

# Ashutosh Raturi And Others ... vs Vice Chancellor And Others on 30 June, 2022

**Author: Sharad Kumar Sharma**

**Bench: Sharad Kumar Sharma**

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No. 1130 of 2022

Ashutosh Raturi and others		.....Petitioners
	Versus	
Vice Chancellor and others		.... Respondents
Present :		
Mr. Anurag Bisaria, Advocate, for the petitioners.		
Dr. Kartikey Hari Gupta, Advocate, for respondent Nos. 1, 2 and 3.		
Mr. Vikas Pande, Advocate, for respondent No. 4.		

## JUDGEMENT

Hon'ble Sharad Kumar Sharma, J.

The petitioners, in the present Writ Petition, had agitated their grievance, as against the decision, which had been taken by the Academic Council, vide its Agenda 11.12 of the Minutes of Meeting, as it was held on 19th March, 2021, and the consequential Resolution, to the Agenda Item No. 16.20 of the Minutes of Meeting dated 17.02.2022, whereby, the petitioners have been restrained to pursue their Ph.D. studies, on the pretext, that there is no continuity in the course or the period prescribed to complete the Ph.D. courses, as per the Statutes, and the UGC Regulation. The Ministry of Human Resource and Development, vide its gazette notification dated 5th May, 2016, had promulgated, the basic guidelines while exercising its powers under Section 26 (1) of the University Grants Commission Act, 1956, had laid down the basic norms and parameters for providing the minimum standards and procedure for the courses of M. Phil and Ph.D., which has been called as Regulation of 2016.

2. The contention of the learned counsel for the petitioners, is that the restriction, which has been thus imposed by Agenda Item No. 11.12, with regard to deriving the concept of "continuity" for pursuing the Ph.D. degree, is in specific contravention to the gazette notification of the Government of India, whereby, the notification was promulgated providing thereof for the specified period during which, the candidate is expected to complete the Ph.D course, as well as the aspect as to whether, this period has to be construed, to be in continuity or not, which has been derived to be applied, to be creating a bar in the instant case, in view of the decision taken by the minutes of meeting of 19th March, 2021 and the decision of the meeting dated 17th February, 2022.

3. It is argued by the learned counsel for the petitioners that, if the gazette notification, as it has been issued by the University Grant Commission, in the exercise of its statutory power is taken into consideration, particularly, in the context of duration of the program, which is provided under its Clause 4, he submits that, if Clause-4 of it is read in its totality, where it provides for a duration, during which, a candidate is expected and supposed to complete the Ph.D. course, it has only prescribed 6 years' period.

4. The implications of Clause 4 or any of its Sub- clauses, do not at any place specify, that this maximum period of 6 years, provided to a candidate to complete the Ph.D. program, anywhere contemplates that it has to be a period of course, which has to be in "continuity". In that eventuality, the embargo, which has been extracted to be created by the resolution taken by the academic council is in specific contravention to the notification dated 5th May, 2016, formulating the Regulation of 2016.

5. As far as this contention about the implications which flow from Clause 4 of the Regulation of 2016, is concerned, legally, it cannot be refuted by any of the respondents from the counter affidavit, because it is absolutely a question of law, as to what implications, would a subordinate legislation have, when it has got a statutory source of rule making powers under the Central Legislation.

6. The Regulation of 2016, since has a statutory force, its implication cannot be permitted to be overridden by the decision of the academic council which has been taken vide its resolution dated 19th March, 2021, or 17th February, 2022, as impugned in the Writ Petition, and the concept of continuity, in the Ph.D. course, as it has been derived therein, it cannot be attracted to be applied to the detriment to the career of the petitioners to discontinue their Ph.D. courses, which they were otherwise pursuing as per the stipulations of the prevalent Regulation of 2016.

7. There is nothing on record as such brought by way of counter affidavit which has been filed by respondents, that ever either prior to the admission of the petitioners in their respective disciplines of Ph.D. or even thereafter, there have been any statutory amendment, which had been made under Regulation 4 of the Regulation of 2016, introducing the concept of "continuity of period" provided therein under Clause 4.

8. Hence, this Court is of the view, that when the Statute in its specific term has only prescribed the upper time limit of six years' for completing the course under Regulation 4, the concept of continuity which had been borrowed to be applied by the Resolution of academic council, this Court is of the opinion that it will not create an impediment as such for the petitioners in continuing or pursuing their Ph.D. courses after grant of admission as per the Regulation of 2016.

9. Hence, discontinuing the Ph.D. courses of the petitioners, under the pretext of lack of continuity, since being an aspect which was alien to the Regulation of 2016, it will not be attracted and the resolution of the academic council impugned in the Writ Petition, will not create any bar as such for the petitioners to continue to pursue their respective Ph.D courses, contrary to the provisions of Regulation of 2016, to which, they have already stand admitted because even as on date of filing of the Writ Petition, after the grant of their admission, the upper time limit, which had been prescribed

under Regulation 4, i.e. 6 years has not yet lapsed.

10. In that eventuality, this Writ Petition is being disposed of with the direction, that the embargo, which has been sought to be attracted by the respondents vide their resolution of 19th March, 2021, taken on agenda No. 11.12, and the minutes of meeting of 7th February, 2022, on agenda item No. 16.20, would not in any manner create any impediment as such against the petitioners in continuing their respective courses under the pretext of discontinuance of the period of course prescribed under Regulation 4.

11. Hence, a writ of mandamus is issued to the respondents to permit the petitioners to pursue their Ph.D. courses in accordance with the specification of the Regulation of 2016 as already dealt with above.

12. The only apprehension, which has been expressed by the respondents' Counsel after the culmination of the judgement, is with regard to the extension of the benefit of the UGC fellowship, which has been earlier otherwise extended, as per the guide lines framed by the University Grant Commission. He submits that since the petitioners themselves by virtue of filing of an application have done away with their rights, claiming any right of fellowship and since they have surrendered their right to avail the benefit of fellowship, the consequential effect of it would be that the direction given by this Court for enabling them to continue with Ph.D. courses in the light of the admission already granted to them under the Regulation of 2016, would not override the undertaking which has already been given by the petitioners to surrender their UGC fellowship.

13. Hence, in view of the above, the Writ Petition stands disposed of with the direction, that the petitioners would not avail the benefit of UGC fellowship and the respondents would not create any impediment in petitioners' pursuing the Ph.D. courses in their respective disciplines in the light of the decision of their academic council, as taken on 19th March, 2021 and 17th February, 2022.

(Sharad Kumar Sharma, J.) 30.06.2022 Shiv