Allahabad University vs Geetanjali Tiwari (Pandey) on 18 December, 2024

Author: Dipankar Datta

Bench: Prashant Kumar Mishra, Dipankar Datta

2024 INSC 1003 REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 12411-12414 OF 2024

ALLAHABAD UNIVERSITY ETC. ….APPELLANT(S)

VERSUS

GEETANJALI TIWARI (PANDEY) &
ORS. ETC. ETC. ....RESPONDENT(S)

WITH

CIVIL APPEAL NO.12415 OF 2024

ALLAHABAD DEGREE COLLEGE & ANR. .…APPELLANT(S)

VERSUS

GEETANJALI TIWARI (PANDEY) & ORS. .…RESPONDENT(S)

JUDGMENT

DIPANKAR DATTA, J.

THE CHALLENGE

1. Assail in these civil appeals is to the common judgment and order dated 18th January, 20241 passed by a Division Bench of the High Court of Judicature at Allahabad2, whereby the High Court disposed of a writ impugned order High Court, hereafter petition, two special appeals and one review petition3. All but one of the proceedings were at the instance of Gitanjali Pandey4. The

remaining one was at the instance of one Brahma Deo (Respondent 1 in Civil Appeal No. 12413/2024).

RESUME OF FACTS

2. Relevant facts, pertinent for disposal of the present appeal, are summed up as under:

a. Respondent 1 was an aspirant for the post of 'Assistant Professor' in Allahabad University and its affiliated colleges. As per her pleadings, between October 2004 and March 2010 (approximately 5 ½ years), she worked as a contractual faculty in Jawad Ali Shah Imambara Girls PG College (affiliated to Pandit Deen Dayal Upadhyay University, Gorakhpur) at a monthly cash honorarium of Rs. 5000/-. Thereafter, between 2016 and 2021, she claims to have worked as a guest faculty in different constituent colleges of Allahabad University at different honoraria ranging from Rs.

25,000/- to Rs. 50,000/-.

b. Advertisements:

i. On 28th September 2021, Allahabad University published an advertisement for appointment on the posts of Assistant Professors in various disciplines. A total of 4 (four) posts were Writ-A No. 580 of 2023, Special Appeal Defective No. 187 of 2022, Special Appeal Defective No. 257 of 2022 and Civil Misc. Review Application No. 398 of 2023 Respondent 1 advertised for Sanskrit. Respondent 1 applied for appointment on the single advertised post in the unreserved category.

ii. On 30th August 2022, a constituent college of Allahabad University, viz. Iswar Saran Degree College (ISDC), issued an advertisement which, inter alia, invited applications from eligible candidates for appointment on the post of Assistant Professor in Sanskrit.

iii. On 28th November 2022, another constituent college of Allahabad University, viz. Allahabad Degree College (ADC), issued a similar advertisement.

c. Pursuant to all the above advertisements, Respondent 1 duly applied for appointment on the posts.

d. The requisite qualifications for appointment on the posts of Assistant Professor, Associate Professor and Professor are prescribed by 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, 20185. Clause 4 thereof provides for the minimum qualifications required for the post of Assistant and Associate Professor. It is not in dispute that Respondent 1 does possess the requisite

educational qualifications for appointment as Assistant Professor in Sanskrit.

2018 Regulations, hereafter e. The procedure for shortlisting candidates for interview is given in the note to Reg.4.1, which provides for shortlisting on the basis of an academic score prepared in accordance with Table 3A (for universities) and 3B (for colleges). Hence, for shortlisting candidates for the purposes of interview, Allahabad University would score candidates as per the criteria laid down in Table 3A and the affiliated colleges in Table 3B.

f. As per clause 7 of Tables 3A and 3B, 2 (two) marks are to be granted to a candidate for every year of his/her teaching experience or Post Doctoral experience. Since the contents of both the tables are similar, we propose to reproduce Table 3A later in this judgment.

g. Despite Respondent 1 fulfilling the eligibility criteria, she was not shortlisted for the interview as her score did not reach the cutoff marks. This happened because she was not awarded any marks under clause 7 in Table 3A for "Teaching/Post Doctoral experience".

Her past teaching experiences on contractual basis and as a guest faculty were not counted as 'teaching experience' by Allahabad University.

h. According to Allahabad University, past teaching experience as a guest lecturer and on contractual basis do not fulfill the conditions provided under Reg.10(e) and (f)(iii), respectively; hence, it could not be counted as 'Teaching/Post Doctoral experience'.

i. As per clause 10(e), previous service as a 'guest lecturer' would not count as 'teaching experience'. Furthermore, as per clause 10(f)(iii), previous service of a lecturer on contractual basis would count as 'teaching experience' only if the incumbent was drawing total gross emoluments not less than the monthly gross salary of a regularly appointed Assistant Professor, Associate Professor and Professor, as the case may be. Reg.10, in its entirety, would also be reproduced at a latter part of this judgment for the sake of completeness of understanding.

j. As mentioned above, Respondent 1 had served as a guest lecturer and on contractual basis before. Furthermore, as per the records, she was also not drawing a salary/honorarium equivalent to the monthly gross salary of a regularly appointed Assistant Professor, which at the relevant time was Rs. 35,654/-. Therefore, Respondent 1 was not granted any marks for her past services as guest lecturer and on contractual basis. Falling short of marks, she was not shortlisted for interview.

k. Thereafter, litigation commenced with the following cases being presented by the Respondent 1:

> i. Upon the advertisement dated 28th September 2021 being issued and her experience not being marked, Respondent 1 invoked the writ jurisdiction by filing a petition6 praying that Allahabad University be directed to grant her marks for her teaching experience as 'contractual faculty' while shortlisting candidates for interview. Her petition was rejected by the Single Writ-A no. 7114 of 2022 Judge on 20th May 2022. Challenging the same, she filed the Special Appeal (Defective)7.
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> ii. In respect of advertisement dated 30th August 2022, Respondent 1 filed another petition8 wherein, inter alia, she prayed for a declaration that Reg.10(f)(iii) of the 2018 Regulations be declared ultra vires Article 14 of the Constitution of India, 1950.

This petition was dismissed on 2nd August 2023 in light of the pendency of the Special Appeal (Defective) filed earlier. Against the order dated 2nd August 2023, Respondent 1 preferred Civil Misc Review Application9.

iii. Insofar as the advertisement dated 28th November 2022 is concerned, Respondent 1 filed another petition10 challenging the vires of Reg.10(f)(iii) of the 2018 Regulations. iv. Relying upon the judgment dated 20th May 2022 (rendered in Writ-A No.7114 of 2022), the Single Judge dismissed the petition11 of the said Brahma Deo. Aggrieved by such dismissal, Brahma Deo also filed a Special Appeal (Defective)12. v. As noted above, vide the impugned order, all the abovementioned four proceedings were disposed of. Special Appeal (D) No. 187 of 2022 W.P. 16585 of 2022 Civil Misc. Application No. 398 of 2023 Special Appeal (D) no.257 of 2022 IMPUGNED ORDER

3. The High Court noted the question arising for decision in paragraph 17 of its decision and commenced its discussion from paragraph 23. We consider it appropriate to reproduce verbatim the same hereunder:

> "17. The short question raised in this bunch of petitions is as to whether regulation 10(f)(iii) would be applicable while awarding marks for the teaching/post-doctoral experience, in terms of clause 7 of table 3A for shortlisting of candidates, to be called for interview for the post of Assistant Professors in universities? As a sequel, it has to be seen as to whether regulation 10(f)(iii) is ultra vires Article 14 of the Constitution of India.
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> 23. The counting of past services under regulation 10, however, would be relevant and directly co-related to the post on which direct appointment or promotion under CAS itself is sought. Since, past services are required for appointment to the post of Associate Professor and Professor only in the regulations, the relevance of regulation 10 would be restricted to these posts alone.

> 24. No previous teaching experience (including Assistant Professor) since is required as eligibility condition for appointment to the post of Assistant Professor, as such regulation 10 would have no direct applicability/relevance for appointment to the post of Assistant Professor.
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> 29. Regulation 10 specifically deals with a defined exigency i.e. counting of past services for direct recruitment and promotion under CAS. This exigency is not attracted in the present set of cases.

Regulation 10 has a direct nexus with the object sought to be achieved i.e. direct recruitment and promotion under CAS. Since past services are mandatorily required for appointment to the post of Associate Professor and Professor only, therefore, regulation 10 would have relevance only for appointment and promotion to such posts.

30. Reference of past services on the post of Assistant Professor for appointment to the post of Assistant Professor appears to be a surplusage since the eligibility for the post of Assistant Professor does not require any teaching experience. Counting of past services as Assistant Professor for appointment to the post of Assistant Professor serves no purpose in the scheme contained in the regulations. Regulation 10 of the regulations, therefore, has no applicability in the case of direct appointment to the post of Assistant Professor.

31. We are persuaded to take such a view as reference to teaching experience in table 3A has to be read in conjunction with post- doctoral experience as they constitute a composite class in itself. In the event regulation 10 conditions teaching experience, as is suggested by the respondents, the term post-doctoral experience would also have to be necessarily conditioned by regulation 10. This, however, does not appear to be the intent of the scheme contained in the regulations.

32. Limiting teaching experience to the experience of teaching as an Assistant Professor, by drawing emoluments not less than the monthly gross salary of a regularly appointed Assistant Professor would clearly be reading something more than what is specified in the regulations itself. Counting of past services for direct recruitment or promotion under CAS to the post of Assistant Professor otherwise is not contemplated. Such a construction would also be unworkable once a condition of the kind is attached to the post-doctoral experiences also.

33. Post-doctoral experiences can be of different kinds, including research activity, teaching activity etc. If the provisions of regulation 10 are applied while awarding marks in clause 7 of table 3A then an anomalous situation may arise, inasmuch as teaching experience gathered by a post-doctoral candidate would entitle him to two marks if teaching by him is considered as post-doctoral experience but such marks would be denied if it is treated as teaching experience only. It is for this reason that table 3A of the regulations does not refer to or rely upon regulation 10. The interpretation drawn by the respondents to read regulation 10 in table 3A, which specifically lays down the criteria for short-listing of candidates for interview for the post of Assistant Professors,

therefore, cannot be approved.

34. In our opinion, regulation 10 of the regulations would be attracted only where past services are required to be counted for direct recruitment and promotion under CAS. It cannot be transposed to be made applicable in criteria for short-listing of candidates to be called for interview, to the post of Assistant Professor, by any recognized process of interpretation. Such construction otherwise is not culled out from the scheme contained in the regulations nor it helps in short- listing of candidates to be called for interview.

35. Table 3A specifies the marks to be awarded to a candidate on different parameters specified therein. Apart from awarding marks for graduation; post-graduation; M.Phil.; NET with JRF or NET; SLET/SET the table provides for teaching/post-doctoral experience of two marks for each year. Since the term teaching/post-doctoral experience is not defined in the regulations the ordinary/commonsensical meaning would have to be assigned to it.

36. Teaching experience as a full time teacher in a recognized university or its affiliated or constituent colleges with requisite qualification as per regulations for the post of Assistant Professor would sufficiently entitle a candidate to award of two marks for each year of teaching experience in clause 7 of table 3A. Nature of appointment i.e. substantive/adhoc/guest lecturer etc. or the amount of salary paid having not been specified in clause 7 of the table 3A are not relevant for the purposes of award of marks in clause 7 of table 3A for short-listing of candidates. Regulation 10 would otherwise not be applicable for the reasons recorded above. This construction would obviate the need to examine the challenge laid to the regulation 10(f)(iii) and the general instructions appended to the advertisement in that regard. It would also effectuate the cause of calling best candidates for interview, inasmuch as teaching experience of a candidate would be counted towards his merit for short-listing.

37. The interpretation assigned in this judgment to clause 7 of table 3A would subserve the object of short-listing the best candidates to be called for interview to the post of Assistant Professors. The selections already made, however, would not be reopened or challenged on the ground that short-listing of candidates was not done in the manner indicated in this judgment. This is so as the selected candidates are not a party to this bunch of petitions nor their selections otherwise have been assailed. The respondents would, henceforth, short-list the candidates to be called for interview for the post of Assistant Professor in the manner indicated in this judgment. On these terms the writ petition, special appeal and the review application are disposed of. No order is passed as to costs.” SUBMISSIONS ON BEHALF OF THE APPELLANTS

4. Learned senior counsel and counsel for Allahabad University and Allahabad Degree College, respectively, submitted that the High Court erred in substituting its opinion to the mandatory methodology followed by them. To persuade us to reverse the impugned order, they argued that:

> a. For award of marks under clause 7 of Tables 3A and 3B, Reg.10 would apply, even for appointment on the post of Assistant Professor, as the post ‘Assistant Professor’ is expressly mentioned therein;

b. The process of shortlisting as adopted by the appellants is extremely important for them, considering that thousands of candidates apply for a few posts;

c. Even if Reg.10 is assumed to be not applicable, the appellants are entitled to adopt the methodology given therein as there is no specific bar in the 2018 Regulations. Hence, it is open for them to supplement such regulations so long as they are not illegal, arbitrary, discriminatory and contrary to the 2018 Regulations;

d. The Division Bench while being seized of the writ petition ought to have noticed that respondent 1 had not averred anomaly in respect of clause 7 of Tables 3A and 3B and in the absence thereof, and particularly when 'post-doctoral experience' had not been defined, could have sought clarification from the University Grants Commission13 or the appellants as to what is meant by such expression but instead thereof, allowed itself to be guided by a perceived anomaly which was not even the pleaded case of respondent 1;

e. In practice, 'post-doctoral experience' refers to post-doctoral fellowship programmes awarded by various Government organizations like UGC, Indian Council of Social Science Research, Department of Science and Technology, etc., not including teaching activity, yet, it would appear from the impugned order that the UGC Division Bench has proceeded to return findings which are based on mere assumptions;

f. There are decisions of this Court, viz. A.P.J. Abdul kalam Technological University v. Jai Bharath College of Mngt. & Engg. Technology14 and Visveswaraiah Technological University v. Krishnendu Halder15 where it has been laid down that while dilution of published norms is not permissible, prescribing enhanced norms is permissible without defeating any right of an aspirant for a post;

g. The decision of recent origin of the Constitution Bench of this Court in Tej Prakash Pathak v. Rajasthan High Court16 also puts beyond any shadow of doubt that any procedure that is transparent, non-discriminatory/non-arbitrary and having a rational nexus with the object sought to be achieved can be devised for taking a recruitment process towards its logical end by the recruiting bodies.

SUBMISSIONS ON BEHALF OF RESPONDENT 1

5. Learned senior counsel for respondent 1 submitted that the Division Bench of the High Court has rightly read down Reg. 10(f)(iii) of the 2018 Regulations to save it from being struck down as arbitrary and hence there is no need for interference. He argued that:

a. Emoluments-based distinction under Reg.10(f)(iii) violates Article 14 of the Indian Constitution as the distinction between Assistant (2021) 2 SCC 564 (2011) 4 SCC 606 2024 SCC OnLine SC 3184 Professors, who are serving on contractual basis, and

those who are appointed on regular basis, has no direct nexus with the objective of ensuring quality education;

b. Exclusion of candidates, who otherwise are qualified and have ample teaching experience (even though on contractual basis), undermines the objective of ensuring quality education; c. The Division Bench has rightly held that since 'Assistant Professor' is an entry level post, there is no need for any previous experience; d. Although respondent 1 has since lost the right to participate in the process initiated by Allahabad University due to passage of time, the impugned order still holds good for the colleges where the process is yet to be concluded and it was urged that a well-qualified candidate like respondent 1 should not lose the opportunity to compete with the whole lot of candidates aspiring for appointment in the manner directed by the Division Bench.

PLEADING OF RESPONDENT 1 IN SUPPORT OF HER CLAIM THAT REG. 10(f)(iii) IS ULTRA VIRES ARTICLE 14 OF THE CONSTITUTION

6. In Writ-A No. 580 of 2023, respondent 1 prayed that Reg.10(f)(iii) be declared ultra vires since the same was in violation of Article 14 of the Constitution. She submitted that the said regulation is discriminatory as it creates a hierarchy among teachers (in other words, creates class amongst class) on the basis of salary drawn by them. This adversely impacts other equally qualified and experienced candidates, as they do not get any marks for their past teaching experience just because they were not drawing salary equivalent to gross monthly salary of a regular Assistant Professor. She further submitted that the salary a teacher receives does not have any visible correlation with the teaching experience. Reg.10(f)(iii) is, thus, liable to be declared ultra vires Article 14 of the Constitution.

7. Significantly, apart from the emoluments aspect, neither have we been able to trace any other point that respondent 1 sought to urge to invalidate Reg.10(f)(iii), nor was any other part of the 2018 Regulations subjected to challenge.

THE ISSUE

8. Exception was taken by the High Court to the methodology adopted by Allahabad University and Allahabad Degree College in shortlisting candidates for interview for appointment on the post of Assistant Professor in Sanskrit in terms of Reg.10 of the 2018 Regulations. Since the High Court did not declare Reg.10(f)(iii) as ultra vires the Constitution or the parent enactment, i.e., the University Grants Commission Act, 195617 (in terms whereof the 2018 Regulations were framed) but read Reg.10 down, we are primarily tasked to decide whether the High Court was correct in reading it down in the manner it did. Should the answer be in the negative, allowing the appeal of Allahabad University and Allahabad Degree College is the logical conclusion; and since the appeals would thus succeed, as a corollary, there would be no impediment for the appellants to be guided, inter alia, UGC Act, hereafter by Reg.10 of the 2018 Regulations for the purpose of shortlisting. On the contrary, if these appeals fail, all the universities and colleges across the country would be precluded from shortlisting candidates seeking appointment on the posts of Assistant Professor for interview in terms of Regs.4 and 10 read with Tables 3A and 3B of the 2018 Regulations. This is a conclusion

that would logically follow from the view expressed in paragraph 22 of the decision of this Court in Kusum Ingots & Alloys Ltd. v. Union of India18 and the ramifications, to say the least, could be significant.

OBSERVATIONS/FINDINGS OF THE HIGH COURT WHILE READING DOWN REG. 10(f)(iii)

9. To recapitulate, the Division Bench of the High Court proceeded to read down Reg.10 and held that the same would apply only where past services are required to be counted for direct recruitment and promotion under the Career Advancement Scheme (CAS), i.e., to the posts of Associate Professor and Professor. The Division Bench took the view that marking candidates for their past teaching experiences in order to shortlist them for interview for appointment on the post of Assistant Professor was a surplusage, since the eligibility for the post of Assistant Professor does not require any teaching experience. Therefore, counting of past services on such posts serves no tangible purpose. In the absence of such a requirement, the applicability of Reg.10 to direct recruitment on the posts of Assistant Professor would not arise, thus, (2004) 6 SCC 54 restricting the operation of Reg.10 only to posts which demanded prior experience i.e. Associate Professor and Professor.

10. The Division Bench further opined that 'Teaching experience' as provided under clause 7 of table 3A has to be read in conjunction with 'Post- doctoral experience'. They form a composite class. Resultantly, if 'teaching experience' is allowed to be conditioned by Reg.10, then 'post- doctoral experience' mentioned in the same clause will also necessarily have to be conditioned by the said regulation. This will result into an anomalous situation. According to the Division Bench, 'post-doctoral experiences' can be of many kinds including research activity, teaching activity, et cetera and that if teaching experience of a post-doctoral candidate (who is not drawing gross monthly equivalent to that of a regular Assistant Professor) is counted as 'post-doctoral experience', then such candidate would be entitled to two marks per year of his/her experience; however, if it is counted as 'teaching experience', then the candidate would not be entitled to the marks as he/she as a teacher was not drawing salary as aforesaid. Hence, for the same candidate, two different markings are possible based on the interpretation chosen. This perceived anomaly guided the High Court to ultimately read down Reg.10.

JUDICIAL PRECEDENTS AND THE PRINCIPLES FLOWING THEREFROM

11. It would be of profit to read precedents and to deduce the principles of law laid down therein, having a bearing on the issue which we are tasked to decide.

ON INTERPRETATION OF STATUTES

12. Hon'ble O. Chinnappa Reddy, J. (as His Lordship then was) in Girdhari Lal & sons v. Balbir Nath Mathur19, in His Lordship's inimitable style, had the occasion to emphasize:

> "6. It may be worthwhile to restate and explain at this stage certain well-known principles of interpretation of statutes: Words are but mere vehicles of thought. They

> are meant to express or convey one's thoughts. Generally, a person's words and thoughts are coincidental. No problem arises then, but, not infrequently, they are not. It is common experience with most men, that occasionally there are no adequate words to express some of their thoughts. Words which very nearly express the thoughts may be found but not words which will express precisely. There is then a great fumbling for words. Long- winded explanations and, in conversation, even gestures are resorted to. Ambiguous words and words which unwittingly convey more that one meaning are used. Where different interpretations are likely to be put on words and a question arises what an individual meant when he used certain words, he may be asked to explain himself and he may do so and say that he meant one thing and not the other. But if it is the legislature that has expressed itself by making the laws and difficulties arise in interpreting what the legislature has said, a legislature cannot be asked to sit to resolve those difficulties. The legislatures, unlike individuals, cannot come forward to explain themselves as often as difficulties of interpretation arise. So the task of interpreting the laws by finding out what the legislature meant is allotted to the courts. Now, if one person puts into words the thoughts of another (as the draftsman puts into words the thoughts of the legislature) and a third person (the court) is to find out what they meant, more difficulties are bound to crop up. The draftsman may not have caught the spirit of the legislation at all; the words used by him may not adequately convey what is meant to be conveyed; the words may be ambiguous: they may be words capable of being differently understood by different persons. How are the courts to set about the task of resolving difficulties of interpretation of the laws? The foremost task of a court, as we conceive it, in the interpretation of statutes, is to find out the intention of the legislature. Of course, where words are clear and unambiguous no question of construction may arise. Such words ordinarily speak for themselves. Since the words must have spoken as clearly to legislators as to judges, it may be safely presumed that the legislature intended what the words plainly say. This is the real basis of the so-called golden rule of construction that where the words of statutes are plain and (1986) 2 SCC 237 unambiguous effect must be given to them. A court should give effect to plain words, not because there is any charm or magic in the plainness of such words but because plain words may be expected to convey plainly the intention of the legislature to others as well as judges. Intention of the legislature and not the words is paramount.

Even where the words of statutes appear to be prima facie clear and unambiguous it may sometimes be possible that the plain meaning of the words does not convey and may even defeat the intention of the legislature; in such cases there, is no reason why the true intention of the legislature, if it can be determined, clearly by other means, should not be given effect. Words are meant to serve and not to govern and we are not to add the tyranny of words to the other tyrannies of the world."

13. Another crisp and enlightening passage is found in Reserve Bank of India (supra), where His Lordship observed as follows:

> "33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. ... "

14. Reiteration of the principles of interpretation of statutes and elucidation of the approach to be adopted, as suggested by the Hon'ble Judge, are so lucid that we feel hesitant to say anything more. However, while proceeding with the task entrusted to us, certainly these principles will have a strong bearing.

WHETHER, WORDS CAN BE ADDED TO OR DELETED FROM A STATUTE?

15. Though Reg.10 of the 2018 Regulations expressly refers to "Assistant Professor" as one of the three posts to which the same would apply, the effect and import of the impugned order of the Division Bench of the High Court is that henceforth, Reg.10 has to be read as if it does not apply to the post of Assistant Professor. The following decisions would throw light on whether the approach of the High Court was right or not.

16. In Sri Jeyaram Educational Trust v. A.G. Syed Mohideen 20, this Court held:

> "11. It is now well settled that a provision of a statute should have to be read as it is, in a natural manner, plain and straight, without adding, substituting or omitting any words. While doing so, the words used in the provision should be assigned and ascribed their natural, ordinary or popular meaning. Only when such plain and straight reading, or ascribing the natural and normal meaning to the words on such reading, leads to ambiguity, vagueness, uncertainty, or absurdity which were not obviously intended by the legislature or the lawmaker, a court should open its interpretation toolkit containing the settled rules of construction and interpretation, to arrive at the true meaning of the provision. While using the tools of interpretation, the court should remember that it is not the author of the statute who is empowered to amend, substitute or delete, so as to change the structure and contents. A court as an interpreter cannot alter or amend the law. It can only interpret the provision, to make it meaningful and workable so as to achieve the legislative object, when there is

> vagueness, ambiguity or absurdity. The purpose of interpretation is not to make a provision what the Judge thinks it should be, but to make it what the legislature intended it to be." (emphasis supplied)

17. This Court, in Union of India v. Deoki Nandan Aggarwal21, had the occasion to lament by observing that:

> "14. We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior (2010) 2 SCC 513 1992 Supp (1) SCC 323 to November 1, 1986 as 'more than five years' and as 'more than four years' in the same paragraph for the period subsequent to November 1, 1986. It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities……." (emphasis supplied)

18. The legal position is, thus, clear. A situation could arise where plain and literal reading of a statute could lead to a manifest contradiction of the apparent purpose for which the enactment was introduced and, the situation, necessarily compels the court to adopt that construction which would carry out the obvious intention of the legislature. The court would be justified in doing so, but it must be cautious that while it irons out the creases in the material it does not alter the material of which the legislation is woven.

ON THE PRINCIPLE OF READING DOWN

19. Examining the reasons assigned by the High Court for reading down Reg.10(f)(iii) of the 2018 Regulations would necessitate an understanding of what the principle of 'reading down' is all about. Precedents on 'reading down' of a provision are legion and only a few of them are referred to here.

20. In CST v. Radhakrishan22, this Court held:

> "15. … In considering the validity of a statute the presumption is in favour of its constitutionality and the burden is upon him who attacks it to show that there has been a clear transgression of constitutional principles. For sustaining the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may

> assume every state of facts which can be conceived. It must always be presumed that the Legislature understands and correctly appreciates the need of its own people and that discrimination, if any, is based on adequate grounds. It is well settled that courts will be justified in giving a liberal interpretation to the section in order to avoid constitutional invalidity. These principles have given rise to rule of reading down the sections if it becomes necessary to uphold the validity of the sections. ... " (emphasis supplied)

21. Hon'ble P.B. Sawant, J. (as His Lordship then was) in his concurring judgment in Delhi Transport Corpn. v. D.T.C. Mazdoor Congress23 captured the rule of 'reading down' as follows:

> "255. It is thus clear that the doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible — one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires, to amend it. What is further, if the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into (1979) 2 SCC 249 1991 Supp (1) SCC 600 play is where the statute requires extensive additions and deletions.

Not only it is no part of the court's duty to undertake such exercise, but it is beyond its jurisdiction to do so." (emphasis supplied) Hon'ble K. Ramaswamy, J. (as His Lordship then was), in a separate concurring opinion, had the occasion to consider authorities on statutory interpretation and observed:

> 323. In Craies Statute Law (7th edn., Chapter 5 at page 64) it is stated that where the words of an Act are clear, there is no need for applying any of the principles of interpretation which are merely presumptions in cases of ambiguity in the statute. The safer and more correct course of dealing with the question of construction is to take the words themselves and arrive, if possible, at their meaning without in the first place referring to cases. Where an ambiguity arises to supposed intention of the legislature, one of the statutory constructions, the court propounded, is the doctrine of reading down.

Lord Reid in Federal Steam Navigation Co. v. Department of Trade and Industry [(1974) 2 All ER 97, 100] (as also extracted by Cross Statutory Interpretation, Butterworths' edition, 1976 at page 43 in proposition 3) has stated thus:

> '... the judge may read in words which he considers to be necessarily implied by words which are already in the statute and he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible, absurd or totally unreasonable, unworkable or totally irreconcilable with the rest of the statute.'
>
> 324. At page 92 of the Cross Statutory Interpretation, the author has stated that: 'The power to add to, alter or ignore statutory words is an extremely limited one. Generally speaking it can only be exercised where there has been a demonstrable mistake on the part of the draftsman or where the consequence of applying the words in their ordinary, or discernible secondary, meaning would be utterly unreasonable. Even then the mistake may be thought to be beyond correction by the court, or the tenor of the statute may be such as to preclude the addition of words to avoid an unreasonable result.' Therefore, the Doctrine of Reading Down is an internal aid to construe the words or phrase in statute to give reasonable meaning, but not to detract, distort or emasculate the language so as to give the supposed purpose to avoid unconstitutionality. ***
>
> 326. It is, thus, clear that the object of reading down is to keep the operation of the statute within the purpose of the Act and constitutionally valid. ..." (emphasis supplied)

22. The question of 'reading down' a provision arises if it is found that the provision is ultra vires as it stands. This is the law laid down in Electronics Corpn. of India Ltd. v. Secy., Revenue Deptt., Govt. of A.P.24.

23. An instructive passage is found in B.R. Enterprises v. State of U.P.25, reading thus:

> "81. ... Thus, where there are two possible interpretations, one invalidating the law and the other upholding, the latter should be adopted. For this, the courts have been endeavouring, sometimes to give restrictive or expansive meaning keeping in view the nature of legislation, may be beneficial, penal or fiscal etc. Cumulatively it is to subserve the object of the legislation. Old golden rule is of respecting the wisdom of legislature that they are aware of the law and would never have intended for an invalid legislation. This also keeps courts within their track and checks individual zeal of going wayward. Yet in spite of this, if the impugned legislation cannot be saved the courts shall not hesitate to strike it down. Similarly, for upholding any provision, if it could be saved by reading it down, it should be done, unless plain words are so clear to be in defiance of the Constitution. These interpretations spring out because of concern of the courts to salvage a legislation to achieve its objective and not to let it

> fall merely because of a possible ingenious interpretation. The words are not static but dynamic. This infuses fertility in the field of interpretation. This equally helps to save an Act but also the cause of attack on the Act. Here the courts have to play a cautious role of weeding out the wild from the crop, of course, without infringing the Constitution. For doing this, the courts have taken help from the Preamble, Objects, the scheme of the Act, its historical background, the purpose for enacting such a provision, the mischief, if any which existed, which is sought to be eliminated……." (emphasis supplied)

24. In State of Rajasthan v. Sanyam Lodha26, this Court was considering whether absent a challenge to the law/rule, the same could be read (1999) 4 SCC 458 (1999) 9 SCC 700 (2011) 13 SCC 262 down. Answering in the negative, Hon'ble R. V. Raveendran, J. (as His Lordship then was) speaking for the bench held:

> "12. It is true that any provision of an enactment can be read down so as to erase the obnoxious or unconstitutional element in it or to bring it in conformity with the object of such enactment. Similarly, a rule forming part of executive instructions can also be read down to save it from invalidity or to bring it in conformity with the avowed policy of the Government. When courts find a rule to be defective or violative of the constitutional or statutory provision, they tend to save the rule, wherever possible and practical, by reading it down by a benevolent interpretation, rather than declare it as unconstitutional or invalid. But such an occasion did not arise in this case as there was no challenge to the validity of Rule 5 and the parties were not at issue on the validity of the said Rule. We are therefore of the view that in the absence of any challenge to the Relief Fund Rules and an opportunity to the State Government to defend the validity of Rule 5, the High Court ought not to have modified or read down the said Rule."

25. Caution has been sounded in Subramanian Swamy v. Raju27 in the following words:

> "61. Reading down the provisions of a statute cannot be resorted to when the meaning thereof is plain and unambiguous and the legislative intent is clear. The fundamental principle of the 'reading down' doctrine can be summarised as follows. Courts must read the legislation literally in the first instance. If on such reading and understanding the vice of unconstitutionality is attracted, the courts must explore whether there has been an unintended legislative omission. If such an intendment can be reasonably implied without undertaking what, unmistakably, would be a legislative exercise, the Act may be read down to save it from unconstitutionality. The above is a fairly well-established and well-accepted principle of interpretation which having been reiterated by this Court time and again would obviate the necessity of any recall of the huge number of precedents…"

26. On the question as to whether harshness of a provision could afford reason for reading down the same, we find that a three-Judge bench of this Court in Authorised Officer, Central Bank of India v.

(2014) 8 SCC 390 Shanmugavelu28 speaking through Hon'ble J.B. Pardiwala, J. has held as follows:

> "100. Thus, the principle of 'Reading Down' a provision emanates from a very well-settled canon of law, that is, the courts while examining the validity of a particular statute should always endeavour towards upholding its validity, and striking down a legislation should always be the last resort. "Reading Down" a provision is one of the many methods, the court may turn to when it finds that a particular provision if for its plain meaning cannot be saved from invalidation and so by restricting or reading it down, the court makes it workable so as to salvage and save the provision from invalidation. Rule of 'Reading Down' is only for the limited purpose of making a provision workable and its objective achievable.
>
> 101. The High Court in its impugned order resorted to reading down Rule 9(5) of the SARFAESI Rules not because its plain meaning would result in the provision being rendered invalid or unworkable or the statute's objective being defeated, but because it would result in the same harsh consequence of forfeiture of the entire earnest-money deposit irrespective of the extent of default in payment of balance amount.
>
> 102. However, harshness of a provision is no reason to read down the same, if its plain meaning is unambiguous and perfectly valid. A law/rule should be beneficial in the sense that it should suppress the mischief and advance the remedy. The harsh consequence of forfeiture of the entire earnest-money deposit has been consciously incorporated by the legislature in Rule 9(5) of the SARFAESI Rules so as to sub-serve the larger object of the SARFAESI Act of timely resolving the bad debts of the country. The idea behind prescribing such a harsh consequence is not illusory, it is to attach a legal sanctity to an auction process once conducted under the SARFAESI Act from ultimately getting concluded." (emphasis supplied)

27. Thus, what follows from the above authoritative discussions is this.

Whenever a court is seized of a question of vires of a primary legislation/ subordinate legislation or a part of it, a presumption of constitutionality is attached to the impugned provision and the courts would ordinarily strive to save the impugned provision from being declared ultra vires; (2024) 6 SCC 641 however, there could be situations where the subordinate legislation (like a rule or a regulation) is challenged on the ground of excessive delegation or is itself violative of the enabling/primary legislation under which it is framed or even breaches constitutional guarantees. 'Reading down' of a provision is a subsidiary rule of interpretation of statutes, which the courts tend to employ in situations to save the subordinate legislation like a rule or a regulation, wherever possible and practical, by reading it down by a benevolent interpretation, rather than declaring it as unconstitutional or invalid. However, it has been clarified that it is to be used sparingly, and in limited circumstances. Additionally, it is clear that the act of reading down a provision, must be undertaken only if doing so can keep the operation of the statute "within the purpose of the Act and constitutionally valid".

WHETHER, A SELECTION BOARD CAN FIX A HIGHER CRITERION FOR SHORTLISTING CANDIDATES?

28. One would find a catena of decisions answering the question, as posed, and the legal position has never been in doubt. The decisions cited by the appellants are apt. However, without unnecessarily burdening our judgment with authorities, reference is made to only one decision of this Court which has a factual resemblance with the present case.

29. In M.P. Public Service Commission v. Navnit Kumar Potdar29, this Court upheld shortlisting of candidates by the relevant Public Service Commission. In this case, for the purpose of shortlisting, a longer period (1994) 6 SCC 293 of experience than the minimum prescribed was used as a criterion by it to call candidates for an interview. Relevant passages from such decision are reproduced below:

> " 6. The question which is to be answered is as to whether in the process of short-listing, the Commission has altered or substituted the criteria or the eligibility of a candidate to be considered for being appointed against the post of Presiding Officer, Labour Court. It may be mentioned at the outset that whenever applications are invited for recruitment to the different posts, certain basic qualifications and criteria are fixed and the applicants must possess those basic qualifications and criteria before their applications can be entertained for consideration. The Selection Board or the Commission has to decide as to what procedure is to be followed for selecting the best candidates from amongst the applicants. In most of the services, screening tests or written tests have been introduced to limit the number of candidates who have to be called for interview. Such screening tests or written tests have been provided in the concerned statutes or prospectus which govern the selection of the candidates. But where the selection is to be made only on basis of interview, the Commission or the Selection Board can adopt any rational procedure to fix the number of candidates who should be called for interview. It has been impressed by the courts from time to time that where selections are to be made only on the basis of interview, then such interviews/viva voce tests must be carried out in a thorough and scientific manner in order to arrive at a fair and satisfactory evaluation of the personality of the candidate. ****
>
> 8. The sole purpose of holding interview is to search and select the best among the applicants. It is obvious that it would be impossible to carry out a satisfactory viva voce test if large number of candidates are interviewed each day till all the applicants who had been found to be eligible on basis of the criteria and qualifications prescribed are interviewed. If large number of applicants are called for interview in respect of four posts, the interview is then bound to be casual and superficial because of the time constraint. The members of the Commission shall not be in a position to assess properly the candidates who appear before them for interview. It appears that Union Public Service Commission has also fixed a ratio for calling the candidates for interview with reference to number of available vacancies.

*****

> 13. The High Court has taken the view that raising the period from five years to seven and half years' practice for purpose of calling the candidates for interview amounted to changing the statutory criteria by an administrative decision. According to us, the High Court has not appreciated the true implication of the short-listing which does not amount to altering or changing of the criteria prescribed in the rule, but is only a part of the selection process. ... As we have already pointed out that where the selection is to be made purely on the basis of interview, if the applications for such posts are enormous in number with reference to the number of posts available to be filled up, then the Commission or the Selection Board has no option but to short-list such applicants on some rational and reasonable basis." (emphasis supplied)

30. The principle discernible from the above decision as well as those cited on behalf of the appellants is that whenever selection is based solely on the performance of the aspirants in the interview, it is not open to the recruiting authorities to dilute in any manner the norms and standards prescribed by the statutory provisions or executive orders governing recruitment for screening aspirants to be called for interview; however, it is always open to them to prescribe enhanced norms to have the zone of consideration for interview restricted to those aspirants satisfying the enhanced norms or higher criteria. In such cases, however, care has to be taken such that the enhanced norms or higher criteria are not susceptible to a challenge on the ground of arbitrariness or being contrary to the statutory provisions or executive orders governing recruitment.

WHETHER, RELIEF CAN BE GRANTED IN THE ABSENCE OF REQUISITE PLEADINGS?

31. The necessity for appropriate pleadings in a writ petition cannot be overemphasized, particularly when such petitions are mainly decided on affidavit evidence and not witness action.

32. Without a doubt, a court cannot in the absence of the requisite pleadings grant relief claimed by a party. We first propose to notice two decisions which arose out of pure civil proceedings and then two decisions arising out of writ proceedings.

33. In Pt. Shamboo Nath Tikoo v. S. Gian Singh30, this Court held as follows:

> "20. No doubt, the finding recorded by the learned third Judge (Farooqi, J.) that two rooms of Dharamshalla had been granted by Maharaja Partap Singh in favour of the Sikh community-defendants, accords with the finding of another learned Judge (Jalal-ud-Din, J.). But, that finding, in our view, becomes wholly unsustainable being altogether a new case made out for the defendants by him, in that, such case is not in any way traceable to the pleas of defence of the defendants set out in their written statements against their ejectment from the said two rooms."

34. Bachhaj Nahar v. Nilima Mandal31 is a decision where one finds a neat discussion on the object and purpose of pleadings. The relevant passages read as follows:

> "12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.
>
> 13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The 1995 Supp. (2) SCC 266 (2008) 17 SCC 491 question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief."

35. In Rani Laxmibai Kshetriya Gramin Bank v. Chand Behari Kapoor32, this Court noted the settled legal position and interfered with the impugned decision by ruling as follows:

> "8. ... It is too well settled that the petitioner who approaches the court invoking the extraordinary jurisdiction of the court under Article 226 must fully aver and establish his rights flowing from the bundle of facts thereby requiring the respondent to indicate its stand either by denial or by positive assertions. But in the absence of any averments in the writ petition or even in the rejoinder-affidavit, it is not permissible for a court to arrive at a conclusion on a factual position merely on the basis of submissions made in the course of hearing. The High Court, therefore, in our view committed serious error in coming to the conclusion that there existed vacancies in the post of Field Supervisor on the materials produced before it. In fact the respondents herein who were the petitioners in the High Court had not produced any

> material in support of their stand that vacancies existed and yet appointments have not been made. We are of the considered opinion that the conclusion of the High Court that there existed vacancies is unsustainable in law and is accordingly set aside." (emphasis supplied)

36. The difference in pleading in respect of civil proceedings and a writ petition was succinctly noticed in Bharat Singh v. State of Haryana33 and expressed in the following words:

> "13. ..., when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in (1998) 7 SCC 469 (1988) 4 SCC 534 support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. ..."

37. Based on the aforesaid authorities, we hold that while deciding a writ petition on the basis of affidavits, the writ court's enquiry ought to be restricted to the case pleaded by the parties and the evidence that they have placed on record as part of the writ petition or the counter/reply affidavit, as the case may be. Findings of the court have to be based on the pleadings and the evidence produced before it by the parties. It is well-nigh impermissible for the writ court to conjecture and surmise and make out a third case, not pleaded by the parties, based on arguments advanced in course of hearing.

ANALYSIS AND REASONS

38. Allahabad University and, for that matter, Allahabad Degree College are both bound by the UGC Act and the 2018 Regulations. Normally, if compliance with certain statutory provisions of a central statute bring about adverse result for a citizen, the said result has to be accepted by him/her because the statutory provisions are nothing but the will of the people of India expressed by the Parliament. The only exception is if the vires of the relevant statutory provision is challenged on either of the two available grounds of challenge, i.e., legislative incompetence and manifest repugnancy with any of the Constitutional rights, and the challenge succeeds on any one of such grounds. In such a case, rights of the affected party invaded by the impugned statutory provision is protected by the courts in the manner considered just and proper bearing in mind the facts and circumstances before it.

39. The 2018 Regulations are subordinate legislation and not per se part of the central statute, i.e., the UGC Act. However, nothing much turns on it. The authority to craft subordinate legislation is derived from the enabling/primary legislation and it is imperative that such legislation harmonises

with the provisions outlined in the enabling/primary legislation. Thus, grounds for challenging a subordinate legislation to ultimately succeed would, normally, be the same. The only additional ground available is that if the subordinate legislation offends any provision of the enabling/primary legislation, that too would provide room for the courts to hold the impugned provision ultra vires such enactment.

40. Respondent 1, for succeeding in her claim, challenged Reg.10(f)(iii) of the 2018 Regulations. However, it is noteworthy that she did not challenge any other regulation. At this juncture, we consider it useful to read Regs.4 and 10 together with Table 3A. Since there is no dispute that respondent 1 possesses requisite eligibility for consideration of her candidature for appointment on the post of Assistant Professor, we refrain from reproducing the eligibility criteria. The other relevant provisions are reproduced hereunder:

> "4.0. DIRECT RECRUITMENT 4.1. For the disciplines of Arts, Commerce, Humanities, Education, Law, Social Science, Sciences, Languages, Library Science, Physical Education, and Journalism & Mass Communication.
>
> I. Assistant Professor:
>
> Eligibility (A or B):
>
> A. ***
>
> OR
>
> B. ***
>
> Note: The Academic score as specified in Appendix II (Table 3A) for Universities, and Appendix II (Table 3B) for Colleges, shall be considered for short-listing of the candidates for interview only, and the selections shall be based only on the performance in the interview." (emphasis supplied) "10.0. COUNTING OF PAST SERVICES FOR DIRECT RECRUITMENT AND PROMOTION UNDER CAS.

Previous regular service, whether national or international, as Assistant Professor, Associate Professor or Professor or equivalent in a University, College, National Laboratories or other scientific/professional organisations such as the CSIR, ICAR, DRDO, UGC, ICSSR, ICHR, ICMR and DBT, should count for the direct recruitment and promotion under the CAS of a teacher as Assistant Professor, Associate Professor, Professor or any other nomenclature, provided that:

> (a) The essential qualifications of the post held were not lower than the qualifications prescribed by the UGC for Assistant Professor, Associate Professor and Professor, as the case may be.
>
> (b) The post is/was in an equivalent grade or of the pre-revised scale of pay as the post of Assistant Professor (Lecturer), Associate Professor (Reader) and Professor.

(c) The Assistant Professor, Associate Professor and Professor concerned should possess the same minimum qualifications as prescribed by the UGC for appointment to the post of Assistant Professor, Associate Professor and Professor, as the case may be.

(d) The post was filled in accordance with the prescribed selection procedure as laid down in the Regulations of the University/State Government/Central Government/Institutions concerned, for such appointments.

(e) The previous appointment was not as guest lecturer for any duration.

(f) The previous Ad hoc or Temporary or contractual service (by whatever nomenclature it may be called) shall be counted for direct recruitment and for promotion, provided that:

(i) the essential qualifications of the post held were not lower than the qualifications prescribed by the UGC for Assistant Professor, Associate Professor and Professor, as the case may be;

(ii) the incumbent was appointed on the recommendation of a duly constituted Selection Committee/Selection Committee constituted as per rules of the respective university;

(iii) the incumbent was drawing total gross emoluments not less than the monthly gross salary of a regularly appointed Assistant Professor, Associate Professor and Professor, as the case may be.

(g) No distinctions shall be made with reference to the nature of management of the institution where previous service was rendered (private/local body/government) while counting the past service under this clause." Table 3A is reproduced below:

"Table 3A" S.N. Academic Record Score

1. Graduation 80% & Above 60% to less 55% to less 45% to = 15 than 80% = than 60% = less than 13 10 55% =

2. Post Graduation 80% & Above 60% to less 55% (50% in case of = 25 than 80% = SC/ST/OBC (non-

23 creamy layer)/PWD) to less than 60% = 20

3. M.Phil. 60% & above 55% to less than 60% = 05 = 07

6. Research Publications (2 10 marks for each research publications published in Peer-Reviewed or UGC-listed Journals)

7. Teaching/Post Doctoral 10 Experience (2 marks for one year each)#

8. Awards International/National Level 03 (Awards given by International Organizations/Government of India/Government of India recognized National Level Bodies) (Awards given by State Government) #However, if the period of teaching/Post-doctoral experience is less than one year then the marks shall be reduced proportionately.

Note:

(A)	(i) M.Phil + Ph.D	Maximum – 30 marks
	(ii) JRF/NET/SET	Maximum – 07 marks
	(iii) In awards category	Maximum – 03 marks

(B) Number of candidates to be called for interview shall be decided by the concerned universities (C) Academic Score - 80 Research Publications - 10 Teaching Experience - 10 Total - 100 (D) Score shall be valid for appointment in respective State SLET/SET Universities/Colleges/Institutions only.

41. For reasons more than one, we hold that the Division Bench of the High Court was in error.

42. First and foremost, the Division Bench of the High Court has not found Reg.10(f)(iii) to be ultra vires on any of the available grounds, i.e., either on the ground of legislative incompetence or that it offends any of the Constitutional rights and/or any provision of the UGC Act or that there is excessive delegation; rather, the Division Bench has read down Reg.10(f)(iii) on the specious ground (paragraph 36 of the impugned order, extracted supra) that the construction it has placed "would obviate the need to examine the challenge laid to the regulation 10(f)(iii) and the general instructions appended to the advertisement in that regard". In our view, this course of action was impermissible having regard to the authorities noted above. 'Reading down' can be resorted to whenever a provision, which is questioned, is found to be ultra vires by the court but there is scope for the court to read the same down in a manner so as to save it from being declared constitutionally invalid. The Division Bench without even recording any prima facie opinion, much less final opinion, that Reg.10(f)(iii) is ultra vires, chose to sidestep the issue of examining the vires by observing what we have noted above. The line of reasoning weighing with the Division Bench that the need to examine the challenge would stand obviated if Reg.10(f)(iii) were construed in the manner it did is, thus, plainly erroneous.

43. Moving on, we have no hesitation to hold that in construing Reg.

10(f)(iii) in the manner it did and observing that Reg.10 has no application in relation to appointment on the post of Assistant Professor (since reference to past services in Tables 3A and 3B appears to be surplusage and serves no purpose in the scheme of the 2018 Regulations), the Division Bench of the High Court has clearly exceeded its jurisdiction by resorting to a sort of judicial

legislation. Once Reg.10 specifically refers to counting of previous regular service, whether national or international, inter alia as Assistant Professor, the Division Bench in the exercise of its judicial review powers could not have held that Reg.10 has no application to one aspiring for appointment as an Assistant Professor. Law is well settled that courts cannot add words to a statute or read words into it, which are not there; at the same time, it cannot also read a statute in a manner that results in deletion of words which are there. This is for the simple reason that the court has no power to legislate; hence, it cannot rewrite the legislation. Bearing this principle in mind, the Division Bench was wholly unjustified in its approach.

44. That apart, clause (f) and other clauses of Reg.10 lay down the conditions to be satisfied for an aspirant to claim marks for past service, read with Tables 3A and 3B. If what the Division Bench has held regarding past service is upheld, that is, past service as Assistant Professor, or whatever other nomenclature, is a surplusage, that would result in candidates answering all the conditions referred to in clauses

(a)-(g) being deprived of marks for teaching experience. Certainly, this could not have been the intention of the UGC while it framed the 2018 Regulations. We have been shown that even the predecessor regulations had similar such provisions for shortlisting of candidates. It is, therefore, as a matter of policy, that the UGC has laid down qualifications mandatory in nature for eligibility as well as marks for teaching experience earned from past service of the nature ordained which, of course, is in the nature of a desirable quality and is such that the 2018 Regulations permit for being taken into consideration for shortlisting of candidates, more particularly when the proportion of candidates applying for the number of posts available is quite high.

45. Even otherwise, we find no justification to uphold the view taken by the Division Bench of the High Court. It was never the intention to deprive aspirants of marks for their teaching experience as Assistant Professors, albeit for shortlisting purposes. Conditions of eligibility for entitlement to secure marks, which have been laid down, are matters of policy over which the courts have no expertise. Judicial review would not extend to cases of the present nature where regulations are framed by experts having a fair measure of idea of what is required and what is not for appointment on teaching posts. The Division Bench overstepped its limits and treaded a territory, which was forbidden.

46. Besides, even on a plain reading of Reg.10, we have failed to comprehend why the High Court embarked on reading down Reg.10(f)(iii). After reading Reg.4, one had to first read Reg.10, as a whole, and then, clause by clause, phrase by phrase and word by word. Had Regs.4 and 10 been so read, there could be no difficulty in ascertaining the intent behind incorporation of Reg.10 (f)(iii) in the 2018 Regulations. The whole lot of aspirants having served nationally or internationally as Assistant Professor in institutions, as specified, were entitled to have such service counted for direct recruitment as an Assistant Professor on fulfilment of conditions in clauses (a)-(e), f(i), f(ii) and (g) with which the Division Bench High Court had no reservation. The Division Bench only had reservation qua clause f(iii). In expressing its reservation about clause f(iii), the Division Bench appears to have overlooked that an aspirant having previous experience, even while working on ad hoc/temporary/contractual basis internationally, could claim that his past service be counted

subject, of course, to producing proof that his total gross emoluments were not less than the monthly gross salary of a regularly appointed Assistant Professor. Whatever was applicable to previous regular service rendered internationally by an aspirant was made applicable equally to service rendered within the nation. Allahabad University has placed on record applications of multiple aspirants who were shortlisted for interview. Learned senior counsel, referring to the contents thereof, showed that all such aspirants' past teaching experience gained on the basis of contractual service were taken into consideration since they had been drawing salary in the pay scale for academic level prescribed by the UGC/7th Central Pay Commission, i.e., drawing salary equal to that of a regularly appointed faculty. Respondent No. 1 could not dispute the same before us and this, ex facie, has the effect of removing the plinth of her claim for declaring Reg.10(f)(iii) invalid. While focusing on Reg. 10(f)(iii) singularly, the Division Bench missed the woods for the trees and the interpretation placed by it would certainly have the effect of (a) robbing aspirants having previous teaching experience of the nature specified from such experience being counted for the purpose of shortlisting and (b) requiring the selectors to be engaged in a long drawn process of interview of a large number of candidates aspiring for appointment on very few vacant posts of Assistant Professor.

47. Above, we have assigned reasons why the High Court was not justified in its approach. Independent thereof, there is one equally weighty reason for allowing the instant appeals. As discussed in M.P. Public Service Commission (supra), a recruiting authority is well-nigh entitled to adopt a method for shortlisting candidates on some rational and reasonable basis when selection is required to be made only on the basis of an interview. In the present case, 'Note' to Reg.4.1 relating to Assistant Professor ordains that after shortlisting of candidates based on academic score specified in Tables 3A and 3B, "the selections shall be based only on the performance in the interview". In course of hearing, we were informed by learned senior counsel for Allahabad University that 69 candidates were shortlisted and called for interview (the cut-off marks being 87.17), who were competing against each other for appointment on only one unreserved vacancy. Respondent 1 had secured 81 marks and between 87.17 and 81 marks, there were 147 candidates. It is true that these facts and figures are not on record but appointment in furtherance of the advertisement dated 28th September, 2021 having been made, the High Court directed that appointment already made need not be reopened. It is for this reason that we do not disbelieve the instructions provided to learned senior counsel for Allahabad University. However, considering the disproportionate number of applications received in comparison to the number of vacancies available to be filled up, Allahabad University narrowed the zone of consideration by adopting a marking scheme in the way it did with the obvious ultimate objective of permitting candidates with higher teaching experience to enter the zone of consideration. This methodology was perfectly in sync with Regs.4 and 10 read with Table 3A. The Division Bench, therefore, ought not to have been swayed in its decision-making process by reason of teaching experience not being a mandatory eligibility criterion.

48. We are also of the view that the criteria for shortlisting of candidates as engrafted in Tables 3A and 3B were in furtherance of the entire scheme framed by the UGC for appointment on the post of Assistant Professors in universities as well as in colleges. Clause 7 of Tables 3A and 3B, having direct relation with Reg.10, did not call for any observation from the Division Bench of the High Court of the nature noticed above. An aspirant satisfying the conditions in Reg.10 would be entitled to marks

either for teaching experience or post-doctoral experience for which a cap of 10 (ten) marks is imposed. Reg.10, on its very terms, makes it clear that rendering of past services is not a sine qua non for direct recruitment. If indeed a candidate has served in the past and answers all the conditions that Reg.10 envisages, read with clause 7 of Tables 3A or 3B, as the case may be, he/she would be entitled to marks for teaching experience. In such circumstances, we hold that the Division Bench completely erred in appreciating the contentious issues in the proper perspective vis-à-vis the law applicable thereto and returned findings which are not only unwarranted but are wholly unacceptable.

49. Finally, we consider it essential to say a few words about the approach adopted by the Division Bench in relation to 'post-doctoral experience', referred to in clause 7 of Tables 3A and 3B. It is plain and clear that respondent 1 did not question the same. In fact, the noun 'anomaly' had not even been referred to by respondent 1 in her writ petition. In the absence of any definition of 'post-doctoral experience' as well as a complete lack of pleadings in regard to such experience earning marks, but assuming that there was good reason for the Division Bench to notice a grey area, either the UGC or the appellants ought to have been asked to clarify. Without seeking any clarification, it was not open to the Division Bench to surmise and conjecture and to be guided to a particular direction based on a 'perceived anomaly' while giving its decision. We are inclined to the view that the Division Bench, in the absence of the requisite pleadings and the ramifications that are closely associated with its decision, ought to have adopted a hands-off approach in this regard. CONCLUSION

50. In our opinion, for the foregoing reasons, the impugned order is unsustainable in law and deserves to be set aside. Consequently, the impugned order is set aside and the writ petition of Respondent 1 is dismissed. Also, the special appeal filed by Respondent 1 challenging dismissal of her writ petition, filed earlier, stands dismissed and the order of the Single Judge is affirmed. The review petition filed by Respondent 1 also stands dismissed.

51. The writ petition filed by the said Brahma Deo also stands dismissed.

52. All the appeals stand allowed, without order for costs.

.....J. (DIPANKAR DATTA) .....J. (PRASHANT KUMAR MISHRA) NEW DELHI;

18th DECEMBER, 2024.