

UNIVERSITY OF DELHI

v.

RAJ SINGH

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SEPTEMBER 8, 1994

[A.M. AHMADI AND S.P. BHARUCHA, JJ.]

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Constitution of India—Seventh Schedule, List I, Entry 66—University Grants Commission Act 1956—Sections 14 r/w 26(1)(e) and (o) and 12—University Grants Commission(Qualifications required of a person to be appointed to the teaching staff of a University and institutions affiliated to it) Regulations, 1991—Regulations 2 and 3—National eligibility test for lecturers—UGC prescribing eligibility test as a qualification to be appointed to teaching Posts—Relaxation of prescribed qualification with prior approval of UGC—Failure to comply with the recommended qualifications attracting withholding of grants made by UGC to the University—Whether the test impinges on power of University to select its teachers and therefore beyond the powers invested in the UGC—Held, UGC has wide-ranging powers to act for the determination and maintenance of standards of teaching—Written eligibility test, based on recommendations of commissions and committees of educationists to ensure standards of teaching, is within the competence of UGC to prescribe—Held, further, regulations prescribe test to determine basic eligibility, and there is no element of selection in the process—University may still select lecturers by written test and interview or either—University's autonomy is not entrenched upon by the Regulations—Delhi University Act 1922.

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Constitution of India—Seventh Schedule, List I. Entries 63 and 66—University Grants Commission Act 1956—Section 2(f)—Delhi University Act 1992—Applicability of later Act to institutions mentioned under entry 63, including Delhi University—Held, Delhi University and other Universities covered by entry 63 are subject to the regulation of the UGC for purposes of coordination and determination of standards—It must be assumed that Parliament was aware of the provisions of the Delhi University Act when it enacted the later legislation—Held, further, any other view would render otiose, qua the universities covered by Entry 63 not only the UGC Act but Entry 66 itself—Also, were Entry 66 to operate only vis-a-vis institutions other than those mentioned in Entry 66, the UGC Act in its entirety would not apply

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A to *Delhi University, including the provisions relating to grants—Interpretation of statutes—Harmonious Construction.*

Interpretation of Statutes—University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of a University and institutions affiliated to it) Regulations, 1991—Regulation 2—Mandatory or directory—Held, regulations prescribing eligibility test recommendatory in character.

B *Interpretation of Statutes—University Grants Commission Act 1956—Sections 12-A, 26(1)(e)—"Qualifications"—Definition of Qualification in Section 12-A(1)(d), held, is confined to the provisions of Section 12-A and does not apply to Section 26(1)(e)—Were it intended to apply throughout the Act held, it would have found place in definition section.*

C The University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of a university and institutions affiliated to it) Regulations, 1991 were notified on 19 September, 1991. They prescribed that no person shall be appointed to a teaching post in any University, institution or college unless he qualified in a written test to determine eligibility. They provided that a University may relax the prescribed qualification with the prior approval of the UGC. Failure to comply with this recommendation would lead to withholding the grants proposed to be made by the UGC to the University. The Regulations were to have protective application.

F In a writ petition filed in the High Court by an aspirant for appointment as lecturer, it was contended for the Delhi University that the Regulations were beyond the competence of the UGC; that, in any event, the Regulations were directory and not mandatory; that the Delhi University was an autonomous body and no condition of eligibility could be imposed upon it. The High Court rejected the case of the Delhi University, and upheld the Regulations.

G In appeal before this Court, the Delhi University reiterated its contentions. It was also argued that the definition of University in the UGC Act 1956 had to be read not with reference to the UGC Act as a whole, but only with reference to such provisions of the UGC Act as deal with funding.

H For the UGC it was contended that the Regulations were based on

various reports and recommendations of committees and commissions of educationists and expert bodies; the Regulations were only a conditions of eligibility had did not entrench upon the University's right to select; and the implementation of the scheme was a condition for revision of pay scales as recommended by the Mehrotra Committee, as per letter dated 17 June, 1987 written by the Department of Education, Ministry of Human Resources Development to the UGC, and that it was a matter of National policy.

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For the original writ petition, it was further argued that there was no conflict between Entries 63 and 66 of List I of the Seventh Schedule, and that the concept of autonomy of a University could not be so construed as to make Entry 66 *otiose qua* university that fall under Entry 63.

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Dismissing the appeal, this Court

HELD : 1. The Regulations made under the UGC Act 1956 are within the competence of the UGC and are authorized by Sections 12, 14 and 26(e) and (g). The UGC Act was enacted under entry 66 of the Constitution, and a duty expressly cast on the UGC to take "all such steps as it may think fit..... for the determination and maintenance of standards of teaching". These are wide-ranging powers, and comprehend the power to conduct a written test to establish minimal proficiency for holding the post of lecturer. [239-G-H, 240-A]

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2. The Delhi University Act 1922 was on the statute book when the UGC Act was enacted by Parliament under entry 66 of List I. It must be assumed that Parliament was aware of the provisions of the Delhi University Act when it enacted the UGC Act, 1956, particularly because the power to enact legislation concerning the Delhi University lay with Parliament under entry 63 of List I. Section 2(f) of the UGC Act 1956 makes it clear that the Universities covered by entry 63 of List I were consciously made subject to the regulation of the UGC in so far as co-ordination and determination of standards were concerned. To take any other view would be to make *otiose qua* the Universities covered by entry 63, not only the U.G.C. Act but entry 66 itself. [239-C-D]

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3. The argument that Section 2(f) of the UGC Act defining University had to be read not as a whole but only with reference to such provisions of the UGC Act as deal with funding must be rejected. If there were merit in the argument that entry 66 operated only vis-a-vis institutions other

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A then those mentioned in entry 63, the UGC Act in its entirety would not apply to the Delhi University and the Delhi University would, consequently, not be entitled to receive any grant thereunder. [239-E]

4. The word "qualification" in s. 26(1)(e) is of wide amplitude and would include the requirement of passing a basic eligibility test prescribed by the U.G.C. It is wider than the word "qualification" defined in section 12A(1)(d), which in expressly stated terms applies only to the provisions of Section 12A. Were this definition of qualification, as meaning a degree or any other qualification awarded by a University, to have been intended to apply throughout the Act, it would have found place in the definition C section, namely, Section 2. [240-H, 241-A]

5. The provisions of clause 2 of the said Regulations are recommendatory in character. The Regulations do not impinge upon the power of the University to select its teachers. The University may still select its lecturers by written test and interview or either. Successful candidates at D the basic eligibility test prescribed by the said Regulations are awarded no marks or ranks and, therefore, all who have cleared it stand at the same level. There is, therefore, no element of selection in the process. The University's autonomy is not entrenched upon by the said Regulations.

[241-G-H, 242-A-B]

E 6. There must be highly qualified men and women in the country who, to serve their chosen field would be willing to become lecturers. There is not doubt that they would appreciate the sound objective of the said Regulations and would, therefore, not consider it infra dig to appear at and clear the test prescribed thereby. In the case of eminently qualified men and F women, no doubt the UGC would not hesitate to grant prior approval to the relaxation of the requirement of clearing the test. [242-C-D]

G 7. It is necessary to consider whether or not the letter dated 17 June, 1987, addressed by the Department of Education, Ministry of Human Resource development, Government of India to the UGC can be said to be a directive under Section 20 of the UGC Act concerning a question of policy relating to national purposes. [242-E]

H 8. The Delhi University may, therefore, appoint as a lecturer in itself and its affiliated colleges one who has cleared the test prescribed by the said Regulation; or it may seek prior approval for the relaxation of this

requirement in a specific case; or it may appoint as lecturer one does not meet this requirement without having first obtained the UGC's approval, in which event it would, if failed to show cause for its failure to abide by the said Regulations to the satisfaction of the UGC, forfeit its grant from the UGC. If, however, it did show cause to the satisfaction of the UGC, it not only would not forfeit its grant but the appointment made without obtaining the UGC's prior approval would stand regularised.

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[242-H, 243-A]

Gujaraj University, Ahmedabad v. Krishna Ranganath Mudhoikar, [1963] Supp. 1 SCR 112 and Osmania University Teachers Association v. State of Andhra Pradesh, [1987] 3 SCR 949, referred to.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1819 of 1994.

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From the Judgment and Order dated 15.10.93 of the Delhi High Court Court in C.W.P. No. 3570 of 1992.

P.P. Rao, V.P. Chowdhary, Jitendra Sharma, P. Gaur, Ms. G. Dara and R. Sasiprabhu for the Appellants.

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Ms. Kumud L. Das, S.B. Upadhyay and R.D. Upadhyay for the Intervenor: applicant Nos. 2-8 & 10 & in I.A. No. 15.

B.K. Pal for the Intervenor In I.A. No. 15.

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M.P. Jha, Ajit Kumar Sinha for the Intervenor in I.A. Nos. 12 & 13.

Milan K. Banerjee, Attorney General and Gaurab Banerjee, Rathin Das for the U.G.C.

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A. Sharan for the Intervenor C.S.I.R.

A.K. Ganguli and A.D.N. Rao for the D.U.R.A.

A.K. Ganguli and Navin Prakash for the Respondent No. 1.

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The Judgment of the Court was delivered by

BHARUCHA, J. Upon a writ petition filed by Raj Singh (the first respondent in this appeal) the Delhi High Court held that the University Grants Commission (Qualifications required of a person to be appointed

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- A to the teaching staff of a University and institution affiliated to it) Regulations, 1991, notified on 19th September, 1991, by the University Grants Commission (the second respondent in this appeal) were valid and mandatory and the Delhi University (the appellant) was obliged under law to comply therewith. The Delhi University was directed to select lecturers for appointment in itself and in its affiliated colleges strictly in accordance with the said Regulations. This appeal by special leave is filed by the Delhi University.

The writ petition was filed because Raj Singh had applied for the post of lecturer in Commerce in three colleges affiliated to the Delhi

- C University but had not been called for an interview. He averred that the advertisement for applications in this behalf did not lay down that candidates should have passed the test prescribed by the said Regulations and that candidates who had not passed that test would not be called for interview. The writ petition was contested by the Delhi University. It was the case of the Delhi University that the said Regulations were beyond the competence of the University Grants Commission (U.G.C.) and that, in any event, they were directory and not mandatory. The Delhi University, it was submitted, was an autonomous body and no condition of eligibility could be imposed upon it. The case of the Delhi University was not accepted by the High Court.

- E The Delhi University was established under the Delhi University Act, 1922, Section 2(g) thereof defines 'teachers' to include "Professors, Readers, lecturers and other persons imparting instructions in this University or in any college or Hall", Section 2(h) defines 'teachers of the University' to mean "persons appointed or recognised by the University for the purpose of imparting instruction in the university or in any college". "College" is defined in clause (a) thus :

"College", means an institution maintained or admitted to its privileges by the University, and includes an Affiliated College and a Constituent College.

- G By reason of Section 20 the Court is "the supreme authority of the University". Section 21 states that the Executive Council would be the executive body of the University. Section 23 states that the Academic Council would be the academic body of the University and would, subject to the provisions H of the Act, the Statutes and the Ordinances, "have the control and general

regulation, and be responsible for the maintenance of standards of instruction, education and examination within the University, and shall exercise such other powers and perform such other Duties as may be conferred or imposed upon it by the Statutes. It shall have the right to advise the Executive Council on all academic matters.....". Section 29 deals with the statutes of the University. No statute dealing with, *inter alia*, "the conditions on the fulfilment of which the teachers of colleges and institutions may be recognised as teachers of the University" may be made, amended or repealed by the Executive Council except with the prior concurrence of the Academic Council.

Statute 6, so far as is relevant, reads thus :

(1) The Executive Council shall, subject to the control of the Court, have the management and administration of the revenue and property of the University and the conduct of all administrative affairs of the university not otherwise provided for.

(2) Subject to the provisions of the Act, the Statutes and the Ordinances, the Executive Council shall in addition to all other powers vested in it, have the following powers namely :

(i) to appoint, from time to time, the Registrar, Librarian, Principals of Colleges and Institutions established by the University and such professors, Readers, Lecturers and other members of the teaching staff as may be necessary on the recommendations of Selection Committees constituted for the purpose."

Ordinance XXIV sets out the qualifications requisite for the post of Lecturer in the Delhi University thus :

(a) A Doctorate's degree or research work of an equally high standard; and

(b) Good academic record with at least second class (C in the seven point scale) Master's degree in a relevant subject from an Indian University or an equivalent degree from a foreign University.

Having regard to the need for developing interdisciplinary Programmes, the degree in (a) and (b) above may be in relevant

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A subjects.

B Provided that if the Selection Committee is of the view that the research work of a candidate as evident either from his thesis or from his published work is of very high standard, it may relax the requirement of "at least second class in Master's degree examination" in terms of level achieved at the said examination as prescribed in (b) above.

C Provided further that if a candidate possessing a Doctor's degree or equivalent research work is not available or is not considered suitable, a person possessing a good academic record, (weightage being given to M. Phil. or equivalent degree or research work of quality) may be appointed on the conditions that he will have to obtain Doctor's/M. Phil. degree or give evidence of research of high standard within ten years of his appointment, failing which he will not be able to earn future increments until he fulfils these requirements.

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Explanation :

E 1. For determining 'good academic record' the following criteria shall be adopted :

F (i) A candidate holding a Ph. D./M.Phil. degree should possess at least a second class Master's degree; or

G (ii) A candidate without a Ph. D./M. Phil. degree should possess a high second class master's degree and second class in the Bachelor's degree; or

H (iii) A candidate not possessing Ph.D./M. Phil. degree but possessing second class Master's degree should have obtained first class in the bachelor's degree.

G (2) persons having securing at least 55% or more marks shall be deemed to have passed the examination in the high second class."

H The Delhi University Act is "existing law" for the purpose of the Constitution of India, having been enacted before the Constitution came into force. Entry 63 of List I of the Seventh Scheduled to the Constitution

reads :

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

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Therefore, it is Parliament which is invested with the power to legislate concerning the Delhi University.

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The University Grants Commission Act, 1956, (the U.G.C. Act) is enacted under the provisions of entry 66 of List I of the Seventh Schedule to the Constitution. It entitles Parliament to legislate in respect of "co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions".

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The short title of the U.G.C. Act repeats the words of Entry 66, thus:

"An Act to make provisions for the co-ordination and determination of standards in Universities for that purpose, to establish a University Grants Commission."

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Section 2 of the U.G.C. Act is the definition section and clause (f) thereof defines a University to mean "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 recognised by the Commission in accordance with the regulations made in this behalf under this Act". Section 12 sets out the functions of the U.G.C. It says, so far as is relevant for our purposes.

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"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 for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions under this Act, the Commission may -

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A (d) recommend to any University the measures necessary for the improvement of University education and advise the University upon the action to be taken for the purpose of implementing such recommendation ;

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B (j) perform such other functions as may be prescribed or as may be deemed necessary by the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above functions.

C Section 12A enables the U.G.C. to regulate fees and it prohibits donations in certain cases. Sub-section (1) of Section 12A sets out certain definitions expressly for the purpose of Section 12A. Clause (d) thereof defines qualification to mean "a degree or any other qualification awarded by a university". Section 14 reads thus :

D "If any University grants affiliation in respect of any course of study to any college referred to in the sub-section (5) of section 12A in contravention of the provisions of that sub-section or fails within a reasonable time to comply with any recommendation made by the Commission under section 12 or section 13, or contravenes the provisions of any rule made under clause (f) or clause (g) of sub-section (2) of section 25, or of any regulation made under clause (e) or clause (f) or clause (g) of section 26, the Commission, after taking into consideration the cause, if any, shown by the University for such failure or contravention, may withhold from the University the grants proposed to be made out of the Fund of the Commission."

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Section 20 reads thus :

G "(1) In the discharge of its functions under this Act, the Commission shall be guided by such directions on questions of policy relating to national purposes as may be given it to by the Central Government.

H (2) If any dispute arises between the Central Government and the commission as to whether a question is or is not a question of policy relating to national purposes, the decisions of the Central

Government shall be final."

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Section 25 empowers the Central Government to make rules for the carrying out of the purposes of the U.G.C. Act. Section 26 entitles the U.G.C., by notification in the Official Gazette, to make regulations consistent with the Act and the rules made thereunder for :

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"(e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the university, having regard to the branch of education in which he is expected to give instruction.

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(g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities.

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The said Regulation, that is to say, the University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of a University and institutions affiliated to it) Regulations, 1991, were made in exercise of the powers conferred by Section 26(1)(e) reading with Section 14 of the U.G.C. Act and were notified on 19th September, 1991, in the Gazette of India. They apply, by reason of clause 1 (ii) thereof, "to every University established or incorporated by or under a Central Act. Provincial Act or a State Act, every institution including a constituent or an affiliated college recognised by the Commission in consultation with the University concerned under clause (f) of Section 2 of the University Grants Commission Act, 1956 and every institution deemed to be a University under Section 3 of the said Act". Clause 2 prescribes the qualifications and clause 3 the consequences of the failure of Universities to abide therewith. They need to be reproduced in extenso :

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"2. Qualifications - No person shall be appointed to a teaching post in the University or in any of institutions including constituent or affiliated colleges recognised under clause (f) of Section 2 of the University Grants Commission Act, 1956 or in an institution deemed to be a University under Section 3 of the said Act in a subject if he does not fulfil the requirements as to the qualifications for the appropriate subject as provided in the Schedule 1.

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Provided that any relaxation in the prescribed qualification can only be made by a University in regard to the posts under it or

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A any of the institutions including constituent or affiliated colleges recognised under clause (f) of Section 2 of the aforesaid Act or by any institution deemed to be a University under Section 3 of the said Act with the prior approval of the University Grants Commission.

B Provided further that these regulations shall not be applicable to such cases where selections through duly constituted selection committees for making appointments to the teaching posts have been made prior to the enforcement of these regulations.

C 3. Consequences of failure of Universities to comply with recommendations of the Commission, as per provisions of Section 14 or the University Grants Commission Act, 1956 :

D If any University grants affiliation in respect of any course of study to any college referred to in sub-section (5) of Section 12A in contravention of the provisions of that sub-section or fails within a reasonable time to comply with any recommendation made by the Commission under Section 12 or Section 13, or contravenes the provision(s) of any rule made under clause (f) or clause (g) or sub-section (2) of Section 25 of any regulation made under clause (e) or clause (f) or clause (g) of Section 26, the Commission, after taking into the consideration the cause, if any, shown by the University for such failure of contravention, may without from the University the grants proposed to be made out of the Fund of the Commission."

F The genesis of the said Regulations is to be found in recommendations made by expert bodies of educationists from time to time. In the Report of the National Commission on Teachers-II dated 23rd March, 1985, it was noted under the sub-title "Evaluating academic achievements" that categorical statements had been made by various earlier committees and commissions that examination results were neither reliable nor valid and comparable. It was recognised that the standards of performance varied from University to University, and that Universities which were a little more exacting were less generous with their scores. A way had to be found to ensure not only that justice was done but also that it appeared to be done. Thereafter, in considering an All India Merit Test, the Report H said that it had to be ensured that every citizen aspiring to be a teacher at

the tertiary level, that is, a lecturer, qualified in terms of a national yardstick. Since the first appointment presupposed doctoral work and since the UGC as well as the Council of Scientific and Industrial Research (C.S.I.R.) held an All-India test for fellowships at this stage, the grade secured by a candidate in this test could be utilised for drawing up a list of candidates eligible for lecturerships in colleges and Universities of the country. If this proposal were to be implemented in such a manner that test became reliable, valid and comparable from the academic and the technical points of view, the problem of regulating the induction of persons with high calibre into the Universities and college of the country would be largely taken care of and the dream of having a national cadre of academics with high inter-regional mobility would have been realised. The Report, therefore, recommended "that the U.G.C. should incorporate the passing of one of the national tests at least in grade B + on a seven-point scale in its Regulations laying down the minimum qualification of teachers and that this should come into force within two years". Under the sub-title "Professional excellence", The Report reiterated that it was extremely important to make a rigorous merit-based selection for the entry level into the teaching profession, and this view corresponded with that of the vast majority of teachers.

In 1986 the U.G.C. appointed a committee of eminent men in the field of under the chairmanship of Prof. R.C. Mehrotra to examine the structure of emoluments and conditions of service of University and college teachers and to make recommendations in this behalf "having regard to the necessity of attracting and retraining talented persons in the teaching profession and providing advancement opportunities to teachers of Universities and colleges". The Mehrotra Committee noted what the Sen Committee and the Review Committee of the U.G.C. 1977, had said in regard to the need for improved qualifications of teachers and observed that whereas high Standards of M.Phil and Ph.D. continued to be maintained in a number of Universities, the standards appeared to have been diluted at several places because of unplanned growth, inadequate faculty and lack of infrastructural facilities. It was underlined that one very serious consequence of dilution of minimum standards for initial recruitment had been that already existing disparities in the standards of teaching between rural colleges, urban colleges, State Universities and Central Universities had tended to get further aggravated. The Mehrotra Committee recommended that the minimum qualification for eligibility to a lecturer's position should

- A be a good M.A., M.Sc. . M.Com., or equivalent degree. While making this recommendation the committee expressed its full consciousness of the importance of research experience and capability as an essential input for efficiency and quality of teaching in most disciplines at the tertiary (lecturer's) level. It therefore, strongly recommended the creation of much better research facilities for universities and colleges, particularly those dealing with post-graduate education to start with. This would enable brilliant lecturers recruited without an M.Phil or Ph.D. degree to pursue course and research work in their own institutions which could be followed for the completion of their dissertation by more specialised research for a limited period in a more advanced centre of learning or research. In order
- B to ensure the quality of new entrants to the teaching profession, the Mehrotra Committee recommended that all aspirants for the post of lecturer in a University or college should have passed a national qualifying examination. This recommendation, it said, was in line with the recommendation of the National Commission on Teachers II. Such a test would have the merit of removing disparities in standards of examination at the Master's level between different Universities. The Mehrotra Committee hoped that by this step local influence would be minimised and the eligibility zone for recruitment would be come wider. The proposed examination was to be a qualifying one in the sense that it determined only eligibility and not selection. The Mehrotra Committee recommended the
- C following minimum qualification for the post of lecturer :

"(i) Qualifying at the National Test conducted for the purpose by the UGC or any other agency approved by the UGC.

F (ii) Master's degree with at least fifty five per cent marks or its equivalent grade and good academic record.

The minimum qualifications mentioned above should not be relaxed even for candidates possessing M. Phil, Ph.D., qualification at the time of recruitment."

G A Conference of Vice Chancellors was held under the auspices of the U.G.C. in 1989. Among the major recommendations made by the conference was one that related to the "implementation of qualifying test for recruitment of lectures". The recommendation read thus :

H "The National level test to determine the eligibility for lecturers be

conducted. When the State Government conducts such tests, while accreditating them caution be exercised. It was also suggested that the test in regional languages be also conducted." A

Following up on the Mehrotra Committee report the Department of Education, Ministry of Human Resources Development, Government of India wrote to the U.G.C. on 17th June, 1987 on the subject of revision of pay-scales in Universities and colleges and other measures for the maintenance of standards in higher education. The letter stated that the Government of India had, after taking into consideration the recommendations of the U.G.C. (based upon the Mehrotra Committee report) decided to revise the pay-scales of teachers in the Central Universities. To enable the same to be done in the State, separate letter had been addressed. A scheme for the revision of pay-scales was appended to the letter, which would be applicable to teachers in all the Central Universities, the colleges in Delhi and the institutions deemed to be University whose maintenance expenditure was met by the U.G.C. The implementation of the scheme would be subject to acceptance of all the conditions attached to the scheme. The letter stated that the Universities should be advised to amend their Statutes and Ordinances before the revised Scales became operational. For our purposes, the relevant portion of the scheme reads thus : B

"Only those candidates who, besides fulfilling the minimum academic qualifications described for the post of lecturer, have qualified in the comprehensive test, to be specially conducted for the purpose, will be eligible for appointment as lecturers. The detailed schemes for conducting the test including its design, content and administration will be worked out and communicated by the UGC." C

Before we proceed to consider the submissions of learned counsel, reference may be made with advantage to two decisions of this Court which consider entry 66 of List I of the Seventh Schedule to the Constitution. D

In *The Gujarat University, Ahmedabad v. Krishna Ranganath Mudhokar and Others*, [1963] Supp. 1 SCR 112, the central question was whether the Gujarat University could impose Gujarati or Hindi as the exclusive media of instruction and examination and whether State legislation authorising the Gujarat University to impose such media was constitu- E

A tionally valid in view of entry 66. As it then read, entry 11 of List II empowered the States to legislate in respect of education, including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and 25 of List III. Entry 63 of List I, as it then read, invested Parliament with the power to enact legislation with respect to the institutions known at the commencement of the Constitution as the Banaras Hindu University, the

B Aligarh Muslim University and the Delhi University and other institutions declared by Parliament by law to be institutions of national importance. By reason of entry 66, Parliament was invested with the power to legislate on "coordination and determination of standards in institutions for higher education or reach and scientific and technical institutions." Item 25 of List

C III conferred power upon Parliament and the State legislatures to enact legislation with respect to "vocational and technical training on labour". A six-Judge bench of this Court observed that the validity of State legislation on the subjects of University education and education in technical and scientific institutions falling outside entry 64 of List I as it then read (that is to say, institutions for scientific or technical education other than those

D financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance) had to be judged having regard to whether it impinged on the field reserved for the Union under entry 66. In other words, the validity of the State legislation depended upon whether it prejudicially affected the coordination and determination of standards. It did not depend upon the actual existence of union legislation in respect of coordination and determination of standards which had, in any event, paramount importance by virtue of the first part of Article 254(1). Even if power under entry 66 was not exercised by Parliament, the relevant legislative entries being in the exclusive Union List, a State law entrenching upon the Union field would be invalid.

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F Counsel for the Gujarat University submitted that the power conferred by entry 66 was merely a power to coordinate and to determine standard; that is, it was a power merely to evaluate and fix the standards of education, because the expression "coordination" meant evaluation and "determination" meant fixation. Parliament had, therefore, power to legislate only for the purpose of evaluation and fixation of standards in the institutions referred to in entry 66. In the course of the arguments, however, it was admitted that steps to remove disparities which had actually resulted from adoption of regional media and the falling of standards might be undertaken and legislation for equalising standards in higher education might be enacted by Parliament. The Court was unable to agree with the argument.

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H It held that entry 66 was a legislative head and in interpreting it, unless it

was expressly or necessity found conditioned by words used therein, a narrow or restricted interpretation could not be put upon the generality of its words. Power to legislate on a subject was normally to be held to extend to all ancillary or subsidiary matters which could fairly and reasonably be said to be comprehended in that subject. Again, there was nothing either in entry 66 or elsewhere in the Constitution which supported the submission that the expression "coordination" meant, in the context in which it was used, merely evaluation. Coordination in its normal connotation meant harmonising or bringing into proper relation. In which all the things coordinated participated in a common pattern of action. The power to coordinate, therefore, was not merely a power to evaluate. It was a power to harmonise or secure relationship for concerted action. There was nothing in entry 66 which indicated that the power to legislate on coordination of standards in institutions of higher education did not include the power to legislate for preventing the occurrence of or for removal of disparities in standards. By express pronouncement of the Constitution-makers it was a power to coordinate and, of necessity, implied therein was the power to prevent what would make coordination impossible or difficult. The power was absolute and unconditional and in the absence of any controlling reasons it had to be given full effect according to its plain and expressed intention.

In *Osmania University Teachers Association v. State of Andhra Pradesh and Anr.*, [1987] 3 SCR 949, the validity of the Andhra Pradesh Commission of Higher Education Act, 1986, was in question. It was enacted to provide for the constitution of a Commissionate to advise the State Government in matters relating to higher education and to oversee its development and perform all functions necessary for the furtherance and maintenance of excellence in the Standards of higher education. The legislation was upheld by the High Court. This court on appeal held to the contrary. It observed that entry 66 of List I gave power to the Union to see that the required standard of higher education in the country was maintained. It was the exclusive responsibility of the Central Government to coordinate and determine the standards of higher education. That power included that power to evaluate, harmonise and secure proper relationship to any project of national importance. Such coordinate action in higher education with proper standards was of paramount importance to national progress. Parliament had exclusive power to legislate with regard to the matters included in List-I and the State had no power at all in regard to

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- A such matters. If the State legislated on a subject falling within List-I, the State legislation was void. The Court went on to say, "The Constitution of India vests parliament with exclusive authority in regard to co-ordination and determination of standards in institutions for higher education. The Parliament has enacted the UGC Act for that purpose. The University
- B Grants Commission has, therefore, a greater role to play in shaping the academic life of the country. It shall not falter or fail in its duty to maintain a high standard in the Universities. Democracy depends for its very life on high standards of general, vocational and professional education, Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs. It is hoped that University Grants Commission will duly discharge its responsibility to the national and play in increasing role to bring about the needed transformation in the academic life of the Universities."
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- D Mr. P.P. Rao, learned counsel for the Delhi University, submitted that the said Regulations were recommendatory or advisory in nature and not mandatory. They could not override the provisions of the Delhi University Act and its Statutes and Ordinances. If the said Regulations were regarded as binding on all Universities, they would be *ultra vires* the U.G.C. Act itself because Section 12(d) thereof only provided for recommendation and advice. The term "qualifications" in Section 26(1)(e) of the U.G.C. Act meant educational qualifications obtained from recognised Universities. The test prescribed by the said Regulations did not fall within the term "qualifications" used in Section 26(1)(e). The definition of 'qualification' given in Section 12A(1)(d) applied to Section 26(1)(e) as well because Sections 12, 12A and 26 were inter-connected. Section 12 outlined the powers and functions of the U.G.C. It was incorporated by reference in Section 12A(2). The said Regulations were made under section 26(1)(e) giving effect to Section 12(d). The word "defining" used in Section 26(1)(e) meant describing the nature of or stating precisely or specifying. The power to define qualifications did not include the power to create a new qualification, which was what the said Regulations purported to do. In defining, the U.G.C. could only specify some from among existing recognised qualifications awarded by Universities. The test prescribed by the said Regulations was in the nature of a test for screening candidates possessing educational qualifications obtained from different Universities by way of preliminary selection or a first step in the process of selection. Such a screening test
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formed part of the process of selection. The U.G.C. Act did not confer upon the U.G.C. the power of selection of teachers or the power to conduct a test for such selection. The power to appoint included the power to select and the power to select included the power to choose the method and manner of selection. The power to appoint teachers was with the universities. Only the universities could select teachers and for that purpose only they could conduct a written test. The U.G.C. had not such power. The power of coordination and determination of standards had nothing to do with the selection of teachers. It was for each university to decide whether it would select teachers by a written test and interview or only by interview. The said Regulations had been made in consultation with the Department of Education, Ministry of Humans Resources Development, Government of India. This was in contravention of the provisions of Section 12 read with Section 26(1)(e) and eroded the autonomy of every University. The power to relax qualifications was an inherent power of the appointing authority and was necessarily implied in the power to make appointments. While recognising the power of a University to relax qualifications, Clause (2) of the said Regulations shifted the power from the Universities to the U.G.C. through the requirement of its prior approval. This was assumption of a part of the power of appointment and was in contravention of the U.G.C. Act. The clause in the said Regulations which required Universities to seek prior approval of the U.G.C. for the relaxation of qualifications was *ultra vires* Section 14 of the U.G.C. Act inasmuch as. While the action contemplated by Section 14 was *post facto*, that is, subsequent to the appointment of a teacher in relaxation of the qualifications, the clause altered the course of action and prohibited the relaxation of qualifications without prior approval. It was not open to the U.G.C. to prescribe consequences different from those mentioned in Section 14 for breach of regulations made under section 26 or change the sequence of steps to be taken for securing enforcement thereof. Regulations made under Section 26(1)(e) did not override the Delhi University Act and its Statutes and Ordinances relating to qualifications for the appointment of teachers. Only regulations made under Sections 12A of the U.G.C. Act were given overriding effect by reason of sub-section (7) thereof. The word "ordinarily" used in Section 26(1)(e) meant "not invariably". Therefore, the qualifications that were required to be defined by Section 26(1)(e) of the U.G.C. Act were in the nature only of recommendations. A written test was inappropriate and irrational in the case of appointments of person belong-

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A ing to a mature age group like lecturers in a University. On a reasonable interpretation of the said Regulations the test prescribed thereby operated only qua candidates possessing the minimum qualification prescribed by the U.G.C. and not qua candidates who possessed higher qualifications like M.Phil. and Ph.D. It operated also qua fresh entrants to the post of lecturer

B and not qua those who were already lecturers in other Universities or colleges. Any other interpretation of the said Regulation would be tantamount to treating unequal as equals and, therefore, violative of Articles 14 and 16(1). The test prescribed by the said Regulations could not be a substitute higher qualifications, much less a preferential qualification.

C Entries 63 and 66 of List-I had to be construed harmoniously. Entry 66 operated vis-a-vis institutions of higher education other than those mentioned in entry 63. Section 2(f) of the U.G.C. Act to be construed accordingly. So read, only some of the provisions of the U.G.C. Act, like Section 13, relating to the funding of Universities would apply to Central Universities and institutions mentioned in entry 63. The other provisions of the

D U.G.C. Act dealing with coordination and determination of Standards would not apply to Central Universities and other institutions mentioned in entry 63. These provisions applied only to Universities and institutions other than those mentioned in entry 63. The definition of 'University' given in Section 2(f) had to be understood in the context of each provision in the

E U.G.C. Act and could not be read mechanically into each and every provision thereof. By reason of entry 63, the Ordinances of the Delhi University which prescribed qualifications had to be treated as laid down by Parliament itself. The process of coordination by the U.G.C. could, therefore, only mean that the standards of other Universities had to be raised to the level of the standards of the Central Universities.

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In support of his submission that only the University could select candidates and for that purpose conduct a written examination, Mr. Rao relied upon this Court's judgment in *A.P. Public Service Commission, Hyderabad & Anr. v. B. Sarat Chandra & Ors.*, [1990] 2 S.C.R. 463. This was a case where the concerned rule provided that no person would be eligible for appointment to the post in question by direct recruitment unless he had completed the age of 21 years and not completed the age of 26 years on the first day of July of the year in which the selection was made. The State Administrative Tribunal took the view that the selection could be said to have been made only when the list had been prepared and the eligibility of the candidate as to age to be determined at this stage. This Court

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observed that if the word 'selection' was understood as meaning only the final act of selecting candidates and preparation of the list for appointment then the conclusion of the Tribunal was not unjustified. Before accepting that meaning, its consequences, anomalies and uncertainties had to be seen. Having regard thereto, the court came to the conclusion that the date to attain the minimum or maximum age had to be specific and determinate for candidates to apply and for the recruiting agency to scrutinise applications. It was, therefore, unreasonable to construe the word "selection" to mean only the factum of preparation of the select list for that date could vary. It is difficult to see how this authority can support the proposition for which it was intended. In support of his submission that it was for each University to decide whether it would select through a written test and interview, or only an interview, Mr. Rao cited this Court's judgment in *State of Andhra Pradesh & Ors. v. Lavu Narendranath & Ors. etc.*, [1971] 3 SCR 699. This was a case on altogether different issues. This Court held that the Government which ran the colleges in question had the right to select out of the large number of applicants for seats and for this purpose it could prescribe a test of its own. Merely because the Government tried to supplement the eligibility rule by a written test in subjects with which the candidates were already familiar, its action could not be impeached. That the University had made regulations regarding the admission of students to its degree courses did not mean that anyone who had passed the qualifying examination, such as the P.U.C. or H.S.C., was *ipso facto* entitled to admission to such courses. Mr. Rao sought to rely upon the judgment of this Court in *Lila Dhar v. State of Rajasthan & Ors.*, [1982] 1 S.C.R. 320, to support the argument that written test was unfair and irrational in the case of appointments of candidates belonging to a major age group. We shall assume that this decision so holds, but it is, in the facts and circumstances of the present case, of little assistance. It is very evident that large numbers of educationists themselves have over the years strongly recommended the imposition of a written test for candidates holding degrees from Universities all over the country because of the lack of a uniform standard and it is not for this Court to say that they were wrong. Again, the judgments in *Sanatha Gauda v. Berhampur University and ors.*, [1990] 2 S.C.R. 273. and *Dr. Amhesh Kumar etc. etc. v. Principal, LLRM Medical College Meerut and ors. etc. etc.*, [1987] 1 S.C.R. 661, were cited by Mr. Rao in support of the proposition that the test prescribed by the said Regulations treated unequal as equals, the unequal being those who possessed higher qualifications like M. Phil. & Ph.D. and those who were already lecturers in other Universities and colleges. As we see it, all

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A applicants for the post of lecturer are equally placed and must be similarly treated.

The learned Attorney General, appearing for the UGC, referred us to the various reports of committees and commissions of educationists aforementioned. He drew our attention to the judgments in the cases of the Gujarat University and the Osmania University, to which we were have made reference. He took us through the provisions of U.G.C. Act and he stressed the meaning of the word 'qualification' as given in various dictionaries and law lexicons. It is enough to cite the Concise *Oxford Dictionary* which defines 'qualification' to mean, *inter alia*, "the condition that must be fulfilled before right can be acquired or office held" and Black's *Law Dictionary* which defines 'qualification' to mean "the possession by an individual of the qualities, properties, or circumstances, natural or adventitious, which are inherently or legally necessary to render him eligible to fill an office.....". Upon this basis, the learned Attorney General submitted that qualification included eligibility. The written test prescribed by the said Regulations, he submitted, was only a condition of eligibility and did not entrench upon the university's right to select, particularly since no marks or ranks were awarded to successful candidates. The learned Attorney General drew our attention to the provisions of Section 20 of the U.G.C. Act (which we have extracted above) and to the letter dated 17th June, 1987, written by the Department of Education, Ministry of Human Resources Development of the Government of India to the U.G.C. making the implementation of the scheme annexed thereto a condition for the revision of pay-scales as recommended by the Mehrotra Committee. He pointed out that the scheme required that only those candidates who, besides fulfilling the minimum academic qualifications prescribed for the post of lecturer, has qualified in a comprehensive test to be specially conducted for the purpose would be eligible for appointment as lecturers. The Attorney General submitted that this letter was a directive by the Central Government to the U.G.C. on a question of policy relating to national purposes and was, therefore, in any event, binding upon the U.G.C. and the said Regulations had been made consequential thereon.

Mr. Ganguli, learned counsel for Raj Singh (the first respondent and original writ petitioner), adopted the argument of the learned Attorney General. He argued that there was no conflict between the areas of operation of entries 63 and 66 of List I and that the concept of the

autonomy of an University could not be so construed as to make entry 66 *otiose qua* Universities that fell under entry 63. In regard to the meaning of the word qualification Mr. Ganguli drew our attention to the judgment of this Court in *The State of Rajasthan and others v. Shri Fateh Chand and another*, [1970] 4 S.L.R. 55, where the view that the word qualifications meant only academic qualifications was disproved.

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The Delhi University Act was on the Statute book when the U.G.C. Act was enacted by Parliament under entry 66 of List I. It must be assumed that Parliament was aware of the provisions of the Delhi University Act when it enacted the U.G.C. Act, particularly because the power to enact legislations concerning the Delhi University lay with Parliament under entry 63 of List I. The Delhi University and other Universities covered by entry 63 were consciously made subject to the regulation of the U.G.C in so far as co-ordination and determination of standards were concerned. This was made explicit by the definition of University in Section 2(f) of the U.G.C. Act. To take any other view would be to make *otiose, qua* the Universities covered by entry 63, not only the U.G.C. Act but entry 66 itself. The argument that Section 2(f) of the U.G.C. Act defining University had to be read not with reference to the U.G.C. Act as a whole but only with reference to such provisions of the U.G.C. Act as deal with funding must be rejected. If there were merit in the argument that entry 66 operated only vis-a-vis institutions other than those mentioned in entry 63, the U.G.C. Act in its entirety would not apply to the Delhi University and the Delhi University would, consequently, not be entitled to receive any grant thereunder. It is for this reason to avail the grant but shed the obligation under the U.G.C. Act. That the argument has been so cautiously advanced.

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The ambit of entry 66 has already been the subject of the decision of this Court in the cases of the Gujarat University and the Osmania University. The U.G.C. Act is enacted under the provisions of entry 66 to carry out the objective thereof. Its short title, in fact, reproduces the words of entry 66. The principal function of the U.G.C. is set out in the opening words of section 12, thus "It shall be the general duty of the Commission to take all such steps as it may think fit for the promotions and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities....." It is very important to note that a duty is cast upon the Commission to take "all such steps as it may think fit..... for the determination and maintenance of standards of teaching". These are very

- A wide ranging powers. Such powers, in our view, would comprehend the power to require those who possess the education qualifications required for holding the post of lecturer in Universities and colleges to appear for a written test, the passing of which would establish that they possess the minimal proficiency for holding such post. The need for such test is demonstrated by the reports of the commissions and committees of educationists referred to above which take note of the disparities in the standards of education in the various Universities in the country. It is patent that the holder of a post-graduate degree from one University is not necessarily of the same standard as the holder of the same post-graduate degree from another University. That is the rationale of the test prescribed
- B by the said Regulations. It falls squarely within the scope of entry 66 and the U.G.C. Act inasmuch as it is intended to co-ordinate standards and the U.G.C. Act is armed with the power to take all such steps as it may think fit in this behalf. For performing its general duty and its other functions under the U.G.C. Act, the U.G.C. is invested with the powers specified in the various clauses of Section 12. These include the power to recommend to a University the measures necessary for the improvement of University education and to advise in respect of the action to be taken for the purpose of implementing such recommendation (clause (d)). The U.G.C. is also invested with the power to perform such other functions as may be prescribed or as may be deemed necessary by it for advancing the cause
- C of higher education in India or as may be incidental or conducive to the discharge of such functions (clause (j)). These two clauses are also wide enough to empower the U.G.C. to frame the said regulations. By reason of Section 14, the U.G.C. is authorised to withhold from a University its grant if the University fails within reasonable time to comply with its recommendation, but it is required to do so only after taking into consideration the cause, if any, shown by the University for such failure. Section 26 authorises the U.G.C. to make regulations consistent with the U.G.C. Act. and the rules made thereunder, *inter alia*, defining the qualifications that should ordinarily be required for any person to be appointed to the teaching staff of a University, having regard to the branch of education in which he is expected to give instruction (clause (e) of sub-section (1)); and regulating the maintenance of standards and the coordination of work or facilities in Universities (clause (g)). We have no doubt that the word 'defining' means setting out precisely or specifically. The word 'qualifications', as used in clause (e), as of wide amplitude and would include the requirement of passing a basic eligibility test prescribed
- D by the U.G.C. The word 'qualifications' in clause (e) is certainly wider than

the word 'qualification' defined in Section 12A(1) (d), which in expressly stated terms is a definition that applies only to the provisions of Section 12A. Were this definition of qualification, as meaning a degree or any other qualification awarded by a University, to have been intended to apply throughout the Act, it would have found place in the definitions section, namely Section 2.

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We now turn to analyse the said Regulations. They are made applicable to a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, every institution, including a constituent or an affiliated college recognised by the U.G.C. in consultation with the University concerned, and every institution deemed to be a University. The said Regulation are thus intended to have the widest possible application, as indeed they must have if they are to serve the purpose intended, namely, to ensure that all applicants for the post of lecturer, from whichever University they may have procured the minimum qualificatory degree, must establish that they possess the proficiency required for lecturers in all Universities in the country. This is what clause 2 of the said Regulations mandates, thus :" No person shall be appointed to a teaching post in university..... in a subject if he does not fulfil the requirements as to the qualifications for the appropriate subject as provided in the Schedule 1". The first proviso to clause 2 permits relaxation in the prescribed qualifications by a University provided it is made with the prior approval of the U.G.C. This is because the said Regulations, made under the provisions of Section 26 (1)(e), define the qualifications that are ordinarily and not invariably required of a lecturer. The second proviso to clause 2 makes the application of the said Regulations prospective. Clause 3 of the said Regulations provides for the consequence of the failure of a University to comply with the recommendation made in clause 2 in the same terms as are set out in section 14 of the U.G.C. Act. The provisions of clause 2 of the said Regulations are, therefore, recommendatory in character. It would be open to a University to comply with the provisions of clause 2 by employing as lecturers only such persons as fulfil the requirements as to qualifications for the appropriate subject provided in the schedule to the said Regulations. It would also be open, in specific cases, for the University to seek prior approval of the U.G.C. to relax these requirements. Yet again, it would be open to the University not to comply with the provisions of clause 2, in which case, in the event that it failed to satisfy the U.G.C. that it had done so for good cause, it would lose its grant from the U.G.C. The said Regulations do not impinge upon the power of

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- A the University to select its teachers. The University may still select its lecturers by written test and interview or either. Successful candidates at the basic eligibility test prescribed by the said Regulations are awarded no marks or ranks and, therefore, all who have cleared it stand at the same level. There is, therefore, no element of selection in the process. The University's autonomy is not entrenched upon by the said Regulations.
- B Mr. Rao was at pains to tell us that there were men and women in the field of education who possessed far higher qualifications than the minimum prescribed for lecturers who were willing to join the Delhi University as Lecturers but would be deterred from doing so by reason of the test prescribed by the said Regulations. We have no doubt that there must be highly qualified men and women in the country who, to serve their chosen field, would be willing to become lecturers. We have no doubt that they would appreciate the sound objective of the said Regulations and would, therefore, not consider it infra dig to appear at and clear the test prescribed thereby. We have also no doubt that in the case of eminently
- C qualified men and women, the U.G.C. would not hesitate to grant prior approval to the relaxation of the requirement of clearing the test.

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- E In the view that we take, it is, we think, not necessary to consider whether or not the letter dated 17th June, 1987 addressed by the Department of Education. Ministry of Human Resource Development, Government of India to the U.G.C. can be said to be a directive under Section 20 of the U.G.C. Act concerning a question of policy relating to national purposes. It is enough to say that the facts do not bear out the submission of Mr. Rao that the said Regulations were made at the behest of the Government of India.

- F It is now appropriate to clarify the direction that the Delhi High Court issued in allowing the writ petition. It held that the notification dated 19th September, 1991, by which the said Regulations were published, was valid and mandatory and the Delhi University was obliged under law to comply therewith. The Delhi University was directed to select lecturers for itself and its affiliated and subordinate colleges strictly in accordance with the notification. Put shortly, the Delhi University is mandated to comply with the said regulations. As analysed above, therefore, the Delhi University may appoint as a lecturer in itself and its affiliated colleges one who has cleared the test prescribed by the said regulations: or it may seek prior approval for the relaxation of this requirement in a specific case, or it may
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- H appoint as lecturer one who does not meet this requirement without having

first obtained the UGC's approval, in which event it would, if it failed to show cause for its failure to abide by the said Regulations to the satisfaction of the U.G.C., forfeit its grant from the U.G.C. If, however, it did show cause to the satisfaction of the U.G.C. it not only would not forfeit its grant but the appointment made without obtaining the U.G.C.'s prior approval would stand regularised.

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The appeal is dismissed. There shall be no order as to costs.

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U.R.

Appeal dismissed.