in the Annexure to the UGC Regulations, 2010 answered the first question in negative, against the appellant-Dr. Kalyani Mathivanan. The High Court also rejected the submission that the Vice-Chancellor need not be a Professor or teacher and observed as follows: "44. Therefore, it is not possible to accept contention that drawing inspiration from the past, one need not be a Professor or even a teacher to become a Vice-Chancellor. As a matter of fact, several committees were constituted in the past about 70 years by the Government of India, to improve the standards of Universities. Recently, a study was conducted by two persons by

name K. Sudha Rao, Vice-Chancellor, Karnataka State Open University, Mysore and Advisor ASERF and Mithilesh Kr. Singh, Senior Fellow, (ASERF), New Delhi analysing the different methods adopted for the appointment of Vice-Chancellor in Indian Universities in comparison to those adopted by some foreign Universities.

45. This paper indicates that as per the reports of the Radhakrishnan Commission (1948:422-23), Kothari Commission (1964-1966: 333-35), Gnanam Committee (1990: 27-30) and Ramlal Parujg Committee (1993:15-17), the Vice-Chancellors have an important role in maintaining the quality and relevance of universities. The highlights of some of the committees were extracted in the said paper by the learned authors as follows:-

Generally the Vice-Chancellor should be a distinguished educationist or eminent scholar in any of the disciplines or professions, with a high standing in his/her field and adequate administrative experience. We are not generally in favour of appointment of persons who have retired from other fields. An exception to this general recommendation should be made only in the case of very outstanding persons whose association with the universities would be desirable from every point of view and should not be made an excuse for accommodating' or 'rewarding individuals who do not fulfill the conditions laid down. A Vice-Chancellor is one who stands for the commitment of the University to scholarship and pursuit of truth.(Kothari Commission 1964-66:334) A Vice-Chancellor should be a person with vision and (have) qualities of academic leadership with ability for administration. He should command high respect among all sections of the society. The Vice-Chancellor should be a distinguished academic...(who) has commitment to the values for which the Universities stand....He must have the ability to provide leadership to the University by his academic worth, administrative competence and moral stature,. (Kothari Commission 1964-66:334) Parikh Committee was not in favour of appointing Government officials as VCs. Quoting the Kothari Commission Report, the Parikh Committee mentions that the Vice-Chancellor is the most important functionary in a University not only on the administrative side but is also charged with the responsibility of creating the right atmosphere for teachers and students. The Universities need distinguished and dignified persons as VCs and it is necessary to ensure that they are treated with dignity and regard, which the office merits.(Ramlal Parikh Committee 1993:15). The Vice-Chancellor is the most important functionary in a University, not only on the administrative side but also for securing the right atmosphere for the teachers and the

students to do their work effectively and in the right spirit. (Report of the Committee on Model Act for Universities 1964:11) The Vice-Chancellor being the principal executive and academic officer of the University, should exercise general supervision and control over the affairs of the University and give effect to the decision of all its authorities. He shall be the ex-officio Chairman of the Court, Executive Council, Academic Council, Finance Committee and Selection Committees and shall, in the absence of the Chancellor preside at any convocation of the University for conferring degrees. It shall be the duty of the Vice-Chancellor to see that the provisions of the Act, Statutes and Ordinances and Regulations are fully observed and he should have the power necessary for the discharge of this duty. (Gajendragadkar Committee on the Governance of the University, 1971:60).

In accordance with Regulation 1 for the office of VC (Statutes and Ordinances of Cambridge University, June 2002:655)...VC is of a stature and his/her presence commensurate to lead a distinguished academic institution. The stated mission of the University is to contribute to society through the pursuit of education, learning, and research at the highest international levels of excellence. The VC must be of exceptional caliber with academic credibility, clear strategic vision, and outstanding leadership qualities. He/she should have strong management skills and senior level experience gained in a complex institution and the ability to bring them to bear in a democratic, self governing University. The ability to promote the University in a regional, national and international context, and to increase the financial resources available to the University, should be key, particularly in order to realise the full potential of the University."

9. By the impugned judgment, the Madras High Court differed with the finding of the Bombay High Court in a similar case, "Suresh Patilkhede of Thane vs. Chancellor, University of Maharashtra, in PIL (L) No.80/2011, 2012 (6) ALLMR 336. The Bombay High Court by the said judgment held that Vice-Chancellor in his said capacity cannot be considered as a member of the academic or teaching staff of the University and also held that the UGC Regulations, 2010 is directory in nature. In the impugned judgment Madras High Court observed as follows:

"46. Therefore, with great respect, we are unable to subscribe to the view expressed by the Bombay High Court in paragraph 13 of the decision in Suresh Patilkhede that the Vice-Chancellor need not be considered as a member of the academic teaching staff.

10. The High Court further observed:

"48. If University Grants Commission Regulations, 2010 will have to be given effect to (subject to our finding on the next two facets of question No.2), the Vice-Chancellor should actually be a distinguished academician. Today, Albert Einstein cannot be appointed as the Vice-Chancellor of any University (at least in India) unless he fulfills the qualifications prescribed by University Grants Commission, the reason being that after a legislative enactment lays down the objective criteria, there is no place for subjective satisfaction.

49. We do not mean to say that the fourth respondent is not an academician. She has always been a teacher and Mr. A.L. Somayaji, learned Advocate General took great pains to highlight the academic and other achievements of the fourth respondent. But we are solely on the question as to whether we could concur with the opinion of the Bombay High Court that a Vice-Chancellor is not part of the teaching staff. There may be a hair splitting difference between being part of an academic stream and being part of the teaching faculty. But it is not possible for us to accept the interpretation that one can be the academic head but cannot be considered as part of the teaching staff."

11. For determination of the second question, the High Court formulated three issues as follows:

"33. In our considered view, the second question before us, actually has three facets namely:-

Whether the post of Vice-Chancellor is not to be considered as part of the teaching staff;

Whether the Madurai Kamaraj University Act and the Statutes issued thereunder prescribe a different set of qualifications for the post of Vice-Chancellor than those prescribed by the University Grants Commission Regulations, 2010 leading to a conflict; and Whether in the event of a conflict between the State enactment and the University Grants Commission Regulations, 2010, the provisions of the State enactment would prevail."

12. The High Court held that the post of Vice-Chancellor is a part of academia i.e. teaching staff and the UGC Regulations, 2010 will prevail over the State enactment i.e. University Act and the Statutes framed thereunder in the event of a conflict.

13. The High Court in the impugned judgment discussed the background history of appointment of Vice-Chancellor in India and observed as follows: "43. It is true that when the seeds of Western education were shown in this country about 150 years ago, men of eminence from various walks of life were appointed as Vice-Chancellors. Several Judges of this Court have adorned the post of Vice-Chancellor of various Universities including the Madras University itself. But apart from being great (and rare) Judges, those men were also distinguished academicians who excelled in various fields.

Students of Indian History would know that Sir John George Woodruff who was a Judge of the Calcutta High Court and who retired as the Officiating Chief Justice of the same Court, collaborated with Ameer Ali in publishing the Civil Procedure Code. He was a great Sanskrit scholar who authored books on Mantra Sastra and Tantra Sastra, After retiring as the Officiating Chief Justice, he served a Reader in law in the Oxford University for seven years. Great Jurists, both (Lawyers and Judges) such as Sir Subramanya Ayyar, Sir P.S.Sivaswamy Ayyar, Justice F.D. Oldfield were among a few who became the Vice-Chancellors of Madras University, ever since its inception about 150 years. But today, it is not possible to continue with the same legacy or two reasons, namely:-

that we do not have such tall men of great eminence and that today the field is regulated by law."

14. The High Court also relied on an Article titled 'Why Socrates should be in the Boardroom in Research Universities', published in 2010 by Amanda H. Goodall, for determining the case and observed as follows:

"47. In an interesting Article, titled Why Socrates should be in the Boardroom in Research Universities, published in 2010 by Amanda H. Goodall, Leverhulme Fellow, Warwick Business School, the author points out two contrasting events that happened in 2003 and 2004. It is common knowledge that Cambridge University came into existence in 1209 and almost about 800 years later, a distinguished Anthropologist, by name Alison Richard, was appointed as the 344th President or Vice-Chancellor of Cambridge. She was an acclaimed academician. In contrast to what

happened at Cambridge in 2003, Oxford University appointed in 2004, a person by name John Hood, who was not an academic but was only a businessman. He became the first head of Oxford University, ever since the year 1230, to be elected to the Vice-Chancellorship from outside the University's current academic body. The paper authored by Amanda Goodall considered the question as to why Cambridge and Oxford chose such different individuals to lead their ancient and reputed institutions. The central theme of the paper was as to whether there was a relationship between University performance and leadership by an accomplished researcher. Eventually, after analysing the statistics from about 100 Universities throughout the world, the author came to the conclusion, supported by evidence that Research Universities should be led by top scholars. The conclusions reached by the author could be summarized as follows:

(i) That the best Universities in the world are led by more established scholars;

(ii) That scholar-leaders are considered to be more credible leaders in Universities, commanding greater respect from their academic peers.

(iii) That setting an organisation's academic standards is a significant part of the function of the Vice-Chancellor and hence one should expect the standard bearer to first year that standard.

(iv) That a leader, who is an established scholar, signals the institution's priorities, internally to its faculties and externally to potential new academic recruits, students, alumni, donors and the media.

(v) That since scholarship cannot be viewed as a proxy for either management experience or leadership skills, an expert leader must also have expertise in areas other than scholarship."

15. Learned counsel for parties relied on the aforesaid observation made by the High Court but we are of the view that it is not necessary to notice the background history of appointment of Vice-Chancellors or the great personalities who held such posts or the interesting Article, titled 'Why Socrates should be in the Boardroom in Research Universities', published in 2010 by Amanda H. Goodall as they are not relevant for determining the issue involved in the present case.

16. Learned counsel for the appellant-Dr. Kalyani Mathivanan, has taken similar pleas as were taken before the High Court.

17. The contesting respondent No.1-Dr. K.Y. Jeyaraj has taken the following pleas:

(i) The words "Teaching Staff of the University" occurring in Clause (e) of Section 26(1) of UGC Act, 1956 are words of wide import. Section 2(n) of the Madurai Kamaraj University Act defines Teachers of the University, as persons appointed by the University to give instruction on its behalf. Any person appointed to the University including the Vice-Chancellor, other than mere administrative staff can be required by the University to give instructions on its behalf. Thus, teaching staff should include those who are appointed to contribute and who can be called upon to contribute to or assigned to contribute to educational activities of the University in its functional sense.

(ii) The UGC regulations having been perceived to be for the advancement and promotion of University education, will qualify as a high principle of persuasive public policy which would commend itself for acceptance by the University. It is a matter of fact that no University Act has provided for, or enacted in respect of qualifications for appointment of Vice- Chancellors. To the extent that such a matter is not occupied by State University legislation falling under Entry 25 of the concurrent list, it would be subject to all provisions enacted including regulations, traceable to Entry 66, List - I. This Hon'ble Court has declared that regulations made under statutes traceable to Entry 66 would also fall within the scope of Entry 66 and would override legislation under Entry 25.

(iii) The UGC Regulations are persuasive principles of public policy relevant for the promotion and advancement of University and higher education. Consequently in the absence of any higher standards and in the absence of any other relevant guidelines, the appointing authority cannot act in disregard of the UGC guidelines. The selection process will be a process void for lack of any standard. Acting in this regard would thus be in frustration of the object and purposes of UGC Act as well as the University legislation itself.

(iv) A person appointed to a public office without reference to any standards or norms or criteria, has no right to hold such an office. Since all appointments to all public offices created by statutes have to be made on the

basis of a norm, standard or a criterion, the onus is on the person appointed to show that a relevant norm, standard or criterion has been adopted. This has not been done by the appellant.

(v) No case has been canvassed that the appointment in question is otherwise based on a relevant standard or criterion, higher in quality than the UGC Regulations. No case has also been made out that on the application of such a higher criterion that the appointing authority did not find any other person considered for appointment, as suitable and fit enough to be appointed as Vice-Chancellor.

18. We have heard the learned counsel for the parties and the issues that arise for our consideration are:

(i) Whether UGC Regulations, 2010 is mandatory in nature; and

(ii) Whether in the event of conflict between the University Act, Regulations framed thereunder and the UGC Regulations, 2010, the provisions of the UGC Regulations, 2010 would prevail or not; and

(iii) Whether the post of Vice-Chancellor of a University is to be considered as part of teaching staff.

19. For determination of these issues, it is necessary to notice the relevant provisions of University Commission Act, 1956 (hereinafter referred to as the, 'UGC Act, 1956'), UGC Regulations, 2010, the University Act, 1965 and the statutes framed thereunder.

University Grants Commission Act, 1956:

UGC Act, 1956 was enacted to make provisions for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission.

Section 12 deals with the 'function of the Commission', relevant of which is quoted hereunder:

"12. It shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination

and research in Universities, and for the purpose of performing its functions under this Act, the Commission may-

inquire into the financial needs of Universities;

.....

recommend to any University the measures necessary for the improvement of University education and advise the University upon the action to be taken for the purpose of implementing such recommendation;

to (i).....

(j) perform such other functions as may be prescribed or as may be deemed necessary by the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above functions."

Section 14 deals with 'consequences of failure of Universities to comply with recommendations of the Commission' which is as follows:

14. If any University 1[grants affiliation in respect of any course of study to any college referred to in subsection (5) of section 12A in contravention of the provisions of that sub-section or] fails within a reasonable time to comply with any recommendation made by the Commission under section 12 or section 13, 2[or contravenes the provision of any rule made under clause (f) or clause (g) of sub-section (2) of section 25, or of any regulation made under clause(e) or clause (f) or clause (g) of section 26,] the Commission, after taking into consideration the cause, if any, shown by the University 3[for Such failure or contraventions may withhold from the University the grants proposed to be made out of the Fund of the Commission."

20. Another relevant provision with which we are concerned is Section 26

- 'power to make regulations'. The relevant portion of the said section is quoted below:

"Section 26. (1) The Commission [may, by notification in the Official Gazette, make regulations] consistent with this Act and the rules made thereunder-

to (d) x x x x x "(e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instruction;"

x x x x "(g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities."

21. As per Section 28 the Rules and Regulations framed under the U.G.C. Act are required to be laid before each House of Parliament and when both the Houses agree then the Rules and Regulations can be given effect with such modification as may be made by the Parliament. Section 28 reads as below:

"Section 28. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session, or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation." [No rule made or purporting to have been made, with retrospective effect, under section 25 of the principal Act before the commencement of this Act shall be deemed to have been invalid or ever to have been invalid merely on the ground that such rule was made with retrospective effect and accordingly every such rule and every action taken or thing done thereunder shall be as valid and effective as if the provisions of section 25 of the principal Act, as amended by this Act, were in force at all material times when such rule was made or action or thing was taken or done.]"

22. From the aforesaid provisions, we find that the University Grants Commission has been established for the determination of standard of Universities, promotion and co-ordination of University education, for the determination and maintenance of standards of teaching, examination and research in Universities, for defining the qualifications regarding the teaching staff of the University, maintenance of standards etc. For the purpose of performing its functions under the UGC Act (see Section 12) like defining the qualifications and standard that should ordinarily be

required of any person to be appointed in the Universities [see Section 26(1)(e)(g)] UGC is empowered to frame regulations.

It is only when both the Houses of the Parliament approve the regulation, the same can be given effect. Thus, we hold that the U.G.C. Regulations though a subordinate legislation has binding effect on the Universities to which it applies; and consequence of failure of the University to comply with the recommendations of the Commission, the UGC may withhold the grants to the university made out of the Fund of the Commission. (See Section 14)

23. UGC Regulations, 2010 and Annexure enclosed therein For the appointment and career advancement of teachers in the Universities and Institutions affiliated to it UGC by Regulation No.F.3- 1/2000(PS) dated 4th April, 2000, enacted the University Grants Commission(Minimum qualifications required for the appointment and career advancement of teachers in Universities and Institutions affiliated to it) Regulations, 2000 (hereinafter referred to as the "UGC Regulations, 2000"). In the said Regulation of 2000, no qualifications were prescribed for the post of 'Pro-Chancellor' or 'Vice-Chancellor'.

The Government of India, Ministry of Human Resource Development Department of Higher Education, New Delhi by letter No.1-32/2006-U.II/U.I(i) dated 31st December, 2008 communicated the Secretary, University Grants Commission, New Delhi the Scheme of revision of pay of teachers and equivalent cadres in Universities and Colleges following the revision of pay scales of Central Government employees on the recommendations of the Sixth Central Pay Commission. By the said letter, the Government of India directed that there shall be only three designations in respect of teachers in Universities and Colleges, namely, Assistant Professors, Associate Professors and Professors.

In the said letter revised Pay Scales, Service Conditions and Career Advancement Scheme for teachers and equivalent positions including the post of Assistant Professors/Associate Professors/Professors in Universities and Colleges were intimated. Pay scales of Pro-Vice-Chancellor/Vice-Chancellor were also mentioned therein. It was intimated that the said Scheme may be extended to the Universities, Colleges and other higher educational institutions coming under the purview of State legislature, provided State Governments wish to adopt and implement the Scheme subject to the terms and conditions mentioned therein.

24. In view of the aforesaid letter No.1-32/2006-U.II/U.I(i), dated 31st December, 2008 issued by the Government of India and in exercise of the powers conferred under clause (e) and (g) of sub-section (1) of Section 26 of the UGC Act, 1956, UGC enacted Regulations, 2010 in supersession of the UGC Regulations, 2000. It was published in the Gazette of India on 28th June, 2010 and came into force with immediate effect. Relevant portion of the said Regulations is as follows:

"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 To be published in the gazette of India Part III Sector 4 University Grants Commission Bahadur Shah Zafar Marg New Delhi-110002.

No.F.3-1/2009 28 June, 2010 In exercise of the powers conferred under clause (e) and (g) of sub-section (1) of Section 26 of University Grants Commission Act, 1956 (3 of 1956), and in pursuance of the MHRD O.M.No.F.23-7/2008-IFD dated 23rd October, 2008, read with Ministry of Finance (Department of Expenditure) O.M.No.F.1- 1/2008-IC dated 30th August, 2008, and in terms of the MHRD Notification No.1-32/2006-U.II/U.I(1) issued on 31st December, 2008 and in supersession of the University Grants Commission (minimum qualifications required for the appointment and career advancement of teachers in Universities and Institutions affiliated to it) Regulations, 2000, issued by University Grants Commission vide Regulation No. F.3-1/2000 (PS) dated 4th April, 2000, together with all amendments made therein from time to time, the University Grants Commission hereby frames the following Regulations, namely:-

1. Short title, application and commencement:

These Regulations may be called the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010.

They shall apply to every university established or incorporated by or under a Central Act, Provincial Act or a State Act, every institution including a constituent or an affiliated college recognized by the Commission, in consultation with the university concerned under Clause (f) of Section 2 of

the University Grants Commission Act, 1956 and every institution deemed to be a university under Section 3 of the said Act.

1.3 They shall come into force with immediate effect. Provided that in the event, any candidate becomes eligible for promotion under Career Advancement Scheme in terms of these Regulations on or after 31st December, 2008, the promotion of such a candidate shall be governed by the provisions of these Regulations.

Provided further that notwithstanding anything contained in these Regulations, in the event any candidate became eligible for promotion under Career Advancement Scheme prior to 31st December, 2008, the promotion of such a candidate under Career Advancement Scheme shall be governed by the University Grants Commission (Minimum Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and institutions affiliated to it) Regulations, 2000 notified vide Notification No. F.3-1/2000(PS) dated 4th April, 2000, as amended from time to time, read with notifications and guidelines issued by the University Grants Commission (UGC) from time to time, in this regard.

The Minimum Qualifications for appointment and other service conditions of University and College teachers, Librarians and Directors of Physical Education and Sports as a measure for the maintenance of standards in higher education, shall be as provided in the Annexure to these Regulations.

3. Consequences of failure of the Universities to comply with the recommendations of the Commission, as provision of Section 14 of the University Grants Commission Act, 1956:

If any University grants affiliation in respect of any course of study to any college referred to in sub-section(5) of Section 12-A in contravention of the provisions of the sub-section, or fails within a reasonable time to comply with any recommendations made by the Commission under Section 12 or Section 13, or contravenes the provisions of any rule made under clause

(f) of sub-section (2) of Section 25 or of any regulations made under clause (e) or clause (f) or clause (g) of Sub-section (1) of Section 26, the Commission after taking into consideration the cause, if any, shown by the University for such failure or contravention, may withhold from the

university the grants proposed to be made out of the fund of the Commission.

Secretary."

25. Annexure to UGC Regulations, 2010 prescribes the minimum qualifications for appointment and other service conditions of University and College Teachers, Librarians, Directors of Physical Education and Sports.

Regulation 2.0.0 relates to pay scales, pay fixation and age of superannuation, etc. Regulation 7.0.0. relates to selection of Pro-Vice-Chancellor/Vice-Chancellor of Universities. In Regulation 7.3.0. standards to be followed and qualifications necessary for selection to the post of Vice-Chancellor have been mentioned. Regulation 7.4.0 relates to adoption of Regulations by the universities and State Governments. The relevant provisions of the Annexure to the UGC Regulations, 2010 are quoted hereunder:

"ANNEXURE UGC REGULATIONS ON MINIMUM QUALIFICATIONS FOR APPOINTMENT OF THE TEACHERS AND OTHER ACADEMIC STAFF IN UNIVESITEIS AND COLLEGES AND MEASURES FOR THE MAINTENANCE OF STANDARDS IN HIGHER EDUCATOIN, 2010

These Regulations are issued for minimum qualifications for appointment and other service conditions of University and College Teachers, Librarians, Directors of Physical Education and Sports for the maintenance of standards in higher education and revision of pay scales.

2.0.0 PAY SCALES, PAYFIXATION FORMULA AND AGE OF SUPERANNUATION, ETC.

2.1.0 The revised scales of pay and other service conditions including age of superannuation in central universities and other institutions maintained and/or funded by the University Grants Commission (UGC), shall be strictly in accordance with the decision of the Central Government, Ministry of Human Resource Development (Department of Education), as contained in Appendix-I.

xxx xxx xxx xxx 2.3.1. The revised scales of pay and age of superannuation as provided in Clause 2.1.0 above, may also be extended to Universities, institutions coming under the purview of the State Legislature and maintained by the State Governments, subject to the implementation of the scheme as a composite one in adherence of the terms and conditions laid down in the MHRD notifications provided as Appendix I and in the MHRD letter No.F.1- 7/2010-U II dated 11 May, 2010 with all conditions specified by the UGC in the Regulations and other Guidelines.

xxx xxx xxx xxx xxx 7.0.0.SELECTION OF PRO-VICE-CHANCELLOR/VICE - CHANCELLOR OF UNIVERSITIES:

7.1.0. PRO-VICE-CHANCELLOR:

The Pro-Vice-Chancellor may be a whole time Professor of the University and shall be appointed by the Executive Council on the recommendation of Vice- Chancellor.

7.2.0.The Pro-Vice-Chancellor shall hold office for a period which is co-terminus with that of Vice-Chancellor. However, it shall be the prerogative of the Vice-Chancellor to recommend a new Pro-Vice-Chancellor to the Executive Council, during his tenure. These Regulations, for selection of Pro- Vice- Chancellor shall be adopted by the concerned University through amendment of their Act/Statute.

7.3.0. VICE-CHANCELLOR:

Persons of the highest level of competence, integrity, morals and institutional commitment are to be appointed as Vice-Chancellors. The Vice-Chancellor to be appointed should be a distinguished academician, with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and / or academic administrative organization.

The selection of Vice-Chancellor should be through proper identification of a Panel of 3-5 names by a Search Committee through a public Notification or nomination or a talent search process or in combination. The members of the above Search Committee shall be persons of eminence in the sphere of higher education and shall not be connected in any manner with the University concerned or its colleges. While preparing the panel, the search

committee must give proper weightage to academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance to be given in writing along with the panel to be submitted to the Visitor/Chancellor. In respect of State and Central Universities, the following shall be the constitution of the Search Committee.

a) a nominee of the Visitor/Chancellor, who should be the Chairperson of the Committee.

b) a nominee of the Chairman, University Grants Commission.

c) a nominee of the Syndicate/ Executive Council / Board of Management of the University.

iii. The Visitor/Chancellor shall appoint the Vice-Chancellor out of the Panel of names recommended by the Search Committee iv. The conditions of service of the Vice-Chancellor shall be prescribed in the Statutes of the Universities concerned in conformity with these Regulations.

v. The term of office of the Vice-Chancellor shall form part of the service period of the incumbent concerned making him/her eligible for all service related benefits.

7.4.0 The Universities/State Governments shall modify or amend the relevant Act/Statutes of the Universities concerned within 6 months of adoption of these Regulations.

8.0. DUTY LEAVE, STUDY LEAVE, SABBATICAL LEAVE"

26. Letter No.1-32/2006-U.II/U.I(1)(i) dated 31st December, 2008 issued by the Government of India, Ministry of Human Resource Development, Department of Higher Education, New Delhi has been appended as Appendix I and is part of the UGC Regulations, 2010. The relevant portion of the said letter is quoted below:

"APPENDIX I No.1-32/2006-U.II/U.I(i) Government of India Ministry of Human Resource Development Department of Higher Education New Delhi, dated the 31St December, 2008 To The Secretary, University Grants Commission, Bahadur Shah Zafar Marg, New Delhi - 110 002.

Subject: Scheme of revision of pay of teachers and equivalent cadres in universities and colleges following the revision of pay scales of Central Government employees on the recommendations of the Sixth Central Pay Commission.

Sir, I am directed to say that the Government of India have decided, after taking into consideration the recommendations made by the University Grants Commission (UGC) based on the decisions taken at the meeting of the Commission held on 7-8 October 2008, to revise the pay scales of teachers in the Central Universities. The revision of pay scales of teachers shall be subject to various provisions of the Scheme of revision of pay scales as contained in this letter, and Regulations to be framed by the UGC in this behalf in accordance with the Scheme given below. The revised pay scales and other provisions of the Scheme are as under:-

1. General

(i) There shall be only three designations in respect of teachers in universities and colleges, namely, Assistant Professors, Associate Professors and Professors. However, there shall be no change in the present designation in respect of Library and Physical Education Personnel at various levels.

(ii) No one shall be eligible to be appointed, promoted or designated as Professor, unless he or she possesses a Ph.D. and satisfies other academic conditions, as laid down by the University Grants Commission (UGC) from time to time. This shall, however, not affect those who are already designated as 'Professor'.

(iii) The pay of teachers and equivalent positions in Universities and Colleges shall be fixed according to their designations in two pay bands of Rs. 15,600 - Rs. 39,100 and Rs. 37,400 - Rs. 67,000 with appropriate "Academic Grade Pay" (AGP in short). Each Pay Band shall have different stages of Academic Grade Pay which shall ensure that teachers and other equivalent cadres covered under this Scheme, subject to other conditions of eligibility being satisfied, have multiple opportunities for upward movement during their career.

(iv) Posts of Professors shall be created in under-graduate (UG) colleges as well as in postgraduate (PG) colleges. The number of posts of Professors in a UG College shall be equivalent to 10 percent of the number of posts-of

Associate Professors in that College. There shall be as many posts of Professors in each PG College as the number of Departments in that College. No new Departments shall be created in UG or PG Colleges without prior approval of the UGC.

(v) Up to 10% of the posts of Professors in universities shall be in the higher Academic Grade Pay of Rs. 12,000 with eligibility conditions to be prescribed by the UGC.

(vi) National Eligibility Test (NET) shall be compulsory for appointment at the entry level of Assistant Professor, subject to the exemptions to the degree of Ph.D. in respect of those persons obtaining the award through a process of registration, course-work and external evaluation, as have been/ or may be laid down by the UGC through its regulations, and so adopted by the University. NET shall not be required for such Masters' programmes in disciplines for which there is no NET.

2. Revised Pay Scales, Service conditions and Career Advancement Scheme for teachers and equivalent positions:

The pay structure for different categories of teachers and equivalent positions shall be as indicated below:-

Assistant Professor/Associate Professors/ Professors in Colleges and Universities.

3. Pay Scales of Pro Vice-Chancellor / Vice-Chancellor of Universities:

(i) Pro-Vice-Chancellor The posts of Pro-Vice-Chancellor shall be in the Pay Band of Rs.37,400 - Rs. 67,000 with AGP of Rs. 10,000 or Rs. 12,000, as the case may be, along with a Special Allowance of Rs.4,000 per month, subject to the condition that the sum total of pay in the Pay Band, the Academic Grade Pay and the Special Allowance shall not exceed Rs. 80,000.

(ii) Vice-Chancellor The posts of Vice-Chancellor shall carry a fixed pay of Rs. 75,000 along with a Special Allowance of Rs. 5,000 per month.

8. Other terms and conditions:

(a) Increments:

XXX XXX XXX XXX XXX XXX XXX XXX

(p) Applicability of the Scheme:

(i) This Scheme shall be applicable to teachers and other equivalent cadres of Library and Physical Education in all the Central Universities and Colleges there-under and the Institutions Deemed to be Universities whose maintenance expenditure is met by the UGC. The implementation of the revised scales shall be subject to the acceptance of all the conditions mentioned in this letter as well as Regulations to be framed by the UGC in this behalf. Universities implementing this Scheme shall be advised by the UGC to amend their relevant statutes and ordinances in line with the UGC Regulations within three months from the date of issue of this letter.

xxx xxx xxx xxx From paragraph 8(p)(i) and (v) of Appendix-I dated 31st December, 2008 read with Regulation 7.4.0 we find that the Scheme of regulation is applicable to teaching staffs of all Central Universities and Colleges thereunder and the institutions deemed to be Universities whose maintenance expenditure is met by the UGC. However, the Scheme under UGC Regulations, 2010 is not applicable to the teaching staffs of the Universities, Colleges and other higher educational institutions coming under the purview of State Legislature, unless State Government wish to adopt and implement the Scheme subject to terms and conditions mentioned therein.

27. The Madurai-Kamaraj University Act, 1965 (University Act) [(Tamil Nadu) ACT No.33 of 1965] The above said Act was enacted by the State Legislature to provide for the establishment and incorporation of a University at Madurai enacted by the State Legislature. Section 2(m) of the University Act defines 'teachers' as under:

"2(m)."teachers" means such lecturers, readers, assistant professors, professors and other persons giving instruction in University colleges or laboratories, in affiliated or approved colleges, or in hostels, and librarians as may be declared by the statutes to be teachers;

Section 2(n) defines 'teachers of the University' as follows: "2(n)"teachers of the University" means persons appointed by the University to give instruction on its behalf;

'University Lecturer', 'University Reader' or 'University Professor' are defined under Section 2(t) as follows:

"2(t)"University Lecturer", "University Reader" or "University Professor" means Lecturer, Reader or Professor respectively appointed as such by the University;"

Section 8 stipulates the Officers of the University. The said Section is as follows:

"Section 8.Officers of the University.- The University shall consist of the following officers, namely:-

(1)The Chancellor; (2)The Pro-Chancellor; (3)The Vice-Chancellor;

(4)The Registrar; and (5)Such other persons as may be declared by the statutes to be officers of the University."

Section 9 relates to Chancellor, Section 10 relates to Pro-Chancellor and Section 11 relates to the Vice-Chancellor. The said Sections are as follows:

"Section 9.The Chancellor.-(1) The Governor of Tamil Nadu shall be the Chancellor of the University. He shall, by virtue of his office, be the head of the University and the President of the Senate and shall, when present, preside at meetings of the Senate and at any convocation of the University.

(2) The Chancellor shall exercise such powers as may be conferred on him by or under this Act.

(3) Where power is conferred upon the Chancellor to nominate persons to authorities, the Chancellor shall, to the extent necessary, nominate persons to represent interests not otherwise adequately represented.

Section 10. The Pro-Chancellor - (1)The Minister in-charge of the portfolio of education in the State of Tamil Nadu shall be the Pro-Chancellor of the University.

(2) In the absence of the Chancellor, or during the Chancellor's inability to act, the Pro-Chancellor shall exercise all the powers of the Chancellor.

Section 11. The Vice-Chancellor - (1) Every appointment of the Vice-Chancellor shall be made by the Chancellor from out of a panel of three names recommended by the Committee referred to in sub-section (2). Such panel shall not contain the name of any member of the said Committee.

Provided that if the Chancellor does not approve any of the persons in the panel so recommended by the Committee, he may take steps to constitute another Committee, in accordance with sub-section (2), to give a fresh panel of three different names and shall appoint one of the persons named in the fresh panel as the Vice-Chancellor.

(2) For the purpose of sub-section (1), the Committee shall consist of three persons of whom one shall be nominated by the Chancellor.

Provided that the person so nominated shall not be a member of any of the authorities of the University.

(3) The Vice-Chancellor shall hold office for a period of three years and shall be eligible for re-appointment for not more than two successive terms.

(4) When any temporary vacancy occurs in the office of the Vice-Chancellor or if the Vice-Chancellor is, by reason of absence or for any other reason, unable to exercise the powers and perform the duties of his office, the Syndicate shall, as soon as possible, make the requisite arrangements for exercising the powers and performing the duties of the Vice-Chancellor.

(5) The Vice-Chancellor shall be a whole-time officer of the University and shall be entitled to such emoluments, allowances and privileges as may be prescribed by the statutes."

The powers and duties of the Vice-Chancellor are mentioned in Section 12 which is as follows:

"Section 12. Powers and duties of the Vice-Chancellor. - (1) The Vice-Chancellor shall be academic head and the principal executive officer of the University and shall, in the absence of the Chancellor and Pro-Chancellor, preside at meetings of the Senate and at any convocation of the University. He shall be a member ex-officio and Chairman of the Syndicate, the Academic Council and the Finance Committee and shall be entitled to be present at and to address any meeting of any authority of the University but

shall not be entitled to vote there at unless he is a member of the authority concerned.

(2) It shall be the duty of the Vice-Chancellor to ensure that the provisions of this Act, the statutes, ordinances and regulations are observed and carried out and he may exercise all powers necessary for this purpose.

(3) The Vice-Chancellor shall have power to convene meetings of the Senate, the Syndicate, the Academic Council and the Finance Committee.

(4) (a) In any emergency which in the opinion of the Vice-Chancellor requires that immediate action should be taken, he may take such action with the sanction of the Chancellor or the Pro-Chancellor, as the case may be, and shall as soon as may be thereafter report his action to the officer or authority who or which would have ordinarily dealt with the matter.

(b) When action taken by the Vice-Chancellor under this sub-section affects any person in the service of the University, such person shall be entitled to prefer an appeal to the Syndicate within thirty days from the date on which he has notice of such action.

(5) The Vice-Chancellor shall give effect to the orders of the Syndicate regarding the appointment, suspension and dismissal of the teachers and servants of the University and shall exercise general control over the affairs of the University.

(6) The Vice-Chancellor shall exercise such other powers as may be prescribed."

The above provisions indicate that the Vice-Chancellor is the academic head [Section 12(1)], heads the Academic Council, and has general control over teaching and examination within the University and is responsible for the maintenance of the standards thereof.

28. Chapter V of the University Act deals with the 'Academic Council', the Faculties, the Boards and Studies, the Finance Committee and other Authorities. Section 23 relates to the Academic Council and Section 24 deals with the Constitution of the Academic Council. The relevant portion of the said provisions reads as under:

" CHAPTER V THE ACADEMIC COUCIL, THE FACULTIES, THE BOARDS OF STUDIES, THE FINANCE COMMITTEE AND OTHER AUTHORITIES.

Section 23.The Academic Council.- The Academic Council shall be the academic authority of the University and shall, subject to the provisions of this Act and the statutes, have the control and general regulation of teaching and examination within the University and be responsible for the maintenance of the standards thereof and shall exercise such other powers and perform other duties as may be prescribed.

Section 24.Constitution of the Academic Council.- (a) The Academic Council shall, in addition to the Vice- Chancellor, consist of the following persons, namely;-

Class I - Ex-officio members-

The Director of Higher Education, Madras;

The Director of Secondary Education, Madras;

The Director of Technical Education, Madras;

(3-A) The Director of Medical Educatoin;

The heads of University Departments of Study and Research; Members of the Syndicate who are not otherwise members of the Academic Council;

xxx xxx xxx xxx

29. Chapter VI of the University Act deals with Statutes, Ordinances and Regulations. Section 30 stipulates the matters which can be provided under Statutes. This includes the constitution or reconstitution, powers and duties of the authorities of the University. Section 32 deals with Ordinances which may provide for all or any of the matters mentioned therein including the qualifications and emoluments of teachers of the University [Section 32(d)].

30. The word statutes with respect to University means law of the University. In the present context it means the provisions of the University Act and the statutes, ordinances and regulations framed therein. Chapter V of the Statutes of Madurai Kamaraja University relates to Vice- Chancellor. Clause 2(1) of Chapter V

stipulates that Vice-Chancellor should be a whole-time Officer of the University who would be the academic head and principal executive officer of the University with powers and duties mentioned therein. Relevant portion of the provision reads as follows:

"CHAPTER V THE VICE-CHANCELLOR

1. The Vice-Chancellor shall be appointed by the Chancellor from out of a panel of 3 names recommended by the Committee referred to in Statute 5 hereunder. Such panel shall not contain the name of any member of the said Committee.

(Act S.11 The Vice-Chancellor) Provided that if the Chancellor does not approve any of the persons in the panel so recommended by the Committee, he may take steps to constitute another Committee, in accordance with Statute 5, to give a fresh panel of three different names and shall appoint one of the persons named in the fresh panel as the Vice-Chancellor.

2.(1) The Vice-Chancellor shall be a whole-time Officer of the University. He shall be the academic head and Principal executive officer of the University.

(2) The Vice-Chancellor shall in the absence of the Chancellor and the Pro-Chancellor preside at the meetings of the Senate, and at any Convocation of the University.

(Act S.12 Powers and duties of the Vice-Chancellor) (3) The Vice-Chancellor shall be a member ex-officio and Chairman of the Syndicate, the Academic Council and the Finance Committee of the University and shall be entitled to be present at and address any meeting of any authority of the University but shall not be entitled to vote there at unless he is a member of the authorities concerned.

(4) The Vice-Chancellor shall have power to convene the meetings of the Senate, the Syndicate, the Academic Council and the Finance Committee of the University.

(5) The Vice-Chancellor shall exercise a general control over all the affairs of the University.

xxx xxx xxx xxx xxx xxx."

31. From UGC Regulations, 2010, it is clear that the Vice-Chancellor should be a distinguished academician with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organization. Whereas the post of Vice-Chancellor under University Act, 1965 and statute made thereunder is not a teaching post but an officer of the University.

Constitutional Provisions:

32. Article 246 demarcates the matters in respect of which Parliament and State Legislature may make laws. The legislative powers of the Central and State Governments are governed by the relevant entries in the three lists given in 7th Schedule.

Entry 66 in List I provides for Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Prior to 42nd Amendment, education including Universities subject to the provisions of the Entries 63, 64, 65, 66 of List-I and Entry 25 of List III was shown in Entry 11 of the List II - State List. By 42nd Amendment of Constitution w.e.f. 3rd January, 1977 Entry 11 of List II-State List was omitted and was added as Entry 25 of List-III.

At present the aforesaid provisions read as follows:

"Seventh Schedule List I - Union List Entry 66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

List III - Concurrent List Entry 25.- Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

Article 254 relates to repugnancy of Law made by the State with the law made by the Parliament. Article 254 reads as follows:-

"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.-(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject

to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

33. The effect in case of inconsistency between the Legislation made by the Parliament and the State Legislature on the subject covered by List III has been decided by this Court in numerous cases.

34. In *State of Tamil Nadu and another vs. Adhiyaman Education & Research Institute and others*, (1995) 4 SCC 104, this Court noticed that Entry 66 of List I of the Seventh Schedule has remained unchanged from the inception and that Entry 11 was taken out from List II and was amalgamated with Entry 25 of List III. In the said case the Court held as follows: "12.The subject "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions" has always remained the special preserve of Parliament. This was so even before the Forty-second Amendment, since Entry 11 of List II even then was subject, among others, to Entry 66 of List I. After the said Amendment, the constitutional position on that score has not undergone any [pic]change. All that has happened is that Entry 11 was taken out from List II and amalgamated with Entry 25 of List III. However, even the new Entry 25 of List III is also subject to the provisions, among others, of Entry 66 of List I. It cannot, therefore, be doubted nor is it contended before us, that the legislation with regard to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions has always been the preserve of Parliament. What was contended before us on behalf of the State was that Entry 66 enables Parliament to lay down the minimum standards but does not deprive the State legislature from laying down standards above the said minimum standards. We will deal with this argument at its proper place.

41. What emerges from the above discussion is as follows:

(i) The expression 'coordination' used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make 'coordination' either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

(vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities de-recognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally."

35. In *Dr. Preeti Srivastava and another vs. State of M.P. and others*, (1999) 7 SCC 120, a Constitution Bench of five Judges dealt with the State competence under List III Entry 25 to control or regulate higher education which is subject to standards laid down by the Union of India. The Court noticed that the standards of higher education can be laid down under List I Entry 66 by the Central Legislation and held as follows:

"35. The legislative competence of Parliament and the legislatures of the States to make laws under Article 246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, Entry 11 of List II gave to the State an exclusive power to legislate on "education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III".

Entry 11 of List II was deleted and Entry 25 of List III was amended with effect from 3-1-1976 as a result of the Constitution 42nd Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows:

"25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour." [pic] Entry 25 is subject, inter alia, to Entry 66 of List I. Entry 66 of List I is as follows:

"66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such

standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

36. It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:

- (1) the calibre of the teaching staff;
- (2) a proper syllabus designed to achieve a high level of education in the given span of time;
- (3) the student-teacher ratio;
- (4) the ratio between the students and the hospital beds available to each student;

(5) the calibre of the students admitted to the institution; (6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;

(7) adequate accommodation for the college and the attached hospital; and [pic](8) the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged.

37. While considering the standards of education in any college or institution, the calibre of students who are admitted to that institution or college cannot be ignored. If the students are of a high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. Education involves a continuous interaction between the teachers and the students. The pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive, depend as much on the calibre of the students as on the calibre of the teachers and the availability of adequate infrastructural facilities. That is why a lower student-teacher ratio has been considered essential at the levels of higher university education, particularly when the training to be imparted is a highly professional training requiring individual attention and on-hand training to the pupils who are already doctors and who are expected to treat patients in the course of doing their postgraduate courses."

36. In *Annamalai University vs. Secretary to Government, Information and Tourism Department and others*, (2009) 4 SCC 590, this Court observed that UGC Act was enacted by Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas the Open University Act was enacted by Parliament in exercise of its power under Entry 25 of List III. It was held that in such circumstances the question of repugnancy between the provisions of the said two Acts, does not arise. The Court while holding that the provisions of the UGC Act are binding on all the Universities held as follows:

"40. The UGC Act was enacted by Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas the Open University Act was enacted by Parliament in exercise of

its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the Statement of Objects and Reasons of the Open University Act shows that the formal system of education had not been able to provide an effective means to equalise educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.

42. The provisions of the UGC Act are binding on all universities whether conventional or open. Its powers are very broad. The Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-section (1) of Section 26 are of wide amplitude. They apply equally to open universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of UGC are all-pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12-A and clauses (a) and (c) of sub-section (2) thereof."

37. The aforesaid judgment makes it clear that to the extent the State Legislation is in conflict with Central Legislation including sub-ordinate legislation made by the Central Legislation under Entry 25 of the Concurrent List shall be repugnant to the Central Legislation and would be inoperative.

38. The question that now arises is whether any of the provisions of the State Legislation (University Act, 1965) and statutes framed thereunder is in conflict with the Central Legislation i.e. UGC Act, 1956 including UGC Regulations, 2010.

39. We find that post of Vice-Chancellor under the University Act, 1965 is a post of an Officer. The UGC Act 1956 is silent about this aspect. The UGC Regulations, 2000 are also silent in regard to post of Vice-Chancellor. Provisions regarding Vice-Chancellor have been made for the first time under UGC Regulations, 2010.

We have noticed and held that UGC Regulations, 2010 is not applicable to the Universities, Colleges and other higher educational institutions coming

under the purview of the State Legislature unless State Government wish to adopt and implement the Scheme subject to the terms and conditions therein. In this connection, one may refer paragraph 8(p)(v) of Appendix-I dated 31st December, 2008 and Regulation 7.4.0 of UGC Regulations, 2010.

40. It is also not the case of the respondents that the Scheme as contained in Appendix-I to the Annexure of UGC Regulations, 2010 has been adopted and implemented by the State Government. It is also apparent from the facts that University Act has not been amended in terms of UGC Regulations, 2010 nor was any action taken by the UGC under Section 14 of UGC Act, 1956 as a consequence of failure of University to comply with the recommendations of the Commission under Section 14 of the UGC Act, 1956.

41. Almost similar Public Interest Litigation was filed before the High Court of Judicature at Bombay being Public Interest Litigation (Lodging) NO.80 of 2011 Suresh Patilkhede vs. The Chancellor, Universities of Maharashtra (supra). In the said case the writ petitioner challenged the appointment of Search Committee for recommending the panel of suitable person for selection of Vice-Chancellor of Pune University on the ground that the appointment of the Search Committee by the Chancellor in accordance with the provisions of Section 12 of the Maharashtra University Act is not in conformity with the provisions of Regulation 7.3.0 of the UGC Regulations, 2010 made under the UGC Act.

42. In the said case also, State of Maharashtra and the Chancellor of Pune University while opposing the writ petition had taken a plea that UGC Regulations, 2010 being in the nature of subordinate Legislation cannot override the provisions of Section 12 of the Maharashtra University Act, 1994, which is a preliminary Legislation made by the State Legislature. In the said case the Bombay High Court held:

"16.....Applying the aforesaid test of "direct impact on the standard of Education" and the principles laid down in the aforesaid decisions, we are of the view that the qualifications and the method of appointment for the post of Pro-Chancellor and Vice-Chancellor of a University cannot be considered as having "direct impact on the standards of education.

17. We are, accordingly, of the considered view that Regulations 7.2.0 and 7.3.0 of UGC Regulations for appointment of Pro-Chancellor and Vice-Chancellor of the University governed by UGC Act cannot be treated as falling under Clauses (e) and (g) of Section 26(1) of the UGC Act, 1956."

The Bombay High Court further held:

"46. As already held by us, Regulations 7.2.0 and 7.3.0 of UGC Regulations, 2010 are traceable to Section 12(d) of UGC Act, 1956. The same are not without any authority of law but at the same time, they are merely recommendatory in nature and, therefore, neither the State Legislature nor the State Government is bound to accept the same. Accordingly, when the State Government issued order dated 15th February, 2011 at Exhibit 'F' enumerated those regulations which are adopted by the State Government out of UGC Regulations, 2010, the State Government decided not to adopt Regulations 7.2.0 and 7.3.0. We, therefore, find considerable substance in the argument of learned Advocate General that non-adoption of directory Regulation 7.3.0 would not render the State legislation or the Government order dated 15th February, 2011 invalid or unconstitutional.

47. To sum up-

Regulation 7.3.0 of UGC Regulations, 2010 is not traceable to clause (e) or clause (g) of Section 26(1) of the University Grants Commission Act, 1956.

The source of making Regulation 7.3.0 of UGC Regulations, 2010 is Section 12(d) and (j) of UGC Act, 1956. However, since Section 12(d) and (j) of UGC Act merely enables UGC to make recommendations to Universities, Regulation 7.3.0 has to be treated as recommendatory in nature.

Regulation 7.3.0 of UGC Regulations, 2010 being a subordinate legislation under an Act of Parliament cannot override plenary legislation enacted by the State Legislature and, therefore, also Regulation 7.3.0 does not override, Section 12 of the Maharashtra Universities Act, 1994."

43. We do not agree with the finding of the Bombay High Court that Regulation 7.3.0 of the UGC Regulations, 2010 is not traceable to clause (e) or (g) of Section 26(1) of UGC Act, 1956. We also refuse to agree that Regulation 7.3.0 of the UGC Regulations, 2010 being a sub-ordinate legislation under the Act of Parliament cannot override the preliminary legislation enacted by the State Legislature. However, the finding of the Bombay High Court that Regulation 7.3.0 has to be treated as recommendatory in nature is upheld in so far as it relates to Universities and Colleges under the State Legislation.

44. In view of the discussion as made above, we hold:

(i) To the extent the State Legislation is in conflict with Central Legislation including sub-ordinate legislation made by the Central Legislation under Entry 25 of the Concurrent List shall be repugnant to the Central Legislation and would be inoperative.

(ii) The UGC Regulations being passed by both the Houses of Parliament, though a sub-ordinate legislation has binding effect on the Universities to which it applies.

(iii) UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central Universities and Colleges thereunder and the Institutions deemed to be Universities whose maintenance expenditure is met by the UGC.

(iv) UGC Regulations, 2010 is directory for the Universities, Colleges and other higher educational institutions under the purview of the State Legislation as the matter has been left to the State Government to adopt and implement the Scheme.

Thus, UGC Regulations, 2010 is partly mandatory and is partly directory.

(v) UGC Regulations, 2010 having not adopted by the State Tamil Nadu, the question of conflict between State Legislation and Statutes framed under Central Legislation does not arise. Once it is adopted by the State Government, the State Legislation to be amended appropriately. In such case also there shall be no conflict between the State Legislation and the Central Legislation.

45. In view of the reasons and finding as recorded above, we uphold the appointment of Dr. Kalyani Mathivanan as Vice-Chancellor, Madurai Kamaraj University as made by the G.O.(1D)No.80, Higher Education (H2)Department, Government of Tamil Nadu dated 9th April, 2012 and set aside the impugned common judgment and order dated 26th June, 2014 passed by the Division Bench of the Madras High Court, Madurai Bench in Writ Petition (MD) No.11350 of 2012 and Writ Petition (MD) No.3318 of 2013. The appeals are allowed but in the facts and circumstances of the case, there shall be no order as to costs.