

GAHC010059582017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/8035/2017

OM PRAKASH SAH
S/O UMESH SAH R/O ACHARYA TULSI MARG, NORTH BONGAIGAON,
P.O./DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION DEPARTMENT, DISPUR, GUWAHATI -781006.

2:THE DIRECTOR OF HIGHER EDUCATION

KAHILIPARA
GUWAHATI - 781019.

3:THE COMMISSIONER and SECRETARY TO THE GOVT OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI -6.

4:THE GOVERNING BODY OF BONGAIGAON COLLEGE
REP. BY THE PRINCIPAL and SECRETARY
BONGAIGAON
COLLEGE
BONGAIGAON - 783380.

5:THE PRINCIPAL

BONGAIGOAN COLLEGE
BONGAIGAON- 783380

Advocate for the Petitioner : MS. B. BHUYAN and MS. N BARUAH

Advocate for the Respondent : MR. K GOGOI (SC, EDUCATION (HIGHER) DEPARTMENT)

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

JUDGMENT & ORDER (ORAL)

Date : 29-01-2024

Heard Ms. B. Bhuyan, learned senior counsel assisted by Ms. N. Baruah, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned standing counsel, Education (Higher) Department, representing the respondent Nos. 1 & 2 and Mr. J. C. Gaur, learned counsel appearing for respondents no. 4 & 5.

2. The petitioner, by way of instituting the present proceeding has presented a challenge to an order dated 10.11.2017, issued by the Director of Higher Education, Assam, by which, approval to the selection of the petitioner for appointment as Assistant Professor in the Department of Commerce (Accountancy) of Bongaigaon College, Bongaigaon was refused on the ground that the petitioner did not possess the qualifications of NET/SLET/Ph.D. The petitioner has also presented a challenge to a notification dated 24.03.2017, by which the Director of Higher Education Department had withdrawn an earlier notification dated 01.01.2011, by which exemption was granted to candidates appearing for selection as Assistant Professor/Librarian, who had acquired M.Phil/Ph.D Degree on, or before 10.07.2009, from the requirement of having NET/SLET/Ph.D qualification.

3. The brief facts requisite for adjudication of the issues arising in the present proceedings is noticed here in below: -

The petitioner had joined as a Lecturer in the Department of Commerce (Accountancy) in Bongaigaon College, Bongaigaon, against a non-sanctioned post in the year 2000. The petitioner acquired his M.Phil qualification from Madurai Kamaraj University through Distance Education mode. The principal of Bongaigaon College, Bongaigaon vide an advertisement dated 08.02.2011, invited application, amongst others, for recruitment against the sanctioned post of Assistant Professor (Accountancy) in the Department of Commerce in the College. The said advertisement while mandating the candidates interested to apply to possess UGC norms with NET/SLET, exempted candidates from having the said qualification in the event such candidate possesses M.Phil Degree on, or before 10.07.2009. The petitioner being eligible in terms of the said advertisement submitted his application against the said post. The petitioner had also submitted an application for condonation of his over age, which on consideration, his such over age was condoned by the competent authority by way of issuance of a communication dated 10.02.2011. The petitioner, thereafter, participated in a selection process and on completion of the said process, the selection board on 29.05.2011, recommended the name of the petitioner for recruitment against the advertised post of Assistant Professor in the department of Commerce (Accountancy) (Un-reserved). The governing body of the college, on examination of the selection committee's recommendation accepted the same by adopting a resolution in this connection, in its meeting held on

17.06.2011. Thereafter, the Principal of the College forwarded a proposal before the Director of Higher Education, Assam seeking approval to the selection of the petitioner for appointment against the said post.

At this juncture, one *Pingki Sarma*, instituted WP(C)/3425/2011, assailing the recommendation made in favor of the petitioner by the selection committee and accordingly, this Court, vide the order dated 06.07.2011 directed that if the resolution of the governing body in the connection of selection of the petitioner has not been approved by the Director of Higher Education Department, Assam, the same was directed not to be approved till the returnable date. The records reveal that the said order was being continued with and accordingly, the Director of Higher Education Department was restrained from considering the case of the petitioner for grant of approval to his selection. The petitioner in WP(C)/3425/2011 prayed for withdrawal of the writ petition and the same on being permitted by this Court to be so withdrawn was vide order dated 09.12.2016 dismissed on withdrawal. On dismissal of the said writ petition and the consequent vacation of the interim orders operating therein, the college authority again re-submitted the documents of the selection process to the Director of Higher Education Department seeking approval to the same.

The Director of Higher Education, Assam, thereafter, vide order dated 10.11.2017 on consideration of the matter rejected the proposal submitted by the Principal holding that the petitioner not having the NET/SLET/Ph.D. qualification, was under-qualified for the post in question and accordingly

it was held that the petitioner was not entitled for appointment as Assistant Professor. The order dated 10.11.2017 was so issued basing on a notification dated 22.03.2017, by which the competent authority had withdrawn the earlier notification dated 01.01.2011, under which exemption was granted to candidates having M.Phil qualification on or before 10.07.2009 from the requirement of possessing NET/SLET qualifications for recruitment as Assistant Professor/Librarian in the Colleges of the State. It is the said orders dated 10.11.2017 and 22.03.2017 that are presently under challenge in the present proceeding.

4. Ms. B. Bhuyan, learned senior counsel for the petitioner submits that the advertisement having mandated exemptions to candidates having M. Phil from the requirement of possessing NET/SLET qualifications and the case of the petitioner being so covered by the provisions of the said advertisement, the respondent authority, more particularly, the Director of Higher Education, Assam ought not to have rejected the proposal submitted for approval of the selection of the petitioner for his appointment against the post of Assistant Professor, Department of Commerce (Accountancy) (Un-reserved) in the Bongaigaon College, Bongaigaon. It is submitted by Ms. Bhuyan, learned Senior Counsel that the delay that had occasioned in considering the case of the petitioner was on account of the writ petition filed by one of the candidates participating in the selection process and the interim directions passed in the matter by this Court. However, on withdrawal of the said writ petition being no. WP(C)3425/2011 on 09.12.2016, the interim orders that were operating also stood vacated and accordingly, the case of the petitioner was required to be considered by the

Director of Higher Education Department, Assam in terms of the provisions as existed on 17.06.2011, i.e., the date when the governing body of the college had accepted the recommendations made in favor of the petitioner for his appointment as Assistant Professor in the Department of Commerce in the Bongaigaon College, Bongaigaon.

5. It is the contention of Ms. Bhuyan, learned Senior Counsel that the notification dated 22.03.2017, could not have been made applicable to the case of the petitioner, inasmuch as, the said notification mandates that the withdrawal of the earlier notification dated 01.01.2011 was with prospective effect only. Accordingly, the case of the petitioner having been recommended for appointment as Assistant Teacher before the said notification dated 22.03.2017 could have taken effect, the case of the petitioner has to be construed by applying the norms as was applicable on 17.06.2011 and in this connection has relied upon the orders of appointment brought on record by the petitioner, wherein, persons similarly situated were extended with orders of appointment as Assistant Professor in various colleges in the year 2011 without insisting upon the requirement of NET/SLET qualifications. Ms. Bhuyan, learned Senior Counsel further submits that the selection process having been initiated in terms of the notification dated 01.01.2011, by which exemption was granted by the competent authority to candidates possessing M. Phil qualification on or before 10.07.2009 from the requirement of possessing the NET/SLET for appointment to the post of Assistant Professor/Librarian and the recruitment process so involved having been concluded before the issuance of the notification dated 22.03.2017, the subsequent withdrawal of the notification dated 01.01.2011, prospectively w.e.f. 22.03.2017 could not have been made

applicable to the case of the petitioner and his case was required to be considered as of 2011, more particularly, as of 17.06.2011 when the governing body of the College had accepted the recommendation made in favor of the petitioner for appointment against the sanctioned post of Assistant Professor in the Department of Commerce (Accountancy) in the Bongaigaon College, Bongaigoan.

6. Ms. B. Bhuyan, learned Senior Counsel for the petitioner submits that in terms of the provisions of the Assam College Employees (Provincialization) Rules of 2010, more particularly, Rule 7 thereof, the Director of Higher Education, Assam is to consider and pass order(s) with regard to the proposal submitted by the Governing Body of Provincialized Colleges for appointment against the post of Assistant Professor within 30 days from the date of receipt of such proposal. The Director of Higher Education Department, Assam, not having acted in terms of the provisions of the said Rules of 2010, a vested right has accrued to the petitioner in the matter and the same cannot be done away with by applying the provisions of a notification issued in the year 2017. Ms. Bhuyan, learned Senior Counsel has further submitted that given the facts involved in the matter, the respondent authorities ought to have approved the selection of the petitioner and given to him a time frame for acquiring the qualifications which subsequently was made mandatory for recruitment to the post of Assistant Professor. In this connection, she refers to the provisions of the *Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017*, wherein it is provided that under qualified serving teachers in a Venture Educational Institution were granted 5 years' time period for acquiring the deficient qualification. Ms. Bhuyan, learned Senior

Counsel in support of her submissions has placed reliance on the decision of this Court dated 04.06.2012 in the case of *Ganga Ram Phukan V. State of Assam & Ors.*, in WP(C)1649/2011.

7. In the above premises, the learned Senior Counsel submits that appropriate directions are called for from this Court in the matter directing the Director of Higher Education Department to accord approval to the selection of the petitioner as Assistant Professor in the Department of Commerce (Accountancy) in the Bongaigaon College.

8. Per Contra, Mr. K. Gogoi, learned Standing Counsel for the Higher Education Department submits that the petitioner as of 2011 not having possessed the requisite qualifications as mandated under the provisions of UGC Regulations holding the field at the relevant point of time, his selection for appointment for the post of Assistant Professor could not be approved by the Director of Higher Education Department, Assam. Mr. Gogoi, learned Standing Counsel submits that in terms of the UGC regulations of 2009, more particularly, the 3rd amendment thereof and the UGC regulation 2010, NET/SLET continued to remain the compulsory qualification and the petitioner did not possess the said qualification. With regard to the exemption granted by the UGC in its 471st and 472ⁿ meeting held on 12.08.2010 and 27.09.2010, to the candidates having acquired M.Phil Degree on or before 10.07.2009, from possessing the mandated NET/SLET, it is submitted that the said resolutions of the UGC were not accepted by the Government and the Ministry of Human Resource Development, Government of India vide communication dated 03.11.2010 had rejected such resolutions adopted by the UGC in its said meetings with further

directions that NET/SLET shall compulsorily be required for recruitment against teaching positions and the same was mandated as a policy relating to national purposes of maintenance of standards of education in the higher levels.

9. Mr. Gogoi, learned Standing Counsel in this connection refers to the decision of the Hon'ble Supreme Court of India in the case of *P. Suseela V. University Grants Commission* reported in (2015) 8 SCC 129 and contends that the said decision in the case of *P. Suseela (supra)* squarely covers the issues in the present proceedings and accordingly, the writ petitioner is not entitled for the reliefs as claimed for by him herein. Mr. Gogoi, learned Standing Counsel has also placed reliance on the decision of this Court in the case of *Biswajit Deka V. State of Assam* in WP(C)4348/2011, dated 02.08.2013.

10. Mr. J. C. Gaur, learned counsel for the respondents no. 4 & 5 has supported the resolution adopted by the governing body of the college in its meeting held on 17.06.2011, recommending the name of the petitioner for appointment in terms of his selection against the post of Assistant Professor in the Department of Commerce (Accountancy) of the Bongaigaon College. Mr. Gaur, learned counsel adopts the argument made by Ms. B. Bhuyan, learned Senior Counsel for the petitioner and reiterates that the notification dated 22.03.2017, by which the earlier notification dated 01.01.2011 was withdrawn would only have prospective effect and the vested right having accrued to the petitioner as of 2011 in terms of Rule 7 of the said Rules of 2010 for his appointment as an Assistant Professor, such accrued right could not have been interfered with by the Director of Higher Education Department, Assam by referring to a notification issued in the year 2017 and that too with prospective

effect only.

11. It is further contended by Mr. Gaur, learned counsel that the case of the petitioner is to be so considered as of 2011 by applying the norms as holding the field as of then pertaining to recruitment against the post of Assistant Professors in provincialized colleges of the State when persons not having NET/SLET/Ph.D qualifications come to be appointed in the event they had acquired M.Phil qualification on or before 10.07.2009.

12. I have heard the learned counsels for the parties and also perused the materials placed on record.

13. The facts as projected in the writ petition are not in dispute, however, the issue that arises in the present proceedings for consideration is as to whether the petitioner, who admittedly, had acquired his M.Phil degree prior to 10.07.2009 in the Distance Education Mode was entitled on his selection by the Selection Board constituted in pursuance to the advertisement dated 08.02.2011 to be appointed as an Assistant Professor in the Bongaigaon College in terms of the provisions of the advertisement, which again was based on a notification bearing no. AHE.394/2010/20 dated 01.01.2011, issued by the competent authority exempting candidates having M.Phil degree before 10.07.2009 from the mandated requirement of possessing NET/SLET against appointment for the post of Assistant Professors in colleges of the State.

14. The selection committee had duly recommended the case of the

petitioner in pursuance to the selection process held on 29.05.2011 and such recommendation of the selection committee was accepted by the governing body of the college and the governing body adopted a resolution in its meeting held on 17.06.2011 in this connection and required that a proposal for approval of the appointment of the petitioner be forwarded to the Director of Higher Education Department, Assam. The proposal in terms of the resolution of the governing body adopted in its meeting held on 17.06.2011 was accordingly forwarded to the Director of Higher Education Department, Assam. However, on account of interim directions that came to be passed by this Court in the proceedings of WP(C)3425/2011, further consideration of the selection of the petitioner could not be undertaken by the Director of Higher Education Department, Assam. On withdrawal of the said writ petition, the case of the petitioner was taken up for consideration by the Director of Higher Education Department, Assam and vide the impugned order dated 10.11.2017, such approval was rejected on the grounds as noticed hereinabove.

15. The Hon'ble Supreme Court of India in the case of P. Suseela and others V. University Grants Commission & others, reported in (2015) 8 SCC 129 considering the provisions of UGC Act 1956 and the power as conferred therein under Section 26 1 (e) to frame Regulations as well as the regulations as framed by the UGC laying down the minimum eligibility conditions for recruitment and appointment of Lecturers (now Assistant Professors) in Universities/Colleges/Institutions noticed that the regulations of 2009 framed by the UGC had undergone amendments and vide the 3rd amendment of the said regulations it came to be specified that NET/SLET shall remain the minimum eligibility criteria for recruitment and appointment of Lecturers in

Universities/Colleges/ Institutions. However, an exemption was granted to candidates who are, or, have been awarded Ph.D degree in compliance with the UGC (minimum standards and procedure for award of Ph.D degree Regulation, 2009 from the requirement of minimum eligibility condition of NET/SLET for recruitment and appointment as Lecturers and equivalent position in Universities/Colleges/ Institutions.

16. The Hon'ble Supreme Court, thereafter, noticed the decision arrived at by the UGC to grant exemptions from applicability of NET qualification to candidates having M. Phil qualification and also the directives dated 03.11.2010, issued by the Ministry of Human Resources Development, under Section 20 of the Act of 1956, directing the UGC not to implement the decision taken in this connection and proceeded to draw the following conclusions: -

7. Pursuant to this directive, on 30th June, 2010, the UGC framed Regulations of 2010, para 3.3.1 of which states:

"3.3.1. 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 a 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 equivalent positions in Universities/Colleges/ Institutions."

8. By two resolutions dated 12th August, 2010 and 27th September, 2010, the UGC opined that since the regulations are prospective in nature, all candidates having M. Phil. degree on or before 10th July, 2009 and all persons who obtained the Ph.D. degree on or before 31st December, 2009 and had registered themselves for the Ph.D. before this date, but are awarded such degree subsequently shall remain exempted from the requirement of NET for the purpose of appointment as Lecturer/Assistant Professor.

9. The Central Government, however, by letter dated 3rd November, 2010 informed the UGC that they were unable to agree with the decision of the Commission and stated that consequently a candidate seeking appointment to the post of Lecturer/Assistant Professor must fulfill the minimum qualifications prescribed by the UGC including the

minimum eligibility condition of having passed the NET test.

10. The Learned counsel assailing the Delhi, Madras and Rajasthan High Court judgments argued that [Section 26\(3\)](#) expressly entitles a regulation to be prospective but so as not to prejudicially affect the interests of any person to whom such regulation may be applicable. They, therefore, argued that both under [Article 14](#) as well as this subsection, since all M.Phil. and Ph.D. holders had been repeatedly assured that they would be exempt from passing the NET exam if they were such holders prior to 2009, the regulations should not be so construed as to impose the burden of this examination upon them. They further argued that under [Section 26\(2\)](#), regulations made in pursuance of [Section 26\(1\)\(e\)](#) and (g) do not require the previous approval of the Central Government. Consequently, the impugned regulations are bad since they follow the dictate of the Central Government which is not required. Also, this would show that when it comes to qualifications of persons to be appointed to the teaching staff, the UGC is an expert body to whom alone such qualifications and consequently exemptions from such qualifications should be left to decide. They also argued that there is a violation of [Article 14](#) in that unequals have been treated equally as those who passed their M. Phil. and Ph.D. degrees prior to 2009 fell in a separate class which had an intelligible differentia from those who did not so fall as has been maintained by the UGC from time to time. They strongly relied upon the judgment of this Court in [University Grants Commission v. Sadhana Chaudhary](#) (1996) 10 SCC 536 for this proposition as well as the proposition that their legitimate expectation in the matter of appointment on the post of Lecturer had been done away with.

11. On the other hand, learned counsel for the Union of India and the UGC stressed the fact that under [Section 26](#) regulations have to be made consistently with the Act and [Section 20](#) is very much part of the Act. Therefore, if directions on questions of policy are made by the Central Government, regulations must necessarily be subordinate to such directions. It was also pointed out that if a question arises as to whether a subject matter is a question of policy relating to national purposes, the decision of the Central Government shall be final. They then relied upon [Udai Singh Dagar v. Union of India](#) (2007) 10 SCC 306, for the proposition that a person will have the right to enter a profession only if he holds the requisite qualification and the holding of such qualification would be prospective if it is a qualification which is laid down any time before his entry into a profession.

12. It is clear that [Section 26](#) enables the Commission to make regulations only if they are consistent with the [UGC Act](#). This necessarily means that such regulations must conform to [Section 20](#) of the Act and under [Section 20](#) of the Act the Central Government is given the power to give directions on questions of policy relating to national purposes which shall guide the Commission in the discharge of its functions under the Act. It is clear, therefore, that both the directions of 12th November, 2008 and 30th March, 2010 are directions made pertaining to questions of policy relating to national purposes inasmuch as, being based on the Munekar Committee Report, the Central Government felt that a common uniform nationwide test should be a minimum eligibility condition for recruitment for the appointment of Lecturer/Assistant Professors

in Universities/Colleges/Institutions. This is for the obvious reason that M. Phil. degrees or Ph.D. degrees are granted by different Universities/Institutions having differing standards of excellence. It is quite possible to conceive of M.Phil/ Ph.D. degrees being granted by several Universities which did not have stringent standards of excellence. Considering as a matter of policy that the appointment of Lecturers/ Assistant Professors in all institutions governed by the [UGC Act](#) (which are institutions all over the country), the need was felt to have in addition a national entrance test as a minimum eligibility condition being an additional qualification which has become necessary in view of wide disparities in the granting of M. Phil./ Ph.D. degrees by various Universities/ Institutions. The object sought to be achieved by these directions is clear: that all Lecturers in Universities/Colleges/Institutions governed by the [UGC Act](#) should have a certain minimum standard of excellence before they are appointed as such. These directions are not only made in exercise of powers under [Section 20](#) of the Act but are made to provide for coordination and determination of standards which lies at the very core of the [UGC Act](#). It is clear, therefore, that any regulation made under [Section 26](#) must conform to directions issued by the Central Government under [Section 20](#) of the Act.

13. It was argued that since the previous approval of the Central Government was not necessary for regulations which define the qualifications required of persons to be appointed to the teaching staff of a University, the Government has no role to play in such matters and cannot dictate to the Commission. This argument does not hold water for the simple reason that it ignores the opening lines of [Section 26\(1\)](#) which states that the Commission can only make regulations consistent with the Act, which brings in the Central Government's power under [Section 20](#) of the Act, a power that is independent of sub-section (2) of [Section 26](#). A regulation may not require the previous approval of the Central Government and may yet have to be in conformity with a direction issued under [Section 20](#) of the Act. In fact, even where a regulation can only be made with the previous approval of the Central Government, the Central Government would have a role to play both before and after the regulation is made. In the first case, it would accord its previous approval to the regulation. Once the regulation becomes law, it may issue directions under [Section 20](#) pursuant to which the very same regulation may have to be modified or done away with to conform to such direction. It is clear, therefore, that [Section 26\(2\)](#) would not stand in the way of the directions issued in the present case by the Central Government to the Commission.

14. The other interesting argument made is that such regulations should not be given retrospective effect so as to prejudicially affect the interests of any person to whom such regulation may be applicable. In order to appreciate this contention, it is necessary to distinguish between an existing right and a vested right. This distinction was made with great felicity in [Trimbak Damodhar Rajpurkar v. Assaram Hiranman Patil](#), 1962 Suppl. 1 SCR 700. In that case a question arose as to whether an amendment made to [Section 5](#) of the Bombay Tenancy and Agricultural Lands Amendment Act could be said to be retrospective because its operation took within its sweep existing rights. A bench of five Hon'ble Judges of this Court held that [Section 5](#) had no retrospective operation.

15. This Court held: (Trimbak case, AIR pp.1760-61, Paras 8-10: SCR pp. 707-09)

"Besides, it is necessary to bear in mind that the right of the appellant to eject the respondents would arise only on the termination of the tenancy, and in the present case it would have been available to him on March 31, 1953 if the statutory provision had not in the meanwhile extended the life of the tenancy. It is true that the appellant gave notice to the respondents on March 11, 1952 as he was then no doubt entitled to do; but his right as a landlord to obtain possession did not accrue merely on the giving of the notice, it accrued in his favour on the date when the lease expired. It is only after the period specified in the notice is over and the tenancy has in fact expired that the landlord gets a right to eject the tenant and obtain possession of the land. Considered from this point of view, before the right accrued to the appellant to eject the respondents amending Act 33 of 1952 stepped in and deprived him of that right by requiring him to comply with the statutory requirement as to a valid notice which has to be given for ejecting tenants.

In this connection it is relevant to distinguish between an existing right and a vested right. Where a statute operates in future it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included. As observed by Buckley, L.J. in *West v. Gwynne* [(1911) 2 Ch 1 at pp 11, 12] retrospective operation is one matter and interference with existing rights is another. "If an Act provides that as at a past date the law shall be taken to have been that which it was not, that Act I understand to be retrospective. That is not this case. The question here is whether a certain provision as to the contents of leases is addressed to the case of all leases or only of some, namely, leases executed after the passing of the Act. The question is as to the ambit and scope of the Act, and not as to the date as from which the new law, as enacted by the Act, is to be taken to have been the law." These observations were made in dealing with the question as to the retrospective construction of Section 3 of the Conveyancing and Law of Property Act, 1892 (55 & 56 Vict.

c. 13). In substance [Section 3](#) provided that in all leases containing a covenant, condition or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition or agreement shall, unless the lease contains an expressed provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent. It was held that the provisions of the said section applied to all leases whether executed before or after the commencement of the Act; and, according to Buckley, L.J., this construction did not make the Act retrospective in operation; it merely affected in future existing rights under all leases whether executed before or after the date of the Act. The position in regard to the operation of [Section 5\(1\)](#) of the amending Act with which we are concerned appears to us to be substantially similar.

A similar question had been raised for the decision of this Court in [Jivabhai Purshottam v. Chhagan Karson](#) [[Civil Appeal No 153 of 1958](#) decided on 27-3-1961] in regard to the retrospective operation of Section 34(2)(a) of the said amending Act 33 of 1952 and

this Court has approved of the decision of the Full Bench of the Bombay High Court on that point in [Durlabbha Fakirbhai v. Jhaverbhai Bhikabhai](#) [(1956) 58 BLR 85] . It was held in [Durlabbhai](#) case [(1956) 58 BLR 85] that the relevant provision of the amending Act would apply to all proceedings where the period of notice had expired after the amending Act had come into force and that the effect of the amending Act was no more than this that it imposed a new and additional limitation on the right of the landlord to obtain possession from his tenant. It was observed in that judgment that "a notice under Section 34(1) is merely a declaration to the tenant of the intention of the landlord to terminate the tenancy; but it is always open to the landlord not to carry out his intention. Therefore, for the application of the restriction under sub-[section 2\(a\)](#) on the right of the landlord to terminate the tenancy, the crucial date is not the date of notice but the date on which the right to terminate matures; that is the date on which the tenancy stands terminated".

16. Similar is the case on facts here. A vested right would arise only if any of the appellants before us had actually been appointed to the post of Lecturer/Assistant Professors. Till that date, there is no vested right in any of the appellants. At the highest, the appellants could only contend that they have a right to be considered for the post of Lecturer/Assistant Professor. This right is always subject to minimum eligibility conditions, and till such time as the appellants are appointed, different conditions may be laid down at different times. Merely because an additional eligibility condition in the form of a NET test is laid down, it does not mean that any vested right of the appellants is affected, nor does it mean that the regulation laying down such minimum eligibility condition would be retrospective in operation. Such condition would only be prospective as it would apply only at the stage of appointment. It is clear, therefore, that the contentions of the private appellants before us must fail.

17. One of the learned counsel for the petitioners argued, based on the language of the direction of the Central Government dated 12th November, 2008 that all that the Government wanted the UGC to do was to "generally" prescribe NET as a qualification. But this did not mean that UGC had to prescribe this qualification without providing for any exemption. We are unable to accede to this argument for the simple reason that the word "generally" precedes the word "compulsory" and it is clear that the language of the direction has been followed both in letter and in spirit by the UGC regulations of 2009 and 2010.

18. The arguments based on [Article 14](#) equally have to be rejected. It is clear that the object of the directions of the Central Government read with the UGC regulations of 2009/2010 are to maintain excellence in standards of higher education. Keeping this object in mind, a minimum eligibility condition of passing the national eligibility test is laid down. True, there may have been exemptions [laid down by](#) the UGC in the past, but the Central Government now as a matter of policy feels that any exemption would compromise the excellence of teaching standards in Universities/Colleges/ Institutions governed by the UGC. Obviously, there is nothing arbitrary or discriminatory in this - in fact it is a core function of the UGC to see that such standards do not get diluted.

17. Applying the decision of the Hon'ble Supreme Court in the case of P. Suseela (supra) to the facts as arising in the present proceeding, it is seen that as of 08.02.2011, i.e., when the advertisement was issued by the College authorities for the post of Assistant Professor in the Department of Commerce (Accountancy), the decision of the UGC to grant specific exemptions from possessing NET/SLET qualification to candidates having M.Phil qualification was already rejected by the Ministry of Human Resources Development vide its communication dated 03.11.2010 and the UGC authorities had framed the Regulations of 2010, and therein, had mandated that NET/SLET/SET shall remain the minimum eligibility conditions for recruitment and appointment of Assistant Professors in Universities/Colleges/Institutions and exemption was only granted to candidates who are, or, have been awarded Ph.D degree in accordance with the UGC (Minimum Standards and Procedure For Award of Ph.D Degree) Regulations, 2009, of the eligibility conditions of NET/SLET/SET for recruitment and appointment of Assistant Professors or equivalent position in Universities/Colleges/Institutions. Accordingly, the petitioner, on the date when the said advertisement dated 08.02.2011 was so issued did not possess the mandatory qualification as prescribed under the UGC Regulations holding the field at that relevant point of time i.e., the UGC Regulations of 2010. It is to be noted that the UGC Regulations of 2010 does not incorporate any exemption to candidates who had obtained M.Phil degree prior to 10.07.2009 from the mandatory qualifications of NET/SLET/Ph.D. The NET/SLET/Ph.D qualification continued to be the mandated minimum qualification.

18. The contention of the petitioner that a vested right had accrued to him under the provisions of the said Rules of 2010 for his appointment as Assistant

Professor in the Department of Commerce (Accountancy) in terms of the selection for the same was also dealt with by the Hon'ble Supreme Court in the case of *P. Suseela (supra)* and it was laid down that a vested right would arise only if a candidate had actually been appointed in the post of Lecturer/Assistant Professor before the said Regulation of the UGC had taken effect. It was further held that till such appointment is effected, there is no vested right in any candidate. The Hon'ble Supreme Court held that the right, if any, is only subject to minimum eligibility condition and till such time as the candidates are appointed, different conditions may be laid down at different times. It was further provided that merely because an additional eligibility condition in form of a NET/SLET/SET is laid down, it does not mean that any vested right of a candidate is affected, nor does it mean that the regulation laying down such minimum eligibility condition would be retrospective in operation. Such condition would only be prospective as it would apply only at the stage of appointment.

19. In the case of the petitioner, his appointment could only materialize in the event the Director of Higher Education Department, Assam, in exercise of powers as conferred upon him under the Rule 7 of the said Rules of 2010 had approved the selection made in respect of the petitioner. The advertisement dated 08.02.2011 and the selection process conducted in pursuance thereof, having been so done after the provisions of UGC Regulations of 2010 had come into force and no exemption being provided thereunder to candidates having M.Phil degree prior to 10.07.2009 from possessing the qualifications of NET/SLET, the petitioner having not possessed the minimum eligibility criteria as mandated under the Regulations of 2010, cannot be held to be a person who was selected in conformity with the UGC Regulations holding the field.

20. The notification dated 23.02.2017 as challenged by the petitioner herein is of no consequence inasmuch as

the exemption as granted by the UGC in its meetings to candidates having M.Phil qualification from possessing the mandatory NET/SLET qualification, being not applicable after the same was not approved by the Ministry of Human Resources Development, which had occasioned way back in the year 2010 itself, the existence of the notification dated 01.01.2011 till 22.03.2017 cannot confer upon the petitioner any right inasmuch as such conferment of right would be in clear violation of the Regulations of the UGC, which in the present case was the Regulations of 2010. At the stage, it would be relevant to take note of the judgment of this Court in the case of *Biswajit Deka (supra)*, wherein under similar circumstances this Court by holding that the UGC Regulations being statutory in nature, the eligibility criteria as mandated therein could be replaced and or, substituted only by another such provision having statutory backing. The Government notification dated 01.01.2011, not being backed by a statutory enactment; it would be the Regulations of the UGC that would hold the field. The relevant conclusions as reached by this Court in the above case are extracted herein below: -

”14. As already noted above, advertisement was issued on 04-06-2011, interview was held on 29-06-2011, resolution of the Governing Body is dated 11-07-2011, provisional approval of the Director of Higher Education is dated 02-08-2011 and appointment order issued by the college authority is dated 03-08-2011. This was followed by the regular approval of the Director of Higher Education dated 25-08-2011.

15. As per UGC (Minimum Qualifications Required For The Appointment And Career Advancement Of Teachers In Universities And Institutions Affiliated to It) (Third Amendment) Regulations, 2009, NET/SLET shall remain the minimum eligibility

condition for recruitment and appointment of Lecturers in Universities /Colleges/Institutions, provided that candidates who have been awarded Ph.D degree in compliance of the UGC (Minimum Standard and Procedure for Award of Ph.D Degree) Regulations, 2009 shall be exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/ Institutions.

16. The college authority (respondent Nos. 3, 4 and 5) in their affidavit have taken the stand that Government of Assam had issued a notification dated 01-01-2011 based on resolution No. 472 of UGC in its meeting held on 27-09-2010 that all candidates having M.Phil degree on or before 10-07-2009 shall remain exempted from the requirement of NET for the purpose of appointment as Lecturer Assistant Professor. Therefore, they have contended that petitioner was eligible for appointment to the post of Assistant Professor though he has not cleared NET/SLET as he had completed M.Phil degree in the year 2008.

17. The UGC (Minimum Qualifications Required For The Appointment And Career Advancement Of Teachers In Universities And Institutions Affiliated to it) (Third Amendment) Regulations, 2009, is a statutory piece of regulation framed in exercise of power under Clauses (e) and (g) of Sub-section (1) of Section 26 read with Section 14 of the UGC Act, 1956. When a statutory requirement of eligibility is in place, the same can be replaced or substituted only by one having statutory backing. The Government notification dated 01-01-2011, on which much reliance has been placed by the college authorities, is based on a resolution of the UGC. Respondents have not been able to show any statutory enactment incorporating such exemption as per UGC resolution. Therefore, such resolution of UGC has not taken any statutory shape. In the absence of any statutory enactment, Court is of the view that the eligibility condition as per the UGC (Minimum Qualifications Required For The Appointment And Career Advancement of Teachers In Universities And Institutions Affiliated To It) (Third Amendment) Regulations, 2009, would be applicable in the selection in question.

18. Court is also of the view that the Regulations and eligibility requirement which were prevalent when the consideration took place shall be applicable. On the date of consideration i.e. on the date of interview on 29-06-2011, respondent No.9 did not have NET/SLET, which is the mandatory requirement under the aforesaid Regulations. That being the position, respondent No.9 did not have the eligibility to be appointed to the post of Assistant Professor. Thus, his selection and appointment cannot be sustained. Accordingly, selection and appointment of respondent No.9 as Assistant Professor of English in the ADP College, Nagaon is hereby set aside and quashed."

21. Applying the decision of this Court in the case of *Biswajit Deka (supra)* to

the facts as involved in the present proceedings, it is seen that the petitioner not having the requisite mandated qualifications as prescribed under the Regulations of UGC holding the field at the time of his such selection, the petitioner cannot be held to have possessed the eligibility to be appointed to the post of Assistant Professor. Further, it is to be noted that the UGC in the year 2009 itself had mandated that for the purpose of recruitment to the post of Assistant Professor, M.Phil qualification as acquired through the Distance Education Mode could not be one of the eligibility conditions. As such, the M.Phil qualification possessed by the petitioner otherwise also cannot be recognized as a valid qualification.

22. In that view of the matter, rejection by the Director of Higher Education Department, Assam vide the order dated 10.11.2017, to the proposal as submitted in respect of the selection of the petitioner for his appointment as Assistant Professor in the Department of Commerce (Accountancy) on the ground that he does not possess the mandated qualification of NET/SLET/Ph.D does not warrant any interference from this Court.

23. This now brings the Court to consider the alternative submission made by Ms. B. Bhuyan, learned Senior Counsel praying that a direction is called for in the matter upon the respondent authorities to consider the case of the petitioner for his appointment as Tutor in terms of the provisions of *Assam Education (Provincialisation of Services of Teachers and Re-Organisation of Educational Institutions) Act, 2017*, and he undertakes to acquire the NET/SLET qualification within the period envisaged under the said Rules.

24. The provisions of Act of 2017 is not applicable to institutions, which have been already provincialized under the provisions of separate Acts issued by the Government from time to time and the College of the petitioner having been so provincialized under the provisions of the Assam College (Provincialization) Act of 2005, the provisions of the said Act of 2007 have got no application to the said College and or, any teacher working therein.

25. This Court, would now like to examine the decision in the case of *Ganga Ram Phukan (supra)*, relied upon by Ms. Bhuyan, learned Senior Counsel for the petitioner, in support of her submission that Lecturers who are already in the University system shall not be required to meet the UGC norms coming into force, subsequent to their appointment in the College in question against the non-sanctioned post. A perusal of the said decision, reveals that the same was a case of regularization of the petitioner therein working against the non-sanctioned post in pursuance to an Office Memorandum dated 17.04.2004, issued by the Government for regularization of such Lecturers working against non-sanctioned post, against sanctioned post. In the case on hand, the petitioner has not prayed for any relief in terms of the Office Memorandum dated 17.07.2004 and further, there is no prayer for adjustment of his service from a non-sanctioned post to any sanctioned post. Accordingly, the said decision in the case of *Ganga Ram Phukan (supra)* has got no application to the facts as existing in the present proceedings.

26. In view of the conclusions as reached herein above, the contentions as raised by the petitioner with regard to the challenge to the order dated 10.11.2017, does not merit acceptance and the writ petition is held to be

without merit.

27. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant