

'AFR'**Judgment reserved on 05.09.2013****Judgment delivered on 09.10.2013****Case :-** WRIT - A No. - 48208 of 2012**Petitioner :-** Dhanpal And Others**Respondent :-** State Of U.P. And Others**Counsel for Petitioner :-** V.K.Upadhyay,S.K.Upadhyay**Counsel for Respondent :-** C.S.C.**Hon'ble Satya Poot Mehrotra, J.****Hon'ble Sanjay Misra, J.****Hon'ble Manoj Misra, J.**

1. This Bench has been constituted pursuant to a referring order dated 19.09.2012 passed by a learned Single Judge in Writ Petition No. 48208 of 2012.

2. Before we proceed to examine the question that has been referred to us, it would be useful to give the background facts, in brief.

3. The petitioners took admission in Special B.T.C. Training Course 2008. They underwent training, passed the practical examination and, thereafter, gave their final written examination. When their results were not declared, they approached this Court by means of Writ Petition No. 13741 of 2012, which was disposed of with a direction to the authority concerned to consider their claim by a reasoned and speaking order, within a specified period. Pursuant to the aforesaid direction, the respondent No.2 (the Secretary, Examination Regulatory Authority, U.P.) proceeded to pass an order dated 07.05.2012 (Annexure 4 to the writ petition), thereby holding that as the petitioners were claiming under a certificate of "**Adhikari Pariksha**" from Gurukul Viswavidhyalaya, Vrindavan (hereinafter referred to as

Gurukul), which has been referred to as a fake institution in Government letter dated 22.02.2008, and this Court also, vide order dated 13.10.2011, in Special Appeal No. 1990 of 2011 (***Indrawati Devi v. State of U.P. and others***), has held that certificate conferred by Gurukul, which has been declared a fake university by University Grants Commission (hereinafter referred to as UGC), cannot be accepted as a valid qualification, therefore, the prayer of the petitioners for declaration of result cannot be accepted.

4. As the order impugned in the writ petition places reliance on the Division Bench decision in *Indrawati Devi's* case, it is necessary for us to refer to the reasoning adopted by the Division Bench in ***Indrawati Devi's case (supra)***. In ***Indrawati Devi's*** case, the Division Bench had the occasion to examine the correctness of a decision rendered by a single judge by which he had dismissed the writ petition of the petitioner. In the said writ petition, the petitioner therein had challenged cancellation of his candidature for BTC Training Course 2010. The candidature was canceled on the ground that Adhikari Pariksha passed from Gurukul in the year 2001 was not valid as the said University has been declared to be a fake University. The petitioner therein contested the cancellation on the ground that Adhikari Pariksha till 2008, was considered equivalent to High School by the Board. The single judge dismissed the writ petition by observing that since Gurukul has been declared fake by UGC, it had no power to confer or grant degree, which can be done by a University established or incorporated by or under a Central Act, Provincial Act or State Act or an institution deemed to be a University under

section 3 of the UGC Act, as has been held by the apex court in ***Prof. Yashpal & anr. V. State of Chhatisgarh & Ors., (2005) 5 SCC 420.*** Before the division bench, in appeal, it was canvassed that Adhikari Pariksha was accorded recognition up to the year 2008 by the Board, therefore, the candidature of the petitioner, who had passed Adhikari Pariksha in the year 2001, cannot be canceled. Rejecting the said contention, the division bench while dismissing the Special Appeal preferred by Indrawati Devi, observed as follows:

"Mere fact that for some period, the Adhikari examination conducted by the said University was considered to be equivalent to the high school examination of U.P. Board, as emphasized by the learned counsel for the appellant by pointing out various letters and documents of the Secretary of the U.P. Secondary Education Board, Allahabad filed along with the writ petition, the same will not validate the certificate, since the University granting such certificate has not been established or incorporated in accordance with law."

5. The petitioners, in the instant petition, have claimed, inter alia, that they had passed the "***Adhikari Pariksha***" with English as one subject from Gurukul, in one session, as a regular student in 1992, 1993 and 1995 respectively and, at that point in time, "***Adhikari Pariksha***" examination conducted by Gurukul, with English as one of the subject, cleared in one year, was recognized by the Board of High School and Intermediate Education, U.P. (hereinafter referred to as the Board), up to the year 2008, as equivalent to High School Examination, vide Entry No.30 in Regulation 2 of Chapter XIV of the Regulations framed under the U.P. Intermediate Education Act, 1921 (hereinafter referred to as Act, 1921). It is their case that the Board is the only authority to recognize educational courses run by various

bodies as equivalent to High School and once such recognition has been accorded, no fault can be found with the "**Adhikari Pariksha**" certificates obtained by the petitioners prior to the year 2008. Reliance has been placed on several judgments and orders, mostly, passed by a Bench presided over by a Single Judge, so as to contend that "**Adhikari Pariksha**", up to the year 2008, was duly recognized as a qualification equivalent to High School. Reliance has also been placed on a judgment rendered by a Single Judge of this Court in the case of **Akanksha Gautam v. State of U.P. and others: 2012 (6) ADJ 107**, decided on 30.03.2012, where the Court, after examining various provisions of the UGC Act, 1956, the Constitution of India and the Act, 1921 including Entry No. 30 in Regulation 2 of Chapter XIV of the Regulations framed thereunder, proceeded to hold that recognition of Adhikari Pariksha as equivalent to High School was not dependent on the status of Gurukul as a University within the meaning of section 2(f) of the UGC Act, 1956 and, therefore, the declaration of Gurukul as a fake University by UGC would not affect the decision of the Board to accord equivalence to Adhikari Pariksha with High School. The learned single judge concluded that as the Board had accorded equivalence to Adhikari Pariksha with High School, up to the year 2008, therefore, all those persons who had obtained Adhikari Pariksha certificate up to the year 2008 were entitled to its benefit, regardless of Gurukul being declared a fake University by the UGC.

6. The judgment rendered in the case of **Akanksha Gautam's case (supra)**, although, notices various

judgments but it fails to notice the Division Bench decision of this Court in Special Appeal No. 1990 of 2011 (**Indrawati Devi's case**), which had held that certificate of "**Adhikari Pariksha**" obtained from Gurukul was not a valid degree.

7. Faced with conflicting judgments, one rendered by a single judge of this court in **Akanksha Gautam's case (supra)** and the other rendered by a division bench of this court in Special Appeal No. 1990 of 2011 in **Indrawati Devi's case (supra)**, a single judge of this court, vide order dated 19.09.2012, referred the matter for consideration by a larger bench, in the following terms:-

*"Judgment in the case of **Akanksha Gautam Vs. State of U.P. and others reported in 2012 (6) ADJ 107** has not at all taken into consideration, the judgment delivered in **Special Appeal No. 1990 of 2011 (Indrawati Devi Vs. State of U.P. and others)** decided on 13.10.2011 whereas aforesaid judgment in question has been delivered on 30th March, 2012. Both the judgments are running in different direction adopting different set of reasoning for arriving at definitive conclusion, in view of this it would be much more appropriate that this matter be referred to Larger Bench to examine .*

i. As to whether view taken in case of Akanksha Gautam Vs. State of U.P. and others reported in 2012 (6) ADJ 107 is correct view.

Or

ii. as to whether view taken in Special Appeal No. 1990 of 2011 (Indrawati Devi Vs. State of U.P. and others) decided on 13.10.2011 is correct view.

Let the papers be laid before the Hon'ble The Acting Chief Justice for constituting the Larger Bench, in this regard."

8. While constituting the Larger Bench, the then Hon'ble the Acting Chief Justice made an endorsement which reads as follows:-

"Since it is judicial order I have no other alternative but to constitute Larger Bench. But Larger Bench may at first place consider the ratio propounded by the Supreme Court in AIR 1968 SC 372 and enter upon the issue.

*Signed Hon'ble ACJ
01.10.2012"*

9. In the light of the endorsement quoted hereinabove, we may observe that it is well settled that a Division Bench decision is binding on a Single Judge and in case of conflict between the two, the Division Bench decision would prevail. But where the Division Bench decision fails to take notice of relevant statutory provisions or a binding precedent, its decision may not have the binding force of a precedent and in such a case, it is open to a Single Judge to refer the matter for consideration by a Larger Bench. Therefore, the question as framed by the learned single Judge may not be in appropriate words. However, during the course of the hearing, our attention was drawn to a Division Bench decision of this Court dated 28.04.2010 in ***Special Appeal No. 391 of 2010 (Anshul Singh Baghel v. State of U.P. and others)***, where it was held that since it is not in dispute that during the relevant period, the Adhikari Pariksha conducted by the Gurukul was recognized as equivalent to the High School Examination conducted by the Madhyamik Shiksha Parishad, U.P., Allahabad and it was derecognized only in the year 2008, a person, who had already passed the Intermediate Examination conducted by the Madhyamik Shiksha Parishad, U.P. Allahabad in the year 2007, could not have been prevented from appearing in the selection examination of the Constable, only on the ground that the Adhikari Pariksha Certificate issued by the Gurukul has been derecognized, vide order dated 10th July, 2008. The said division bench went on to observe that the Madhyamik Shiksha Parishad, U.P. Allahabad had clarified that the

derecognition would be effective prospectively i.e. in respect of the examination of Adhikari Pariksha conducted by the Gurukul after the year 2008. Thus, in view of conflicting decisions of two benches, of co-equal strength, on the same issue, in order to settle the issue, we entertain the reference and reframe the question referred to us in following terms:-

(a) Whether Adhikari Pariksha Certificate issued by the Gurukul Viswavidyalaya, Vrindavan, Mathura, up to the year 2008 i.e. till it was recognized by the U.P. Board of High School and Intermediate Education as equivalent to High School, obtained with English as one of the subject and passed in one year is a valid qualification equivalent to High School, regardless of Gurukul having been declared a fake University by the UGC?

(b) Whether the decision of the division bench in Special Appeal No. 1990 of 2011 dated 13.10.2011 (***Indrawati Devi v. State of U.P. and others***), which holds that "Adhikari Pariksha" certificate obtained from Gurukul Viswavidyalaya, Vrindavan, Mathura cannot be held to be a valid degree, does not lay down the correct law?

10. Before we proceed to answer the aforesaid questions, it would be useful to put on record that when we first assembled on 09.05.2013, pursuant to the order dated 01.10.2012 of the Hon'ble the Acting Chief Justice, we had requested the petitioners' counsel, namely, Sri V.K. Upadhyay and the learned Chief Standing Counsel, namely, Sri Yaswant Verma to submit their respective written submissions after serving copy thereof on the other side. Accordingly, pursuant to our order dated 09.05.2013, on

11.07.2013, the written submissions, as required by order dated 09.05.2013, were filed by Sri V.K. Upadhyay, learned counsel for the petitioners as also by Sri Yaswant Verma, learned Chief Standing Counsel appearing for respondent Nos. 1, 2, 4 and 5. As we discovered on that day that the copy of the writ petition was not served upon the learned counsel for the respondent No.3 (the Board), we directed the learned counsel for the petitioners as also Sri Yaswant Verma, learned Chief Standing Counsel, to inform the learned counsel for the respondent No.3 regarding our order and we also observed that by the next date i.e. 22.08.2013 the respondent No.3 may file written submission. We had also directed Sri V.K. Upadhyay, learned counsel for the petitioners, to implead University Grants Commission (UGC) as party-respondent No.6 and to inform Sri Ritvik Upadhyay, learned counsel for the respondent No.6, about our order.

11. During the course of hearing on 11.07.2013, Sri V.K. Upadhyay, learned counsel for the petitioners, had brought to our notice a letter dated 03.06.2008 written by the University Grants Commission, New Delhi to the Vice-Chancellor, Ex. Minister of U.P. Govt., Gurukul Vrindavan, Mathura, U.P., which has been enclosed as Annexure 11 to the writ petition. The said letter read as follows:-

**"UNIVERSITY GRANTS COMMISSION
BAHADURSHAH ZAFAR MARG
NEW DELHI-110002**

*F.No.1-4/2006(MPC)
June, 2008
Sh. Sachidanand Gupta
Vice-Chancellor
Ex. Minister of U.P. Govt.
Gurukul Vrindavan,
Mathura, U.P.*

03

Sub: Deletion of the name of Gurukul Vishwavidyala Vrindavan, Mathura, U.P. from the list of fake Universities.

Sir,

With reference to your letter No. Gu, Vi. Vi, Vr/2008 dated 05.-06.2008 on the subject mentioned above. It is observed that your institution i.e. Gurukul Vishwavidyala Vrindavan, Mathura, U.P. is offering courses at Secondary level only. As your institution is using the word "Vishwavidyala" in this title, UGC asked clarification.

UGC advised to delete the word "Vishwavidyala". As per advise, the institute has changed its the name "**Gurukul Vishwavidyala Vrindavan, Mathura, U.P.**" to Gurukul Vrindavan, Mathura, U.P. and the matter was reported to Registrar, Co-operative Societies for incorporating necessary change in this regard.

UGC considered the request of the institution for deletion of name from the fake universities list of UGC and agreed to subject to submission a copy of the name change incorporated in the records of Deputy Registrar, Co-operative Societies within 6 months.

Yours faithfully,

(Dr. A.K. Parate)
Joint Secretary

Copy to:

1. The Registrar, Gurukul Vrindavan, Vrindavan, U.P.
2. The Deputy Registrar, Co-operative Societies, Chit Funds, Vikas Deep, 3rd Floor, Station Road, Lucknow, U.P.
3. P.S. to Chairman, UGC

(Dr. A.K. Parate)
Joint Secretary"

12. Referring to the aforesaid letter, Sri V.K. Upadhyay, learned counsel for the petitioners, submitted that the UGC was apparently concerned only with the use of word "**Vishwavidyala**" suffixed to the name Gurukul and was prepared to delete the name of Gurukul from the list of fake Universities on deletion of the name of Vishwavidyalaya suffixed to its name.

13. In view of the above submission, we, by our order dated 11.07.2013, required Sri V.K. Upadhyay, learned counsel for the petitioners, to bring on record all relevant documents with regard to the said letter by filing a supplementary-affidavit by 22.07.2013 and fixed 25.07.2013.

14. On 25.07.2013, a supplementary-affidavit was filed in terms of our order dated 11.07.2013 and the respondents were provided time to file supplementary counter-affidavit by 14th August, 2013. On that date i.e. 25.07.2013, Sri V.K.Upadhyay informed the Court that after impleading UGC, as respondent No.6, copy of the writ petition and copies of written submissions were tendered to Sri Ritvik Upadhyay, Advocate, who declined to accept the same on the ground that he had no instructions in the matter. Accordingly, we, by our order dated 25.07.2013, directed that notices be issued to the University Grants Commission (UGC). We further felt, on considering the nature of controversy, that it would be appropriate that the institution in question, namely, Gurukul Viswavidhyalaya, Vrindavan be impleaded as respondent No.7 and, therefore, we directed the impleadment of the said institution and, accordingly, ordered that requisite steps to serve the respondent Nos. 6 and 7 be taken by registered post A.D., fixing 22.08.2013. On 22.08.2013, on the joint request of the learned counsel for the parties, the matter was directed to be listed on 05th September, 2013. On 05th September, 2013, an affidavit of service was filed by the petitioners indicating that personal service was effected on the respondent No.6 (UGC) and

respondent No.7 (Gurukul Vishwavidhalaya). We also noticed the office report dated 30th July, 2013 that notices were issued to the respondent Nos. 6 and 7 as also the follow-up office report dated 20th August, 2013 which indicated that neither acknowledgment nor unserved notice was received back. Accordingly, we proceeded to hear the matter by treating service of notice as deemed sufficient. Sri Rizwan Ali Akhtar, however, put in appearance on behalf of respondent No.6 but no one appeared on behalf of respondent No.7, therefore, we heard Sri V.K. Upadhyay, learned counsel for the petitioners, Sri Anoop Kumar Srivastava, learned Additional Chief Standing Counsel for the respondent Nos. 1, 2, 4 and 5 and Sri Rizwan Ali Akhtar for the respondent No.6.

15. Sri V.K. Upadhyay relying on the statement made in the supplementary-affidavit dated 21st July, 2013, which was filed on 25.07.2013, submitted that the UGC had put Gurukul Viswavidhyalaya, Vrindavan in the list of fake Universities only on the ground that it was using the word "**Viswavidyalaya i.e. University against its name**". Attention of the Court was drawn to a letter no. Misc. No.6—2/ 2011, dated 09th September, 2011, written by Sarita Makhija, Under Secretary, UGC to one Sri Arvind Kumar Pal, wherein it was mentioned that UGC is concerned with education at the graduate and post-graduate level and that Gurukul Viswavidyalaya was entered in the list of fake Universities only because it was using the word "**Viswavidyalaya against its name**". Attention of the Court was also drawn to a press release of the month of

December, 2011, enclosed as Annexure S.A. No.3 to the supplementary-affidavit in which it was mentioned "*that there are some institutions offering undergraduate/postgraduate degrees in various subjects, which are not established under either Central Act or State Act or UGC Act and, hence, these institutions are fake Universities/Viswavidyalayas and do not have any right to confer/grant degrees.*" In the press release, the name of such fake Universities was disclosed and Gurukul Viswavidyalaya, Vrindavan, Mathura figured as one of the fake Universities listed therein.

16. Relying on the aforesaid documents, the learned counsel for the petitioners submitted that the institution Gurukul Vishwavidyalaya, Vrindavan, Mathura, by itself, is not a fake or fictitious institution but was entered in the list of fake universities only because it used the word "***Viswavidyalaya i.e. University against its name***" and since it was not established either under a Central Act or State Act or UGC Act, any degree conferred by it was not recognized. Sri V.K. Upadhyay submitted that grant of "***Adhikari Pariksha***" certificate by Gurukul is not equivalent to conferment of a degree and, therefore, would not become invalid merely because the UGC considers Gurukul to be a fake University. It was submitted that grant of "***Adhikari Pariksha***" certificate is in the realm of Secondary Education to which UGC has no concern. It has been submitted that UGC was constituted by Act No. 3 of 1956. The object of the Act was to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission. He submitted that the term University has been defined in the

UGC Act, 1956 vide Section 2 (f) as follows:-

"2(f) "university" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concern, be recognized by the Commission in accordance with the Regulations made in this behalf under this Act.

17. He submitted that under Section 3 of the UGC Act, 1956, the Central Government may, on the advise of the Commission, declare, by notification in the Official Gazette, that any institution for higher education, other than a University shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of Section 2.

18. Sri V.K. Upadhyay further submitted that UGC Act, 1956 was enacted by the Parliament in exercise of its power under Entry 66 of List I-Union List in the Seventh Schedule of the Constitution, which confers power on the Parliament to legislate for the purpose of co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. He submitted that otherwise, power to legislate with regards to education is covered by Entry No. 25 in List III-Concurrent List in the Seventh Schedule, which is subject to the provisions of Entries 63, 64, 65 and 66 of List I. He submitted that mere declaration of Gurukul Viswavidhyalaya, Vrindavan as a fake University would not obliterate its recognition at the secondary education level, which has been accorded to it by the Board in exercise of

power conferred by Section 7(4) read with Section 15 of the Act, 1921. It has been submitted that under Section 7(4) of the Act, 1921, the Board has the power to recognize institution for the purposes of its examination. Under Section 15 of the Act, 1921, the Board may make Regulations for the purpose of carrying into effect the provisions of the Act, 1921 and by sub-section (2) of Section 15, the Board, without prejudice to the generality of its power, conferred by sub-section (1), has power to make Regulations providing for the conditions under which candidates shall be admitted to the examinations of the Board and shall be eligible for diplomas and certificates as well as for the admission of institutions to the privileges of recognition and the withdrawal of recognition. The learned counsel for the petitioners submitted that in exercise of the powers conferred by the aforesaid provisions, the Board has framed Regulations. Under Regulation 1 of Chapter XIV, it is provided that for taking admission to the intermediate examination course, a candidate must have either passed High School or High School technical examination or must have passed such equivalent examination as may have been declared by the Regulations. It has been submitted that Regulation 2 of Chapter XIV provides for the list of such courses/examinations, which have been granted equivalence with High School Examination. Entry No.30 of Regulation 2 of Chapter XIV provides equivalence to Adhikari Pariksha, from Gurukul Vishwavidyalaya, Vrindavan, up to the year 2008, with High School provided it is with English as one of the subject and has been passed in one year.

19. On the strength of the aforesaid Entry, the learned counsel for the petitioners submitted that declaration of Gurukul Vishwavidyalaya, Vrindavan as a fake University would not affect the Adhikari Pariksha certificate accorded to such candidates who have passed the examination, up to the year 2008, with English as one of the subject, and have passed the same in one year.

20. The learned counsel for the petitioners further submitted that Division Bench decision in ***Indrawati Devi's case (supra)*** failed to notice the Regulation 2(30) of Chapter XIV of the Regulations framed under the U.P. Intermediate Education Act, 1921 and it also failed to consider that UGC had put Gurukul Vishwavidyalaya, Vrindavan in the list of fake Universities/ Institutions only on account of having used the word "***Vishwavidyala***" suffixed to its name and not with regards to its right or power to confer valid certificates at the secondary education level.

21. Sri V.K. Upadhyay further submitted that in ***Akansha Gautam's case (supra)***, the learned Single Judge of this Court had examined all the statutory provisions including the powers of the UGC under the UGC Act, 1956 and had taken the view that Adhikari Pariksha falls within the ambit of secondary education, which is not governed by 1956 Act but it is within the legislative competence of the State Legislature and as, in the State of U.P., the secondary level education is governed by the provisions of Act, 1921 and the Board has accorded recognition to Adhikari Pariksha, vide Regulation 2(30) under Chapter XIV of the Regulations framed under the Act, 1921, the Adhikari Pariksha certificate

obtained by the petitioners cannot be invalidated, inasmuch as, they were obtained prior to the year 2008.

22. Sri Yaswant Verma, the learned Chief Standing Counsel appearing for the respondent Nos. 1, 2, 4 and 5, had submitted detailed written submissions. In his submissions, Sri Yaswant Verma very fairly stated that the U.P. Intermediate Education Act, 1921 and the UGC Act, 1956 operate in clearly distinct fields. The 1956 Act, is concerned primarily and solely with higher education of the Universities. It does not touch upon the subject of High School or Intermediate education. Similarly, the 1921 Act is confined to the functioning of the Board constituted thereunder and the conduct of High School and Intermediate Examinations. In paragraph 10 of the written submissions, he submitted that de-recognition or declaration of the Gurukul Vishwavidyalaya, Vrindavan as a fake University, should not affect the certification granted by it in so far as the High School or Intermediate education examinations are concerned. It has further been submitted that for the purpose of conducting the High School or Intermediate classes, an institution is not required to be established under a Central, Provincial or State enactment as is in a case of University. It has been submitted that for the purpose of preparing students to participate in the High School or Intermediate examination conducted by the Board, an institution does not require any recognition from the University Grants Commission. The recognition of the course carried out by Gurukul Vishwavidyalaya, Vrindavan and its equivalence thereof conferred by the Board under the

provisions of the Act, 1921 was an act within the exclusive domain and legislative authority of the Board. The declaration of law by the apex court in the case of **Prof. Yashpal's case (supra)**, is to be confined to Universities alone and institutions imparting higher education and those conferring degrees or otherwise falling within the ambit of the provisions of the Act, 1956. It was further submitted that pursuant to the press note dated 27.11.2007, issued by the Govt. of India, giving a list of fake Universities, which includes the Gurukul Vishwavidyalaya, Vrindavan, the Board issued a notification dated 28.07.2008 revoking the declaration of equivalence granted to the Adhikari Pariksha issued by the said institutions and, accordingly, the Regulations framed under the Act, 1921 were amended with effect from 08.09.2008 wherein Entry No. 30 in Regulation 2 contained in Chapter XIV was amended to accord equivalence to the said certificate up to the year 2008 only. It has been submitted that subsequent to the judgment of the Division Bench in the case of **Indrawati Devi's case (supra)** and in deference to the law laid down therein, the protection granted to the said certificate up to the year 2008, was also revoked and Chapter XIV was amended accordingly. In his written submissions, Sri Yaswant Verma very fairly submitted that the act of recognition being accorded to Adhikari Pariksha conducted by Gurukul was a power exercised by the Board in accordance with Section 15 and 16 of the Act, 1921, which was an act made in exercise of delegated legislation, therefore, the amendment should not be interpreted to have retroactive operation. It has also been submitted that amendments made by the Board to

Regulation 2(30) were not intended to be retrospective. It has thus been submitted that the amended Regulation does not have the effect of disabling or revoking the certificates granted by the institution up to the year 2008. Sri Yashwant Verma in his submission further submitted that if retrospective operation be conferred on the amendments made by the Board, it would result in thousands of students, who had obtained the certification prior to 2008 and who may have pursued studies further, to suffer from a fundamental disqualification. Such an interpretation would have a wholly unfair and catastrophic effect. He further submitted that certificate which has been obtained by persons prior to the year 2008, would stand saved by virtue of invocation of the de-facto doctrine, inasmuch as, the grant of certificate by the Gurukul Vishwavidyalaya, Vrindavan have not been faulted prior to the year 2008 and were rather statutorily recognized up to that period, as being equivalent to the High School examination.

23. Although, the University Grants Commission Counsel had put in appearance but he neither advanced any submission nor disclosed any intention of filing any response to the various affidavits and submissions made by the learned counsel for the petitioners as well as the learned counsel for the State.

24. At this stage, it would be useful to refer to certain documents that have been brought on record, vide Compilation-A, supplied by the Chief Standing Counsel, Sri Yashwant Verma, Advocate. Enclosure No. I of the Compilation-A reveals that vide Notification dated

19.09.2008 issued by the Secretary, U.P. High School and Intermediate Education Board, Allahabad, it was notified that the Government by its letter No. 2085/15-7-08-1(139)/05, dated 03.09.2008, had approved amendment to Entry No.30 in Regulation 2 of Chapter XIV of the Regulations framed under the U.P. Intermediate Education Act, 1921, in exercise of its power under Section 16(2) of the said Act, and the said amendment would be operative with immediate effect. The unamended and the amended Regulation 2(30), as per the notification, reads as under:-

वर्तमान स्वरूप अध्याय-चौदह, विनियम-2 (30)	संशोधित स्वरूप अध्याय-चौदह, विनियम-2 (30)
गुरुकुल विश्वविद्यालय वृन्दावन द्वारा संचालित अंग्रेजी के अधिकारी परीक्षा, जो एक से अधिक वर्ष में खण्डों में उत्तीर्ण न की गई हो।	गुरुकुल विश्वविद्यालय, वृन्दावन द्वारा वर्ष 2008 की परीक्षा तक संचालित अंग्रेजी के साथ अधिकारी परीक्षा, जो एक से अधिक वर्ष में खण्डों में उत्तीर्ण न की गई हो।
टिप्पणी- इस विनियम में प्रयुक्त शब्द खण्डों से तात्पर्य पूरक परीक्षा से है।	टिप्पणी-इस विनियम में प्रयुक्त शब्द खण्डों से तात्पर्य पूरक परीक्षा से है।

25. Enclosure No. V of the said compilation reveals that vide Notification No. 09/85, dated 10th May, 2013, the Secretary of the Board notified that the Government, vide its letter No. 500/15-7-2013-1(139)/2005, dated 09th April, 2013, has approved the revocation of Entry No.30 in Regulation 2 of Chapter XIV of the Regulations framed under the U.P. Intermediate Education Act, 1921, in exercise of its power under Section 16(2) of the Act. The notification provides as follows:-

वर्तमान विनियम अध्याय-चौदह, विनियम-2 (30)	संशोधित विनियम अध्याय-चौदह, विनियम-2 (30)
गुरुकुल विश्वविद्यालय वृन्दावन, मथुरा द्वारा वर्ष-2008 की परीक्षा तक संचालित अंग्रेजी के साथ अधिकारी परीक्षा, जो एक से अधिक वर्ष में खण्डों में उत्तीर्ण न की गई हो।	विखण्डित

टिप्पणी- इस विनियम में प्रयुक्त शब्द खण्डों से तात्पर्य पूरक परीक्षा से है।	
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26. Thus, from a careful examination of the record as also the submission of the learned counsel for the parties, the following position emerges:

(a) That "**Adhikari Pariksha**" certificate awarded by Gurukul Viswavidhyalaya, Vrindavan, Mathura was accorded equivalence with a High School certificate by the U.P. High School and Intermediate Education Board vide Entry No. 30 in Regulation No.2 of Chapter XIV of the Regulations framed under the U.P. Intermediate Education Act, 1921, provided the same was passed in one year with English as one of the subject.

(b) That UGC declared a list of fake Universities wherein the name of Gurukul Vishwavidhyalaya, Vrindavan finds mention.

(c) That in deference to the declaration by UGC, vide notification dated 19th September, 2008, Entry No. 30 in Regulation No.2 of Chapter XIV of the Regulations framed under the U.P. Intermediate Education Act, 1921 was amended with the sanction of the State Government, under Section 16(2) of the U.P. Intermediate Education Act, 1921, whereby the equivalence accorded to "**Adhikari Pariksha**" was limited up to the year 2008.

(d) That subsequently, vide notification dated 10th May, 2013, Entry 30 in Regulation 2, under Chapter XIV of the Regulations framed under the U.P. Intermediate Education Act was revoked by amendment, with the sanction of the Government, under Section 16(2) of the U.P. Intermediate

Education Act.

27. From Enclosure IV to the Compilation-A, which is a letter no. 500/15-7-2013-1(139), dated 09.04.2013, written by the Joint Secretary, Govt. of U.P. to the Director of Education, Madhyamik Shiksha Parishad, it appears that Entry No. 30 in Regulation 2 of Chapter XIV of the Regulations was revoked in deference to the order of this Court in Special Appeal No. 1990 of 2011 (***Indrawati Devi v. State of U.P. and others***). A careful perusal of the said letter reveals that pursuant to the decision of this court in ***Indrawati Devi's case (supra)***, the matter relating to equivalence of Adhikari Pariksha was referred to the Examination Committee of the Board, which met on 24.08.2012. The said Committee took cognizance of this Court's order, in Indrawati Devi's case, wherein it was observed that Gurukul Vishwavidyalaya, Vrindawan was neither constituted under a Central Act nor a State Act and its examinations were also not accorded recognition by the UGC and since the UGC had put it in the list of fake Universities, therefore, its certificates cannot be considered to be valid. The Committee, accordingly, recommended for revocation of the recognition accorded to the Adhikari Pariksha.

28. Decision in ***Indrawati Devi's case (supra)*** follows the principle laid down by the apex court in the case of ***Prof. Yashpal and Anr. v. State of Chhattisgarh & Ors : (2005) 5 SCC 420***. In ***Prof. Yashpal's case (supra)***, it has been held that the right of conferring or granting degree can be exercised only by a University or an institution deemed to be University under Section 3 of the UGC Act or

any institution especially empowered by an Act of Parliament to confer or grant degrees. Mere conferment of degree is not enough. What is necessary is that the degree should be recognized and it is for this purpose that the right to confer degree has been given under Section 22 of UGC Act only to a University established or incorporated by or under a Central Act, Provincial Act or State Act or an institution deemed to be a University under Section 3 of the Act. This Court in Indrawati Devi's case, following the principle laid down in **Prof Yashpal's case (supra)**, proceeded to hold that since Gurukul was not established or incorporated either by Central Act, Provincial Act or State Act nor there is anything on record that it was ever recognized by the UGC, and as it has been declared to be a fake University by the State Government as well as UGC, the degree or certificate conferred by it cannot be held to be a valid degree. The Court further proceeded to observe that the mere fact that for some period, the Adhikari examination conducted by Gurukul was considered to be equivalent to the high school examination of U.P. Board, the same would not validate the certificate, since Gurukul has not been established or incorporated in accordance with law.

29. While rendering the judgment in **Indrawati Devi's case (supra)** on the principle laid down in Prof. Yashpal's case, this Court failed to notice that the decision of the Apex Court in **Prof. Yashpal's case (supra)**, was in reference to "degrees" conferred by Universities. In **Prof. Yashpal's case (supra)**, the Apex Court examined the meaning of the word "University" as also the word "degree". In paragraph

19, 20, 21 and 22 of the judgment in **Prof Yashpal's case (supra)**, the apex Court considered various definitions of the word "**University**" as follows:-

"19. In Halsbury's Laws of England (4th Edn., Reissue), Vol. 15, what is a university and how it is incorporated is described as under:

256. General.—A university is the whole body of teachers and scholars engaged, at a particular place, in giving and receiving instruction in the higher branches of learning; such persons associated together as a society or corporate body, with definite organization and acknowledged powers and privileges (especially that of conferring degrees), and forming an institution for the promotion of education in the higher or more important branches of learning; also, the colleges, buildings and other property belonging to such a body. Although the institutions to which it refers are readily identifiable, precise and accurate definition is difficult. The essential feature of a university seems to be that it was incorporated as such by the sovereign power.

Other attributes of a university appear to be the admission of students from all parts of the world, a plurality of masters, the teaching of one at least of the higher faculties, namely theology, law or philosophy (which in some definitions are regarded as identical) and medicine, provision for residence and the right to confer degrees, but possession of these attributes will not make an institution a university in the absence of any express intention of the sovereign power to make it one. A university involves the relation of tutor and pupil; it is charged with the supervision and upbringing of the pupil under tuition. Incorporation was anciently effected by papal grant or charter, and later by royal charter or Act of Parliament.

The practice adopted in the case of the most recent foundations is to incorporate the university by royal charter, to which there is annexed a schedule containing the original statutes of the university, and thereafter to obtain the passing of a local Act of Parliament vesting in the university the property and liabilities of any institution which it replaces and making other necessary provisions.

A copy of any application for a charter for the foundation of any college or university which is referred by the Queen-in-Council for the report of a Committee of the Privy Council must be laid before Parliament, together with a copy of the draft charter, for not less than 30 days before the Committee reports upon it.

20. In 15-A, American Jurisprudence 2d "**university**"

has been defined as under:

1. **Definitions.**—*Properly speaking, a "university" is an aggregation or union of colleges. It is an institution in which the education imparted is universal, embracing many branches, such as the arts, sciences, and all manner of higher learning, and which possesses the power to confer degrees indicating proficiency in the branches taught.*

The word "**college**" has been said to be employed in the United States to indicate an institution of learning, having corporate powers, and possessing the right to confer degrees, and which, with reference to its educational work, consists of the trustees, teachers, and scholars, all of whom make up the membership of the college and represent its active work. The term "college" may also be used to indicate a building, or group of buildings, in which scholars are housed, fed, instructed, and governed while qualifying for university degrees, whether the university includes a number of colleges or a single college. In a broad sense, the terms "**college**" and "**university**" convey the same idea, differing only in grade, with each indicating an institution of learning consisting of trustees, teachers, and scholars as making up its membership and representing its active work, or an institution engaged in imparting knowledge to resident students and possessing the right to confer degrees.

21. In the footnote to this paragraph, reference is made to a decision which has some kind of similarity with the case in hand and the footnote reads as under:

A school offering correspondence courses in professional and other educational subjects, sending students textbooks and lessons to study, giving examinations based thereon, and awarding diplomas or degrees, but having no entrance requirements, resident students, library, laboratory, or faculty, is not a university. Branch v. Federal Trade Com. (CA7).

22. In The New Encyclopaedia Britannica (15th Edn.) "**university**" has been described as under:

(p. 165) University, institution of higher education, usually comprising a liberal arts and sciences college and graduate and professional schools and having the authority to confer degrees in various fields of study.

* * *

(p. 186) Universities and students looked toward ways of creating opportunities for a satisfying career outside traditional roles for graduates in scholarship, teaching, and the professions. The university's basic traditional functions remain unchanged — enabling students to learn from their cultural heritage, helping them to realize their intellectual and creative abilities, and encouraging

them to become humane and responsible people. The university expands knowledge across the entire spectrum of disciplines, and it can add to the understanding and enjoyment of life. It continues to be needed for imaginative solutions to the problems of society."

The various definitions examined above have a common thread that is, a University is primarily concerned with higher education and that it has a right to confer a degree.

30. In paragraph No. 37 of the judgment in **Prof. Yashpal's case (supra)**, the Apex Court examined the meaning of the word "**degree**", which does not find mention in the UGC Act. Paragraph 37 of the judgment reads as follows:-

"37. It is important to note that in view of Section 22 of UGC Act, the right of conferring or granting degree can be exercised only by University or an institution deemed to be University under Section 3 of the aforesaid Act or institution especially empowered by an Act of Parliament to confer or grant degrees. What is a "degree" and what it connotes is not given in the UGC Act but the meaning of the word as given in dictionaries and standard books is as under :

Webster's Third New International Dictionary :

1. *"a title conferred upon students by a college, International Dictionary university, or professional school upon completion of a unified programme of study carrying a specified minimum of credits, passing of certain examinations, and often completion of a thesis or other independent research project."*

2. *"a grade or class of membership attained in a ritualistic order or society denoting a stage of proficiency often after a set ordeal or examination."*

Wharton's Law Lexicon :

"the state of a person, as to be a barrister-at-law, or to be a Bachelor or Master of Arts of a University."

Chambers's Twentieth Century Dictionary :

"a mark of distinction conferred by universities, Century Dictionary whether earned by examination or granted as a mark of honour."

P. Ramanatha Aiyar's Law Lexicon (2nd Edn.) :

"a mark of distinction conferred upon a student Law Lexicon (2nd Ed) for proficiency in some art or science; University diploma of specified proficiency."

Encyclopedia Americana

"**DEGREE**" - the title conferred by a college or university, signifying that a certain step or grade has been attained in an area of learning. The award of a diploma conferring the bachelor's degree marks completion of undergraduate study. The master's and doctor's degrees reward graduate study. Other degrees constitute evidence of preparation for professional work ---- the M.D. (doctor of medicine) for example.

In the 20th century, however, the M.A. is granted in American universities and in those of England and the Commonwealth of Nations (apart from Oxford and Cambridge) on the basis of study beyond the B.A. and the presentation (usually) of a thesis. An exception is Scotland, where the M.A. has been the first degree conferred in all six universities ever since their founding. The bachelor of philosophy and bachelor of letters degrees are given for work beyond the M.A.

The New Encyclopedia Britannica

"Degree" ----in education, any of several titles conferred by colleges and universities to indicate the extent of academic achievement. The hierarchy of degrees, dating from the 13th century, once resembled the medieval guild system. In the United States and Great Britain, the modern gradation of academic degrees is usually bachelor (or baccalaureate), master, and doctor. With some exceptions, intermediate degrees, such as those of bachelor and master, have been abandoned in the universities of continental Europe."

31. In paragraph 38 of the aforesaid judgment, the Apex Court observed as follows:

"A degree conferred by a university is a proof of the fact that a person has studied a course of a particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level. In the case of a doctorate degree, it certifies that the holder of the degree has attained a high level of knowledge and study in the subject concerned by doing

some original research work. A university degree confers a kind of status upon a person like a graduate or a postgraduate. Those who have done research work and have obtained a PhD, DLitt or DSc degree become entitled to write the word "Doctor" before their names and command certain amount of respect in society as educated and knowledgeable persons. That apart, the principal advantage of holding a university degree is in the matter of employment, where a minimum qualification like a graduate, postgraduate or a professional degree from a recognised institute is prescribed. Even for those who do not want to take up a job and want to remain in a private profession like a doctor or lawyer, registration with the Medical Council or the Bar Council is necessary for which purpose a degree in medicine or law, as the case may be, from an institution recognised by the said bodies is essential. An academic degree is, therefore, of great significance and value for the holder thereof and goes a long way in shaping his future. The interest of society also requires that the holder of an academic degree must possess the requisite proficiency and expertise in the subject which the degree certifies."

"28. Though incorporation of a University as a legislative head is a State subject (Entry 32 List II) but basically University is an institution for higher education and research. Entry 66 of List I is coordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

32. In paragraph 33, 34, 35 and 36 of the aforesaid judgment, the Apex Court dealt with the object and purpose of the UGC Act and observed as follows:-

"33. The consistent and settled view of this Court, therefore, is that in spite of incorporation of Universities as a legislative head being in the State List, the whole gamut of the University which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State legislature on account of a specific Entry on co-ordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which the Parliament alone is competent. It is the responsibility of the Parliament to ensure that proper standards are maintained in institutions for higher education or research throughout the country and also uniformity in standards is maintained.

34. In order to achieve the aforesaid purpose, the Parliament has enacted the University Grants Commission Act. First para of the Statement of Objects and Reasons of the University Grants Commission Act, 1956 (for short "UGC Act") is illustrative and consequently it is being reproduced below :

"The Constitution of India vests Parliament with exclusive authority in regard to 'co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions'. It is obvious that neither co-ordination nor determination of standards is possible unless the Central Government has some voice in the determination of standards of teaching and examination in Universities, both old and new. It is also necessary to ensure that the available resources are utilized to the best possible effect. The problem has become more acute recently on account of the tendency to multiply Universities. The need for a properly constituted Commission for determining and allocating to Universities funds made available by the Central Government has also become more urgent on this account."

35. In the second para it is said that the Commission will also have the power to recommend to any University the measures necessary for the reform and improvement of University education and to advise the University concerned upon the action to be taken for the purpose of implementing such recommendation. The Commission will act as an expert body to advise the Central Government on problems connected with the co-ordination of facilities and maintenance of standards in Universities.

36. The preamble of the UGC Act says - an Act to make provision for the coordination and determination of standards in Universities and for that purpose to establish a University Grants Commission. Section 2(f) of this Act defines a University and it means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the Regulations made in this behalf under this Act. Clause 12 provides that it shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of its functions under the Act, the Commission may do all such acts enumerated in sub-sections (a) to (j) thereof. Sections 22 and 23 are important and are being reproduced below :

"22. **Right to confer degrees** - (1) *The right of conferring or granting degree shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.*

(2) *Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant any degree.*

(3) *For the purpose of this section, "degree' means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette.*

23. **Prohibition of the use of the word "University" in certain cases.** -- *No institution, whether a corporate body or not, other than a University established or incorporated by or under a Central Act, a Provincial Act or a State Act shall be entitled to have the word "University" associated with its name in any manner whatsoever:*

Provided that nothing in this section shall, for a period of two years from the commencement of this Act, apply to an institution which immediately before such commencement, had the word "University" associated with its name."

33. In paragraph 39 of the said judgment, the Apex Court observed as follows:

"Mere conferment of degree is not enough. What is necessary is that the degree should be recognised. It is for this purpose that the right to confer degree has been given under Section 22 of the UGC Act only to a university established or incorporated by or under a Central Act, Provincial Act or State Act or an institution deemed to be a university under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. Sub-section (3) of this section provides that "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette. The value and importance of such degrees which are recognised by the Government was pointed out by a Constitution Bench in S. Azeez Basha v. Union of India."

34. From the aforesaid observations, it is clear that the

UGC is concerned with the coordination and determination of standards in Universities and is entitled to take such steps as it may think fit for the promotion and coordination of the University education and determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of its functions under the Act, the Commission may do all such acts as are enumerated in Section 12 of the Act, 1956. What further appears is that University is concerned with higher education like graduate, post-graduate, doctorate and the like and is entitled to confer degree on those levels. The UGC Act, 1956 does not relate to Secondary and Higher Secondary Level Education. The power to legislate in respect of education, in general, can be drawn from Entry 25 in List III-Concurrent List of the Seventh Schedule, which provides as follows:-

"25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

Entries 63, 64, 65 and 66 of List I -Union List of Seventh Schedule provides as follows:-

"63. The institutions known at the commencement of this Constitution as the Benaras Hindu University, the Aligarh Muslim University and the Delhi University; the University established in pursuance of Article 371E; any other institution declared by Parliament by law to be an institution of national importance.

64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.

65. Union agencies and institutions for—

(a) professional, vocational or technical training, including the training of police officers; or

(b) the promotion of special studies or research; or

(c) *scientific or technical assistance in the investigation or detection of crime.*"

66. *Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.*"

35. The U.P. Intermediate Education Act, 1921 provides for establishment of a Board of High School and Intermediate education. The preamble of the Act, 1921 provides as follows:-

"Whereas it is expedient to establish a Board to take the place of Allahabad University in regulating and supervising the system of High School and Intermediate Education in the United Provinces and to prescribe courses therefor"

36. Section 7 of the Act, 1921, provides as follows:-

"Section 7. Powers of the Board:- *Subject to the provisions of this Act, the Board shall have the following powers, namely, –*

(1) *to prescribe courses of instructions, text-books, other books and instructional material, if any, for the High School and Intermediate classes in such branches of education as it thinks fit;*

(1A).....

(2) *to grant diplomas or certificates to persons who---*

(a) *have pursued a course of study in an institution admitted to the privileges of recognition by the Board, or*

(b) *are teachers, or*

(c) *have studied privately, under conditions laid down in the Regulations, and have passed the examinations of the Board under like conditions;*

(3)

(4) *to recognise institutions for the purposes of its examinations;*

(5) *to admit candidates to its examinations;*

(6) *to (II).....*

(12) *to do all such other acts and things as may be requisite in order to further the objects of the Board as a body constituted for regulating and supervising High School and Intermediate Education."*

37. Section 15 of the Act, 1921, provides as follows:-

"15. Power of Board to make Regulations:- (1)
The Board may make Regulations for the purpose of carrying into effect the provisions of this Act.

(2) *In particular and without prejudice to the generality of the foregoing power the Board may make Regulations providing for all or any of the following matters, namely, :-*

(a)....

(b) *the conferment of diplomas and certificates;*

(c) *the conditions of recognitions of institutions for the purpose of its examination;*

(d)

(e) *the conditions under which candidates shall be admitted to the examinations of the Board and shall be eligible for diplomas and certificates."*

38. A conspectus of the aforesaid provisions would reveal that the Board is not concerned with conferment of degrees, but it is concerned with grant of certificate and diplomas to certain category of persons. Thus, it is manifestly clear that the Board and the UGC operate in clearly distinct fields. One relates to secondary and higher secondary level education whereas the other relates to higher education. UGC Act, 1956 is concerned with the coordination and determination of standards in universities and UGC is entitled to take such steps as it may think fit for the promotion and coordination of the university education and determination and maintenance of standards of teaching, examination and research in universities.

39. What we find from the record is that the U.P. Board, in exercise of its power conferred by Section 15, vide Entry No.30 in Regulation 2 of Chapter XIV of the Regulations framed under the Act, 1921, provided equivalence to the

Adhikari Pariksha conducted by the Gurukul Vishwavidhyalaya, Vrindavan with High School examination for the purpose of admitting a candidate to its intermediate level course provided the Adhikari Pariksha was underwent in one year with English as one of the subjects. Such recognition accorded to Adhikari Pariksha by the Board was within its power conferred by Act, 1921 and is independent of the status of Gurukul as a University. Conferment of Adhikari Pariksha certificate does not amount to conferment of a degree by a University, which relates to higher level education and not to the secondary level education.

40. We, therefore, find that the judgment rendered in the case of ***Indrawati Devi's case (supra)***, which placed reliance on apex court's decision in the case of ***Prof. Yashpal's case (supra)***, fails to notice the distinction between two different levels of education. No doubt, a degree conferred by Gurukul, as a University, for graduate, post-graduate or higher level cannot be accorded recognition unless Gurukul is conferred with the status of a University within the meaning of Section 2(f) of the University Grants Commission Act, 1956. However, its secondary level examination such as "***Adhikari Pariksha***", which has been accorded equivalence with high school examination by the Board, in exercise of its power conferred under the Act, 1921, cannot be set at naught merely by a notification of the UGC declaring Gurukul Viswavidhyalaya, Vrindavan as a fake University.

41. At this stage, it would be useful to notice that under Section 23 of the UGC Act, there is a prohibition for any

institution, whether a corporate body or not, other than a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, to have the word "**University**" associated with its name in any manner whatsoever. It might be so, as suggested by the learned counsel for the petitioners, that because of this prohibition "**Gurukul**" was put in the list of fake Universities as it was using the word "**Vishwavidyalaya**" suffixed to its name. However, we refrain from making any authoritative pronouncement on that score in absence of any conclusive material provided to us by the learned counsel appearing for the UGC.

42. In **Akansha Gautam's case (supra)**, the learned Single Judge of this Court had considered, in detail, the provisions of UGC Act, 1956, the provisions of the U.P. Intermediate Education Act and the Regulations framed therein. It would be useful to reproduce paragraphs 20 to 23 of the judgment in **Akansha Gautam's case**, which are as follows:-

"20. Learned counsel for the petitioners could not place anything before this Court to show that GVV, Vrindavan (Mathura) was established in a manner so as to qualify definition of 'University' under Section 2(f) of 1956 Act. It is also not their case that it can be treated a "Deemed University under Section 3 of 1956 Act nor it can be said to be an institution specially conferred power to grant or confer degree by an Act of Parliament. To this extent virtually learned counsel for the petitioners could not dispute that in these circumstances the University Grant Commission has identified the aforesaid institution a "fake university/institution" running in violation of Section 22 of 1956 Act and therefore State of Uttar Pradesh in furtherance thereof has taken action to stop functioning of aforesaid institution as a University so as not to cheat, mislead and misguide innocent young students aspiring higher standard and legal education in

this country. The result would be that GVV, Vrindavan (Mathura) was never a body authorized and entitled to either run any degree and diploma course nor any such degree or diploma awarded by it would be valid for any purpose. This is what has been said by this Court also in Surjeet Singh (supra), Ishrat Ali (supra) and Rita Rani (supra). The Apex Court has said in Prof. Yashpal & Anr. Vs. State of Chhattisgarh & Ors. (2005) 5 SCC 420 that a degree does not mean a mere degree but it means the degree which is recognized. Right to confer a degree has been conferred on a University established or incorporated or is considered to be a University under 1956 Act. Section 22 of 1956 Act restricts right of conferment of degree upon University or institutions entitled to do so under the said Act. Thus, if a question would have arisen as to whether a degree issued by GVV, Vrindavan (Mathura) can be considered a valid degree or not, it would have to be answered in negative to the extent it offends provisions of 1956 Act relating to the level of education governed by the said Act. The GVV, Vrindavan (Mathura) is not a University under UGC Act, 1956.

21. However, in the present case, I am concerned with "Adhikari Pariksha" which is an examination claimed to be equivalent with High School Exam of U.P. Board. The Secondary Education admittedly is not governed by 1956 Act but it is within the legislative competence of State Legislature. In the State of U.P.; it is governed by the provisions of 1921 Act. A person who has obtained education upto Class 10, may seek admission in Class 11 i.e. Intermediate course duly recognized under 1921 Act. Chapter 14 of Regulations provides for Intermediate examination and Regulation 1 reads as under:

“इण्टरमीडियट परीक्षा में प्रवेश के लिये या परीक्षा के लिये निर्धारित पाठ्यक्रम का अध्ययन प्रारम्भ करने से पूर्व प्रत्येक परीक्षार्थी को परिषद की हाईस्कूल परीक्षा अथवा हाईस्कूल प्राविधिक परीक्षा अथवा विनियम द्वारा उसके (हाईस्कूल परीक्षा) समकक्ष घोषित परीक्षा में उत्तीर्ण होना आवश्यक होगा।”

"For entrance in Intermediate Examination or prior to commencement of study of the syllabus prescribed for the said examination, every candidate must have passed the High School Examination or High School (Technical) Examination of the Board or any examination declared by the Regulations equivalent to it (High School Examination)."

(English Translation by the Court)

22. For the benefit of students and public at large, various examination, which have been declared equivalent to High School examination of U.P. Board, Regulation 2 chapter 14 contains a list, and the relevant extract thereof may be reproduced as under:

“2. निम्नलिखित परीक्षायें इण्टरमीडिएट परीक्षा के निर्धारित पाठ्यक्रम के अध्ययन के लिये परीक्षार्थियों को प्रवेश का पात्र बनाने के उद्देश्य से परिषद को हाईस्कूल परीक्षा के समकक्ष घोषित की जाती है—

1. भारत में विधिवत् स्थापित किसी विश्वविद्यालय की मैट्रिक्यूलेशन परीक्षा, जो परिषद द्वारा इस उद्देश्य से मान्य है। निम्नलिखित विश्वविद्यालयों की मैट्रिक्यूलेशन परीक्षायें परिषद द्वारा मान्य हैं—

इलाहाबाद, पंजाब, बम्बई, कलकत्ता, मद्रास, बनारस और अलीगढ़।

प्रतिबन्ध यह है कि बम्बई विश्वविद्यालय के सम्बन्ध में परीक्षार्थी को प्रत्येक विषय में 35 प्रतिशत अंको से अथवा प्रथम अथवा द्वितीय श्रेणी उत्तीर्ण होना चाहिए।

ज्ञातव्य—बनारस हिन्दू तथा अलीगढ़ मुस्लिम विश्वविद्यालयों की मैट्रिक्यूलेशन परीक्षा का तात्पर्य प्रथम की प्रवेश परीक्षा तथा द्वितीय की हाईस्कूल परीक्षा से है।

2. उत्तर प्रदेश अथवा किसी अन्य राज्य का हाईस्कूल लीविंग सर्टीफिकेट परीक्षा इस प्रतिबन्ध के साथ कि यह परीक्षा उस राज्य में विधिवत् स्थापित विश्वविद्यालय द्वारा मैट्रिक्यूलेशन के समकक्ष स्वीकार की जाती है।

3. कौम्ब्रिज स्कूल सर्टीफिकेट (जो पहले सीनियर लोकल कहलाती थी) परीक्षायें

4. चीफ कालेजों की डिप्लोमा परीक्षा,

5. मध्य प्रदेश तथा अन्य राज्यों में यूरोपियन स्कूलों की हाईस्कूल परीक्षा।

6. मध्य प्रदेश के हाईस्कूल, शिक्षा परिषद की हाईस्कूल सर्टीफिकेट परीक्षा,

7. हाईस्कूल फाइनल मैट्रिक्यूलेशन परीक्षा परिषद वर्मा द्वारा संचालित हाईस्कूल फाइनल तथा मैट्रिक्यूलेशन परीक्षा जो पहले वर्मा की एंगलो वर्नाक्यूलर हाईस्कूल तथा इंगलिश हाईस्कूल परीक्षा कहलाती थी।

ज्ञातव्य—उन भारतीय विद्यार्थियों के सम्बन्ध में, जो वर्मा से निष्क्रान्त हैं, रंगून विश्वविद्यालय की मैट्रिक्यूलेशन परीक्षा में वर्मा के अतिरिक्त अन्य विषयों में उत्तीर्ण परीक्षार्थियों, जिन्होंने अलग-अलग विषयों में न्यूनतम अंक तथा वर्मा के अतिरिक्त समस्त विषयों में वांछित न्यूनतम योगांक प्राप्त किये हैं, इण्टरमीडिएट परीक्षा में प्रवेश के पात्र समझे जाते हैं।

8. लन्दन विश्वविद्यालय की मैट्रिक्यूलेशन परीक्षा,

9. टावनकोर राज्य की हाईस्कूल लीविंग सर्टीफिकेट परीक्षा,

10. हैदराबाद (दक्खिन) की हाईस्कूल लीविंग सर्टीफिकेट परीक्षा, इस प्रतिबन्ध के साथ कि परीक्षार्थी प्रथम अथवा द्वितीय श्रेणी में उत्तीर्ण हुआ है,

11. मैसूर की सेकेन्डरी स्कूल लीविंग सर्टीफिकेट परीक्षा इस प्रतिबन्ध के साथ कि परीक्षार्थी विश्वविद्यालय पाठ्यक्रम में प्रवेश का पात्र घोषित हुआ है,

12. राष्ट्रीय इण्डियन मिलिटरी कालेज, देहरादून (जो पहले सैनिक स्कूल देहरादून तथा मौलिक रूप से रायल इण्डियन मिलिटरी कालेज कहलाता था) की डिप्लोमा परीक्षा,

13.

14. सेन्ट्रल बोर्ड आफ सेकेन्डरी एजेक्यूशन, अजमेर जो पहले बोर्ड आफ हाईस्कूल एण्ड, इन्टरमीडियट एजुकेशन, राजपूताना जिसमें अजमेर, मारवाड भी सम्मिलित थे, मध्य भारत और ग्वालियर, अजमेर कहलाता था तथा बाद में जिसका नाम बोर्ड आफ हाईस्कूल एण्ड इन्टरमीडियट एजुकेशन, अजमेर, भोपाल और विन्ध्य प्रदेश अजमेर, रखा गया की हाईस्कूल की परीक्षा

15. भारतीय नौ सेना का हायर एजुकेशनल टेस्ट जो पहले "इण्डियन मार्केन्टाइल मैरिन ट्रेनिंग शिप डफरिन" का डफरिन फाईनल पारसिंग आउट इग्जामनेशन अधिशासी अथवा अभियन्त्रण कैंडेटों के लिए कहलाता था,

16. कोचीन राज्य की सेकेन्ड्री स्कूल लीविंग सार्टिफिकेट परीक्षा इस प्रतिबन्ध के साथ कि सार्टिफिकेट प्राप्त कर्ता मद्रास विश्वविद्यालय द्वारा विश्वविद्यालय के अध्ययन के पाठ्यक्रम में प्रवेश का पात्र घोषित हुआ है।

17. नेशनल यूनिवर्सिटी आयरलैण्ड की मैट्रिक्यूलेशन की परीक्षा इस प्रतिबन्ध के साथ कि परीक्षार्थी प्रथम अथवा द्वितीय श्रेणी में उत्तीर्ण हुआ है।

18. उस्मानिया विश्वविद्यालय, हैदराबाद (दक्खिन) की मैट्रिक्यूलेशन परीक्षा इस प्रतिबन्ध के साथ कि परीक्षार्थी प्रथम अथवा द्वितीय श्रेणी में उत्तीर्ण हुआ है,

19. बोर्ड आफ इण्टरमीडियट एण्ड सेकेन्डरी एजुकेशन

20. नेपाल शासन द्वारा संचालित स्कूल लीविंग सार्टिफिकेट परीक्षा,

21. मैनचेस्टर, लीवरपुल, लार्ड्स, शेफिल्ड तथा बरलिंगम विश्वविद्यालय के संयुक्त बोर्ड की हाईस्कूल सार्टिफिकेट परीक्षा इस प्रतिबन्ध के साथ कि परीक्षार्थी ने परीक्षा, अंग्रेजी, गणित, इतिहास अथवा भूगोल तथा दो अन्य विषयों में उत्तीर्ण की है, जो माध्यमिक शिक्षा परिषद उत्तर प्रदेश द्वारा हाईस्कूल परीक्षा के लिए स्वीकृत है।

22. संयुक्त मैट्रिक्यूलेशन बोर्ड प्रिंटारिया दक्षिण की मैट्रिक्यूलेशन की परीक्षा,

23. बोर्ड आफ सेकेन्डरी एजुकेशन हैदराबाद की हायर सेकेन्ड्री सार्टिफिकेट परीक्षा इस प्रतिबन्ध के साथ कि परीक्षार्थी एक प्रयत्न में उत्तीर्ण हुआ है और उसने परीक्षा में सम्पूर्ण योगांक के कम से कम 35 प्रतिशत अंक प्राप्त किये हैं तथा वह उस्मानिया विश्वविद्यालय की हैदराबाद की पूर्व विश्वविद्यालय में प्रवेश का पात्र है,

24. उत्कल विश्वविद्यालय की मैट्रिक्यूलेशन परीक्षा,

25. प्रमुख एयर कैफ्टेशनमैन के लिए पुनर्वर्गीकरण हेतु आई.ए.एल. एजुकेशनल टेस्ट,

26. भारतीय सेना का स्पेशल सार्टिफिकेट आफ एजुकेशन

27. सन् 1946 ई0 से मई 1964 ई0 तक की प्रयाग महिला विद्यापीठ द्वारा संचालित विद्या विनोदनी (मैट्रिक्यूलेशन) परीक्षा इस प्रतिबन्ध के साथ कि वह एडवांस अंग्रेजी वैकल्पिक विषय के साथ उत्तीर्ण की गयी हो तथा पूर्ण परीक्षा एक साथ अथवा एक दूसरे से दो वर्षों के बीच (दो से अधिक खण्डों में नहीं) उत्तीर्ण की गई हो,

पुनश्च—प्रयाग महिला विद्यापीठ के दारागंज, इलाहाबाद तथा 106 हीवेट रोड इलाहाबाद स्थित कार्यालयों से प्रदत्त प्रमाण-पत्र स्वीकार किये जायेंगे।

28. लंका की सीनियर स्कूल सार्टिफिकेट परीक्षा, जिसका बाद में नाम जनरल सार्टिफिकेट आफ एजुकेशन (आर्डिनरी) परीक्षा लंका रख गया है।

29. बोर्ड आफ हायर सेकेन्डरी एजुकेशन, दिल्ली की हायर सेकेन्डरी परीक्षा (एक वर्षीय अथवा तीन वर्षीय पाठ्यक्रम)

30. गुरुकूल विश्वविद्यालय, वृन्दावन द्वारा संचालित अंग्रेजी के साथ अधिकारी परीक्षा, जो एक से अधिक वर्ष में खण्डों में उत्तीर्ण न की गई हो,

23. Besides above, Clause 2-A, Chapter 14 of Regulations contemplates certain examination conducted by institutions privately managed which are not governed

by any statute or charter but satisfy the requirement with respect to recognition as laid down therein and it reads as under:

“2क-नीचे लिखी हुई शर्तें उन व्यक्तिगत रूप से व्यवस्थित संस्थाओं पर लागू होंगी, जो किसी अधिनियम अथवा चार्टर के अन्तर्गत अनिवार्य शर्त के रूप में नहीं चल रही हैं। ये शर्तें उनके द्वारा संचालित परीक्षाओं की परिषद की हाईस्कूल परीक्षा के समकक्ष विनियम 2, अध्याय 14 के अन्तर्गत मान्यता देने के उद्देश्य से लागू होंगी:-

1. परिषद का एक प्रतिनिधि उस प्राधिकार में होगा, जो परीक्षा के लिए अध्ययन के निर्धारित पाठ्यक्रम का अनुमोदन करता है।

2. वह संस्था अपने परीक्षा केन्द्रों की परिषद के प्रतिनिधि द्वारा निरीक्षित किये जाने की अनुमति देगी,

3. वह संस्था परिषद के प्रतिनिधियों को परिषद के नियमों के अनुसार यात्रा एवं दैनिक भत्ता देगी।

ये शर्तें उन समस्त संस्थाओं पर लागू होंगी जो परिषद द्वारा मान्यता प्राप्त करने के लिए आवेदन पत्र देती हैं तथा उन निकायों के लिए भी, जिनकी परीक्षाएँ इस अध्याय के विनियम 2 (30) तथा 2 (33) के अन्तर्गत परिषद द्वारा उसकी हाईस्कूल परीक्षा के समकक्ष मान्य हैं।”

43. After examining the aforesaid provisions/ regulations in detail the learned single judge went on to observe/ hold as follows:-

“24. The list, extract whereof has been referred to hereinabove, would show that besides matriculation examinations conducted by certain Universities established by law, it also recognises certain courses, examination whereof is conducted by the institutions which are not Universities established by law but are bodies like Societies or others institutions. It also recognises private institutions and bodies with certain conditions. Therefore, for the purposes of High School Examination conducted by U.P. Board, recognition as equivalent course has been given not only to the equivalent courses run by Universities established by law but also to the Societies and other bodies including certain private bodies.

25. A perusal of aforesaid list would show that Adhikari Examination of GVV, Vrindavan (Mathura) was recognized separately without including it along with category of Universities established in the country conducting matriculation examination and others. But various courses recognized therein is equivalent to high school examination of U.P. Board are bodies which either satisfy the term 'University' under 1956 Act or bodies established under some charter of concerned provincial

government. Those bodies who do not fulfill the said requirement but are private, in respect thereto also a separate provision was made in chapter 14 Regulation 2-A.

26. It appear that at the time when Adhikari Pariksha of GVV, Vrindavan (Mathura) was included in the list of recognized institution, Board treated GVV, Vrindavan (Mathura) to be a University governed by provisions of 1956 Act and therefore the same was included therein. It is for this reason when Government of India acting upon identification made by UGC declared GVV, Vrindavan (Mathura) as a fake university, the consequential exclusion of GVV, Vrindavan (Mathura) Adhikari Pariksha from the Regulation underwent with the U.P. Board. The said declaration and existing Regulation has not wiped out the examination already conducted by GVV, Vrindavan (Mathura) up to 2008. Earlier Adhikari Pariksha without any restriction of time was recognized as equivalent to High School of U.P. Board but after amendment made vide notification dated 08.09.2008, Regulation, as it stand today, it continue to recognise Adhikari Pariksha conducted by GVV, Vrindavan (Mathura) but now it is confined upto 2008 and not beyond that. The validity of this Regulation, as it stand today, has not been disputed or assailed by anyone.

27. The Regulation, as it stood prior to 2008 or thereafter, gives a clear impression to all that U.P. Board still reconises Adhikari Pariksha conducted by GVV, Vrindavan (Mathura) upto 2008 as a valid qualification equivalent to High School Examination of U.P. Board. It cannot be controverted that in the aforesaid scenario a very large number of candidates must have appeared till 2008 in Adhikahri Pariksha conducted by GVV, Vrindavan (Mathura) and have passed the same. For giving admission in Intermediate course of U.P. Board the aforesaid examination i.e. Adhikari Pariksha upto 2008 conducted by GVV, Vrindavan (Mathura) is still a valid qualification and learned Standing Counsel could not dispute that for giving admission in Intermediate Course, there is no bar or disqualification for such candidates. The recognition vis a vis equivalence up to High School Examination to Adhikari Pariksha as such does not depend upon the status of the institution in question namely GVV, Vrindavan (Mathura) to be a University or not since such equivalence under the list, as aforesaid, is available to various examination bodies other than Universities under UGC Act, 1956. This is very clear and evident.

28. That being so, the mere fact that GVV, Vrindavan (Mathura) is not a University under U.G.C. Act, 1956 can it be said that Adhikari Pariksha, which is a

course in respect to Secondary Education would have any adverse effect particularly when there is no complete de-recognition by U.P. Board in respect to its equivalence with High School Examination conducted by U.P. Board. The answer would be 'No'. Even otherwise, this Court find it appropriate to stick to this interpretation for the reason that a huge number of candidates founded on Adhikari Pariksha have obtained higher education from various institutions including U.P. Board and various Universities. Any decision otherwise would wipe out all these qualifications earned by these students for no fault on their part. Such a drastic consequence can be save particularly when there is no compulsion to take such a view."

44. On careful examination of the various provisions noticed by the learned single judge in **Akansha Gautam's case**, which have not been disputed by the learned counsel for the parties, we find ourselves in complete agreement with the view taken by the learned Single Judge, and we adopt the same.

45. In view of the discussion made herein above we are of the view that the decision of the division bench in Special Appeal No.1990 of 2011 dated 13.10.2011 (**Indrawati Devi v. State of U.P. and others**) does not lay down the correct law. The law laid down in **Akanksha Gautam's case** is hereby approved.

46. However, another ancillary question has cropped up for our consideration. That is, as to what would be the effect of revocation of Entry No. 30 in Regulation 2 of Chapter XIV of the Regulations framed under the U.P. Intermediate Education Act, 1921, vide notification dated 10th May, 2013 of the Board, with the sanction of the State Government accorded under Section 16(2) of the Act, 1921.

47. Before we proceed to answer the above question, it

would be useful to first examine as to what would be the effect of such revocation if we assign retrospective effect to the same that is, as if, the Entry No.30 in Regulation 2 of Chapter XIV of the Regulations framed under the Act, 1921 never existed. Ordinarily, a high school level examination is not the end of scholastic pursuits. In fact, it is the beginning of a series of examinations which a person undergoes to attain eligibility for entry in various categories of service/profession, etc. It is a foundational qualification on which the superstructure of various higher qualifications including technical and professional qualifications are built. Therefore, if it is held that revocation of Entry No.30 in the Regulations would mean that "**Adhikari Pariksha**" was never treated as equivalent to a high school level examination, the entire superstructure of higher qualifications attained by a person based on that foundational qualification would crumble resulting in catastrophic effect on the life and careers of thousands of innocent persons who underwent the same and have obtained various higher qualifications, job, etc. based on that foundational qualification.

48. In ***State of Tamil Nadu & others V. M. Sheshachalam & others: (2011) 12 SCC 641***, the apex court observed that while making amendments to principal or subordinate legislation either by executive decisions or by legislative Act paramount consideration should be of the persons who are going to be affected by such amendment. In other words, legislative impact is one aspect which always should be examined by the Government concerned before it takes any decision which is likely to affect a larger section of

the society.

49. In ***Tariq Islam v. Aligarh Muslim University: (2001) 8 SCC 546***, the apex court, observed that equivalence of qualification has to be determined before a person is allowed to undergo a course because to nullify the equivalence accorded once would be to put the clock back causing grave injustice to the person concerned, inasmuch as, had he been denied admission on the ground that his qualification is not equivalent to the qualification determining eligibility, he might have obtained an equivalent qualification or pursued his studies elsewhere. The relevant observations of the apex court are in paragraph 8 of the judgment, as follows:

".....Equivalence of qualification has to be determined before a person is allowed to undergo a course. When the appellant as a result of such admission obtained such high qualifications as MPhil/PhD, it is difficult to imagine that the equivalence of qualification obtained by him earlier was not considered by the University. After having obtained such degrees, to nullify the equivalence declared by the Academic Council and the Vice-Chancellor will be to put the clock back causing grave injustice to the appellant. Had he been denied admission on the ground that his qualification is not equivalent to Master's degree, he might have obtained an equivalent qualification or pursued his studies elsewhere. That opportunity having been deprived to him and his admission to such courses having been ratified based on the recommendations of the Equivalence Committee, it cannot be nullified in the manner it has been done."

50. In ***State of Orissa & another v. Bhupendra Kumar Bose & others, AIR 1962 SC 945***, a Constitution Bench comprising of five judges of the apex court while dealing with the effect of expiration of a temporary statute held that if the right created by the Statute is of an enduring character and has vested in the person, that right cannot be

taken away because the statute by which it was created has expired. It would be useful to reproduce paragraph 21 of the report, which reads as follows:-

" In our opinion, it would not be reasonable to hold that the general rule about the effect of the expiration of a temporary Act on which Mr Chetty relies is inflexible and admits of no exceptions. It is true for instance that offences committed against temporary Acts must be prosecuted and punished before the Act expires. If a prosecution has not ended before that day, as a result of the termination of the Act, it will ipso facto terminate. But is that an inflexible and universal rule? In our opinion, what the effect of the expiration of a temporary Act would be must depend upon the nature of the right or obligation resulting from the provisions of the temporary Act and upon their character whether the said right and liability are enduring or not. As observed by Parker, B. in the case of Steavenson v. Oliver: "there is a difference between temporary statutes and statutes which are repealed; the latter (except so far as they relate to transactions already completed under them) become as if they had never existed; but with respect to the former, the extent of the restrictions imposed, and the duration of the provisions, are matters of construction". In this connection, it would be useful and interesting to consider the decision in the case of Steavanson itself. That case related to 6th Geo. 4, c. 133, Section 4 which provided that every person who held a commission or warrant as surgeon or assistant surgeon in His Majesty's navy or army, should be entitled to practise as an apothecary without having passed the usual examination. The statute itself was temporary and it expired on 1-8-1826. It was urged that a person who was entitled to practise as an apothecary under the Act would lose his right after 1-8-1826 because there was no saving provision in the statute and its expiration would bring to an end all the rights and liabilities created by it. The Court rejected this contention and held that the person who had acquired a right to practise as an apothecary, without having passed the usual examination, by virtue of the provision of the temporary Act, would not be deprived of his right after its expiration. In dealing with the question about the effect of the expiration of the temporary statute, Lord Abinger, C.B. observed that "it is by no means a consequence of an act of Parliament's expiring, that rights acquired under it should likewise expire. Take the case of a penalty imposed by an act of Parliament, would not a person who had been guilty of

*the offence upon which the legislature had imposed the penalty while the Act was in force, be liable to pay it after its expiration? The case of a right acquired under the Act is stronger. The 6 Geo. 4, c. 133, provides that parties who hold such warrants shall be entitled to practise as apothecaries; and we cannot engraft on the statute a new qualification, limiting that enactment". It is in support of the same conclusion that Parker, B. made the observations which we have already cited. "We must look at this act, observed Parker, B., and see whether the restriction in the 11th clause, that the provisions of the statute are only to last for a limited time, is applicable to this privilege, in question. It seems to me that the meaning of the legislature was that all assistant surgeons, who were such before 1-8-1826, should be entitled to the same privileges of practising as apothecaries, as if they had been in actual practice as such on 1-8-1815, and that their privilege as such was of an executory nature, capable of being carried into effect after 1-8-1826." Take the case of a penalty imposed by a temporary statute for offences created by it. If a person is tried and convicted under the relevant provisions of the temporary statute and sentenced to undergo imprisonment, could it be said that as soon as the temporary statute expires by efflux of time, the detention of the offender in jail by virtue of the order of sentence imposed upon him would cease to be valid and legal? In our opinion, the answer to this question has to be in the negative. Therefore, in considering the effect of the expiration of a temporary statute, it would be unsafe to lay down any inflexible rule. **If the right created by the statute is of an enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired.** If a penalty had been incurred under the statute and had been imposed upon a person, the imposition of the penalty would survive the expiration of the statute. That appears to be the true legal position in the matter."*

51. In the case of **S.L. Srinivasa Jute Twine Mills (P) Ltd. v. Union of India & Another: (2006) 2 SCC 740**, the apex court was required to adjudicate on the effect of omission of clause (d) in section 16(1) of the Employees' Provident Fund Misc. Provisions Act, 1952. By clause (d) protection from operation of the provisions of the Act was provided to newly set up establishment for a period of three

years from the date on which such establishment was set up. By Ordinance, which was followed by amending Act, clause (d) was omitted with effect from 22.09.1997. A question, therefore, arose as to what would be the effect of such omission on those establishments that have not completed three years infancy period and were accorded protection under the then existing clause (d). The apex court after a considering a number of precedents took the view that regardless of the omission of clause (d) from the statute, the right under the then existing clause (d) had accrued on the newly set up establishments and they were entitled to protection for the full period of infancy. While holding as above, the apex court in paragraph 18 of the report, observed as follows:

"It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. (See Keshavan Madhava Menon v. State of Bombay.) But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only nova constitutio futuris formam imponere debet, non praeteritis. In the words of Lord Blanesburgh,

"provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment" (see Delhi Cloth & General Mills Co. Ltd. v. CIT).

"Every statute, it has been said", observed Lopes, L.J.,

"which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect." (See Amireddi Rajagopala Rao v. Amireddi Sitharamamma.)

As a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate rule to the effect that a statute or a

section in it is not to be construed so as to have larger retrospective operation than its language renders necessary. (See Reid v. Reid.) In other words, close attention must be paid to the language of the statutory provision for determining the scope of the retrospectivity intended by Parliament. (See Union of India v. Raghubir Singh.) The above position has been highlighted in Principles of Statutory Interpretation by Justice G.P. Singh. (10th Edn., 2006 at pp. 474 and 475.)"

52. Likewise, in the case of **State of Andhra Pradesh v. CH Gandhi: (2013) 5 SCC 111**, the apex court, in paragraph 27 of the report, while dealing with the effect of substitution of a Rule observed that the provision which is substituted by the amending Rules, does not obliterate the rights of the parties as if they never existed. While holding as above, the apex court, in paragraph 23 cited with approval **Maxwell on the interpretation of Statutes, 12th Edn.**, wherein it has been stated thus:

"Perhaps no rule of construction is more firmly established than thus - 'that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only'. The rule has, in fact, two aspects, for it, 'involves another and subordinate rule, to the effect that a statute is not to be construed so as to have greater retrospective operation than its language renders necessary."

53. In the instant case, the revocation of the Entry No.30 from Regulation 2 of Chapter XIV was made in deference to the order of this court in **Indrawati Devi's case (supra)**. From the document enclosed with the compilation, as has been noticed by us in paragraph 27 herein above, it does not appear that the Board carried out any independent exercise to ascertain that Gurukul, as an institution imparting

education up to the secondary level, for which it had been accorded recognition, never existed. No material has been brought on record to suggest that Gurukul was a bogus or a fictitious institution. Thus, in view of the law noticed herein above, providing retrospectivity to the amendment in the Regulations would be completely unjustified inasmuch as the equivalence earlier accorded to "**Adhikari Pariksha**", up to the year 2008, by the U.P. Board, in exercise of its power under section 15 read with section 7 of the Act, 1921, has conferred rights of enduring character on persons who pursued the course and obtained such certificates, and such right having vested in them cannot be extinguished by mere deletion of Entry No.30 from Regulation 2 of Chapter XIV of the Regulations framed under the Act, 1921, particularly, in absence of any statutory intendment to make it applicable from retrospective effect. Providing retrospectivity to such an amendment would play havoc with the life and career of innumerable persons who, on the strength of Adhikari Pariksha certificate, have pursued and obtained higher qualifications.

54. In view of the discussion made above, we answer the reference thus:

(a) Adhikari Pariksha Certificate issued by the Gurukul Viswavidyalaya, Vrindavan, Mathura, up to the year 2008 i.e. till it was recognized by the U.P. Board of High School and Intermediate Education as equivalent to High School, obtained with English as one of the subject, and passed in one year, is a valid qualification equivalent to High School, regardless of Gurukul having been declared a fake University

by the UGC.

(b) The decision of the division bench in Special Appeal No. 1990 of 2011 dated 13.10.2011 (**Indrawati Devi v. State of U.P. and others**), which holds that "**Adhikari Pariksha**" certificate obtained from Gurukul Viswavidyalaya, Vrindavan, Mathura cannot be held to be a valid degree, does not lay down the correct law.

Let the papers of this writ petition be placed before the appropriate Court for further orders.

Order Date :-09.10.2013

Sunil Kr Tiwari

(Satya Poot Mehrotra, J.)

(Sanjay Misra, J.)

(Manoj Misra, J.)