

UNIVERSITY OF KERALA AND ORS. ETC.

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v.

MERLIN J. N. AND ANR. ETC. ETC.

(Civil Appeal Nos. 5309-5314 of 2022)

AUGUST 17, 2022

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**[UDAY UMESH LALIT, S. RAVINDRA BHAT AND
SUDHANSU DHULIA, JJ.]**

Service Law – Exemption of NET for Ph.D Holders – Prospective Operation of 2018 UGCR – UGC (Minimum Qualifications for Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to It) Regulations – In 2009, amendment was made to the UGC Regulations, 2000 (UGCR) – By this amendment, for the first time, the minimum stipulation for the appointment of lecturer was introduced i.e. NET – However, candidates who had acquired their Ph.D. were exempted from qualifying in the NET – On 13.06.2011, the University invited applications for filling up the post of Lecturer in various subjects – The minimum qualification was NET, however, the advertisement exempted candidates who had a Ph.D. in the concerned subject from qualifying the NET – One ‘J’ who applied for the post was ranked in the first position and the respondent was placed at second rank – Respondent challenged the appointment of ‘J’ before the High Court on the ground that it contravened the 2009/10 UGCR, i.e., as ‘J’ had not obtained his Ph.D. (on 23.08.2006) in accordance with the 2009 Ph.D. Regulations – High Court held that the ‘J’ was not qualified to hold the post of Lecturer – Division Bench affirmed the order passed by the Single Judge by holding that the 2016 UGCR amendment which enable those awarded Ph.D. degrees prior the cut-off date of 11.07.2009 to also be considered for appointment as Lecturers was applicable only prospectively, and hence denied the benefit to ‘J’ - On appeal, Held: There are perhaps hundreds of other Ph.D. candidates who had secured their degrees prior to the 2009 Ph.D. Regulations and who were, till the 2009/10 UGCR were brought into force, entitled to claim exemption from NET in every selection for any teaching vacancy in any university in India – The 2018 UGCR, bifurcated the pre- and post-2009 Ph.D. holders into two groups, and allowed both exemption from taking the NET – To

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- A *construe them as applying only prospectively, would give rise to an absurdity, and defeat the purpose for which the amendment was promulgated – It is the duty of the courts, whether trying original proceedings or hearing an appeal, to take notice of the change in law affecting pending actions and to give effect to the same - To interpret the 2018 UGCR prospectively would imply that a pre-2009 Ph.D. holder's appointment would be rendered illegal, and after having taught for several years, he/she would lose his/her seniority and all accrued benefits and would now have to take the NET in order to teach – which is clearly unwarranted.*
- B *Ph.D. holder's appointment would be rendered illegal, and after having taught for several years, he/she would lose his/her seniority and all accrued benefits and would now have to take the NET in order to teach – which is clearly unwarranted.*

C **Allowing the appeals, the Court**

- C **HELD:** 1.1 The facts of this case would reveal that the selection process was completed in 2012. There is no doubt that at that stage, the 2009 Ph.D. Regulations and 2009/10 UGCR were in force. Yet the University appointed ‘J’(Dr.) by applying the existing standards as understood by it. According to the University, the 2009/10 UGCR was incorporated in its statute only in 2013. In the opinion of this court, that detail is irrelevant. What is undeniable is that like ‘J’, there are perhaps hundreds of other Ph.D. candidates who had secured their degrees prior to the 2009 Ph.D. Regulations and who were, till the 2009/10 UGCR
- E were brought into force, entitled to claim exemption from NET in every selection for any teaching vacancy in any university in India. This state of affairs led the UGC to issue clarifications, which the Central Government did not agree to. The appellant ‘J’ fell within that category of Ph.D. holders for whom the UGC intended to soften the rigors of the 2009/10 UGCR. However, F lack of approval by the Central Government led to litigation which culminated in P. Suseela. [Para 16][335-C-E]

- G 1.2 P. Suseela appears facially, to adversely clinch the issue with respect to pre-2009 Ph.D. holders. The UGC perhaps realized the hardship which they had to endure (with many of them even appointed in various universities on account of the resolution adopted in UGC’s 471st meeting on 12.08.2010), and therefore amended the regulations once more (2016 UGCR). [Para 17][335-F-G]

1.3 The intention of the UGC to protect the pre-2009 Ph.D. holders, who may have been appointed in various universities and taught for many years, is evidently clear in the language adopted. To make the intention even clearer, the 2018 UGCR, published on 18.07.2018, bifurcated the pre- and post-2009 Ph.D. holders into two groups, and allowed both exemption from taking the NET. [Para 18][336-D] A

2. This court is unpersuaded by such contentions. In situations such as these, a retrospective restoration of rights which had earlier been taken away, will certainly affect pending proceedings - however, it is the duty of the courts, whether trying original proceedings or hearing an appeal, to take notice of the change in law affecting pending actions and to give effect to the same. If on such consideration, it is held by the court that an amendment speaks a language which expressly or by clear intendment takes in even pending matters, the court of first instance as well as the court of appeal must have regard to the intention so expressed, and the court of appeal may give effect to such a law even after the judgment of the court of first instance. [Para 22][338-G-H; 339-A-B] B

3. When an enactment or an amendment is declaratory, curative or clarificatory, impelled by a felt need to make clear what was always intended, such amendment is usually meant to operate from an antecedent date, or to cover antecedent events. This position was clarified in Commissioner of Income Tax, Bhopal vs. Shelly Products & Ors. [Para 23][339-B-C] C

4. The logic pervading all the versions of the UGCR from 1993-2018 (as discussed above) to exempt M. Phil./Ph.D. holders from qualifying in the NET was perhaps premised on the understanding that such a doctorate in one's chosen subject, involving years of study, would render a greater understanding of the subject compared to most other candidates taking the NET who have only obtained a Master's degree. Such qualification (M. Phil. or Ph. D.) is undoubtedly awarded for a proven proficiency of the candidate in the concerned subject or discipline. This is apparent from the minimum qualification requirements of different positions as well – for e.g., while a Master's degree is F

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- A sufficient for application to the post of Assistant Professor, a Ph.D. is required for applying to the post of Associate Professor onwards. To interpret the 2018 UGCR prospectively would imply that a pre-2009 Ph.D. holder's appointment would be rendered illegal, and after having taught for several years, he/she would lose his/her seniority and all accrued benefits and would now have to take the NET in order to teach – which is clearly unwarranted. This court therefore, holds that 'J' appointment is protected by the 2016 UGCR, which is applicable retrospectively. [Para 26][340-D-G; 341-A]

C *Shyam Sunder v. Ram Kumar (2001) 8 SCC 24 : [2001] 1 Suppl. SCR 115 – followed.*

Dr. Merlin J.N. v University of Kerala W.P.(C) No. 20055 of 2012 and W.P.(C) No. 2951 of 2013; P. Suseela v. University Grants Commission (2015) 8 SCC 129 : [2015] 5 SCR 643; Dr. D. Radhakrishnan Pillai v The Travancore Devaswom Board 2016 (2) KLT 245; State of Madhya Pradesh. v. Manoj Sharma (2018) 3 SCC 329 : [2018] 1 SCR 779; Rafiquenessa v. Lal Bahadur Chettri (Dead) Through His Representatives and Ors. [1964] 6 SCR 876; Darshan Singh v. Ram Pal Singh & Ors. [1990] 3 Suppl. SCR 212; Noorunissa Begum v. Brij Kishore Sanghi (2015) 17 SCC 128 : [2015] 4 SCR 246; Commissioner of Income Tax, Bhopal v. Shelly Products & Ors. (2003) 5 SCC 461 : [2003] 1 Suppl. SCR 79; Zile Singh v. State of Haryana (2004) 8 SCC 1 : [2004] 5 Suppl. SCR 272; Manoj Sharma v. State of Madhya Pradesh W.P. (C) No. 3290 of 2012 – referred to.

D *Pillai v The Travancore Devaswom Board 2016 (2) KLT 245; State of Madhya Pradesh. v. Manoj Sharma (2018) 3 SCC 329 : [2018] 1 SCR 779; Rafiquenessa v. Lal Bahadur Chettri (Dead) Through His Representatives and Ors. [1964] 6 SCR 876; Darshan Singh v. Ram Pal Singh & Ors. [1990] 3 Suppl. SCR 212; Noorunissa Begum v. Brij Kishore Sanghi (2015) 17 SCC 128 : [2015] 4 SCR 246; Commissioner of Income Tax, Bhopal v. Shelly Products & Ors. (2003) 5 SCC 461 : [2003] 1 Suppl. SCR 79; Zile Singh v. State of Haryana (2004) 8 SCC 1 : [2004] 5 Suppl. SCR 272; Manoj Sharma v. State of Madhya Pradesh W.P. (C) No. 3290 of 2012 – referred to.*

E *Pillai v The Travancore Devaswom Board 2016 (2) KLT 245; State of Madhya Pradesh. v. Manoj Sharma (2018) 3 SCC 329 : [2018] 1 SCR 779; Rafiquenessa v. Lal Bahadur Chettri (Dead) Through His Representatives and Ors. [1964] 6 SCR 876; Darshan Singh v. Ram Pal Singh & Ors. [1990] 3 Suppl. SCR 212; Noorunissa Begum v. Brij Kishore Sanghi (2015) 17 SCC 128 : [2015] 4 SCR 246; Commissioner of Income Tax, Bhopal v. Shelly Products & Ors. (2003) 5 SCC 461 : [2003] 1 Suppl. SCR 79; Zile Singh v. State of Haryana (2004) 8 SCC 1 : [2004] 5 Suppl. SCR 272; Manoj Sharma v. State of Madhya Pradesh W.P. (C) No. 3290 of 2012 – referred to.*

<u>Case Law Reference</u>		
[2015] 5 SCR 643	referred to	Para 8
G [2018] 1 SCR 779	referred to	Para 8
[1964] 6 SCR 876	referred to	Para 19
[1990] 3 Suppl. SCR 212	referred to	Para 19
[2001] 1 Suppl. SCR 115	followed	Para 20

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[2015] 4 SCR 246	referred to	Para 22	A
[2003] 1 Suppl. SCR 79	referred to	Para 23	
[2004] 5 Suppl. SCR 272	referred to	Para 24	

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 5309-5314 of 2022. B

From the Judgment and Order dated 16.03.2020 and 30.09.2020 of the High Court of Kerala at Ernakulam in W.A. Nos.1713, 1744, 1792 of 2018 and R.P. Nos. 688, 689, 690 of 2020.

With

Civil Appeal Nos. 5315-5332 of 2022. C

V. Giri, Sr. Adv., Mohammed Sadique T.A., Mrs. Anu K. Joy, Alim Anvar, Abraham C. Mathews, Lakshmeesh S. Kamath, Ms. Samriti Ahuja, Advs. for the Appellants.

Raj Panjwani, Sr. Adv., Ms. Purnima Bhat, Kaleeswaram Raj, A. D Lakshminarayanan, Ms. Thulasi K. Raj, Advs. for the Respondents.

The Judgment of the Court was delivered by

S. RAVINDRA BHAT, J.

1. Leave granted. With consent of the learned counsels, the appeals were heard finally. The appellants (in the first appeal, Dr. M.S. Jayakumar, and in the second appeal, the University of Kerala (hereinafter, "University") challenge a common judgment of the Division Bench of the Kerala High Court.¹ The issue involved is the legality of Dr. Jayakumar's appointment as Lecturer in Sociology by the University. The High Court concurrently set aside that appointment. E F

2. Dr. Jayakumar completed his graduation in Sociology in the year 1999, acquired his M.Phil. in the year 2000, and Ph.D. on 23.08.2006. The regulations prescribing qualifications for appointment promulgated by the University Grants Commission (hereinafter, "UGC") were the UGC (Minimum Qualifications for Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to It) Regulations, introduced in March 2000 (hereinafter, "2000 UGCR"). They prescribed passing the National Eligibility Test (hereinafter, "NET") G

¹ In W.A. No. 1713, 1744 & 1792 of 2018 and the common orders passed in R.P. No. 688-90 of 2020 by Kerala High Court. H

- A as an essential condition for appointment as Lecturer in any university. The 2000 UGCR exempted candidates who had acquired M. Phil or submitted their Ph.D. thesis by 31.12.1993 from taking the NET.²
3. The 2000 UGCR were amended on July 2002 (hereinafter, “2002 UGCR/first amendment”). As a consequence, those who had
- B acquired M.Phil. by 31.03.1993 or had submitted their Ph.D. thesis by 31.12.2002 were exempted from taking the NET.³ In June 2006, the regulations were further amended (hereinafter, “2006 UGCR/second amendment”).⁴
4. The next round of amendments was made to the regulations on
- C 11.07.2009 (hereinafter, “2009 UGCR/third amendment”). By this amendment, for the first time, the *minimum* stipulation for appointment of Lecturer was NET. However, candidates who had acquired their Ph.D. in compliance with the UGC (Minimum Standards and Procedure for Award of M. Phil/Ph.D. Degree) Regulations 2009 (hereinafter, “2009 Ph.D. Regulations”), introduced on 01.06.2009, were exempt from qualifying in the NET. The substituted provision in the 2009 UGCR read as follows:
- “NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of Lecturers in Universities/ Colleges/Institutions. Provided, however, that candidates, who are or have been awarded Ph.D. Degree in compliance of the University Grants Commission (minimum standards and procedure for award of Ph.D. Degree), Regulation 2009, shall be exempted from the requirement of the minimum eligibility*
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- F ² “NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidate who have completed M.Phil. degree or have submitted Ph.D. thesis in the concerned subject up to 31st December, 1993, are exempted from appearing in the NET examination.”
- G ³ “NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D. degree. However, the candidates who have completed M.Phil. degree by 31st December, 1993 or have submitted Ph.D. thesis to the university in the concerned subject on or before 31st December, 2002 are exempted from appearing in the NET examination. In case such candidates fail to obtain Ph.D. degree, they shall have to pass the NET examination.”
- H ⁴ “NET shall remain the compulsory requirement for appointment as Lecturer for those with post-graduate degree. However, the candidates having Ph.D. degree in the concerned subject are exempted from NET for PG level and UG level teaching. The candidates having M.Phil. degree in the concerned subject are exempted from NET for UG level teaching only.”

condition of NET/SLET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/ Colleges/Institutions.”⁵ A

5. The 2009 Ph.D. Regulations prescribed uniform standards for admission to Ph.D. and dealt with other issues, such as allocation of supervisors, course work, standards of evaluation and assessment, depository of thesis with the UGC, presentation by Ph.D. aspirants in the University departments which had to be open to faculty members and research students for comments, the mandatory requirement of the publication of research papers, etc. B

6. On 30.06.2010, the UGC amended the regulations (hereinafter, “2010 UGCR”). The relevant provision continued the NET exemption for candidates who had acquired their Ph.D. degrees in accordance with the 2009 Ph.D. Regulations: C

“NET/SLET/SET shall remain the minimum eligibility condition for recruitment and appointment of Assistant Professors in Universities/Colleges/Institutions. Provided however, that candidates, who are or have been awarded as Ph.D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/ SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions.”⁶ D E

7. On 13.06.2011, the University through a notification invited applications for filling up the post of Lecturer in various subjects, including Sociology. The advertisement spelt out the minimum qualifications required. One mandatory condition was that the candidates should fulfill the eligibility requirement for Lectureship, i.e., the NET. At the same time, the advertisement exempted candidates who had a Ph.D. in the concerned subject from qualifying the NET. The relevant extracts of the advertisement are as follows: F G

“Qualifications”

Good Academic record with at least 55% marks or an equivalent grade at Masters Degree level in the relevant

⁵Reg. 4, 2009 UGCR.

⁶Reg. 3.3.1, 2010 UGCR. H

- A *subject from an Indian University or an equivalent Degree from a Foreign University.*

Note:1 Candidates besides fulfilling the above qualifications should have cleared the eligibility test for Lectureship conducted by the UGC, CSIR or similar tests accredited by the UGC.

- B *However, the candidates who have Ph.D. Degree in the concerned subject are exempted from NET qualifications.*

Note:2 A relaxation of 5% marks at Masters level is allowed to the following categories:-

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 1. SC/ST Candidates
 2. Ph.D. Degree holders who have passed their Masters Degree prior to 19.09.1991.⁷

- D 8. Dr. Jayakumar applied for the post. The application was processed, and pursuant to his interview by the Selection Committee, he was assessed and ranked in the first position on 04.08.2012. The respondent Dr. Merlin J.N. was placed at the second position. Feeling aggrieved, she preferred a writ petition before the Kerala High Court.⁸ The grounds urged by Dr. Merlin were that *inter alia* she had been

- E unjustly denied four marks (concerning requisite teaching experience and publication in a recognized journal) which ought to have been awarded to her. Additionally, she challenged the appointment of Dr. Jayakumar, alleging that it contravened the 2009/10 UGCR, i.e., as Dr. Jayakumar had not obtained his Ph.D. in accordance with the 2009 Ph.D. Regulations, he was not qualified to hold the post of Lecturer under the 2009/10

- F UGCR. A learned Single Judge of the Kerala High Court, by judgment dated 01.02.2017,⁹ held that Dr. Jayakumar was not qualified to hold the post of Lecturer. The learned Single Judge relied upon the judgment of this Court in *P. Suseela v. University Grants Commission*¹⁰ as well as a Kerala High Court Full Bench decision in *Dr. D. Radhakrishnan Pillai v The Travancore Devaswom Board*¹¹. The University and Dr.

⁷University of Kerala, Notification No. Ad. H/5091/2011, dated 11.06.2011.

⁸Dr. Merlin J.N. v University of Kerala, W.P.(C) No. 20055 of 2012 and W.P.(C) No. 2951 of 2013.

⁹Common judgment in W.P.(C) No. 20055 & 21902 of 2012 and W.P.(C) No. 2951 of 2013, dated 01.02.2017.

¹⁰P. Suseela v. University Grants Commission, 2015 (8) SCC 129.

H ¹¹Dr. D. Radhakrishnan Pillai v The Travancore Devaswom Board, 2016 (2) KLT 245

Jayakumar appealed to the Division Bench which affirmed the ruling of the learned Single Judge. The Division Bench noticed a subsequent judgment of this Court in *State of Madhya Pradesh. v. Manoj Sharma*¹² and the (then) latest amendment to the regulations (hereinafter, “2016 UGCR/fourth amendment”) which sought to somewhat relieve the rigors of the 2009/10 UGCR and enable those awarded Ph.D. degrees prior to the cut-off date of 11.07.2009 to also be considered for appointment as Lecturers. The Division Bench held that the 2016 UGCR was applicable only prospectively, and hence denied the benefit to Dr Jayakumar.

9. Before this court, it was argued on behalf of Dr. Jayakumar as well as the University that the former’s appointment was in accordance with the extant law and regulations. It was emphasized that the University adopted the 2009/10 UGCR only with effect from 23.11.2013. In these circumstances, when the advertisement was published, as also when Dr. Jayakumar was appointed in August 2012, he was fully qualified and entitled to be appointed as Lecturer. It was further contended that prior to Dr. Jayakumar’s appointment, the UGC had, through its resolution dated 12.08.2010 passed in its 471st meeting, clarified that 2009 Ph.D. Regulations and 2009 UGCR were prospective in nature, and not retrospective:

“[A]ll candidates who had either obtained Ph.D. on or before 31.12.2009 and such candidates who had registered themselves for Ph.D. degree on or before 31.12.2009 were exempt from the requirement of NET”.¹³

10. It was argued on behalf of the appellant that the fourth amendment placed the matter beyond any doubt because it rendered eligible candidates who had acquired their Ph.D. degree before 11.07.2009. In this regard, great emphasis was placed on the following:

“The proviso prescribed under Regulation 3.3.1, 4.4.1, 4.4.2, 4.4.2.2, 4.4.2.3, 4.5.3 and 4.6.3 in 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) (3th Amendment) Regulations, 2016 regarding

¹² *State of Madhya Pradesh. v. Manoj Sharma*, 2018 (3) SCC 329.

¹³ Minutes of the 471st Meeting of the University Grants Commission, Item 2.08 (iii), dated 12.08.2010.

- A *exemption to the candidates registered for Ph.D. programme prior to July 11, 2009 shall stand amended and be read as under:-*
- B *Provided further, the award of degree to candidates registered for the M.Phil/Ph.D. programme prior to July 11, 2009, shall be governed by the provisions of the then existing Ordinances/ Bylaws/Regulations of the Institutions awarding the degree and the Ph.D. candidates shall be exempted from the requirement of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions subject to the fulfilment of the following conditions:-*
- C *a) Ph.D. degree of the candidate awarded in regular mode only;*
- D *b) Evaluation of the Ph.D. thesis by at least two external examiners;*
- E *c) Open Ph.D. viva voce of the candidate had been conducted;*
- F *d) Candidate has published two research papers from his/her Ph.D. work out of which at least one must be in a refereed journal;*
- G *e) Candidate has made at least two presentations in conferences/seminars, based on his/her Ph.D. work.*
- H *(a) to (e) as above are to be certified by the Vice-Chancellor/ Pro-Vice-Chancellor/Dean (Academic Affairs)/Dean (University instructions). ”¹⁴*
- F 11. It was argued on behalf of Dr. Merlin that Dr. Jayakumar was ineligible and could not have been granted exemption from the NET qualification which was essential under the prevalent 2009/10 UGCR. It was highlighted that the 2009 Ph.D. Regulations ushered a new rigorous academic framework for the award of Ph.D. degrees. If one kept this in mind, the stipulation that only those candidates who acquired their Ph.D. in terms of the 2009/10 UGCR were eligible for exemption from taking the NET – such a stipulation was absolute. In other words, candidates who had acquired their Ph.D. in terms of the 2009/10 UGCR were the
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¹⁴ Reg. 3, 2016 UGCR.

only class of candidates who were exempt from having to qualify the NET. Since Dr. Jayakumar did not fall in that class, but had obtained his Ph.D. much earlier, the exemption did not apply to him. To be eligible, he had to have taken the NET. It was submitted that Dr. Merlin on the other hand, was better qualified because she had passed the NET in 1998 and had later obtained a Ph.D. Further, she was working in the University of Kerala as a contractual teacher since 2001. Despite these factors, the University proceeded to appoint Dr. Jayakumar and ignored her candidature. As between the two of them, she alone was qualified, whereas Dr. Jayakumar was not. It was submitted that the appellant Dr. Jayakumar could not rely upon the resolution of UGC taken in its 471st meeting.

12. Learned senior counsel for Dr. Merlin urged that the UGC's resolution was contrary to the express terms of the 2010 UGCR. This became the subject matter of controversy since the Central Government had expressed its disagreement with the resolution, in a letter dated 23.11.2010. This controversy was discussed in the decision of this court in *P. Suseela (supra)*. Learned counsel relied upon that judgment to urge that this court had categorically ruled that UGC's resolution take in its 471st meeting could not provide any relief to candidates similarly situated as Dr. Jayakumar as it was at odds with the Central Government's directives which had to prevail in terms of the parent enactment.¹⁵ Learned senior counsel also relied upon the subsequent judgment in *Manoj Sharma (supra)*. It was further argued the 2016 UGCR were expressly prospective in nature - those possessing Ph.D. qualifications prior to the cut-off date of 11.07.2009 but seeking to benefit from the 2016 UGCR had to fulfil specific conditions (as mentioned above) which were absent hitherto. In the same vein, it was highlighted that though UGC has the power to frame regulations with retrospective effect (by Section 26 (3) of the UGC Act) the 2016 UGCR is expressly prospective and that this court should not, by interpretation, give it retrospective effect, as is being sought by the appellants. In these circumstances, there could be no question of Dr. Jayakumar seeking to benefit from the 2016 UGCR which came into force *after* his appointment. Having regard to these facts, it was urged that this court should desist from interfering with the concurrent findings of the High Court.

¹⁵ University Grants Commission Act, 1956 (hereinafter, "UGC Act").

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A Analysis and Findings

13. From the narration of facts, it is evident that for long, whenever the UGC introduced regulations pertaining to qualifications for university teaching staff, exemptions were provided for Ph. D and M. Phil. holders from the requirement of qualifying in the NET. This is evident from the successive changes which UGC introduced in the relevant regulations dealing with eligibility and qualifications for appointment as Assistant Professors, Associate Professors, etc. in 1993, 2000, 2002 and 2006. The 2009 Ph.D. Regulations were the first time that the pedagogic content of curriculum and manner in which evaluation of thesis/viva voce, etc. were spelt out. Building on this, the 2009/10 UGCR dealt with the qualifications for appointment of teaching staff in universities, and made a break with the past inasmuch as only those who had earned their Ph.D. in terms of the 2009 Ph.D. Regulations or were to earn them under that regime were entitled to the exemption from taking the NET.
14. This meant that a large group of Ph.D. holders (such as Dr. Jayakumar in this case) who had been awarded their doctoral degrees prior to 11.07.2009, i.e., the cut-off date under the 2009 UGCR, suddenly became disentitled to claim exemption and were *per force* made to appear and qualify in the NET. The UGC became aware of this situation and by two resolutions dated 12.08.2010 and 27.09.2010, opined that since the regulations are prospective in nature, all candidates having M. Phil. degree on or before 10.07.2009 and all persons who obtained the Ph.D. degree on or before 31.12.2009 and had registered themselves for the Ph.D. before this date, but would be awarded such degree subsequently, shall remain exempted from the requirement of NET for the purpose of appointment as Lecturer/Assistant Professor. However, as the facts discussed in *P. Suseela (supra)* reveal – the Central Government did not agree with the opinion of the UGC. Some correspondence took place between the two authorities i.e., the UGC and the Central Government. It was in the background of these facts that the petitioner in *P. Suseela (supra)* had approached the Allahabad High Court (as did some other candidates in other High Courts). The differing decisions of the various High Courts led to appeals before this court by Special Leave. In the batch of decided by *P. Suseela (supra)*, the question of application of exemption from NET for candidates who obtained Ph.D. under the old regime (i.e., prior to the coming into the force of the 2009 Ph.D. Regulations) was considered – specially whether the distinction between
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pre and post 2009/10 UGCR Ph.D. holders amounted to an impermissible classification, whereby one set (pre-2009) was denied exemption which the other set (post 2009) was entitled to.

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15. This court in *P. Suseela (supra)* ruled that since the Central Government was the final authority under the UGC Act, it had the final say with regard to how the 2009/10 UGCR were going to operate. It was held that the regulations had to be construed in such a manner that only those acquiring their Ph.D. degree or after 11.07.2009 in terms of the 2009 Ph.D. Regulations were entitled to the exemption.

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16. The facts of this case would reveal that the selection process was completed in 2012. There is no doubt that at that stage, the 2009 Ph.D. Regulations and 2009/10 UGCR were in force. Yet the University appointed Dr. Jayakumar by applying the existing standards as understood by it. According to the University, the 2009/10 UGCR was incorporated in its statute only in 2013. In the opinion of this court, that detail is irrelevant. What is undeniable is that like Dr. Jayakumar, there are perhaps hundreds of other Ph.D. candidates who had secured their degrees prior to the 2009 Ph.D. Regulations and who were, till the 2009/10 UGCR were brought into force, entitled to claim exemption from NET in every selection for any teaching vacancy in any university in India. This state of affairs led the UGC to issue clarifications, which the Central Government did not agree to. The appellant Dr. Jayakumar fell within that category of Ph.D. holders for whom the UGC intended to soften the rigors of the 2009/10 UGCR. However, lack of approval by the Central Government led to litigation which culminated in *P. Suseela (supra)*.

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17. *P. Suseela (supra)* appears facially, to adversely clinch the issue with respect to pre-2009 Ph.D. holders. The UGC perhaps realized the hardship which they had to endure (with many of them even appointed in various universities on account of the resolution adopted in UGC's 471st meeting on 12.08.2010), and therefore amended the regulations once more (2016 UGCR), which read as follows:

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"The proviso prescribed under Regulation 3.3. J, 4.4. J, 4.4.2, 4.4.2.2, 4.4.2.3, 4.5.3 and 4.6.3 in 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) (3th Amendment) Regulations, 2016 regarding

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- A exemption to the candidates registered for Ph.D. programme prior to July 11, 2009 shall stand amended and be read as under:-
- Provided further, the award of degree to candidates registered for the M.Phil. / Ph.D. programme prior to July 11, 2009,
- B shall be governed by the provisions of the then existing Ordinances/Bylaws/Regulations of the Institutions awarding the degree and the Ph.D. candidates shall be exempted from the requirement of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities / Colleges / institutions subject to the fulfilment of the following conditions... ¹⁶ (emphasis supplied)
- C 18. The intention of the UGC to protect the pre-2009 Ph.D. holders, who may have been appointed in various universities and taught for many years, is evidently clear in the language adopted. To make the intention even clearer, the 2018 UGCR, published on 18.07.2018, bifurcated the pre- and post-2009 Ph.D. holders into two groups, and allowed both exemption from taking the NET, as follows:
- “The National Eligibility Test (NET) or an accredited test (State Level Eligibility Test SLET/SET) shall remain the minimum eligibility for appointment of Assistant Professor and equivalent positions wherever provided in these Regulations. Further, SLET/SET shall be valid as the minimum eligibility for direct recruitment to Universities/Colleges/Institutions in the respective state only:
- F Provided that candidates who have been awarded a Ph.D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of M.Phil./ Ph.D. Degree) Regulation, 2009, or the University Grants Commission (Minimum Standards and Procedure for Award of M.Phil./Ph.D. Degree) Regulation, 2016, and their subsequent amendments from time to time, as the case may be, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or any equivalent position in any University, College or Institution.
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- H ¹⁶ Reg. 3, 2016 UGCR.

Provided further that the award of degree to candidates registered for the M.Phil. / Ph.D. programme prior to July 11, 2009, shall be governed by the provisions of the then existing Ordinances / Bye-laws / Regulations of the Institutions awarding the degree. All such Ph.D. candidates shall be exempted from the requirement of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions subject to the fulfillment of the following conditions... ”¹⁷

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(emphasis supplied)

19. This court did not have the benefit of examining these amendments to the regulations in *P. Suseela (supra)* or *Manoj Sharma (supra)*. To construe them as applying only prospectively, would give rise to an absurdity, and defeat the purpose for which the amendment was promulgated. The manner of interpretation of amendments, where the language adopted gives clear inference of retrospective application, was determined by this court in *Rafiquennessa v. Lal Bahadur Chetri (Dead) Through His Representatives and Ors.*, which pertained to the bar on eviction of tenants brought about retrospectively by an amendment:

“In order to make the statement of the law relating to the relevant rule of construction which has to be adopted in dealing with the effect of statutory provisions in this connection, we ought to add that retrospective operation of a statutory provision can be inferred even in cases where such retroactive operation appears to be clearly implicit in the provision construed in the context where it occurs. In other words, a statutory provision is held to be retroactive either when it is so declared by express terms, or the intention to make it retroactive clearly follows from the relevant words and the context in which they occur.”¹⁸

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This interpretation has withstood the test of time, and was upheld in the decision of *Darshan Singh vs. Ram Pal Singh*¹⁹ which succinctly stated:

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¹⁷ Reg. 3.3(I), 2018 UGCR.

¹⁸ *Rafiquennessa v. Lal Bahadur Chetri (Dead) Through His Representatives and Ors.*, (1964) 6 SCR 876, para 9.

¹⁹ *Darshan Singh vs. Ram Pal Singh & Ors.*, 1990 (Supp) 3 SCR 212, para 12.

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- A “Courts will construe a provision as conferring power to act retroactively when clear words are used.”

20. Further, in *Shyam Sunder v. Ram Kumar*²⁰, a Constitution Bench of this court discussed the scope and ambit of a declaratory law and observed:

- B “*Lastly, it was contended on behalf of the Appellants that the amending Act whereby new Section 15 of the Act has been substituted is declaratory and, therefore, has retroactive operation. Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or to explain a previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed, invariably it has been held to be retrospective. Mere absence of use of the word ‘declaration’ in an Act explaining what was the law before may not appear to be a declaratory Act but if the court finds an Act as declaratory or explanatory, it has to be construed as retrospective. Conversely where a statute uses the word ‘declaratory’, the words so used may not be sufficient to hold that the statute is a declaratory Act as words may be used in order to bring into effect new law.*”

21. The respondents herein had submitted that it was not the UGC’s intention to give retrospective effect to the 2016 UGCR, even though

- F the UGC had the power to do so under Section 26(3) of the UGC Act. It was additionally urged that in such circumstances, the court should not interpret the amendments so as to confer such benefits retrospectively, especially to pending proceedings.

- G 22. This court is unpersuaded by such contentions. In situations such as these, a retrospective restoration of rights which had earlier been taken away, will certainly affect pending proceedings - however, it is the duty of the courts, whether trying original proceedings or hearing an appeal, to take notice of the change in law affecting pending actions and to give effect to the same.²¹ If on such consideration, it is held by

²⁰ *Shyam Sunder v. Ram Kumar* (2001) 8 SCC 24, para 39.

H ²¹ G.P. Singh, *Principles of Statutory Interpretation* (14th Edn.), Pg. 631.

the court that an amendment speaks a language which expressly or by clear intendment takes in even pending matters, the court of first instance as well as the court of appeal must have regard to the intention so expressed, and the court of appeal may give effect to such a law even after the judgment of the court of first instance.²²

23. When an enactment or an amendment is declaratory, curative or *clarificatory*, impelled by a felt need to make clear what was always intended, such amendment is usually *meant to operate from an antecedent date, or to cover antecedent events*. This position was clarified in *Commissioner of Income Tax, Bhopal vs. Shelly Products & Ors.*²³ where this court, while interpreting an amendment, held that:

"It seeks to clarify the law so as to remove doubts leading to the courts giving conflicting decisions, and in several cases directing the revenue to refund the entire amount of income-tax paid by the assessee where the revenue was not in a position to frame a fresh assessment. Being clarificatory in nature it must be held to be retrospective, in the facts and circumstances of the case. It is well settled that the legislature may pass a declaratory Act to set aside what the legislature deems to have been a judicial error in the interpretation of statute. It only seeks to clear a meaning of a provision of the principal Act and make explicit that which was already implicit."

24. Likewise, in *Zile Singh v State of Haryana*²⁴, this court, quoted from G.P. Singh's *Principles of Statutory Interpretation* (9th Edn.), and applied the relevant rule of construction:

"If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended...An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was

²² *Noorunissa Begum v. Brij Kishore Sanghi*, (2015) 17 SCC 128, para 28.

²³ *Commissioner of Income Tax, Bhopal vs. Shelly Products*, (2003) 5 SCC 461, para 38.

²⁴ *Zile Singh v State of Haryana*, 2004 (8) SCC 1, para 14.

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- A *already implicit. A clarificatory amendment of this nature will have retrospective effect.”*
- B 25. Another argument raised by the respondent was that this court’s decision in *Manoj Sharma (supra)* squarely held against the appellants. We disagree. In *Manoj Sharma (supra)*, the respondents had obtained M.Phil. degrees under distance education programs, which was de-recognized by the 2009 Ph.D. Regulations. The Madhya Pradesh High Court held²⁵ that such de-recognition was prospective in nature, and their M.Phil. degrees were not rendered ineffective, which was upheld by this court.²⁶ As far as the issue of application of 2009 UGCR was concerned, the same was restricted to only MPhil degree holders, wherein the 2009 UGCR removed the NET exemption granted for M.Phil. degree holders, and retained it only for Ph.D. holders in accordance with 2009 Ph.D. Regulations. Again, this court was not afforded the opportunity to analyse the 2016 or 2018 UGCR, as those were not raised before it (the respondents were unrepresented before this court). Thus, we find limited applicability of *Manoj Sharma (supra)* to the present case.

- C 26. The logic pervading all the versions of the UGCR from 1993-2018 (as discussed above) to exempt M. Phil./Ph.D. holders from qualifying in the NET was perhaps premised on the understanding that such a doctorate in one’s chosen subject, involving years of study, would render a greater understanding of the subject compared to most other candidates taking the NET who have only obtained a Master’s degree. Such qualification (M. Phil. or Ph. D.) is undoubtedly awarded for a proven *proficiency* of the candidate in the concerned subject or discipline. This is apparent from the minimum qualification requirements of different positions as well – for e.g., while a Master’s degree is sufficient for application to the post of Assistant Professor, a Ph.D. is required for applying to the post of Associate Professor onwards.²⁷ To interpret the 2018 UGCR prospectively would imply that a pre-2009 Ph.D. holder’s appointment would be rendered illegal, and after having taught for several years, he/she would lose his/her seniority and all accrued benefits and
- D G would now have to take the NET in order to teach – which is clearly

²⁵ *Manoj Sharma v State of Madhya Pradesh*, W.P. (C) No. 3290 of 2012, dated 29.08.2012 [MP HC].

²⁶ *State of Madhya Pradesh v. Manoj Sharma*, 2018 (3) SCC 329, para 12.

²⁷ See Reg. 4.1, 2018 UGCR, applicable to all disciplines of Arts, Commerce, Humanities,

H Education, Law, Social Sciences, Sciences, Languages, Library Science, Physical Education, and Journalism & Mass Communication.

unwarranted. This court therefore, holds that Dr. Jayakumar's A appointment is protected by the 2016 UGCR, which is applicable retrospectively.

27. Thus, the appeals are allowed. The impugned judgment is set aside, and all applications are disposed of accordingly. There will be no order as to costs. B

Ankit Gyan
(Assisted by : Rahul Rathi, LCRA)

Appeals allowed.