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Ajesh V.V. Varapuzha House, Puzhavathu, Changanacherry P.O., Kottayam District, Research Scholar, Department Of Linguistics, Karyavattom Campus - Petitioner @HASH The University Grants Commission Represented By Its Secretary, New Delhi - 110 002 - Respond

Writ Petition (C) Nos. 5912, 11209, 12532, 17725, 17863, 19714, 20438, 20535 and 24760 of 2016.

Court: High Court Of Kerala

Date of Decision: Oct. 25, 2016

Acts Referred:
Constitution of India, 1950 - Article 226#University Grants Commission Act, 1956 - Section 26

Citation: (2016) 4 ILRKerala 807 : (2016) 4 KLT 89

Hon'ble Judges: A.M. Shaffique, J.

Bench: Single Bench

Advocate: Sri. John, K. George, Smt. V.V. Asha, Smt. Nima Jacob, Sri B. Ramachandran, Smt. Indu Susan Jacob, Sri R. Kishore (Kallumthanzham), Smt. A.M. Fousi and Sri Liju V. Stephen, Advocates, for the Petitioner; Sri. S. Krishnamoorthy, CGC, for the Respondent No.

Final Decision: Dismissed

Judgement

Mr. A.M. Shaffique, J. - These writ petitions concern a common issue and hence they are heard and decided together. Petitioners are Research

Scholars under various departments of the Kerala University. At the time of registration as Research Scholars, they have been allotted with

Research Supervisors/Guide and they are doing their research work under such persons. As per the relevant statutes of the University, only those

teachers who have acquired Ph.D and has two publications in approved journals within two years from the award of Ph.D are designated as

Guides. Petitioners contend that as per the prevailing facts, in all Universities in Kerala, Guides are allotted from faculty members and even after

they retire, they continue to be research guide for the respective Research Scholars till final submission of the thesis and awarding of doctoral

degree. It is stated that by a communication dated 6/7/2015 (Ext.P3), UGC had clarified to the Universities that at the time of allocation of

Research Supervisors to the students, they should make sure that it shall only be from regular faculty members. By another clarification dated

4/9/2015, (Ext.P4), UGC reiterated that only regular faculty can be appointed as Research Supervisors/Guide. Pursuant to the above

clarifications, University by its order dated 8/1/2016 (Ext.P5) indicated that the University shall allocate Research Supervisor from among the

regular faculty members in a department or its affiliated PG Colleges/Institutes and that such faculty members shall not be eligible to continue as

Research Supervisors/Guide after his/her retirement. However, a Research Supervisor can continue as a co-guide once he ceases to be a regular

faculty and the Research Scholars at such point of time shall formally be transferred to an eligible Research Supervisor.

2. Petitioners further submit that the Vice Chancellor has issued another order dated 1/02/2016 for implementing the regulations, viz., UGC

(Minimum Standards and Procedures for award of M.Phil/Ph.D) Regulations, 2009 (hereinafter referred to as the 2009 Regulations). The main

contention urged by the petitioners is that the clarifications, Exts.P3 and P4, issued by the UGC have never mentioned about reappointment or

reallocation of Supervisors. It is only stated that at the time of allocation, only regular faculty has to be appointed as Research Supervisors.

Therefore, such Research Supervisors who have been allocated can continue as Guides till the final submission of thesis. According to the

petitioners, Exts.P5 and P6 issued by the University are contrary to the UGC guidelines. Further it is contended that it is impossible to reallocate

the existing Research Scholars to Research Supervisors of regular faculty as they already have Research Scholars under them and the UGC has

fixed a maximum of only 8 scholars under one Supervisor. Petitioners also point out the practical difficulty in complying with the above requirement

and hence seeks for a direction to the 3rd respondent to consider Ext.P7 representation which they have submitted and for setting aside Exts.P5

and P6. Petitioners also seek for a direction to the 2nd respondent to permit the petitioners to continue with the Research Guide/Supervisor

allotted to them at the time of registration in spite of the fact of retirement of Supervisors from service.

3. Counter affidavit has been filed by the 1st respondent inter alia contending that the intention of the UGC is that throughout the research period,

the faculty should be a regular faculty. Referring to Clause 12 of the UGC Guidelines, it is contended that the allocation of the supervisor for a

selected student shall be decided by the Department in a formal manner depending on the number of student per faculty member, the available

specialisation among the faculty supervisors, and the research interest of the student as indicated during interview by the student. It is further stated

that since the spell of the research period is consistently for a long period, in the place of retiring faculty, another equivalent faculty can be replaced

by the University without violating the UGC Regulation, 2009.

4. The standing counsel for the University has filed a statement on behalf of respondents 2 and 3. It is submitted that Ext.P6 came to be issued

after receiving Exts.P3 and P4 notices from the UGC wherein it was indicated that any violation of UGC Regulations 2009 will be taken seriously.

Though the University sought for relaxation of the provisions of the UGC Regulations, 2009, no such relaxation was granted by UGC. It is further

submitted that to help the candidates out of the dilemma as stated in the writ petition, it was indicated that existing Research Supervisors who have

retired from service but are not covered by Clause 9.2 of the guidelines shall be permitted to continue the guidance and research of the existing

research scholars before 15/7/2016. Further, it was clarified that the Departmental Doctoral Committee shall reallocate the candidates working

under the guidance of Research Supervisors already retired from service and not covered by Clause 9.2. It is submitted that in terms of Clause 9.3

of the guidelines, the existing Research Supervisors who have retired prior to 2015-16 are permitted to continue the guidance and complete the

research of the existing Research Scholars before 15/7/2016.

5. WP(C) No. 24760/2016 has been filed by the Kerala University Research Students Union seeking the very same reliefs and inter alia

contending that the directions presently issued as per clarification of the UGC on 4/9/2015 and the University order dated 8/1/2016 have only

prospective application and that the allotment of Research Supervisors done prior to the issuance of the aforesaid communication/order cannot be

unsettled.

6. WP(C) Nos. 5912, 11209, 12532, 17863, 19714, 20438 and 20535/2016 are all filed seeking almost similar reliefs.

7. Counter affidavit/statement filed in these cases are almost identical.

8. Heard the learned counsel for the petitioners, learned counsel appearing for the UGC as well as the relevant Universities.

9. Since the contentions urged on behalf of the petitioners are substantially the same, for easy reference, I am referring to the documents filed in

WP(C) No. 17725/2016 for a narration of the facts and legal issues involved in the matter.

10. The 2009 Regulations presently holds the field which of course has been amended as per the 2016 Regulations. The Regulations had been

framed under Section 26 of the University Grants Commission Act, 1956. There is no challenge to the Regulations as such. As per Clause 6 of the

2009 Regulations, all Universities, Institutions, Deemed Universities and Colleges are directed to lay down criteria for the faculty to be recognised

as Research Supervisor, both for M.Phil and Ph.D Programmes. Clause 7 indicates that such University/institution shall lay down and decide on

annual basis, a predetermined and manageable number of M.Phil and doctoral students depending on the number of eligible Faculty Supervisors. It

is further indicated that ""a supervisor shall not have, at any given point of time, more than eight Ph.D Scholars and five M.Phil Scholars."" Clause 8

further indicates that the number of seats for M.Phil and Ph.D shall be decided well in advance and notified in the University website or

advertisement and thereafter conduct admission on regular basis. Clause 12 reads as under:-

Allocation of Supervisor

12. The allocation of the supervisor for a selected student shall be decided by the Department in a formal manner depending on the number of

student per faculty member, the available specialisation among the faculty supervisors, and the research interest of the student as indicated during

interview by the student. The allotment/allocation of supervisor shall not be left to the individual student or teacher.

11. By Ext.P3 dated 6/7/2015, UGC issued a communication to the Vice Chancellor, University of Kerala which appears to be a general

communication issued to all the Universities indicating that it has come to the notice of UGC that some Universities are hiring the services of

Supervisors who do not happen to be regular teachers of the Universities or its affiliated post graduate Colleges/institutes, which is in violation of

the 2009 Regulations and accordingly the following clarification had been issued:-

Universities shall allocate the supervisor from amongst the regular faculty members in a department or its affiliated PG Colleges/Institutes

depending on the number of students per faculty member, the available specialisation among the faculty supervisors and the research interest of the

student. It is further clarified that any Ph.D/M.Phil degree awarded by a University under the supervision of a supervisor who is not a faculty

member of the University or its affiliated PG Colleges/Institutes would be in violation of UGC (Minimum Standards and Procedure for award of

M.Phil/Ph.D) Regulations, 2009.

This was followed by another letter dated 4/9/2015 produced as Ext.P4 clearly indicating that only regular faculty and not adjunct faculty can be

appointed as Research Supervisors. The contents of the said letter read as under:-

It has come to the notice of University Grants Commission that some of the Universities are circumventing the provisions of UGC (Minimum

Standards and Procedure for Award of M.Phil/Ph.D) Regulations, 2009 by utilising the services of Adjunct Faculty as Supervisors. It is reiterated

for the information of the Universities that only regular faculty (not Adjunct Faculty) can be appointed as Research Supervisors. This has already

been iterated in the earlier letter of even number dated 6th July, 2015.

In case of any aberration by the University, it will be proceeded against as per the UGC Act, 1956 and the name of the University will be put in the

defaulters list on the UGC website.

It appears that pursuant to the above instructions/clarification issued by UGC, the University had issued order dated 8/1/2016 (Ext.P5) in which

the following orders had been passed:-

1. The University shall allocate the Supervisor from amongst the Regular faculty members in a Department or its affiliated PG Colleges/Institutes.

He/She shall not be eligible to continue as Supervisor after his/her retirement. However, a Research Supervisor can continue as co-guide once he

ceases to be a Regular faculty and the Research Scholars at such point of time shall formally be transferred to an eligible Research Supervisor

(Regular faculty) in the subject.

2. Adjunct Faculty shall not be allocated as Research Supervisor.

3. The UGC (Minimum Standards and Procedure for Award of M.Phil/Ph.D Degree) Regulations, 2009 shall be strictly adhered to.

4. Provisions in the University Regulations/Rules/ Bye Laws and orders pertaining to Registration and procedure for the award of Ph.D which are

inconsistent with UGC (Minimum Standards and Procedure for Award of M.Phil/Ph.D Degree) Regulations, 2009 stands cancelled.

Ext.P5 was followed by Ext.P6 dated 01/02/2016, order issued by the University in regard to the guidelines framed in conformity with 2009

Regulations. The relevant clause which we are concerned is Clause 2, which reads as under:-

2. Research Supervisors

2.1 The University shall allocate only regular faculty members in the teaching department or the affiliated PG Colleges/Institutes as Research

Supervisors.

2.2 Each Research Supervisor shall not have, at any given point of time, more than eight Ph.D Scholars and five M.Phil Scholars.

2.3 The number of seats for M.Phil and Ph.D shall be decided well in advance and notified in the University website or advertisement on the basis

of the data furnished by the Heads of Departments of University Departments and Heads of Approved Research Institutions.

12. In regard to Research Supervisors who retire during the research programme, the relevant clauses are 9.2 to 9.5, which read as under:-

9.2. The Research Supervisors who retire from service on attaining superannuation from 2015- 2016 academic year onwards shall be permitted

to continue the guidance for one year from the date of retirement to complete the research work of the then existing research scholars.

9.3. The existing Research Supervisors who have retired from service, but not covered under Clause 9.2 of these guidelines shall be permitted to

continue the guidance and complete the research work of the existing research scholars before 15th July 2016.

9.4. The Departmental Doctoral Committee shall have to reallocate the candidates working under the guidance of research supervisors already

retired from service and not covered under Clauses 9.2 and 9.3 of these guidelines.

9.5 All the Research Supervisors already approved by the University inclusive of retired teachers shall be permitted to continue as co-supervisor of

the existing research scholars.

13. The 2016 Regulations have come into force w.e.f. 15/4/2016 which we are not concerned as no contention had been urged on the said basis.

Petitioners challenge Exts.P5 and P6. One main contention urged is that in the eligibility criteria for M.Phil/Ph.D Supervisors, as prescribed under

Clause 6 of the 2009 Regulations, there is no specific mention that only regular faculty members can be Research Supervisors. Clause 6 of

Regulation 2009 reads as under:-

6. All Universities, Institutions, Deemed to be Universities and Colleges/Institutions of National Importance shall lay down the criteria for the

faculty to be recognised as Research Supervisor both for M.Phil and Ph.D.Programmes.

14. But it is relevant to note that UGC themselves have clarified by Exts.P3 and P4 that the faculty as per Regulations are regular faculty and not

adjunct faculty. In other words, retired persons cannot continue as Research Supervisors or Guides for M.Phil and Ph.D Programmes. It is

pursuant to the clarification issued by UGC that Ext.P5 order and Ext.P6 guidelines had been issued.

15. The meaning of the word ""faculty"" as available in the Oxford Advanced Learner''s Dictionary is ""all the teachers of a particular University or

College"". In Merriam-Webster''s Advanced Learner''s Dictionary, ""faculty"" means ""the group of teachers in a school"". In P. Ramanatha Aiyar''s

Advanced Law Lexicon, ""faculty"" is defined as ""Faculty"" means a Faculty of the University. ""Faculty"" means the faculty of a Central Educational

Institution. A department of learning at a university, or the professors constituting it. Right, authority or privilege to act. Colleges, a body of

instructors (as) Faculty of Arts. ''Faculty'' signifies a privilege or special dispensation, granted unto a man by favour and indulgence to do that which

by the law he cannot otherwise do"". In the New Oxford Encyclopedic Dictionary, ''faculty'' means ""whole teaching staff of college or university"".

16. One contention that has been urged is that Exts.P3 and P4 clarifications issued by UGC were not in accordance with the Regulation and that

the word ""faculty"" in Clause 6 of 2009 Regulations ought to include retired teachers as well. I do not think I can ascribe to the said view. The

faculty"" of a University or a College can only mean that the faculty who is in service of the University or College and cannot be a person who has

already retired from service. Therefore, there is justification on the part of the UGC in issuing Exts.P3 and P4 clarifications. Apparently, Exts.P5

and P6 had been issued based on the said clarifications. That apart, University had even indicated in Ext.P6 that the required faculty, the Research

Supervisor, who had retired from service can be permitted to continue the guidance for one year from the date of retirement to complete the

research work of the then existing Research Scholars in respect of such Supervisors who attain superannuation in the academic year 2015-16, and

that retired teachers shall be permitted to continue as cosupervisor of the existing Research Scholars. Necessary provisions has also been made by

way of Clause 9.3 indicating that those Research Supervisors who have already retired from service shall be permitted to continue the guidance

and complete the research work of the existing Research Scholars before 15/7/2016. Further, in terms of Clause 9.4 of Ext.P6, it is clearly

indicated that the Doctoral Committee has to reallocate the candidates working under the guidance of Research Supervisors already retired from

service and not covered under Clauses 9.2 and 9.3 of the guidelines. Therefore, it is discernible from Ext.P6 that all eventualities have been taken

note of by the University to comply with the 2009 Regulations. Therefore, I do not think that Exts.P5 and P6 can be challenged as illegal or

arbitrary.

17. Yet another contention urged by the petitioners is that if the Research Supervisor is changed after their year of retirement, there will be

substantial difficulty for the Research Scholars to complete the research subject. This problem is taken care of by the University itself by delegating

the existing retired Research Supervisors as a Co-supervisor. Further, when the University Regulations clearly specify that only existing teachers

can be allocated as Research Supervisors, University cannot deviate from the said regulations which has statutory force. Therefore, the

apprehension expressed by the petitioners is totally unfounded.

18. Yet another argument raised is that there are no sufficient Research Supervisors in the University when retired teachers are not being permitted

to act as Research Supervisors. In fact, it is for the University to make necessary arrangements on a case to case basis if it is found that sufficient

faculty is not available. No doubt, as per the Regulations, Research Supervisor shall not have, at any given point of time, more than 8 Ph.D

Scholars and 5 M.Phil Scholars. Further, the course work has to be completed by the Research Scholars within a specified time. As per Clause

12 of the Regulations, the allocation of Supervisor for a selected student is the obligation of the Department and when in Ext.P6, it is reiterated by

the University that appropriate provisions will be made, I do not think that the petitioners will be put to any inconvenience as suggested. The period

for full time research as well as part time research also varies. It is for the University to take into consideration all such parameters and ensure that

all the Research Scholars presently shall not be deprived of the Research Supervisors and in order to enable them to complete the research work

within the specified time, if at all there is any delay on the part of the University in arranging Research Supervisors, on retirement of existing

Research Supervisors, the University will have to take appropriate decision in that regard.

19. There is no doubt about the proposition that the Regulations framed by the UGC in accordance with Section 26 of the UGC Act, 1956, is

having statutory force. It is so held by the Apex Court in P. Suseela and Others v. University Grants Commission and Others [(2015) 8

SCC 129]. This case was decided with reference to the guidelines framed by the UGC in the matter relating to prescribing minimum qualifications

required for the appointment of career advancement of teachers in universities and institutions affiliated to it. It is held at paras 12, 13, 14, 16 and

17 as under:-

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 12-11-2008 and 30-3-2010 are directions made pertaining to questions of policy relating to national

purposes inasmuch as, being based on the Mungekar 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 PhD degrees are granted by different universities/institutions having differing standards of

excellence. It is quite possible to conceive of M.Phil/PhD 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/PhD 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 the 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 the 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 pre-judicially 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 Hiraman Patil. 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.

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 12-11-2008

that all that the Government wanted 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.

20. A similar view had been expressed by the Apex Court in University Grants Commission v. Neha Anil Bobde (Gadekar) (2013 (10)

SCC 519), wherein, at para 31, the Apex Court held as under:-

31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued,

the courts shall keep their hands off since those issues fall within the domain of the experts. This Court in University of Mysore v. C.D. Govinda

Rao, Tariq Islam v. Aligarh Muslim University and Rajbir Singh Dalal v. Chaudhary Devi Lal University, has taken the view that the court shall not

generally sit in appeal over the opinion expressed by the expert academic bodies and normally it is wise and safe for the courts to leave the

decision of the academic experts who are more familiar with the problem they face, than the courts generally are. UGC as an expert body has been

entrusted with the duty to take steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in

the university. For attaining the said standards, it is open to UGC to lay down any ""qualifying criteria"", which has a rational nexus to the object to

be achieved, that is, for maintenance of standards of teaching, examination and research. The candidates declared eligible for Lectureship may be

considered for appointment as Assistant Professors in universities and colleges and the standard of such a teaching faculty has a direct nexus with

the maintenance of standards of education to be imparted to the students of the universities and colleges. UGC has only implemented the opinion of

the experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or discriminatory or violative of Article 14 of the

Constitution of India.

21. If any interference is made to the guidelines issued by the University, it will amount to dilution of the 2009 Regulations which is not permissible

and the Courts cannot take a different view from what has already been stated.

22. Under such circumstances, I am of the view that the petitioners are not entitled for any reliefs as sought for. However, it is made clear that the

Universities shall endeavour to ensure that all the Research Scholars are attached to respective Research Supervisors and in the event of retirement

of any of the faculty members during the research work as stated above, in regard to the period spent for allocating a new Research Supervisor,

appropriate provision shall be made, if necessary, in consultation with the UGC.

23. Writ petitions are dismissed with the above directions.