

A GAMBHIRDAN K GADHVI

v.

THE STATE OF GUJARAT & ORS.

(Writ Petition (Civil) No. 1525 of 2019)

B MARCH 03, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

- Universities: Appointment of Vice Chancellor – Writ of quo warranto – Writ petition alleging that eligibility criteria was diluted and UGC Regulations, 2018 were violated – Held: Being a subordinate legislation, UGC Regulations becomes part of the Act and in case of any conflict between State legislation and Central legislation, Central legislation shall prevail by applying the rule/principle of repugnancy as enunciated in Art.254 of the Constitution as the subject ‘education’ is in the concurrent list – By adopting the scheme and having accepted 80% of the maintenance expenditure from the central government and when respondent No.4 is paid a fixed pay of Rs.75,000/- along with a special allowance of Rs.5,000/- per month, the State and the Universities thereunder are bound by the UGC Regulations, including the UGC Regulations, 2018 – Respondent No.4 has been appointed by a search committee, not constituted as per the UGC Regulations, 2018 and also does not fulfil the eligibility criteria as per the UGC Regulations, 2018, namely, having ten years of teaching work experience as a professor in the university system – Appointment of respondent No.4 as a Vice Chancellor of respondent No.2-University, is contrary to the UGC provisions, namely, UGC Regulations, 2018 – Writ of quo warranto issued for quashing and setting aside the appointment of respondent No.4 as the Vice Chancellor of SP University – UGC Regulations, 2010/2018 – Regn. 7.3.0 – Writ of quo warranto – Constitution of India – Art.254.*
- G Universities: Universities are autonomous and the Vice Chancellor is the leader of a higher education institution – As per the norm, he/she should be an eminent academician, excellent administrator and also someone who has a high moral stature – The said reports of the Radhakrishnan Commission, Kothari Commission, Gnanam Committee and Ramlal Parikh Committee have*
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highlighted the importance of the role of Vice-Chancellor in maintaining the quality and relevance of universities, in addition to its growth and development, keeping in view, the much needed changes from time to time – These committees have also made suggestions and recommendations for identifying the right person for the said position – A Vice Chancellor is the king pin of a University's system and a keeper of the University's conscience – Further, the Search/Selection Committee plays a vital and significant role in the selection of the Vice Chancellor; yet the selected Vice Chancellor's performance in the universities vary from university to university – Therefore, the members of the Search Committee, who are given the privilege and honour of selecting and suggesting names for the appointment of Vice Chancellor are directly or indirectly responsible for the achievement of the University.

Sardar Patel University Act, 1955 – ss. 9, 10 – Governor of Gujarat is the Chancellor of the University and he shall, by virtue of his office, be the head of the University and the President of the Senate – As the head of the University, his advice is binding upon the University – Universities.

Allowing the Writ Petition, the Court

HELD: 1.1 The jurisdiction of the High Court to issue a writ of quo warranto is a limited one, which can only be issued when a person holding public office does not fulfil the eligibility criteria prescribed to be appointed to such an office or when the appointment is contrary to the statutory rules. [Para 9.1][423-H; 424-A]

Rajesh Awasthi v. Nand Lal Jaiswal and Ors., (2013) 1 SCC 501 : [2012] 10 SCR 883; Retd. Armed Forces Medical Association and Ors. v. Union of India & Ors., (2006) 11 SCC 731 : 2006 (10) SCALE 224 – relied on.

1.2 The UGC Act, 1956 was enacted to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission. Section 12 deals with “Functions of the Commission”, while Section 14 speaks of “Consequences of failure of Universities to comply

- A with recommendations of the Commission". Section 26 deals with "Power to make regulations". As per Section 28, the rules and regulations framed under the UGC Act are required to be laid before each House of the Parliament and when both the Houses agree then rules and regulations can be given effect with such modification as may be made by the Parliament. Therefore, any regulation enacted in exercise of powers under Section 26 can be said to be subordinate legislation. [Para 11.2][424-E-G]
2. The Government of India, Ministry of Human Resource Development Department of Higher Education, New Delhi by Letter No.132/2006 U.II/U.I(i) dated 31.12.2008 communicated to the Secretary, University Grants Commission, New Delhi the scheme of revision of pay of teachers and equivalent cadres in universities and colleges following the revision of pay scales of the Central Government employees on the recommendations of the 6th Central Pay Commission. By the said letter, the Government of India directed that there shall be only three designations in respect of teachers in the universities and colleges, namely, Assistant Professors, Associate Professors and Professors. In the said letter revised pay scales, service conditions and Career Advancement Scheme for teachers and equivalent positions including the post of Assistant Professors/Associate Professors/Professors in universities and colleges were intimated. Pay scales of ProVice Chancellor/Vice Chancellor were also mentioned therein. It was intimated that the said Scheme may be extended to the universities, colleges and other higher educational institutions coming under the purview of the State Legislature, provided the State Governments wish to adopt and implement the Scheme subject to the terms and conditions mentioned therein. In view of the aforesaid Letter dated 31.12.2008 issued by the Government of India and in exercise of the powers conferred under clauses (e) and (g) of sub-section (1) of Section 26 of the UGC Act, 1956, UGC enacted the Regulations, 2010 in supersession of the UGC Regulations, 2000. Regulation 7.3.0 deals with the post of Vice Chancellor. UGC Regulations, 2010, inter alia, prescribes in Regulation 7.3.0 that a person shall have ten years of teaching work experience as a professor in a

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university system. It also provides for constitution of a search committee consisting of a nominee of the Visitor/Chancellor, a nominee of the Chairman of the UGC, a nominee of the Syndicate/Executive Council of the University and the search committee has to recommend the names of the successful candidates. [Paras 11.3 - 11.3.3][425-A-G; 426-G-H]

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3.1 Prior to enactment of UGC Regulations, 2010, the Union Ministry of Human Resource Development laid down a scheme of revision of pay of teachers and equivalent cadres in the Universities following the 6th Central Pay Commission. The Scheme provides a fixed pay of Rs.75,000/- along with a special allowance of Rs.5,000/- per month to the Vice Chancellor. Para 8(p)(v) of the said scheme provides that it is extended to Universities, Colleges and other higher educational institutions coming under the purview of the State Legislature provided the State Governments wish to adopt and implement the scheme with certain conditions, inter alia, financial assistance from the Central Government to the extent of 80% of the maintenance expenditure and remaining 20% shall be met by the State Government. It further provides that payment of Central assistance for implementing the scheme is subject to the condition that the entire scheme of revision of pay scales together with all the conditions to be laid down by the UGC by way of regulations and other guidelines shall be implemented by the State Governments and the Universities thereunder without any modification. [Para 11.4][427-A-D]

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3.2 In the present case, State of Gujarat has adopted the said Scheme dated 31.12.2008 by a Resolution dated 11.11.2009 with effect from 01.01.2006 subject to the conditions mentioned in the said resolution. Even in the said resolution, condition No.13 provides that the State Government will publish the educational qualifications as per the UGC instructions published from time to time and quality yardstick, teaching work days, norms, instructions, resolutions will have to be implemented. It is not in dispute that the SP University is receiving Central financial assistance under the Scheme and it is included in the State

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- A universities receiving Central financial assistance as per Section 12(b) of the UGC Act, 1956. Therefore, having adopted the UGC Scheme and implemented the same and getting Central financial assistance to the extent of 80% of the maintenance expenditure, the State Government and the SP University are bound by the UGC Regulations, 2010. The UGC Regulations, 2010 are superseded by the UGC Regulations, 2018. However, the eligibility criteria for the post of Vice Chancellor and the constitution of the search committee for appointment of a Vice Chancellor remains the same. Therefore, the State of Gujarat and the universities thereunder including the SP University are bound to follow UGC Regulations, 2010 and UGC Regulations, 2018. [Para 11.4][427-D-G]
 - 4. Respondent No.4 was appointed as a Vice Chancellor of the SP University under the SPU Act, 1955. Section 10 of the said Act relates to the post of Vice Chancellor. As per Section 10 of the Act, 1955 the search committee shall consist of two members (not being persons connected with the respondent - University or with any affiliated college or recognised institution) out of whom, one shall be a person nominated in the manner prescribed by Statutes by the Syndicate and the Academic Council jointly and the other shall be a person nominated in the manner prescribed by Statutes by the Vice Chancellor of all the Universities established by law in the State of Gujarat and the third member to be nominated by the Chancellor. Section 10 of the SPU Act does not provide any qualification whatsoever for appointment to the post of Vice Chancellor. Even the eligibility criteria to be prescribed is left to the Search Committee. There are no guidelines whatsoever on the eligibility criteria to be prescribed by the Search Committee. On the other hand, the UGC Regulations, 2010/2018 specifically prescribes the qualification / eligibility criteria for the post of Vice Chancellor. It also provides for the constitution of the Search Committee. As observed hereinabove as per Regulation 7.3.0 a person shall have ten years of teaching work experience as a professor in the university system and it also provides for constitution of a search committee consisting of a nominee of the Visitor/Chancellor, a
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nominee of the Chairman of the UGC, a nominee of the Syndicate/ Executive Council of the University. But respondent No.4 did not/ does not fulfil the eligibility criteria prescribed under the UGC Regulations, 2010/2018. He was/is not having ten years of teaching work experience as a professor in the university system. Moreover, his name was not recommended by the legally constituted search committee, constituted as per the UGC Regulations, 2010/2018. Also, the search committee has prescribed the eligibility criteria for the post of Vice Chancellor by diluting the eligibility criteria laid down in the UGC Regulations, 2010/2018. Thus, the provisions of the SPU Act, 1955/provisions under the State legislation are just contrary to the UGC Regulations, 2010/2018, which, as observed hereinabove, are binding on the State Government and the universities thereunder. Even the State Government has not bothered to amend the State legislation – to put at par with the UGC Regulations, 2010/2018 and has continued the appointment in the universities *dehors* the UGC Regulations. [Paras 12 – 12.2][427-H; 429-B-H; 430-A]

5. By adopting the Scheme and having accepted 80% of the maintenance expenditure from the Central government and when respondent No.4 is paid a fixed pay of Rs.75,000/- along with a special allowance of Rs.5,000/- per month, which is prescribed as per the Scheme of 2008, the State and the universities thereunder are bound by the UGC Regulations, including the UGC Regulations, 2018. The appointment of respondent No.4 is even otherwise not as per the eligibility criteria prescribed by the Search Committee. In fact, in the instant case, H.E. – Governor of Gujarat who is also the Chancellor of all the Universities in the said State had through his Principal Secretary directed that the communication from the Secretary, University Grants Commission, Government of India, New Delhi dated 11th August, 2014 be complied and appropriate steps be taken in that regard. This Court has referred to the aforesaid letter dated 30th August, 2014. The letter of the Secretary of the UGC dated 11th August, 2014 to H.E. – Governor of Gujarat informing about the regulations titled “Minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges

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- A and measures for the maintenance of standards in higher education, 2010” has also been extracted above in the said letter. It has been clearly stated that the UGC has prescribed minimum qualifications for the appointment of a Vice-Chancellor and therefore, such an appointment must be in accordance with the provisions laid down in the aforementioned regulations of the UGC. It is clear that the respondent-state of Gujarat has failed to take note of the communication from the UGC and instead the respondent-University has left to the sweet will of the search committee to prescribe eligibility criteria for the appointment of the Vice-Chancellor of the University. The eligibility criteria when once fixed by the UGC under its regulations would apply to all the universities which are aided by the UGC to be bound by the said regulations even in the absence of the same being incorporated under the respective universities Act of the respective States. Therefore, when the appointment of respondent No.4 is found to be contrary to the UGC Regulations, 2018 and the UGC Regulations are having the statutory force, this is a fit case to issue a writ of *quo warranto* and to quash and set aside the appointment of respondent No.4 as the Vice Chancellor of the SP University. [Para 15][434-H; 435-A-H; 436-A-C]
- E 6. It cannot be disputed that the UGC Regulations are enacted by the UGC in exercise of powers under Section 26(1)(e) and 26(1)(g) of the UGC Act, 1956. Even as per the UGC Act every rule and regulation made under the said Act, shall be laid before each House of the Parliament. Therefore, being a subordinate legislation, UGC Regulations becomes part of the Act. In case of any conflict between State legislation and Central legislation, Central legislation shall prevail by applying the rule/principle of repugnancy as enunciated in Article 254 of the Constitution as the subject ‘education’ is in the Concurrent List (List III) of the Seventh Schedule of the Constitution. Therefore, any appointment as a Vice Chancellor contrary to the provisions of the UGC Regulations can be said to be in violation of the statutory provisions, warranting a writ of *quo warranto*. [Para 16][436-C-E]

Annamalai University represented by Registrar v. Secretary to Government, Information and Tourism Department and Ors, (2009) 4 SCC 590 : [2009] 3 SCR 355; Kalyani Mathivanan v. K.V. Jeyaraj & Ors, (2015) 6 SCC 363 : [2015] 3 SCR 467 – referred to.

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<u>Case Law Reference</u>	B
[2009] 3 SCR 355	referred to
[2015] 3 SCR 467	referred to
[2012] 10 SCR 883	relied on

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CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 1525 of 2019.

[UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA]

I.H. Syed, Sr. Adv., Varinder Kumar Sharma, Shantanu Sharma, Prithu Parimal, Ms. Parul Sharma, Advs. for the petitioner.

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Vinay Navare, Sr. Adv., Ravindra Sadanand Chingale, Manoj Ranjan Sinha, Rameshwar Prasad Goyal, Gaurav Agrawal, Ms. Ruchi Kohli, Ms. Srishti Mishra, Ms. Deepanwita Priyanka, Advs. for the Respondents.

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The Judgment of the Court was delivered by

M. R. SHAH, J.

1. By this writ petition under Article 32 of the Constitution of India the petitioner has prayed for a writ of quo warranto challenging the appointment of respondent No.4 as a Vice Chancellor of respondent No.2 – Sardar Patel University (hereinafter referred to as “SP University”) and to quash and set aside the notification dated 29.08.2019, bearing No.GH/SH/76/SPY/122010/2626/ KH-2 passed by respondent No.1 – State of Gujarat, appointing respondent No.4 as the Vice Chancellor of the respondent - SP University. The petitioner has also prayed for any other appropriate writ, direction and order directing respondent authorities to recover from respondent No.4 all consequential benefits not limited to pay, with retrospective effect, that have been extended to him by virtue of his illegal appointment as Vice Chancellor of the SP University.

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- A 2. It is the case on behalf of the petitioner that the University Grants Commission (hereinafter referred to as the “UGC”) framed UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 (hereinafter referred to as the “UGC Regulations, 2010”) which, inter alia, prescribes in Regulation 7.3.0 that a person shall have ten years of teaching work experience as a professor in the University system. It also provides for constitution of a Search Committee consisting of a nominee of the Visitor/ Chancellor, a nominee of the Chairman of UGC, a nominee of Syndicate/ Executive Council of the University. That the Search Committee has to recommend the names of suitable candidates for appointment as Vice Chancellor of a University.
- B 2.1 That the UGC Regulations, 2010 has been substituted subsequently vide UGC Regulations, 2018 with slight modifications which shall be referred to hereinbelow.
- C 2.2 It is the further case on behalf of the petitioner that the Union Ministry of Human Resource Development laid down a Scheme of revision of pay of teachers and equivalent cadres in the Universities following the 6th Central Pay Commission (hereinafter referred to as the “Scheme”). The Scheme provides a fixed pay of Rs.75,000/- along with a special allowance of Rs.5,000/- per month to the Vice Chancellor. Para 8(p)(v) of the said Scheme provides that it is extended to Universities, Colleges and other higher educational institutions coming under the purview of the State Legislature, provided the State Governments wish to adopt and implement the scheme with certain conditions, inter alia, financial assistance from the Central Government to the extent of 80% of the maintenance expenditure and remaining 20% shall be met by the State Government. Payment of Central assistance for implementing the scheme was subject to the condition that the entire scheme of revision of pay scales together with all the conditions to be laid down by the UGC by way of regulations and other guidelines shall be implemented by the State Governments and the Universities thereunder without any modification. According to the petitioner, the State of Gujarat passed a Resolution dated 11.11.2009 adopting the Scheme. Since the Scheme has been adopted, all regulations framed by the UGC are binding upon the State of Gujarat including the respondent - SP University. That on adoption of the Scheme by the State Government as well as the SP
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University, the said University is receiving Central financial assistance under the Scheme and is included in the list of State universities receiving Central financial assistance as per Section 12(b) of the UGC Act, 1956. It is the case on behalf of the petitioner that since the Scheme has been adopted, all regulations framed by the UGC are binding upon the State of Gujarat including the SP University.

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2.3 The UGC addressed a communication dated 11.08.2014 to H.E. - the Governor of Gujarat seeking compliance with the UGC Regulations, 2010 with respect to appointment of Vice Chancellors in the State of Gujarat. That H.E. - the Governor of Gujarat communicated to the Government of Gujarat vide communication dated 30.08.2014 to comply with the UGC Regulations, 2010 with respect to the appointment of Vice Chancellors. At this stage, it is required to be noted that H.E. – Governor of Gujarat is the ex-officio Chancellor of all the Universities in the State including the SP University.

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2.4 It is the case on behalf of the petitioner that ignoring Regulation 7.3.0 of the UGC Regulations, a Search Committee was constituted under Section 10(2)(b) of the Sardar Patel University Act, 1955 (hereinafter referred to as the “SPU Act”) on 29.07.2016 with no nominee of the Chairman of the UGC. According to the petitioner, even as per Section 10(2)(b), the Search Committee has only the authority to recommend a panel of suitable candidates. The Search Committee, in the present case, exceeded its jurisdiction and prescribed its own eligibility criteria for the post of Vice Chancellor by diluting the eligibility criteria laid down in the UGC Regulations, 2010. That respondent No.2 issued an advertisement, inviting applications for the post of Vice Chancellor, while mentioning the aforesaid eligibility criteria prescribed by the Search Committee. Thereafter the State issued a notification appointing respondent No.4 as the Vice Chancellor of the SP University for his first term of three years. According to the petitioner respondent No.4 was not having teaching work experience as a professor for a period of ten years, which is mandatory as per the UGC Regulations, 2010. That respondent No.4 herein was promoted to the post of Professor with effect from 08.03.2008. According to the petitioner though respondent No.4 lacked the eligibility, he was appointed as the Vice Chancellor at the fixed pay of Rs.75,000/- which is as per the revised Scheme – Appendix I dated 31.08.2008.

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- A 2.5 That the petitioner challenged the said appointment of respondent No.4 before the High Court by way of filing Special Civil Application (SCA) No.18922 of 2017. By judgment and order dated 05.07.2018 the Division Bench of the High Court dismissed the said SCA by observing and holding that the UGC Regulations had not been adopted by the State of Gujarat and thus were not binding upon respondent University. While dismissing the SCA and upholding the appointment of respondent No.4 to the post of Vice Chancellor of the University, the Division Bench of the High Court referred to Section 10 of the SPU Act, which does not provide for any qualification whatsoever for appointment to the post of Vice Chancellor. The Division Bench of the
- B C High Court observed that such a position would leave room for a lot of arbitrariness in the matter of selection of persons for appointment as Vice Chancellor. The Division Bench of the High Court observed that though it is true that UGC Regulations provides for certain qualifications, however, the same are not binding unless the State legislation is appropriately amended. That the Division Bench of the High Court also noted the communication dated 11.08.2014 addressed by the UGC to H.E. – Governor of Gujarat. By the said communication it was requested to ensure that all the appointments of Vice Chancellors in the State are made in accordance with the provisions laid down in the UGC Regulations. The said Regulations, inter alia, provide for minimum qualifications for
- E F G the appointment of Vice Chancellor in Regulation 7.3.0. The High Court noted that the Principal Secretary to H.E. – the Chancellor had addressed a communication dated 30.08.2014 to the Principal Secretary, Government of Gujarat, requesting him to take note of the said important communication and take necessary steps at the Government level but the same had been ignored by the State and no steps had been taken pursuant thereto. Therefore, the High Court observed that it is high time the State of Gujarat adopts the UGC Regulations and amends the State legislation appropriately so that no room is left for any manipulation, arbitrariness, nepotism and favouritism. At this stage, it is required to be noted that despite the above observations made in para 24 by the High
- G Court, no further steps have been taken by the State Government to adopt the UGC Regulations and amend the State legislation appropriately.
- H 2.6 Feeling aggrieved and dissatisfied with the judgment and order passed by the High Court dismissing SCA No.18922/2017, upholding the appointment of respondent No.4 to the post of Vice Chancellor of SP University, petitioner preferred a Special Leave Petition (SLP) before

this Court by filing SLP (C) No.21792/2018. The said SLP came up before this Court for final hearing on 30.07.2019. However, by the time the said SLP could be heard, only one month remained in the first term of respondent No.4, therefore, this Court did not interfere with the appointment of respondent No.4 and vide order dated 30.07.2019 disposed of the same; however, this Court specifically observed that all questions of law are left open.

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2.7 That thereafter an advertisement dated 12.06.2019 was published, inviting applications to the post of Vice Chancellor of respondent No.2 – SP University. According to the petitioner again the Search Committee was not constituted as per the UGC Regulations. According to the petitioner in the said advertisement the Search Committee has further diluted the eligibility criteria to suit respondent No.4, in so far as it states that persons who have remained Vice Chancellor for one term are eligible. That thereafter respondent No.4 has been again appointed as the Vice Chancellor of the SP University vide notification dated 29.08.2019 for a further term of three years. It is the case on behalf of the petitioner that impugned notification appointing respondent No.4 as the Vice Chancellor of the SP University is absolutely illegal and in violation of the UGC Regulations, 2010 and the UGC Regulations, 2018. Therefore, the present writ petition has been preferred for a writ of quo warranto challenging the appointment of respondent No.4 as the Vice Chancellor of the SP University.

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2.8 It is the case on behalf of the petitioner that the earlier decision of the Division Bench of the High Court passed in Special Civil Application No.18922/2017 may come in the way of the petitioner and if again the petitioner approaches the High Court by filing a writ petition under Article 226 of the Constitution of India. This is because the petitioner will have to face the decision of the Division Bench of the High Court passed in SCA No.18922/2017 which though challenged before this Court, the same was disposed of without considering the legality and/or correctness of the judgment and order passed by the Division Bench of the High Court in SCA No.18922/2017. This was because by the time the matter was heard, only one month of service of respondent No.4 was left and while disposing of the SLP, it was observed by this Court that all questions of law are left open. Hence, the petitioner has preferred this writ petition under Article 32 of the Constitution of India. Therefore, it is prayed to

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- A entertain the present writ petition and consider the same on merits in the aforesaid facts and circumstances of the case.

3. Shri I.H. Syed learned Senior Advocate appearing on behalf of the petitioner has vehemently submitted that the appointment of respondent No.4 as Vice Chancellor of SP University is absolutely illegal and contrary

- B to the statutory guidelines issued by the UGC.

3.1 It is contended that appointment of respondent No.4 as Vice Chancellor is by a Search Committee not legally constituted as per the UGC guidelines.

- C 3.2 It is submitted by Shri Syed learned Senior Advocate appearing on behalf of the petitioner that at the relevant time when his first appointment was made as Vice Chancellor, he was not fulfilling the eligibility criteria required as per the UGC guidelines as well as even the eligibility criteria fixed by even the Search Committee. It is further submitted that at the relevant time when respondent No.4 was appointed, D he was not having ten years of experience as a professor which was mandatorily required as per the UGC guidelines as well as the eligibility criteria fixed by the Search Committee.

3.3 It is further contended by Shri Syed, learned Senior Advocate appearing on behalf of the petitioner that in the present case the Search

- E Committee constituted was not legal and valid. It is urged that as per the UGC guidelines which the State and universities were bound, one of the members of the Search Committee should be the Chairman of the UGC and/or his nominee. It is submitted that in the present case the Search Committee constituted did not include the Chairman of the UGC and/or his nominee. Hence, the appointment of respondent No.4 by such an F illegal Search Committee is absolutely illegal and contrary to the statutory provisions and, therefore, the same is required to be quashed and set aside by issuing a writ of quo warranto.

3.4 It is further submitted by Shri Syed learned Senior Advocate appearing on behalf of the petitioner that in the present case even the

- G Search Committee prescribed the eligibility criteria for the post of Vice Chancellor. That the SPU Act as such does not provide and/or prescribe any eligibility criteria for the post of Vice Chancellor which as such is a very important and prestigious post so far as the University is concerned. That even the Division Bench of the High Court in the earlier round of H litigation in paragraph 24 of the judgment specifically criticised the State

for not prescribing/providing the minimum qualifications for appointment of Vice Chancellor at par with the UGC Regulations, 2010. It is submitted that Division Bench of the High Court even noted the communication dated 11.08.2014 addressed to H.E. – Governor of Gujarat to ensure that all the appointments of Vice Chancellors in the State are made in accordance with the provisions laid down in the UGC Regulations/guidelines which provide for minimum qualifications for the appointment of Vice Chancellor as per Regulation 7.3.0 of the UGC Regulations, 2010 and also noted that even H.E. – Governor of Gujarat addressed a communication dated 30.08.2014 to the State Government to take note of the communication dated 11.08.2014 and to take necessary steps at the Government level. That thereafter the Division Bench of the High Court has noted that said communications have been ignored by the State government and no steps have been taken pursuant thereto and therefore, it is high time that the State government adopts the UGC Regulations and amends the State legislation appropriately so that no room is left for manipulation, arbitrariness, nepotism and favouritism. That despite the above and even thereafter also no further steps have been taken by the State Government to amend the State legislation.

3.5 It is further submitted by Shri Syed, learned Senior Advocate, appearing on behalf of the petitioner that by adopting the Scheme dated 31.12.2008 vide Resolution dated 11.11.2009, all regulations framed by the UGC shall be binding on the State Government including the SP University. That UGC Regulations, 2010 which, inter alia, prescribe in Regulation 7.3.0 that a person shall have ten years of teaching work experience as a professor in the University system. It also provides for constituting of the search committee, consisting of a nominee of the Visitor/Chancellor, a nominee of the Chairman of the UGC, a nominee of the Syndicate/Executing Council of the University. That such a search committee has to recommend the names of the successful candidates. It is submitted that in the present case respondent No.4 was appointed as Vice Chancellor for the second term even though he did not fulfil the said criteria.

3.6 It is submitted that even respondent No.4 was being paid a fixed pay of Rs.75,000/- along with a special allowance of Rs.5,000/- per month as per the Scheme dated 31.12.2008. It is submitted that once the Scheme dated 31.12.2008 had been adopted by the State government and the SP University and the said University started receiving central

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- A financial assistance and even it is included in the list of State universities receiving financial assistance as per Section 12(b) of the UGC Act, 1956, thereafter it will not be open to the State and/or the University not to follow the UGC Regulations and to continue to appoint the Vice Chancellor illegally and contrary to the provisions of the UGC Regulations, 2010 (now UGC Regulations, 2018).
- B 3.7 It is further submitted by Shri Syed, learned Senior Advocate appearing on behalf of the petitioner that the UGC Regulations, 2010/ 2018 are Central legislation and therefore, the State and/or the State universities are bound by the Central legislation and UGC Regulations,
- C 2010/2018, the subject ‘education’ being in the Concurrent List of the Seventh Schedule of the Constitution. Reliance is placed on the decisions of this Court in the cases of **Annamalai University represented by Registrar Vs. Secretary to Government, Information and Tourism Department and Ors, (2009) 4 SCC 590** and **Kalyani Mathivanan Vs. K.V. Jeyaraj & Ors, (2015) 6 SCC 363**.
- D 3.8 Shri Syed, learned Senior Advocate appearing on behalf of the petitioner has submitted that the post of Vice Chancellor in a University is a very important and prestigious post. Post of Vice Chancellor can be said to be holding of a public office. It is submitted that the future of the students – next generation can be said to be in the hands of the Vice Chancellor who has to run the administration and management and lead the University and guide the students. It is urged that therefore greater care and caution should be taken while making the appointment of the Vice Chancellor of a University and the best talent shall have to be appointed as Vice Chancellor. It is submitted that any appointment as a Vice Chancellor contrary to the statutory rules and regulations warrants issuance of a writ of quo warranto. It is submitted that the Vice Chancellor, not having the requisite qualifications and who does not fulfil the eligibility criteria and/or who is appointed by a search committee which is not legally constituted, cannot hold such an important public office.
- E 3.9 Making the above submissions and relying upon the above decisions, it is prayed to allow the present writ petition and to issue a writ of quo warranto as prayed in the petition.
- F 4. Shri Manoj Ranjan Sinha, learned counsel appearing on behalf of the UGC – respondent No.3 herein has as such supported the petitioner. It is submitted that in a search committee for appointment as

Vice Chancellor, one of the members of the search committee shall be a nominee of the Chairman of the UGC. It is submitted that UGC Regulations, 2010 and 2018 were/are binding to all the States and the Universities.

4.1 It is further submitted that even as per clause 7.3.0 of the UGC Regulations, 2010/2018, the members of the Search cum Selection Committee, can be persons of eminence in the sphere of higher education. It further provides that one member of the search committee shall be nominated by the Chairman of the UGC for selection of Vice Chancellors of the State, Private and Deemed to be universities. That as per the UGC Regulations, Visitor/Chancellor shall appoint the Vice Chancellor out of the panel of the names recommended by the Search cum Selection committee. It is contended that being a Central legislation all the States, Private and Deemed to be Universities are bound by the UGC Regulations and the guidelines issued from time to time.

5. The present petition is opposed by Shri Vinay Navare, learned Senior Advocate appearing on behalf of respondent No.2 - SP University.

5.1 Shri Vinay Navare, learned Senior Advocate appearing on behalf of respondent No.2 - SP University has vehemently submitted that in the earlier round of litigation, the Division Bench of the High Court dismissed the writ petition and did not interfere with the appointment of respondent No.4 as the Vice Chancellor of SP University and the SLP against the same was dismissed by this Court. Therefore, it is not open for the petitioner to again challenge the appointment of respondent No.4 as a Vice Chancellor for the second term. It is submitted that as such the UGC Regulations, 2010 and the subsequent Regulations, 2018 have not been adopted by the State government and therefore, the UGC Regulations are not binding to the State and/or universities and in the present case SP University.

5.2 It is submitted that appointment of respondent No.4 is governed under the SPU Act, 1955 and the Search Committee was constituted by the State government under the SPU Act. That as such Section 10 of the said Act, does not provide for any specific eligibility criteria/minimum eligibility criteria for the post of Vice Chancellor, therefore, the Search Committee itself prescribed the eligibility criteria. That after selecting respondent No.4 and on the recommendations made by the Search Committee, respondent No.4 has been appointed.

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- A 5.3 It is submitted that in the absence of any statutory breach, appointment of respondent No.4 has been made as per the SPU Act, 1955 and hence no writ of quo warranto be issued. It is submitted that while challenging the appointment of respondent No.4 in the first term, the Division Bench of the High Court rightly refused to issue a writ of quo warranto. Therefore, with regard to the appointment of respondent No.4 as a Vice Chancellor for the second term also, no writ of quo warranto can be issued.
- B 5.4 It is further submitted by Shri Navare, learned Senior Advocate, appearing on behalf of respondent No.2 - SP University that even C otherwise the petitioner has no locus standi. It is submitted that the petitioner is an ex-employee of the respondent - University and has a grudge against the University and therefore, the present writ petition has been preferred challenging the appointment of Vice Chancellor. It is prayed not to entertain the writ petition at the instance of such a person.
- D 6. Shri Gaurav Agrawal, learned counsel appearing on behalf of respondent No.4, while adopting the submissions made by Shri Navare, has further submitted that so far as the appointment of respondent No.4 as a Vice Chancellor for the second term is concerned, UGC Regulations, 2010 are not applicable as UGC Regulations, 2010 have been substituted by the UGC Regulations, 2018.
- E 7. Ms. Ruchi Kohli, learned counsel appearing on behalf of respondent No.1 – State has opposed the present writ petition.
- F 7.1 When a pointed question was asked to Ms. Kohli, learned counsel appearing on behalf of respondent No.1 – State, whether the State legislation is amended providing for the minimum eligibility criteria at par with the UGC Regulations, as observed by the High Court in the earlier round of litigation in para 24, she is not in a position to satisfy and/ or point out any such amendment in the State legislation.
- G 8. We have heard learned counsel appearing on behalf of the respective parties at length.
- H 9. By way of this writ petition filed under Article 32 of the Constitution of India, the petitioner has prayed for a writ of quo warranto by challenging the appointment of respondent No.4 herein as Vice Chancellor of the SP University – respondent No.2 herein. When a writ of quo warranto will lie has been dealt with by this Court in the case of

Rajesh Awasthi Vs. Nand Lal Jaiswal and Ors., (2013) 1 SCC 501. A
In para 19, it has been observed and held as under: -

“**19.** A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in *Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana* [(2002) 6 SCC 269] held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In *B. Srinivasa Reddy* [(2006) 11 SCC 731 (2) : (2007) 1 SCC (L&S) 548 (2)], this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this Court in *Hari Bansh Lal* [(2010) 9 SCC 655 : (2010) 2 SCC (L&S) 771] wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy itself that the appointment is contrary to the statutory rules.”

9.1 In the case of **Retd. Armed Forces Medical Association and Ors. Vs. Union of India & Ors.**, (2006) 11 SCC 731, it has been observed by this Court that strict rules of locus standi are relaxed to some extent in a quo warranto proceedings. It is further observed in the said decision that broadly stated, the quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by a judicial order. It is further observed that in other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointments to public office against law and to protect citizens from being deprived of public office to which they have a right. These proceedings also tend to protect the public from usurpers of public office. It is further observed that it will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry, as to, whether, the appointment of the alleged usurper has been made in accordance with law or not. Thus, as per the law laid down in a catena of decisions, the jurisdiction of the High Court to issue a writ of quo warranto is a limited one, which can

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- A only be issued when a person is holding the public office does not fulfil the eligibility criteria prescribed to be appointed to such an office or when the appointment is contrary to the statutory rules. Keeping in mind the law laid down by this Court in the aforesaid decisions on the jurisdiction of the Court while issuing a writ of quo warranto, the factual and legal controversy in the present petition is required to be considered.
- B 10. Respondent No.4 is holding the post of Vice Chancellor. The post of Vice Chancellor in a University can be said to be a public office. There cannot be any dispute about the same. It is nobody's case that holding the post of Vice Chancellor cannot be said to be holding a post of public office.
- C 11. Now the next question which is posed for consideration of this Court is, whether, the appointment of respondent No.4 as a Vice Chancellor of the SP University – respondent No.2 herein can be said to be contrary to any statutory provisions and whether, can it be said that respondent No.4 fulfils the eligibility criteria for the post of Vice Chancellor
- D 11.1 While examining the aforesaid issues the relevant provisions of the UGC Regulations, 2010 enacted in exercise of powers conferred under clauses (e) and (g) of Sub-section (1) of Section 26 of the University Grants Commission Act, 1956 and the relevant provisions of the SPU Act, 1955, are required to be referred to.
- E 11.2 The UGC Act, 1956 was enacted to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission. Section 12 deals with "Functions of the Commission", while Section 14 speaks of "Consequences of failure of Universities to comply with recommendations of the Commission". Section 26 deals with "Power to make regulations". As per Section 28 the rules and regulations framed under the UGC Act are required to be laid before each House of the Parliament and when both the Houses agree then rules and regulations can be given effect with such modification as may be made by the Parliament. Therefore,
- F G any regulation enacted in exercise of powers under Section 26 can be said to be subordinate legislation.
- H 11.3 For the appointment and career advancement of teachers in the universities and institutions affiliated to it, UGC by Regulation dated 04.04.2000, enacted the University Grants Commission (Minimum Qualifications Required for the Appointment and Career Advancement

of Teachers in Universities and Institutions Affiliated to it) Regulations, 2000. However, in the said Regulation of 2000, no qualifications were prescribed for the post of "Pro-Chancellor" or "Vice Chancellor". A

Thereafter, the Government of India, Ministry of Human Resource Development Department of Higher Education, New Delhi by Letter No. 1-32/2006-U.II/U.I(i) dated 31-12-2008 communicated to the Secretary, University Grants Commission, New Delhi the scheme of revision of pay of teachers and equivalent cadres in universities and colleges following the revision of pay scales of the Central Government employees on the recommendations of the 6th Central Pay Commission. By the said letter, the Government of India directed that there shall be only three designations in respect of teachers in the universities and colleges, namely, Assistant Professors, Associate Professors and Professors. In the said letter revised pay scales, service conditions and Career Advancement Scheme for teachers and equivalent positions including the post of Assistant Professors/Associate Professors/Professors in universities and colleges were intimated. Pay scales of Pro-Vice-Chancellor/Vice-Chancellor were also mentioned therein. It was intimated that the said Scheme may be extended to the universities, colleges and other higher educational institutions coming under the purview of the State Legislature, provided the State Governments wish to adopt and implement the Scheme subject to the terms and conditions mentioned therein. In view of the aforesaid Letter No. 1-32/2006-U.II/U.I(i), dated 31-12-2008 issued by the Government of India and in exercise of the powers conferred under clauses (e) and (g) of sub-section (1) of Section 26 of the UGC Act, 1956, UGC enacted the Regulations, 2010 in supersession of the UGC Regulations, 2000. It was published in the Gazette of India on 28-6-2010 and came into force with immediate effect. B C D E F

11.3.1 Regulation 7.3.0 deals with the post of Vice Chancellor which reads as under: -

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

- A (ii) The selection of Vice-Chancellor should be through proper identification of a panel of 3-5 names by a Search Committee through a public notification or nomination or a talent search process or in combination. The members of the above Search Committee shall be persons of eminence in the sphere of higher education and shall not be connected in any manner with the university concerned or its colleges. While preparing the panel, the Search Committee must give proper weightage to academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance to be given in writing along with the panel to be submitted to the Visitor/Chancellor. In respect of State and Central universities, the following shall be the constitution of the Search Committee:
 - (a) a nominee of the Visitor/Chancellor, who should be the Chairperson of the Committee.
 - (b) a nominee of the Chairman, University Grants Commission.
 - (c) a nominee of the Syndicate/Executive Council/Board of Management of the university.
- E (iii) The Visitor/Chancellor shall appoint the Vice-Chancellor out of the panel of names recommended by the Search Committee.
- F (iv) The conditions of service of the Vice-Chancellor shall be prescribed in the statutes of the universities concerned in conformity with these Regulations.
 - (v) The term of office of the Vice-Chancellor shall form part of the service period of the incumbent concerned making him/her eligible for all service related benefits.”
- G 11.3.2 Regulation 7.4.0 mandates that the universities/State Governments shall modify or amend the relevant Acts/Statutes of the universities concerned within six months of adoption of these Regulations.
- H 11.3.3 Thus, UGC Regulations, 2010, inter-alia, prescribes in Regulation 7.3.0 that a person shall have ten years of teaching work experience as a professor in a university system. It also provides for constitution of a search committee consisting of a nominee of the Visitor/Chancellor, a nominee of the Chairman of the UGC, a nominee of the Syndicate/Executive Council of the University and the search committee has to recommend the names of the successful candidates.

11.4 Prior to enactment of UGC Regulations, 2010, the Union Ministry of Human Resource Development laid down a scheme of revision of pay of teachers and equivalent cadres in the Universities following the 6th Central Pay Commission. The Scheme provides a fixed pay of Rs.75,000/- along with a special allowance of Rs.5,000/- per month to the Vice Chancellor. Para 8(p)(v) of the said scheme provides that it is extended to Universities, Colleges and other higher educational institutions coming under the purview of the State Legislature provided the State Governments wish to adopt and implement the scheme with certain conditions, inter alia, financial assistance from the Central Government to the extent of 80% of the maintenance expenditure and remaining 20% shall be met by the State Government. It further provides that payment of Central assistance for implementing the scheme is subject to the condition that the entire scheme of revision of pay scales together with all the conditions to be laid down by the UGC by way of regulations and other guidelines shall be implemented by the State Governments and the Universities thereunder without any modification. In the present case, State of Gujarat has adopted the said Scheme dated 31.12.2008 by a Resolution dated 11.11.2009 with effect from 01.01.2006 subject to the conditions mentioned in the said resolution. Even in the said resolution, condition No.13 provides that the State Government will publish the educational qualifications as per the UGC instructions published from time to time and quality yardstick, teaching work days, norms, instructions, resolutions will have to be implemented. It is not in dispute that the SP University is receiving Central financial assistance under the Scheme and it is included in the State universities receiving Central financial assistance as per Section 12(b) of the UGC Act, 1956. Therefore, having adopted the UGC Scheme and implemented the same and getting Central financial assistance to the extent of 80% of the maintenance expenditure, the State Government and the SP University are bound by the UGC Regulations, 2010. The UGC Regulations, 2010 are superseded by the UGC Regulations, 2018. However, the eligibility criteria for the post of Vice Chancellor and the constitution of the search committee for appointment of a Vice Chancellor remains the same. Therefore, the State of Gujarat and the universities thereunder including the SP University are bound to follow UGC Regulations, 2010 and UGC Regulations, 2018.

12. Respondent No.4 herein has been appointed as a Vice Chancellor of the SP University under the SPU Act, 1955. Section 10 of the said Act relates to the post of Vice Chancellor which reads as under:

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- A “[10. (1) The Vice-Chancellor shall be appointed by the State Government from amongst three persons recommended under sub-section (3) by a committee appointed for the purpose under sub-section (2).
- (2) (a) for the purpose of sub-section (1) the Chancellor shall appoint a Committee which shall consist of the following members, namely:—
- (i) two members (not being persons connected with the University or with any affiliated college or recognised institution) out of whom one shall be a person nominated in the manner prescribed by Statutes by the Syndicate and the Academic Council jointly and the other shall be a person nominated in the manner prescribed by Statutes by the Vice-Chancellor of all the Universities established by law in the State of Gujarat;
- (ii) one member to be nominated by the Chancellor.
- D (b) The Chancellor shall appoint one of three members of the Committee as its chairman.
- (3) The Committee so appointed shall, within such time and in such manner as may be prescribed by Statutes, select three persons whom it considers fit for being appointed Vice-Chancellor and shall recommend to the State Government the names of the persons so selected together with such other particulars as may be prescribed by the Statutes.
- F (4) The Vice-Chancellor shall hold office for a term of three years and he shall be eligible for being appointed to that office for a further term of three years only.
- (5) The emoluments to be paid to the Vice-Chancellor, and the terms and conditions subject to which he shall hold office, 1 [shall be determined by the State Government]:
- G Provided that such emoluments or such terms and conditions shall not, during the currency of the term of the holder of that office, be varied to his disadvantage without his consent.
- H (6) (a) During the leave or absence of the Vice-Chancellor, or
(b) in the event of a permanent vacancy in the office of the Vice-Chancellor, until an appointment is made under sub-section (1) to that office,

the Pro-Vice-Chancellor, and in the absence of the Pro-Chancellor, one of the Deans nominated by ³ [the State Government], for that purpose shall carry on the current duties of the office of the Vice-Chancellor.”

12.1 As per Section 10 of the Act, 1955 the search committee shall consist of two members (not being persons connected with the respondent - University or with any affiliated college or recognised institution) out of whom, one shall be a person nominated in the manner prescribed by Statutes by the Syndicate and the Academic Council jointly and the other shall be a person nominated in the manner prescribed by Statutes by the Vice-Chancellor of all the Universities established by law in the State of Gujarat and the third member to be nominated by the Chancellor.

Section 10 of the SPU Act does not provide any qualification whatsoever for appointment to the post of Vice Chancellor. Even the eligibility criteria to be prescribed is left to the Search Committee. There are no guidelines whatsoever on the eligibility criteria to be prescribed by the Search Committee. On the other hand, the UGC Regulations, 2010/2018 specifically prescribes the qualification/ eligibility criteria for the post of Vice Chancellor. It also provides for the constitution of the Search Committee. As observed hereinabove as per Regulation 7.3.0 a person shall have ten years of teaching work experience as a professor in the university system and it also provides for constitution of a search committee consisting of a nominee of the Visitor/Chancellor, a nominee of the Chairman of the UGC, a nominee of the Syndicate/Executive Council of the University. But respondent No.4 did not/ does not fulfil the eligibility criteria prescribed under the UGC Regulations, 2010/2018. He was/is not having ten years of teaching work experience as a professor in the university system. Moreover, his name was not recommended by the legally constituted search committee, constituted as per the UGC Regulations, 2010/2018. Also, the search committee has prescribed the eligibility criteria for the post of Vice Chancellor by diluting the eligibility criteria laid down in the UGC Regulations, 2010/2018.

12.2 Thus, the provisions of the SPU Act, 1955/provisions under the State legislation are just contrary to the UGC Regulations, 2010/2018, which, as observed hereinabove, are binding on the State Government and the universities thereunder. Even the State Government has not bothered to amend the State legislation – to put at par with the

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- A UGC Regulations, 2010/2018 and has continued the appointment in the universities dehors the UGC Regulations.

13. At this stage, it is required to be noted that in the present case the UGC vide communication dated 11.08.2014 addressed to the H.E. – Governor of Gujarat, who is also the Chancellor of the University has

- B drawn the attention of H.E. – Governor of Gujarat to ensure that all the appointments of Vice Chancellors in the State are made in accordance with the provisions laid down in the Regulations of UGC. The letter/ communication dated 11.08.2014 reads as under: -

“University Grants Commission

- C Prof. Dr. Jaspal S. Sandhu
Secretary

D.O.No.F.1-1/2014(Secy) 11th August, 2014

- D At the outset kindly allow me to apologise for encroaching upon your precious time. But it is the criticality of the subject which has compelled me to draw your kind attention to it.

- E The appointment of Vice-Chancellors in our University system has become a subject of widespread criticism. We need visionary leadership to give proper direction to higher education in today's competitive world. It is possible only when we have persons of the highest competence & integrity, in the position of the Vice-Chancellor. In this connection, the University Grants Commission had brought out a Regulations titled “Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010. The UGC has prescribed the minimum qualifications for the appointment of the Vice-Chancellor in this Regulation, which reads as under:
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- G “Persons of the highest level of competence, integrity, morals and institutional commitment are to be appointed as Vice-Chancellors. The Vice-Chancellor to be appointed should be a distinguished academician, with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organization.”
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It hardly needs any mention that the notifications published in The Gazette of India are mandatory. May I, therefore, request your Excellency to use your good offices to ensure that all the appointments of Vice-Chancellors in your State are made in accordance with the provisions laid down in the aforementioned Regulations of the UGC.

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I am certain that your guidance and support in this regard will make a huge difference in the governance of higher education in the country.

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Yours faithfully
Jaspal S.Sandhu

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Shri O.P. Kohli
Hon'ble Governor of Gujarat, Raj Bhawan
Gandhinagar 382 020 Gujarat"

13.1 That thereafter H.E. – Governor of Gujarat – Chancellor of the Universities communicated to the Principal Secretary to the Government of Gujarat vide communication dated 30.08.2014 and emphasized and requested him to take note of the UGC communication dated 11.08.2014 and take necessary steps at the Government level. The communication dated 30.08.2014 issued by the Principal Secretary to the H.E. – Governor of Gujarat, reads as under: -

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OFFICE OF THE SECRETARY TO
THE GOVERNOR OF GUJARAT
Raj Bhavan Gandhinagar-382020.

Date: 30 AUG 2014 F

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Important:

To,

The Principal Secretary to the
Government of Gujarat
Education Department,
Block No.5, 7th Floor,
New Sachivalay, Gandhinagar

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Sub: Appointment of Vice Chancellors

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A Ref: A Communication from the Secretary, University Grant Commission, Government of India, New Delhi dated 11th August, 2014.

Sir,

B With reference to the above subject, it is stated that recently we have received a communication from Prof. (Dr.) Jaspal S. Sandhu, Secretary, University Grant Commission, New Delhi reading the appointment of the vice chancellors in the universities. It has been emphasized that the order to ensure maintenance of standards in Higher Education, the UGC has prescribed certain minimum qualifications for the appointment of the Vice Chancellors. Hon. Governor has been requested to ensure the all the appointment of the Vice Chancellors in Gujarat are made in accordance with the provisions laid down in the UGC Regulation. (Copy of the communication is enclosed herewith for ready reference)

D You are requested to note the above pertinent communication and take necessary steps at the Government level.

Regards,

Yours faithfully,

sd/-

(Arvind Joshi)

Principal Secretary to Hon. Governor

F 13.2 Despite the above clear instructions from the office of H.E. Governor of Gujarat, who is also the Chancellor of all the universities, it is unfortunate that till date the State legislation has not been amended by the State Government and the appointments to the post of Vice Chancellor in the Universities in the said State are being made just contrary to the UGC guidelines and Regulations. At this stage, it is required to be noted that even in the earlier round of litigation being SCA No.18922 of G 2017 in which this very petitioner challenged the appointment of this very respondent No.4 as a Vice Chancellor of SPU made in the year 2016, the Division Bench of the High Court made certain observations against the State Government not adopting the UGC Regulations and not amending the State legislation appropriately. The relevant observations H made by the High Court in para 24 are as under: -

“24. Even while upholding the appointment of the sixth respondent to the post of Vice Chancellor of the respondent University, this court cannot shut its eyes to the fact that section 10 of the SPU Act does not provide for any qualification whatsoever for appointment to the post of Vice Chancellor which would leave room for a lot of arbitrariness in the matter of selection of persons for appointment as Vice Chancellor. The UGC Regulations provide for certain qualifications. However, the same are not binding unless the State legislation is appropriately amended. The UGC, by a communication dated 11th August 2014, addressed to His Excellency the Governor of Gujarat, has requested him to use his good offices to ensure that all the appointments of Vice Chancellors in the State are made in accordance with the provisions laid down in the UGC Regulations, which provide for minimum qualifications for the appointment of Vice Chancellor with reference to regulation 7.3.0 of the UGC Regulations, 2010. Pursuant thereto, the Principal Secretary to His Excellency the Governor of Gujarat addressed a communication dated 30th August 2014 to the Principal Secretary, Government of Gujarat, requesting him to note the said important communication and take necessary steps at the Government level. However, it appears that such communication has been ignored and no steps have been taken pursuant thereto. It is, therefore, high time that the State of Gujarat adopts the UGC Regulations and amends the State legislation appropriately so that no room is left for any manipulation, arbitrariness, nepotism and favouritism.”

Even the aforesaid observations made in para 24 were taken note of by this Court while disposing of the SLP (C) No.21792 of 2018 in which the decision of the Division Bench of the High Court was under challenge.

13.3 Thus, despite the communication by the UGC dated 11.08.2014 and thereafter, the communication by the H.E. – Governor of Gujarat dated 30.08.2014 and even the observations made by the Division Bench of the High Court in paragraph 24 in its judgment and order dated 05.07.2018 in SCA No.18922 of 2017, reproduced hereinabove, it is unfortunate that as on today, no further steps have been taken by the State Government, to amend the State legislation and to put the same at par with the UGC Regulations, and the State and the universities thereunder have continued to make the appointments of Vice

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- A Chancellors just contrary to the UGC Regulations, which as observed hereinabove are binding.

13.4 At this stage, it is required to be noted that as per Section 9 of the SPU Act, 1955, H.E. – Governor of Gujarat is the Chancellor of the University and he shall, by virtue of his office, be the head of the

- B University and the President of the Senate. Therefore, even as the head of the University, his advice was/is binding upon the University and therefore, the State ought to have taken the necessary steps at the Government level as requested in the communication dated 30.08.2014. Even the request made by the H.E. – Governor of Gujarat, who is also C the Chancellor of the University, ought not to have taken very lightly. The State ought to have taken the corrective measures by suitably amending the State legislation on par with the UGC Regulations.

14. The submissions made by Shri Navare, learned Senior Advocate appearing on behalf of respondent No.2 – SP University that as the earlier writ petition filed by the petitioner herein, in which the

- D appointment of respondent No.4 herein as the Vice Chancellor, was under challenge came to be dismissed and the High Court refused to issue a writ of quo warranto and the judgment and order passed by the High Court in SCA No.18922 of 2017 was not disturbed by this Court and therefore, the controversy stands concluded and it is not open for E the petitioner to raise the same issue again is concerned, the aforesaid submissions is noted only to be rejected. This Court did not opine anything on the merits of the judgment and order passed by the High Court. This Court refused to entertain the Special Leave Petition solely on the ground that by the time the same was taken up for hearing the tenure of respondent No.4 herein as a Vice Chancellor was coming to an end. F Even while dismissing the same on the aforesaid ground alone, this Court specifically observed that all the questions of law are left open.

15. Thus, we find that the appointment of respondent No.4 is contrary to the UGC Regulations, 2018. Also, respondent No.4 has been appointed by a search committee, not constituted as per the UGC

- G Regulations, 2018. Moreover, respondent No.4 does not fulfil the eligibility criteria as per the UGC Regulations, 2018, namely, having ten years of teaching work experience as a professor in the university system. As observed hereinabove, by adopting the Scheme and having accepted 80% of the maintenance expenditure from the Central government and H when respondent No.4 is paid a fixed pay of Rs.75,000/- along with a

special allowance of Rs.5,000/- per month, which is prescribed as per the Scheme of 2008, the State and the universities thereunder are bound by the UGC Regulations, including the UGC Regulations, 2018. The appointment of respondent No.4 is even otherwise not as per the eligibility criteria prescribed by the Search Committee, which is as under: -

- “1. Persons of the highest level of competence, integrity, morals and institutional commitment.
2. Persons should be a distinguished academician with proven leadership qualities shall be satisfying anyone of the following:
- ▶ **10 years' experience of teaching and research. As professor or**
 - ▶ Vice Chancellor / Pro Vice Chancellor of any University including former Vice Chancellor / Pro Vice Chancellor or
 - ▶ Director / Principal of a college / institution / Research Organization with 15 years of teaching / research / administration.”

In fact, in the instant case, H.E. – Governor of Gujarat who is also the Chancellor of all the Universities in the said State had through his Principal Secretary directed that the communication from the Secretary, University Grants Commission, Government of India, New Delhi dated 11th August, 2014 be complied and appropriate steps be taken in that regard. We have referred to the aforesaid letter dated 30th August, 2014. The letter of the Secretary of the UGC dated 11th August, 2014 to H.E. – Governor of Gujarat informing about the regulations titled “Minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges and measures for the maintenance of standards in higher education, 2010” has also been extracted above in the said letter. It has been clearly stated that the UGC has prescribed minimum qualifications for the appointment of a Vice-Chancellor and therefore, such an appointment must be in accordance with the provisions laid down in the afore-mentioned regulations of the UGC. It is clear that the respondent-State of Gujarat has failed to take note of the communication from the UGC and instead the respondent-University has left to the sweet will of the search committee to prescribe eligibility criteria for the appointment of the Vice-

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- A Chancellor of the University. The eligibility criteria when once fixed by the UGC under its regulations would in our view apply to all the universities which are aided by the UGC to be bound by the said regulations even in the absence of the same being incorporated under the respective universities Act of the respective States. Therefore, when the appointment of respondent No.4 is found to be contrary to the UGC Regulations, 2018 and the UGC Regulations are having the statutory force, we are of the opinion that this is a fit case to issue a writ of quo warranto and to quash and set aside the appointment of respondent No.4 as the Vice Chancellor of the SP University.
- C 16. It cannot be disputed that the UGC Regulations are enacted by the UGC in exercise of powers under Section 26(1)(e) and 26(1)(g) of the UGC Act, 1956. Even as per the UGC Act every rule and regulation made under the said Act, shall be laid before each House of the Parliament. Therefore, being a subordinate legislation, UGC Regulations becomes part of the Act. In case of any conflict between State legislation and
- D Central legislation, Central legislation shall prevail by applying the rule/principle of repugnancy as enunciated in Article 254 of the Constitution as the subject ‘education’ is in the Concurrent List (List III) of the Seventh Schedule of the Constitution. Therefore, any appointment as a Vice Chancellor contrary to the provisions of the UGC Regulations can be said to be in violation of the statutory provisions, warranting a writ of quo warranto.
- F 17. In view of the above discussion and for the reasons stated above, the appointment of respondent No.4 as a Vice Chancellor of the SP University – respondent No.2 herein, is contrary to the UGC provisions, namely, UGC Regulations, 2018. We hence allow the present writ petition and issue a writ of quo warranto quashing and setting aside the appointment of respondent No.4 as the Vice Chancellor of SP University. The present petition is accordingly, Allowed.
- G 17.1 Before parting we may hope and trust that wiser counsel will now prevail and the State Government shall amend the State legislation accordingly on par with the UGC Regulations, which as such was recommended by the H.E. – Governor of Gujarat as far as back in the year 2014 and even thereafter, the Division Bench of the High Court had made observations in para 24 of its judgment and order dated 05.07.2018 in SCA No.18922 of 2017, in which, the High Court observed
- H that it is high time that the State Government adopts the UGC Regulations

and amends the State legislation appropriately so that no room is left for any manipulation, arbitrariness, nepotism and favouritism, before any fresh appointment as a Vice Chancellor in the State and the universities thereunder are made. As observed hereinabove, prescribing the eligibility criteria shall not be left to the sweet will of the search committee. It may lead to arbitrariness and different search committees in absence of any statutory guidelines and/or prescription, may prescribe different eligibility criteria.

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17.2 It is to be noted that the post of Vice Chancellor of the University is a very important post so far as the University is concerned. Being a leader and head of the institution, the Vice Chancellor of the University has to play very important role. While academic qualifications, administrative experience, research credentials and track record could be considered as basic eligibility requirements, the greater qualities of a Vice Chancellor would be one who is a true leader and a passionate visionary. A Vice Chancellor needs to be one who understands and handles the affairs of the University as ethical business and maintains a pellucidity in his conduct towards the betterment of the University as well as the students therein. A Vice Chancellor should be one who can inspire students and guarantee entry of high-quality teachers into the University system. A Vice Chancellor functions as a bridge between the executive and academic wings of a university as he is the head of both a ‘teacher’ and an ‘administrator’.

We may refer to some of the significant commission reports concerning the personality and role of a Vice-Chancellor of a university as under:

- a) The **1949 Radhakrishnan Commission** stated that originally, the Vice-Chancellorship of an Indian University was regarded as an honorary post to be filled by a prominent man in his leisure time. But now the position has changed, there is enough work to justify a full-time appointment and the Universities should have full time paid Vice-Chancellors. While discussing the duties of a Vice-Chancellor, the Commission stated that a Vice-Chancellor must be the chief liaison between the University and the public and must be a keeper of the university’s conscience, both setting the highest standard by example and dealing firmly and promptly with indiscipline and malpractice of any kind. He/she must have

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- A the strength of character to resist unflinchingly the many forms of pressure. Being a full-time task, it needs an exceptional man (or woman) to undertake it. The Commission rejected the proposal of selecting the Vice-Chancellor by an external body and recommended that the Chancellor should appoint the Vice-Chancellor upon the recommendation of the Executive.
- B b) **The 1971 Report of the Committee on Governance of Universities and Colleges by the University Grants Commission chaired by Dr. P.B. Gajendragadkar, former Chief Justice of India** while reiterating the recommendations and observations made by the aforesaid commissions also stated that the selection of a Vice-Chancellor is the single most important decision that the governing body of the university may be called upon to make. While the Chancellor of a University may be a high dignitary of the State or Union of India or an eminent scholar or eminent person in public life of the State, the appointment of Vice-Chancellor, being the important functionary of the University is most strategic. The powers of proper maintenance of discipline and a healthy environment for both teachers and students in the university is vested with the Vice-Chancellor along with all the other powers vested in him/her by various Statutes, Ordinances or Regulations. The Commission also stated that appointment of a Vice-Chancellor is made in most of the Universities out of a panel of at least three names by the Chancellor in case of State Universities and by the Visitor in case of Central Universities. The panel of names is prepared by a Search Committee constituted in accordance with the provision of Act/Statute. Since it was difficult to have a uniform system of forming a committee in all the States, the alternatives to constitute the Search Committee were also provided in the report.
- C c) **The 1990 Report of the UGC Committee towards New Educational Management by Professor A. Gnanam (also called as the Gnanam Committee Report, 1990)** accentuated the role of a Vice-Chancellor, stating that the
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Vice-Chancellor should be a person with vision and qualities of academic leadership and with a flair for administration because what the universities need is a sensitive, efficient, fair and bold administrator. The Vice-Chancellor should be a distinguished educationist from the higher education system having highest level of competence, integrity, morals and self-respect.

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- d) The **Ramlal Parikh Committee 1993** accented that the universities need distinguished and dignified persons as Vice-Chancellors and it is necessary to ensure that they are treated with dignity and regard, which the office merits.

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- e) The **University Grants Commission in its hand book titled Governance in Higher Education: Hand Book for Vice-Chancellors published in 2019** has penned down the role of Vice-Chancellor of Indian Universities having gained a paramount importance in the recent times. In the words of the Prof. D.P. Singh, the then Chairman of University Grants Commission and Former Director of National Assessment and Accreditation Council (NAAC):-

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“As Chief Executives and Academic Heads of Universities, the Vice Chancellors are expected to be efficient and effective in terms of:-

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- a. Implementation of National Higher Education Policy and programmes,
- b. Institutional change in tune with the national reforms package,
- c. Quality and innovation enhancement and their sustainability,
- d. Productive engagement with ‘communities of scholars’ from within their universities and from national and international domains,
- e. Nurturing of ‘Research and Innovation Ecosystem’ and translation of deliverables to society and economy
- f. Adoption of international best practices of ‘Good Governance.’”

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- A ‘The Vice Chancellor has to evolve as the leader of a symphony of orchestra with the attributes of: -
- a. Developing teams and teamwork, building partnerships and collaborations delicately interwoven by collegiality, friendship and intellectual engagement;
 - b. devising a strategy and action plan with defined milestones and deliverables;
 - c. ensuring primary accountabilities of self and the above-mentioned university governing bodies; and
 - d. steering an institutional monitoring and evaluation mechanism on university performance built on principles of transparency.’

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Discussing the situation in the backdrop of principle of governance as quoted by Chanakya in his Nitishastra- ‘Yatha Raja Tatha Praja’, the sense of morality must begin from the door of the leader who preaches it.

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Thus, universities are autonomous and the Vice-Chancellor is the leader of a higher education institution. As per the norm, he/she should be an eminent academician, excellent administrator and also someone who has a high moral stature. The aforesaid reports of the Radhakrishnan Commission, Kothari Commission, Gnanam Committee and Ramlal Parikh Committee have highlighted the importance of the role of Vice-Chancellor in maintaining the quality and relevance of universities, in addition to its growth and development, keeping in view, the much-needed changes from time to time. Further, these committees have also made suggestions and recommendations for identifying the right person for the said position. At this stage, it is correct to say that a Vice-Chancellor is the king-pin of a University’s system and a keeper of the University’s conscience.

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Further, in our view, the Search / Selection Committee plays a vital and significant role in the selection of the Vice Chancellor; yet the selected Vice Chancellor’s performance in the universities vary from university to university. Therefore, the members of the Search Committee, who are given the privilege and honour of selecting and suggesting names for the appointment of Vice Chancellor are directly or indirectly responsible for the achievement of the University. Commitment to the quality and the objectives of the universities in particular and higher

education system in general, are of course the deciding factors in selecting A
the right person.

We are sure and we hope and trust that while making afresh appointment of Vice Chancellor in the State and the universities thereunder, the aforesaid aspects shall be kept in mind by the State and the concerned universities. With this hope and trust we leave the matter B there.

Devika Gujral
(Assisted by : Deepak Panwar, LCRA)

Writ Petition allowed.