

GAHC010027072022



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

Case No. : WP(C)/1040/2022

DR. MINTU DAS AND 3 ORS
S/O. LT. SUBHAS DAS, RESIDENT DAS TAILORS LALUK, P.O. LALUK, DIST.
LAKHIMPUR, ASSAM, PIN-784160.

2: MOMI SARMA
W/O. AJIT SARMA
R/O. HOUSE NO.4
TRIBENI PATH
RUKMINIGAON
GUWAHATI
P.O. KHANAPARA
DIST. KAMRUP (M)
GUWAHATI
ASSAM-781022.

3: ANUREKHA CHOUDHURY
D/O. DURGESWAR CHOUDHURY
R/O. F.N.-C
2 SUNRISE APARTMENT
CHANDAN NAGAR
SIXMILE
GUWAHATI-781022.

4: GOLAP SUT
S/O. LT. BHABIT CHANDRA DAS
VILL. LANKESWAR
P.O. GUWAHATI UNIVERSITY
GHY.-14

VERSUS

THE UNION OF INDIA AND 4 ORS
REP. BY ITS SECRETARY MINISTRY OF EDUCATION (HIGHER EDUCATION
DEPTT.), 127-C, SHASTRI BHAVAN, NEW DELHI.

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
DISPUR
GUWAHATI-06.

3:JOINT SECRETARY
TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
DISPUR
GUWAHATI-06.

4:THE DIRECTOR OF HIGHER EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-19.

5:THE UNIVERSITY GRANTS COMMISSION
REP. BY THE CHAIRMAN
UGC
BAHADUR SHAH ZAFAR MARG
NEW DELHI-110002

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : ASSTT.S.G.I.

Linked Case : WP(C)/2100/2022

DR. SHREEMOYE BORDOLOI AND 6 ORS
W/O-DR. SURAJIT KONWAR
R/O- DIBRUGARH
P.O- DIBRUGARH
DIST- DIBRUGARH
ASSAM
PIN-786004

2: DR. ARCHITA BHATTACHARYYA
W/O- MRINMOY DUTTA
R/O- HOUSE NO. 2
NEAR JAGANNATH HOMEIO HALL

K.K BHATTA ROAD
CHENIKUTHI
DIST- KAMRUP (M)
ASSAM
PIN-781003

3: DR. PRANITA SARMAH
W/O- DR. HEMANTA SARMAH
R/O- RUPNAGAR
NEAR NORTH LAKHIMPUR COLLEGE
P.O- KHELMATI
DIST- LAKHIMPUR (ASSAM)
PIN-787031

4: DR. JYOTI GOGOI
D/O- SURYA KUMAR GOGOI
R/O- HILOIDARI
P.O- DIGHALA HILOIDARI
DIST- LAKHIMPUR
ASSAM
PIN-787055

5: DR. BINITA PATHAK
W/O- ANUPANANDA DEKA
R/O- PARAMA SARADA APARTMENT
1-B
GANESH MANDIR PATH
NOONMATI
P.S - NOONMATI
DIST- KAMRUP (M)
ASSAM
PIN-781020

6: DR. SNIGDHA DAS
W/O- DR. KULENDU NATH
R/O- VILLAGE TIPLAI
P.S- RANGJULI
DIST- GOALPARA
ASSAM
PIN-783130

7: DR. KULENDU NATH
S/O- LATE GIRINDRA CH. NATH
R/O- TIPLAI
P.S- RANGJULI
DIST- GOALPARA
ASSAM
PIN-783130

VERSUS

THE UNION OF INDIA AND 3 ORS
REP. BY ITS SECRETARY MINISTRY OF EDUCATION
(DEPARTMENT OF HIGHER EDUCATION)
127-C
SHASTRI BHAWAN
NEW DELHI

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
HIGHER EDUCATION DEPARTMENT
DISPUR

GUWAHATI-781006

3:JOINT SECRETARY
TO THE GOVERNMENT OF ASSAM
HIGHER EDUCATION DEPARTMENT
DISPUR

GUWAHATI-781006

4:THE DIRECTOR
OF HIGHER EDUCATION
KAHILIPARA
GUWAHATI-19
ASSAM

5:THE UNIVERSITY GRANTS COMMISSION
REP. BY THE CHAIRMAN
HAVING REGISTERED OFFICE AT BAHADUR SHAH ZAFAR MARG
NEW DELHI-110002

Advocate for : MR. T J MAHANTA
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 3 ORS

Linked Case : WP(C)/2515/2022

MEMI RANI CHINTEY AND ANR
D/O SRI JOGESWAR CHINTEY
RESIDENT OF DUSUTI MUKH GAON

PO KHUBALI
PS AND DIST DHEMAJI
ASSAM

2: MANOB JYOTI SAIKIA
S/O LATE PHANINDRA SAIKIA
RESIDENT OF BAM DHEKIA KHOA

PS AND DIST JORHAT
ASSAM
VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY ITS COMMISSIONER AND SECRETARY
EDUCATION (HIGHER) DEPARTMENT
GOVT. OF ASSAM
DISPUR
GUWAHATI 06

2:THE DIRECTOR OF EDUCATION (HIGHER) DEPARTMENT

GOVT. OF ASSAM
KAHILIPARA
GUWAHATI 06

3:THE DIRECTOR OF THE UNIVERSITY GRANT COMMISSION

BAHADUR SHAR JAFAR MARG
NEW DELHI 02

Advocate for : MR. A R BHUYAN

Advocate for : SC

HIGHER EDU appearing for THE STATE OF ASSAM AND 2 ORS

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 21-06-2022

JUDGMENT & ORDER (ORAL)

Heard Mr. MK Choudhury, learned senior counsel for the petitioners in WP(C)No.1040/2022, Mr. D Mahanta, learned counsel for the petitioners in WP(C)No.2100/2022, Mr. AR Bhuyan, learned counsel for the petitioners in WP(C)No.2515/2022. Also heard Mr. K Gogoi, learned counsel for the respondents No.2, 3 and 4 being the authorities under the Higher Education Department, Government of Assam and Mr. A Chamuah, learned counsel for the

respondent No.5 being the authorities under the UGC as well as Mr. H Gupta, learned CGC for the respondents in the Union of India.

2. The petitioners are all master degree holders in different subjects also having the UGC norms like NET, SLET, Ph.D etc., and are of the view that they have the necessary qualifications to be eligible to participate in any selection process for the posts of Assistant Professor in the various colleges. In the present writ petition, we are more concerned with the participation of the petitioners in the selection process for the post of Assistant Professors in the colleges in the State of Assam and the views that may be expressed may not be applicable in respect of the eligibility of the petitioners for any posts of Assistant Professors in any other States.

3. Some of the petitioners are stated to be serving in various colleges and other institutes on different terms, but not under a regular employment in any of the colleges under the Higher Education Department of the Government of Assam. It is the stand of the petitioners that all of them had acquired their respective qualifications about 7 to 10 years back. In the circumstance, being duly qualified, they intend to offer their candidature in the selection process that may be undertaken in the Higher Education Department of the Government of Assam. The petitioners are primarily aggrieved by the provisions of the office memorandum dated 24.01.2022 of the Higher Education Department of the Government of Assam wherein, amongst others, the distribution of marks to be adopted in a selection process for the posts of Assistant Professors had been provided. The petitioners are particularly aggrieved that in the distribution of

marks out of a total of 100, 72 marks are allotted for academic records which includes the marks that may have been obtained in the HSLC, HSSLC, Degree and Master Degree that the petitioners may have been qualified for.

4. The petitioners in comparison refers to the distribution of marks to be adopted in a selection process provided by the UGC (for short, UGC) as per the appendix III table-II(c) to the communication No.F.3-1/2009 dated 30.06.2010, which in fact notified the 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 to be referred to as the UGC Regulations of 2010).

5. Mr. MK Choudhury, learned senior counsel for the petitioner raises a core contention that distribution of marks in the selection process having been provided by the UGC in appendix III table-II(c) to the communication No.F.3-1/2009 dated 30.06.2010, the same would be binding even on the authorities of the Higher Education Department of the Government of Assam for the purpose of recruitment to the posts of Assistant Professor in the colleges and no further discretion is vested in the Higher Education Department of the Government of Assam to adopt a different procedure.

6. In order to substantiate the said contention, Mr. MK Choudhury, learned senior counsel for the petitioners refers to various judgments rendered by the Supreme Court and this Court as well as some other High Courts wherein specific provisions are being laid down that the provisions of the UGC

Regulations 2010 have a binding effect and, therefore, the authorities under the Higher Education Department of the Government of Assam cannot deviate from such provision and adopted a different procedure in their discretion.

7. Mr. K Gogoi, learned counsel for the Higher Education Department of the Government of Assam on the other hand raises the counter contention that the colleges under the Higher Education Department of the Government of Assam are not funded by the UGC from their funds and such colleges are basically operated by the Government of Assam from their own State funds may be except for certain occasional grants that may be given by the UGC for the developmental purpose of the respective colleges. It is submitted that as colleges under the Higher Education Department of the Government of Assam are not wholly funded by the UGC, therefore, by relying on the propositions of law laid down by the Supreme Court in *Kalyani Mathivanan Vs. KV Jeyaraj and others* reported in (2015) 6 SCC 363, there is a discretion vested in the Higher Education Department of the Government of Assam to adopt their own procedure in respect of selection for the post of Assistant Professor in the colleges under the Department.

8. Mr. A Chamuah, learned counsel for the UGC on the other hand, takes the stand that the Regulations made by the UGC are statutory regulations made under Section 26 of the UGC Act and therefore it has a binding effect on all such colleges and universities under the UGC.

9. In the conspectus of the aforesaid contention and counter contention being

raised, the question for decision before the Court will be whether the provisions of the UGC Regulations in its entirety is binding on the Government of Assam in the Higher Education Department for the purpose of the selection process for Assistant Professors in the colleges or some kind of discretion is also vested in the Government of Assam in the Higher Education Department to adopt a deviated procedure in respect of the selection process.

10. Mr. MK Choudhury, learned senior counsel for the petitioners refers to the communication dated 13.12.2011 from the Director of Higher Education Assam made to the Principals of the various colleges which provides that reference is invited for the fresh guidelines that has been issued for distribution of marks for selection of, amongst others, Assistant Professor as per the UGC Guidelines 2010 and for taking further necessary action. The selection procedure for the post of Assistant Professor enclosed to the aforesaid communication in the first paragraph provides as extracted:

“Qualifications for Direct Recruitment of Assistant Professor: (Reference – Clause 3.0.0./4.0.0./4.4.0/4.4.1. of the UGC Regulations, 30th June 2010) (Arts, Humanities, Science, Social Sciences, Commerce, Education, Languages, Law, Journalism and Mass Communication)

i) Good Academic Record as defined by the concerned University with at least 55% marks (or an equivalent grade in a point scale whenever grading system is followed) at the Master’s Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign university.

ii) Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC LIKE SLET/SET

iii) Notwithstanding anything contained in sub-clause (i) and (ii) to this Clause 4.401. 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 or equivalent position in Universities, Colleges/ Institutions.

iv) NET/ SLET/ SET shall also not be required for such Masters Programmes in disciplines for which NET/ SLET/SET is not conducted.

v) A relaxation of 5% may be provided at the graduate and master's level for the Scheduled Caste/ Scheduled Tribe/ Differently-abled (Physically and visually differently – abled) categories for the purpose of eligibility and for assessing good academic record during direct recruitment to teaching positions. The eligibility marks of 55% marks (or an equivalent grade in a point scale whenever grading system is followed) and the relaxation of 5% to the categories mentioned above are permissible, based on only the qualifying marks without including any grace marks procedure (clause-3.4.1.);

vi) A relaxation of 5% may be provided, from 55% to 50% of the marks to the Ph.D. Degree holders, who have obtained their Master's Degree prior to 19th September, 1991 (Clause-3.5.0.);

vii) The period of time taken by candidates to acquire M.Phil. and/ or Ph.D. Degree shall not be considered as teaching / research experience to be claimed for appointment to the positions. (Clause- 3.9.0)''

11. By referring to the first paragraph of the selection procedure enclosed with the aforesaid communication, Mr. MK Choudhury, learned senior counsel submits that the said paragraph itself makes reference to Clauses 3.0.0, 4.0.0, 4.4.0, 4.4.1 of the UGC Regulations of 2010. According to the learned senior counsel the very reference to the clauses of the UGC Regulations of 2010 in the selection procedure as adopted by the Government of Assam makes it discernible that the Government of Assam in the Higher Education Department had adopted the UGC Regulations for the purpose of regulating the selection procedure for the post of Assistant Professor in the colleges under the

Department.

12. Further reference is made to Rule 7(C) of the Assam College Employees (Provincialisation) Rules, 2010 (for short, the Provincialisation Rules of 2010) which again is extracted as below:

“Rule 7(C): The Selection Committee may hold such test of interview for all posts as may be considered necessary. For posts for which UGC has prescribed norms, no candidate shall be recruited without having the required norms.”

13. By referring to the provisions of Rule 7(C) of the Provincialisation Rules of 2010, the learned senior counsel submits that the procedure provided by the Rules of 2010 itself provides that no candidate who does not have the UGC prescribed norms shall be recruited for the posts, amongst others, Assistant Professor in the colleges under the Higher Education Department of the Government of Assam. By referring to the said provision of Rule 7(C), it is the contention that the Rule itself makes it discernible that there is an adoption by the Government of Assam in the Higher Education Department of the UGC Regulations of 2010, amongst others. Further reference is made to the OM dated 24.01.2022 providing for the guidelines for selection of Assistant Professor wherein also reference is made to Clauses 3.0.0, 4.0.0, 4.4.0, 4.4.1 as well as 5.1.0 and 5.1.4 of the UGC Regulations of 2010 and by referring to the said clauses of the UGC Regulations of 2010 a submission is made that the OM dated 24.01.2022 itself makes it discernible that the Government of Assam in the Higher Education Department had adopted the UGC Regulations of 2010.

14. Having so indicated, it is the submission of the learned senior counsel that the UGC Regulations of 2010 having been adopted by the Government of Assam in the Higher Education Department the provisions thereof would be applicable in its entirety in respect of all such selection process for the posts of Assistant Professor of the colleges under the Department. It is the further submission of Mr. MK Choudhury, learned senior counsel for the petitioners that the UGC Regulations of 2010 having provided for the distribution of marks in a particular manner and it being a part and parcel of the Regulations of 2010 itself, the same would prevail over the distribution of marks provided under the OM dated 24.01.2022 of the Higher Education Department of the Government of Assam inasmuch as, it has been a settled principle of law that the UGC Regulations of 2010 are admittedly a part of a Central legislation whereas the OM dated 24.01.2022 of the Government of Assam in the Higher Education Department are part and parcel of the State made laws for the purpose and, therefore, in view of the provisions of Article 254 of the Constitution of India, even if there is a conflict or repugnancy between the State laws and the Central laws, it would be the Central laws that would prevail. Accordingly, it is the submission that as the provisions of the OM dated 24.01.2022 is in conflict as regards distribution of marks provided in the UGC Regulations of 2010, it would have to be accepted that if there is repugnancy between the State laws and the Central laws as regards the distribution of marks, the provisions in the UGC Regulations of 2010 would prevail.

15. In order to substantiate the submission reference is made to the proposition of law laid down by the Supreme Court in *Gambhirdan K Gadhvi Vs. The State Of Gujarat & Others* passed in WP(C)No.1525/2019 wherein in

paragraph 16 thereof it has been provided that the UGC Regulations being a subordinate legislation, it becomes a part of the University Grants Commission Act 1956 (for short, UGC Act, 1956) and, therefore, in case of any conflict between the State legislation and the Central legislation, the Central legislation shall prevail by applying Principle of repugnancy under Article 254 of the Constitution of India.

16. Further reference is made to the proposition of law laid down in paragraph 6.1. of KV Jeyaraj (supra) wherein it is provided that to the extent the State legislation is in conflict with the Central legislation including the subordinate legislations made under the Central legislation under entry of the concurrent list which may be repugnant to the Central legislation, would be inoperative.

17. With regard to the contention that the provisions of UGC Regulations of 2010 are binding on all colleges and universities, Mr. MK Choudhury learned senior counsel refers to the proposition of law laid down in *Annamalai University represented by Registrar Vs. Secretary to the Government, Information and Tourism Department and Others* reported in (2009)4 SCC 590 wherein in paragraphs 41 and 42 it has been provided that the provisions of the UGC Regulations are binding on all universities, whether conventional or open and further in the matter of higher education, it is necessary to maintain minimum standards of instructions. It has further been held that it is neither denied nor disputed that the matter of laying down qualification of the teachers, running of the universities and the matters provided for under the UGC Act 1956 are applicable and binding on all concerned.

18. Further reference is made to the proposition of law laid down in paragraph 15 of *Gambhirdan (supra)* wherein it has been provided as the UGC Regulations have prescribed the minimum qualification for appointment of the Vice Chancellor, therefore, the appointments must be in accordance with the provisions laid down as per the UGC Regulations. It has further been held that the eligibility criteria when once fixed by the UGC under its Regulations would in the view of the Court apply to all the universities which are aided by the UGC and would be bound by the said Regulation even in the absence of the same being incorporated by the respective universities under the respective States.

19. The contention raised by Mr. M K Choudhury, learned senior counsel for the petitioner are twofold. Firstly, as because various clauses of the UGC Regulations of 2010 had been referred in the communication dated 13.12.2011 from the Director of Higher Education, Assam made to the Principals of various Colleges, as well as the other documents referred, it has to be understood that the provisions of the UGC Regulation of 2010 in its entirety have been adopted by the Department of Higher Education of the Government of Assam. The second contention is that in view of the pronouncement of the Supreme Court in *Kalayani Mathivanan (supra)* and *Gambhirdhan (supra)*, the provisions of the UGC Regulation of 2010 being in the nature of a Central legislation would prevail over any other form of State laws being adopted by the Government of Assam and therefore, the provisions thereof in its entirety are applicable and binding even on the Government of Assam.

20. In furtherance to the said contention, reference is made to the

pronouncement of *Annamalai University (supra)* wherein it had been held that the provisions of the UGC Regulations are binding on all the universities whether conventional or open and therefore, going by the said proposition, the provisions of UGC Regulation of 2010 would also be applicable in respect of the selection procedures for appointment of Assistant Professor in Colleges of the State of Assam.

21. With regard to the contention that as because the communication dated 13.12.2011 from the Director of Higher Education indicates an adoption of certain clauses of UGC Regulations of 2010 to have been adopted by the Government of Assam and therefore, the entire provisions of the said regulation had also been adopted. In order to appreciate the said contention, we have to look into the law relating to incorporation of provisions of another statute in a given statute and the effects thereof. When the provisions of one statute by incorporation is adopted in another statute, the general perception is that the provisions of the other statute which is stated to be incorporated alone is accepted to have been adopted in the given statute and it is not to be construed that the entire provisions of the other statute had been incorporated merely because some provisions thereof had been adopted by incorporation.

22. By following the said principles of interpretation of statutes by incorporation, we have noticed that in the communication dated 13.12.2011 from the Director of Higher Education, Assam, reference is made only in respect of certain specific clauses of the UGC Regulation of 2010 i.e. clauses 3.0.0., 4.0.0, 4.4.0. and 4.4.1.

23. By accepting the reference to the aforesaid clauses in the communication dated 13.12.2011 from the Director of Higher Education, Assam, it has to be accepted that only the provisions of Clauses 3.0.0., 4.0.0, 4.4.0. and 4.4.1 of the UGC Regulation of 2010 have been adopted by the Higher Education Department of Government of Assam. In other words, as per the provisions of the communication dated 13.12.2011 from the Director of Higher Education, Assam, it cannot be construed that all such other provisions of the UGC Regulation of 2010 have also been adopted by the Higher Education Department of Government of Assam over and above the aforesaid Clauses i.e. 3.0.0., 4.0.0, 4.4.0. and 4.4.1.

24. Further by referring to Rule 7(C) of the Provincialisation Rules of 2010, a contention is raised that as the said rule provides that no candidates shall be recruited without having the required UGC norms and as the UGC norms have been referred therein, therefore, it has to be construed that the UGC Regulation of 2010 had been adopted by the Higher Education Department of Government of Assam in its entirety. Rule 7(C) of the Provincialisation Rules of 2010 provides that the UGC norms are to be followed for recruitment. UGC norms mean the qualification and other eligibility conditions for such recruitment. Accordingly, we have to understand that as per Rule 7(C) of the Provincialisation Rules of 2010 the qualification or other eligibility conditions prescribed under the UGC Regulation of 2010 are also to be followed in case of a recruitment. The procedure to be adopted for distribution of marks in a selection process are not within the purview of the prescribed qualifications or the eligibility conditions and therefore, not a part of the UGC norms to be followed. From such point of

view also, it cannot be accepted that by virtue of Rule 7(C) of the Provincialisation Rules of 2010 the entire UGC Regulations of 2010 had been adopted by the authorities under the Higher Education Department of the Government of Assam.

25. In the given situation, by virtue of the communication dated 13.12.2011 from the Director of Higher Education, Assam and Rule 7(C) of the Provincialisation Rules of 2010 what can be accepted to have been adopted by the Government of Assam in the Higher Education Department from the provisions of the UGC Regulations of 2010 are that clauses 3.0.0., 4.0.0, 4.4.0. and 4.4.1 and the norms prescribed by the UGC for the recruitment to the post provided therein are being adopted. In other words, all such other provisions of the UGC Regulations of 2010 other than the Clauses 3.0.0., 4.0.0, 4.4.0. and 4.4.1 and the prescribed norms for the various posts, have not been adopted.

26. In this respect, we take note of the contention of Mr. K Gogoi, learned counsel for the Higher Education Department where reference has been made to the proposition of law laid down by the Supreme Court in *Kalyani Mathivanan (supra)* wherein in paragraph 62.3 thereof it was held that the UGC Regulations of 2010 are mandatory for teachers and other academic staff in all central universities and colleges thereunder and the institutions deemed to be universities whose maintenance expenditure is met by the UGC. In paragraph 62.4 thereof, it has been provided that the UGC Regulations of 2010 are directory for the universities, colleges, and other higher educational institutions under the purview of the State Legislation. As the matter has been left to the

State Government to adopt and implement the scheme, thus the UGC Regulations of 2010 are partly mandatory and is partly directory. In paragraph 62.5 thereof the Supreme Court has provided that the UGC Regulations of 2010 having not been adopted by the State of Tamil Nadu, the question of conflict between State Legislation and the statutes framed under Central Legislation does not arise and in such case, there shall be no conflict between the State Legislation and the Central Legislation.

27. In the instant case, it is stated by the Higher Education Department of the Government of Assam that for the colleges under the Department, the maintenance expenditure is not made by the UGC, but it is made by the State Government from its own funds, except may be for certain occasional grants that may be provided by the UGC for further development of the colleges. In spite of such grants, being received, the core maintenance of the colleges are from the funds of the State Government itself. Accordingly, by referring to the provisions of paragraph 62.3 of the provisions of the Supreme Court in *Kalyani Mathivanan (supra)*, it is the stand of the Government of Assam in the Higher Education Department that the provisions of the UGC Regulations of 2010 in its entirety are not mandatorily applicable for the purpose of colleges under the Government of Assam in the Higher Education Department and on the other hand, such provisions are directory for the authorities. It is the stand of Mr. K Gogoi, learned Standing Counsel Higher Education Department that in exercise of its discretionary power, the provisions of Clauses 3.0.0, 4.0.0, 4.4.0, 4.4.1 of the UGC Regulations of 2010 and prescribed norms for the post provided therein have been adopted and in doing so, the provisions other than the aforesaid provisions have not been adopted. By accepting the statement that the

Government of Assam is meeting the maintenance expenditure of the colleges from its own funds, except for the occasional grants for developmental purpose that may be provided, we are inclined to accept the contention of the Higher Education Department of the Government of Assam that the provisions of the UGC Regulations of 2010 are not applicable to the colleges under the Higher Education Department in its entirety except for the specific provisions thereof that has been adopted as indicated above.

28. Mr. M K Choudhury, learned senior counsel for the petitioners refers to the annual reports of the UGC which provides for the expenditures incurred by the UGC for the colleges and universities in Assam and contends that the same is itself an indication that the Higher Education Department of the Government of Assam utilizes UGC funds for the maintenance of the colleges under it. But Mr. K Gogoi, learned standing counsel for the Higher Education Department of Government of Assam counters the contention by stating that although the figure of Rs.1,37,00,000/- provided by the UGC towards the maintenance of the colleges in Assam may appear to be a high amount, but in terms of the actual expenditure required for the maintenance, which are provided from the funds of the Government of Assam, the same cannot be a basis to conclude that the colleges under the Higher Education Department of the Government of Assam are being maintained from the UGC funds.

29. With regard to the contentions of the petitioners that as per the proposition laid down by the Supreme Court in *Annamalai University (supra)* that the provisions of the UGC Regulations of 2010 are binding on all the

universities and therefore, it would also be binding on the colleges under the Higher Education Department, Government of Assam, we notice that the said proposition had been laid down with reference to the question whether the UGC Regulations are applicable only to the conventional universities or are also applicable to the open universities. In the said context, it was held by the Supreme Court in *Annamalai University (supra)* that the UGC Regulations of 2010 are binding on all universities, whether conventional or open. Therefore, the said proposition cannot be the basis to sustain the contention that the UGC Regulations of 2010 are applicable to all the colleges under the Higher Education Department of the Government of Assam.

30. In the instant case, we have taken note that it is the contention of the petitioners that the provisions of the UGC Regulations of 2010 providing for 50% weightage for the selection committee to the academic record and research performance are have also been adopted by the Government of Assam in the Higher Education Department. We are unable to accept the said contention for the reason that the provisions of Appendix III table-II(c) are neither a part of Clauses 3.0.0, 4.0.0, 4.4.0, 4.4.1 of the UGC Regulations of 2010, nor it is a part of the norms provided under the said Regulations. As we have already arrived at a conclusion that apart from the Clauses 3.0.0, 4.0.0, 4.4.0, 4.4.1 of the UGC Regulations of 2010 and the norms provided under the said Regulations, the other provisions of the UGC Regulations of 2010 have not been adopted, therefore, we also have to accept that the provisions of Appendix III table-II(c) have also not been adopted. As the provisions of Appendix III table-II(c) have not been adopted by the Higher Education Department, Government of Assam, we have now to understand that the it is the discretion

of the Government of Assam in the Higher Education Department to prescribe for any such procedure to be adopted as regards what would be the weightage to be given in a selection to the academic as well as other research records. From such point of view, we have to reject the contention of the petitioners that while providing for the weightage to be given in a selection to the academic as well as other research records, no deviation can be made from the weightage provided under the UGC Regulations of 2010.

31. But, however, we take note of another aspect of the matter that the real concern of the petitioners are that some of them have acquired their qualifications about 10-15 years back and have demonstrated certain materials on record to show that the strictness of the marks in the qualifying examination that prevailed about 10 to 15 years back was much more stricter than what was in the later years. In view of the differences in the marking methods that prevailed, the petitioners claim that they have formed a class with a reasonable classification from all such other candidates who acquired their qualifications at a later period. In view of such variation if 72% weightage is to be given to the marks obtained in the qualifying examination and other research papers, the candidates who have acquired their qualifications in the later years even without their Ph.D and M.Phil degrees, in comparison, will be awarded more marks in the selection than those candidates who acquired their qualifications about 10-15 years back, even when the marks obtained by such candidates in respect of Ph.D and M.Phil are also included. Such materials itself is an indication that the strictness in evaluation in the examination that took place in the earlier period than that in the later period, are at a variance with each other. If a uniform standard of evaluation is adopted that is weightage of 72% is given for

academic performance and other research papers, the candidates who had their qualifications at their earlier period of time would definitely be at a more advantageous position than the candidates who had acquired their qualifications at a later period of time. The marks given in an examination are numerical quantification of a performance. If the numerical evaluation over two different periods of time are made by following a different standard, such numerical evaluation across the board may not indicate the true merit evaluation of the person concerned. In other words, a person securing numerically lower marks in an earlier examination cannot be said to be of a lower merit than the candidate who secured numerically higher marks in the later examinations.

32. Secondly, by applying the same law to two classes of people, i.e. one class of candidates who were subjected to a stricter evaluation in the qualifying examinations and another class who were subjected to a more liberal method of evaluation, the provisions of Article 14 of the Constitution of India would be violated.

33. Without expressing any view on the aforesaid issue as regards the disadvantageous position that the candidates who acquired their qualification at an earlier period of time may face, we provide that ends of justice would be met, if the authorities conducting the selection procedure embark upon a process of rationalization of the marks and in the event, it is noticed that there is a noticeable variation in the marks of the candidates, who appeared in the qualifying examinations at an earlier period of time in comparison with those who appeared at a later period of time, we leave it to the authorities to devise

their own method as to how to rationalize their marks and thereafter take into consideration the rationalized marks of the candidates rather than the numerical marks of the respective candidates as depicted in the respective mark sheets. In our view, the process of rationalization would avoid a situation of any violation of Article 14 of the Constitution of India.

34. In view of the above, the interim order stands modified and the respondent authorities are allowed to proceed with the selection process, but in doing so, the method of rationalization as indicated above be also adopted.

35. Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant