

GAHC010096802023



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

Case No. : WA/214/2023

RAJIB DAS
S/O SRI MANOJ KUMAR DAS, R/O RED CROSS ROAD, KARIMGANJ,
ASSAM, PIN - 788710.

VERSUS

THE STATE OF ASSAM AND 11 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION DEPARTMENT, ASSAM, SECRETARIAT, DISPUR, GUWAHATI-
781006.

2:THE DIRECTOR OF HIGHER EDUCATION

ASSAM
KAHILIPARA
GUWAHATI
KAMRUP (METRO)
ASSAM

PIN - 781019.

3:CHAIRMAN SELECTION COMMITTEE
PANDIT DEENDAYAL UPADHYA ADARSHA MAHAVIDYALAYA
DALGAON

REP. BY D.C. DALGAON
P.O. MANGALDOI
PIN - 784125.

4:CHAIRMAN SELECTION COMMITTEE

PANDIT DEENDAYAL UPADHYA

ADARSHA MAHAVIDYALAYA
AMJONGA REP. BY D.C.
GOALPARA
P.O. BALADMARI
PIN - 783121.

5:CHAIRMAN SELECTION COMMITTEE

PANDIT DEENDAYAL UPADHYA ADARSHA MAHAVIDYALAYA
TULUNGIA
REP. BY D.C. BONGAIGAON
P.O. BONGAIGAON
PIN- 783380

6:PANDIT DEENDAYAL UPADHYA ADARSHA MAHAVIDYALAYA

DALGAON
DARRANG
P.O. MANGALDOI

PIN - 784125.

7:PANDIT DEENDAYAL UPADHYA ADARSHA MAHAVIDYALAYA

AMJONGA
P.O. BALADMARI
PIN - 783121.

8:PANDIT DEENDAYAL UPADHYA ADARSHA MAHAVIDYALAYA

TULUNGIA
P.O. BONGAIGAON
PIN- 783380

9:THE PRINCIPAL

PANDIT DEENDAYAL UPADHYA ADARSHA MAHAVIDYALAYA
DALGAON

DARRANG
P.O.MANGALDOI

PIN - 784125.

10:THE PRINCIPAL

PANDIT DEENDAYAL UPADHYA ADARSHA MAHAVIDYALAYA

AMJONGA

P.O. BALADMARI
PIN - 783121.

11:THE PRINCIPAL
PANDIT DEENDAYAL UPADHYA ADARSHA MAHAVIDYALAYA

TULUNGIA
P.O. BONGAIGAON

PIN - 783380.

12:UNIVERSITY GRANTS COMMISSION
REPRESENTED BY ITS CHAIRMAN
BAHADUR SHAH ZAFAR MARG
NEW DELHI- 110002

Advocate for the Petitioner : MR SISHIR DUTTA, MR. S DUTTA,MS S MOCHAHARI

Advocate for the Respondent : SC, HIGHER EDU, SC, U G C

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR
HONOURABLE MR. JUSTICE KARDAK ETE

JUDGMENT

Date : 25.02.2025

(Kardak Ete, J.)

Heard Mr. S. Dutta, learned Senior Counsel, assisted by Mr. S. Dutta, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned standing counsel, Higher Education Department, for respondent Nos.1 to 11 and Mr. A. Chamuah, learned standing counsel, UGC, for respondent No.12.

2. This intra court appeal is directed against the judgment and order dated 16.03.2023, passed by the learned Single Judge in WP(C) No.6012/2018, assailing a part of the order/direction, particularly, the direction that the said authority shall take note of the fact that the petitioner would not be entitled to marks for time taken by the petitioner to acquire his M.Phil. and Ph.D. Degree by considering it as teaching/research experience to be claimed

for appointment to the post of Asstt. Professor.

3. The facts of the case in brief, are that the Appellant/writ petitioner is serving as an Asstt. Professor and Head of the Department of Computer Science & Application in Karimganj College under the Assam University. He obtained the M.Phil. degree on 29.09.2008 and claims that on the said date he became UGC qualified Asstt. Professor and he is entitled to get marks on teaching experience and Ph.D. degree on 02.05.2014. Pursuant to advertisement dated 08.05.2017 for the post of Asstt. Professor, Computer Science in three of the Pandit Din Dayal Upadhy Mahavidyalayas (hereinafter referred to the PDUAM in short) at Amjonga, Tulungia and Dalgaon, the appellant applied for the post of Asstt. Professor in Computer Science. The Government of Assam has recognized qualifying marks on M.Phil degree to the candidates who have obtained the same before 10.07.2009.

4. It is the contention of the appellant that the Selection Committee of the two PDUAM Colleges awarded marks to the appellant in terms of Office Memorandum dated 25.06.2012, which demonstrates that a candidate having M.Phil. degree is entitled to 5 marks and 5 marks for teaching experience (1 mark for each completed year of service in an affiliated Govt. Degree College) and the appellant being UGC qualified teacher from the year 2008, on obtaining M.Phil degree till the year of interview i.e. 2017, has completed 9 years of service, which entitles him maximum 5 marks on teaching experience. The Selection Committee of Amjonga and Tulungia awarded 5 marks to the appellant on M.Phil & teaching experience each, but the same subject teachers who awarded 5 marks for M.Phil and Teaching experience in Amjonga and Tulungia have awarded 0 marks on M.Phil and 2 marks on Teaching experience for Dalgaon.

5. Essentially, the contention of the appellant is that in terms of O.M. dated 25.06.2012, the appellant is entitled to 5 marks for M.Phil and maximum 5 marks under the head teaching experience i.e. one (1) mark for each completed year of service in an affiliated college i.e. active service will be counted after acquiring the UGC qualification as per the said Govt. O.M. The appellant being UGC qualified teacher from 2008 till the year of interview i.e. 2017, has completed 9 years of active service which entitles him maximum 5 marks for teaching

experience.

6. Mr. S. Dutta, learned Senior counsel for the appellant, submits that the learned Single Judge did not deal with the vital aspect of the matter and landed in error in not considering the factual as well as legal issue. The learned Single Judge also did not consider the fact that the same subject experts had awarded 5 marks on M.Phil and 5 marks on teaching experience in Amjonga and Tulungia to the appellant, whereas they have awarded 0 marks on M.Phil and 2 marks on teaching experience to the appellant at Dalgaon.

7. Mr. S. Dutta, learned Senior counsel, submits that the learned Single Judge has decided the issue in terms of O.M dated 25.06.2021 clause (vii) thereto that "The period of time taken by candidates to acquire M.Phil and/or Ph.D degree shall not be considered as teaching/research experience to be claimed for appointment to the teaching position (clause 3.9.0)" and this finding of the learned Single Judge was not an issue in the instant case as the appellant was not pursuing M.Phil degree at the relevant time. He has already obtained M.Phil degree in the year 2008 and therefore he is entitled to get maximum 5 marks on teaching experience from 2008, till the date of advertisement i.e. on 08.05.2017. It is further submitted that the learned Single Judge had committed illegality in refusing to consider marks to the appellant by treating the time spent for pursuing M.Phil and or Ph.D Degree, as teaching experience, notwithstanding that the petitioner might have actually rendered service to his college during that time. Further, the learned Single Judge failed to appreciate that the appellant obtained his M.Phil degree in the year 2008 and, as such he is entitled to get 5 marks for teaching experience.

8. Mr. S. Dutta, learned Senior counsel submits that the appellant was given lesser marks in teaching experience though he had 9 years of teaching experience as UGC qualified teacher and alternatively he is also entitled to reckon the period of active service spent in pursuing research degree simultaneously with teaching assignment. He submits that the learned Single Judge sent the matter before Secretary, Higher Education Department to examine, whether the non-granting of marks to the petitioner for M.Phil and experience in Ph.D for selection and appointment as Asstt. Professor is liable to be interfered with. The

petitioner also never prayed for any mark under the head Ph.D. In paragraph 28(d) learned Single Judge failed to decide, teaching experience of the appellant for 9 years after he became UGC qualified teacher in the year 2008 till the date of advertisement in the year 2017. He submits that it is not necessary to decide whether appellant is entitled to marks for time taken by the appellant to acquire his M.Phil and Ph.D degree by considering it as teaching/research experience. As such the learned Senior Counsel submits that it is absolutely clear that appellant is eligible to get 5 marks under the head M.Phil and 5 marks under the head Teaching experience and since one post of Asstt. Professor in Computer Science is vacant in PDUAM, Dalgaon the respondents may be directed to appoint the appellant as Asstt. Professor Computer Science within a given time frame.

9. Mr. S. Dutta, learned Senior counsel, while opposing the stand of the Respondents, submits that the respondent No.12 (University Grant Commission) never challenged the validity of the M.Phil degree awarded to the appellant and learned Single Judge in paragraph 28 of the judgment accepted the degree as valid. Respondent No.12 did not challenge the impugned judgment dated 16.03.2023 which has obtained finality. Respondents have been estopped from questioning the same without challenging the judgment passed by Learned Single Judge. He submits that one important consideration of Public Policy is that the decision pronounced by Courts of competent jurisdiction should be final unless they are assailed in higher forum. Furthermore, the attempt to re-argue the case which has been finally decided by the Court is a clear abuse of the process of the Court and contrary to justice and public policy. Filing of the affidavit by respondent No. 12 to re-agitate the matter is an abuse of the process of the Court and contrary to justice and public policy and the respondent No.12 is liable to be imposed heavy cost which may be assessed at Rs. 10 lakhs as held by the Hon'ble Apex Court in the case of **M. Nagabhushena -vs- State of Karnataka**, reported in **(2011) 3 SCC 408**, wherein it has held that principle of finality of litigation is based on high principle of public policy. In the absence of such principle great oppression might result as there will be no end of litigation and a rich and malicious litigant will succeed in infinity vexing his opponent by respective suits and actions. This may compel the weaker party to relinquish his right. One important consideration of Public Policy is that the decision pronounced by Courts of Competent jurisdiction should be final, unless they are modified or reversed by

appellate Courts. One of the examples cited as an abuse of the process of the Court is re-litigation. It is an abuse of the process of the Court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier.

10. Mr. S. Dutta, learned Senior counsel submits that affidavit filed by the respondent No.12 (UGC) reveals that the Director, Annamalai University, informed the respondent No.12 that appellant joined and after attending the personal contact program collected his T.C and degree certificate from the University. It is also stated that since these records are related date back 15 years, we no longer retain the physical records related to the issue. The information provided is sourced from our reliable data storage. He submits that on the face of this specific reply by the Director, Annamalai University, burden lies on the University Grant Commission to establish that, appellant did not obtain M.Phil degree in the year 2008. He submits that the appellant got admitted in M.Phil degree (Distance Education Mode) on 19.12.2006 from Annamalai University. Secretary to the Govt. vide letter date 29.08.2006 intimated that M.Phil /Ph.D courses shouldn't be offered through Distance Education from academic year 2007-2008 and they should be offered only in a Regular Stream. Appellant's M.Phil degree relates to the academic year 2006-2007 bearing enrollment No 4310600474, the M.Phil under distance Education mode was well accepted by Govt. of Assam upto the year 2012-2013 who have obtained M.Phil degree on or before 10.07.2009.

11. Mr. S. Dutta, learned Senior counsel submits that the Govt. of Assam has recruited Asstt. Professors having M.Phil degree in distance mode (off campus) from Annamalai University, Madurai Kamaraj University etc from 01.01.2006 to 31.12.2013. He submits that Govt. has already dispensed M.Phil from 2007-2008 session vide letter dated 29.08.2006. The appellant obtained M.Phil degree in academic year 2006-2007. In terms of Regulation 2006 NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of Lecturers in Universities/Colleges/Institutions, the NET shall remain the compulsory requirement for appointment as Lecturer for those with post-graduate degree. However, the candidates having Ph.D. degree in the concerned subject are exempted from NET for PG level and UG level teaching. The candidates having M.Phil degree in the concerned subject are exempted from NET for UG level teaching only. Provided, however, that candidates, who are

or have been awarded Ph.D. Degree in compliance of the "University Grants Commission (minimum standards and procedure for award of Ph.D Degree), Regulation 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions." He submits that the appellant is qualified teacher as he obtained his Ph.D degree in the year 2014. As per advertisement dated 08.05.2017 for the Post of Asstt Professor for PDUAM where the candidates who have been awarded a Ph.D degree in accordance with University Grants Commission can apply for the post. Because of his M.Phil degree, in terms of Office Memorandum dated 25.06.2012, he is entitled to get 5 marks for teaching experience from 2008 to 02.05.2017 i.e. the date he became qualified teacher.

12. Mr. S. Dutta, learned senior counsel submits that the appellant pursuant to RTI query received reply from 26 Nos of Colleges, wherefrom it is exfacie clear that in all the colleges 3 to 4 no of regular teachers, librarians have obtained their M.Phil degree in Distance Mode from various universities like Annamalai University, Periyar University, Madurai Kamaraj University etc. Their period of study was 2006-2007, 2007-2008, 2008- 2009,2009-2010,2010-2011 and 2011 to 2012. All the teachers appointed on the conditional basis got their job permanent (Direct Recruitment of Asstt Professor/Liberian with the help of M.Phil degree in distance mode/off campus mode/off campus mode during the period 2006-2013. The upshot of the entire facts reveals that Director of Higher Education Assam has accepted M.Phil degree in distance mode/off campus mode from various universities Assam during that period.

13. Mr. S. Dutta, learned Senior counsel submits that the appellant obtained Ph.D. degree from Assam university on 02.05.2014 on regular mode and therefore he is qualified Asstt Professor in terms of Regulation 2009 and that the appellant is qualified professor for having Ph.D. degree obtained from Assam University in regular stream and obtained M.Phil degree in academic year 2006-2007.

14. He submits that the learned Single Judge was satisfied that the M.Phil degree obtained

by the appellant in the academic year 2006-2007 is a valid degree which has not been challenged by the University Grant Commission and the judgement dated 16.03.2023 has not been assailed by the University Grant Commission and therefore, it was not necessary for the Learned Single Judge to refer it back to the Department, Higher Education for a decision as to whether the non-granting of marks to the appellant for M.Phil and experience in Ph.D for selection and appointment as Asstt Professor in PDUAM is liable to be interfered with. In terms of O.M. dated 25.06.2012 at serial No. 2 marks are allotted for teaching experience. Therefore, if the M.Phil degree obtained in the year 2008 which depicts appellant is UGC qualified teacher, he is automatically entitled to get Maximum of 5 marks on teaching experience because of his teaching experience as UGC teacher from 2008 till the date of Advertisement 08.05.2017 and 5 marks in terms of O.M dated 25.06.2012.

15. Mr. K. Gogoi, learned standing counsel for the Higher Education Department, submits that points for determination are as to whether the appellant is entitled to marks for teaching experience by counting/ treating the time spent for pursuing M. Phil and Ph.D. Degree and whether he is a qualified teacher for counting the teaching experience and whether the appellant is entitled to the marks for M. Phil Degree in terms of the OM dated 25.06.2012. While referring to the relevant portion of the Assam College Employees (Provincialisation) Rules, 2010, UGC Regulations and Office Memorandum dated 25.06.2012, he submits that as prescribed under Clause 3.9.0. of the UGC Regulation, 2010 and Clause (vii) of the Office Memorandum dated 25.06.2012, the time taken by the appellant for acquiring Ph.D. Degree shall not be considered as teaching/research experience to be claimed for appointment to the teaching position. As such, the appellant is not entitled to any marks under the heading of Teaching Experience. Further, teaching experience shall be counted only for those candidates and to such extent only who have taught the concerned subject after acquiring the eligibility conditions prescribed by the authority. Teaching experience should be determined based on the requisite

qualification in terms of the UGC Regulations/Rules. The State Respondent cannot dilute or lower the requirement than the requisite qualifications prescribed by the UGC for a particular post.

16. He submits that it is an admitted fact that appellant was awarded the Ph.D. Degree on 02.05.2014. On that day, appellant acquiring the eligibility condition/qualification as per the eligibility condition/norms prescribed by the UGC, before that he is not holding/acquired the eligibility conditions/norms. As such, the period of teaching experience without having eligibility/norms cannot be counted for teaching experience.

17. Mr. K. Gogoi, learned standing counsel submits that the submission of the petitioner that the Government of Assam has recognized qualifying marks on M. Phil Degree, the candidate who obtained the same before 10.07.2009 and Notification dated 17.01.2011 are not back by any statutory enactment. Further the State Respondent cannot dilute and lower the requisite qualification prescribed by the UGC and the UGC has to act in conformity with the direction given by the Central Government under Section 20 of the UGC Act, 1956. In support of his submission, Mr. Gogoi has placed reliance on the following Judgments –

1. **Smti. Asha Rani Brahma -Vs- Smti. Binika Goyari**, reported in **2023 0 Supreme (Gau) 313**.
2. **P. Suseela & Ors. -Vs- UGC & Ors.**, reported in **(2015) 8 SCC 129**.
3. **Prof. Yashpal & Ors. -Vs- State of Chhatisgarh & Ors.** reported in **(2005) 5 SCC 420**.
4. **Kurmanchal Institute of Degree and Diploma & Ors. -Vs- Chancellor M.J.P. Rohilakhand University & Ors**, reported in **(2007) 6 SCC 35**.

18. Regarding entitlement of the appellant of marks for M. Phil Degree in terms of the O.M. dated 25.06.2012, Mr. Gogoi, learned counsel submits that the University Grants Commission and Distance Education Council, New Delhi at no point of time allowed the University, Deemed to be University and any other Institute of Higher Education to offer the M. Phil/Ph. D. Degree through Off-Campus Mode. Admittedly, as per the letter issued by the Public Information Officer of Annamalai University, the appellant's course of study is Off-Campus

Mode. As such, the M. Phil Degree obtained by the petitioner from Annamalai University through Off-Campus Mode cannot be considered for awarding the marks under the Clause (b) (ii) of the Office Memorandum dated 25.06.2012.

19. He further argued that, there is no concept of negative equality. If there has been a benefit or advantage conferred on one or a set of persons, without legal basis or jurisdiction, that benefit cannot multiply or be relied upon as a principle of parity or equality. He has relied on the case of **R. Muthukumar & Ors. -Vs- The Chairman and Managing Director, TANGEDCO & Ors.** reported in **(2022) 0 Supreme (SC) 135**. Therefore, in view of the above, Mr. Gogoi, learned counsel, submits that the Writ Appeal preferred by the appellant is liable to be dismissed.

20. Mr. A. Chamuah, learned standing counsel, UGC, submits that the appellant has preferred the instant appeal for setting aside the observation made in Paragraph 10 of the impugned judgment and order by which the Hon'ble Single Judge has held that Respondent No.2 had not committed any illegality by not providing marks for teaching experience for the period when the appellant obtained the M Phil degree. Except for setting aside of that observation made in Paragraph 10 of the Judgment, the appellant has not prayed for anything else. But as per the UGC guidelines, marks for teaching experience shall be provided counting the time spent for obtaining Ph.D. Degree if it was done without taking leave from service.

21. According to Mr. Chamuah, learned standing counsel, there are two legal issues, i.e. a candidate having a valid M. Phil or Ph.D Degree is entitled to certain marks in the selection process for the post of Assistant Professor. However, the degree must be a valid one. Secondly, the time spent in obtaining a Ph.D Degree can be counted as teaching experience if the Ph.D was obtained simultaneously with the service without taking any leave. He submits that in the instant case, the appellant obtained his M Phil Degree through 'off campus' distance mode from Annamalai University, Tamilnadu. The UGC has communicated with Annamalai University, Tamilnadu to know certain things about the degree obtained by the appellant. The said university provided a vague reply to the queries made by the UGC. The

University has said that they have not kept any data as regards the degree obtained by the appellant since it is an old data. This is really unheard of and per se illegal. Be that as it may, the university itself has said that the degree was obtained through off campus mode. Thus, the said degree is not valid. The UGC since 2001 has been continuously notifying that off campus mode of study under distance learning mode is illegal and degrees are invalid if conferred in that mode. Relying on the case of **Purnendu Sekhar Debnath Vs. State of Assam and Others [W. P. (C) No.2983/2017]**, he submits that the single bench of this Court has categorically held that degree obtained through 'off campus' study centre are invalid. The said judgment was challenged before the Hon'ble Division Bench and a coordinate Bench of this Court has upheld the said Judgment being **WA NO.55/2019, (Bijon Nath Vs. State of Assam)**.

22. Mr. Chamuah, learned standing counsel, submits that the appellant cannot be in two places at the same time. If he went to the main campus of the Annamalai University then he must be on leave for that period. So time spent there cannot be counted as teaching experience and if he did not attend the classes there then his M.Phil Degree is invalid. He submits that the UGC is the apex body to frame Laws and Rules in case of maintaining standard of Higher Education in the Country as such the Rules framed by the UGC is mandatory and cannot be diluted as held in the case of **Prof Yash Pal Vs The State of Chattisgarh**, reported in **(2005) 5 SCC 420** and **Annamalai University v. Information & Tourism Deptt.**, reported in **(2009) 4 SCC 590**. Therefore, the degree obtained by the Appellant is beyond the permissible of law as such not valid and cannot be given effect to.

23. We have extended our anxious consideration to the submissions advanced by the learned counsel for the parties and perused the impugned judgement and order passed by the learned single judge.

24. Essentially, the contention of the appellant is that in terms of O.M. dated 25.06.2012, the appellant is entitled to 5 marks on M.Phil and maximum 5 marks under the head teaching experience i.e. one (1) mark for each completed year of service in an affiliated college i.e. active service will be counted after acquiring the UGC qualification as per the said Govt. O.M.

The appellant being UGC qualified teacher from 2008, till the year of interview i.e. 2017, has completed 9 years of active service which entitles him maximum 5 marks for teaching experience. The challenge to the impugned judgement of the learned Single Judge is a part of the order/direction, particularly, the order/ direction that the authority shall take note of the fact that the petitioner would not be entitled to marks for time taken by the petitioner to acquire his M.Phil. and Ph.D. Degree by considering it as teaching/research experience to be claimed for appointment to the teaching position.

25. The Appellant is serving as an Asstt. Professor and Head of the Dept. of Computer Science & Application in Karimganj College under the Assam University. He obtained the M.Phil. degree on 29.09.2008 and became qualified Asstt. Professor. Pursuant to advertisement dated 08.05.2017 for the post of Asstt. Professor, Computer Science in three of the PDUAM colleges at Amjonga, Tulungia and Dalgaon, the appellant applied for the post of Asstt. Professor in Computer Science.

26. Records of the selection process reveals that the Selection Committee of the two PDUAM Colleges i.e. Amjonga and Tulungia, awarded 5 marks each on M.Phil & teaching experience to the appellant. However, same subject experts in the Selection Committee have awarded 0 mark on M.Phil and 2 marks on Teaching experience in Dalgaon. It is also taken note that the Government of Assam has recognized M.Phil degree to the candidates who have obtained the same before 10.07.2009. The Office Memorandum dated 25.06.2012, shows that a candidate having M.Phil. degree is entitled to 5 marks and for teaching experience maximum 5 marks, i.e., 1 mark for each completed year of service in an affiliated Govt. Degree College. It is incomprehensible that the Selection Committee of Amjonga and Tulungia awarded 5 marks each to the appellant on M.Phil & teaching experience, but 0 mark on M.Phil and 2 marks on Teaching experience in Dalgaon as it does not reflect that the appellant is not entitled for marks on M.Phil for Dalgaon or due to invalid M.Phil Degree. Therefore, in our view, no basis is discernable for awarding 0 mark on M.Phil and 2 marks on Teaching experience in Dalgaon. If the appellant is entitled to marks for M.Phil and teaching experience at Amjonga and Tulungia, same yardstick ought to have been followed for Dalgaon too.

27. As noted above, the appellant assailed the part of the order/ direction in the impugned judgment and order dated 16.03.2023, particularly, the order and direction that the authority shall take note of the fact that the petitioner would not be entitled to marks for time taken by the petitioner to acquire his M.Phil. and Ph.D. Degree by considering it as teaching/research experience to be claimed for appointment to the teaching position, mainly on the ground that as per the O.M, dated 25.06.2012, the appellant is entitled to maximum of 5 marks under the Head teaching experience in M.Phil i.e. one mark for each completed year of service in an affiliated Govt. degree college, as the appellant being UGC qualified teacher from 2008 as such, till the year of interview in the year 2017, appellant has completed 9 years of service which entitle him maximum 5 marks on teaching experience.

28. The stand of the respondents is that the appellant obtained his M Phil Degree through 'off campus' distance mode from Annamalai University, Tamilnadu. The University has stated that the degree was obtained through off campus mode and thus, the said degree is not valid as the UGC since 2001 has been continuously notifying that off campus mode of study under distance learning mode is illegal and degrees are invalid if conferred in that mode.

29. Regard being had to the above stand of the respondents, admittedly no challenge is made either against the impugned judgement and order wherein the learned Single Judge has arrived at certain findings to that effect. We find that the respondents have never questioned the validity or otherwise of the M. Phil or any other degree in the selection process. Thus, in our view, it would not be permissible to take such stand at this stage, although an intra court appeal is a continuation of the writ proceedings. Moreso, the selection committee had awarded 5 marks each on M.Phil and teaching experience for other two colleges without any demur. We are of the view that in this intra court appeal, the issue of validity or otherwise of M. Phil Degree obtained by the appellant is beyond the scope of consideration, although the respondents have fervently urged that since the appellant has obtained the degree of M. Phil from the "Off Campus" mode.

30. As noted in the forgoing paragraph and at the cost of repetition, the appellant is aggrieved by the part of the judgment and order dated 16.03.2023, particularly that the

authority shall take note of the fact that this Court has already adjudicated and decided that the appellant is not entitled to marks for time taken by him to acquire M. Phil and Ph.D. degree, by considering it as teaching/research experience, at direction No. D. At the same time, the learned Single Judge has returned a finding that as the Director of Higher Education, Assam has failed to comply with the order dated 04.09.2017, passed in WP(C) No.5403/2013 and the order dated 16.03.2018, passed in WP(C) No.1488/2018, to which we subscribed to the order dated 16.03.2018, passed by the Director of Higher Education, Assam has been set aside and quashed. The learned Single Judge, after detail consideration of the matter has held that it would be appropriate for the competent authority in the Higher Education Department to take a call, as the same involves the examination of various Notifications and Office Memorandums of the Higher Education Department of the State, University Grants Commission, etc. and therefore, remanded the matter for fresh consideration by the authorities in the Higher Education Department.

31. Having considered the matter in its entirety, we are in full agreement with the learned Single Judge that the Directorate Higher Education, Assam has not complied with the order dated 04.09.2017, passed in WP(C) No.5403/2017 and the order dated 16.03.2018 in WP(C) No.1488/2018, as the Director of Higher Education, Assam has resorted to pass an order, irrelevant to the issues regarding less number of students, lack of proficiency and language, which were otherwise not required to be gone into, in the light of the direction contained in the above said two orders. Thus, we are of the view that the learned Single Judge has rightly passed the impugned judgment and order dated 16.03.2023.

32. We take note that the Office Memorandum dated 25.06.2012, *inter alia*, provided that the period of time taken by candidate to acquire the M. Phil and Ph.D. degree, shall not be considered as teaching/research experience, to be claimed for appointment to the teaching positions. Clause 3.9.0 of the UGC Regulations on Minimum Qualifications for appointment of teachers and other academic staffs in the Universities and Colleges and measures for maintenance of standards in Higher Education, 2010. The period of time taken by the candidates to acquire the M. Phil and Ph.D. degree, shall not be considered as teaching/research experience, to be claimed for appointment to the teaching positions. The

said clause is continued in the subsequently notified University Grants Commission on minimum qualification for appointment of teachers and other academic staffs in Universities and Colleges and measures for maintenance of standards in Higher Education (3rd Amendment) Regulation, 2016.

33. As noticed above, the Selection Committee awarded 5 (five) marks each for M. Phil Degree and teaching experience, in respect of Amjonga and Tulungia but 0 (zero) marks for M. Phil Degree and 2 (two) marks for teaching experience in respect of Dalgaon. Thus, we are of the view that it would be appropriate for the authorities to consider the case of the petitioner in view of the fact that no basis could be discernable as to awarding of marks in different colleges for M. Phil Degree and teaching experience. Such consideration is required to be made in view of the fact that the same would involve examination of various Notifications and Office Memorandums of the Higher Education Department of the State as well as of the University Grants Commission's Regulations coupled with the reason that the learned Single Judge, in the earlier two occasions had directed to consider the case of the petitioner which the respondent authorities have failed to do so, as clearly held by the learned Single Judge, which we have noted and fully agreed upon.

34. We noticed that Clause 3.9.0 of the UGC Guidelines has been considered in the case of **Smti. Asha Rani Brahma vs. Smti Binika Goyari and others**, in Writ Appeal No.367/2018, by the coordinate Bench of this Court. In that case, the issue was whether the UGC Guidelines would apply to the State of Assam, to which the co-ordinate Bench of this High Court has held that the same applies to the State of Assam.

35. In the case of **Gambhirdhan N. Gadhvi vs. State of Gujarat** reported in **(2022) 5 SCC 195**, the Hon'ble Supreme Court has laid the controversy to rest by holding that the UGC Guidelines are mandatory for all educational institutions.

36. In the case of **Prof. Yashpal and another vs. State of Chhattisgarh and others** reported in **(2005) 5 SCC 420**, the Hon'ble Supreme Court has held that any State legislation which stultifies or sets at naught an enactment validly made by Parliament would

be wholly *ultra vires*, by referring to the Constitution Bench decision in **R. Chitrlekha v. State of Mysore**, reported in **AIR 1964 SC 1823**.

37. Having considered the other case laws relied by the learned counsel for the respondents, we refrain from further discussion on the said case laws, as the same found to be not necessary, as this Court is not called up to decide as to the validity or otherwise of the Office Memorandums or UGC Guidelines or of validity or otherwise of the degree obtained by the appellant, coupled with the reason that we have not found any infirmity in the impugned judgment and order of the learned Single Judge.

38. In view of the discussions made hereinabove, we are of the considered opinion that no interference is called for with the impugned judgment and order dated 16.03.2023, passed by the learned Single Judge in WP(C) No.6012/2018, as there is no infirmity.

39. In the result, the Writ Appeal stands dismissed. However, the respondent authorities are directed to take up the matter and consider the case of the appellant as per the judgment and order dated 16.03.2023.

40. The Writ Appeal stands disposed of. No order as to cost.

JUDGE

JUDGE

Comparing Assistant