

**"Real Teaching Experience Needed": Kerala HC Directs Kannur University To Re-Examine Credentials Of Priya Varghese, Wife Of CM's Private Secretary**

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**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**DEVAN RAMACHANDRAN; J.**

**WP(C) NO. 26918 OF 2022; 17 November 2022**

**DR. JOSEPH SKARIAH versus CHANCELLOR OF UNIVERSITIES IN KERALA**

*Petitioner: Advs. Santharam P., Rekha Aravind, P.G. Gokulnath, George Poonthottam (Sr.)*

*Respondents: Advs. I.V. Pramod, SC, Renjith Thampan (Sr.), S. Krishnamoorthy, CGC, M.A. Asif, Anwin John Antony, P. Ravindran (Sr.), S. Gopakumaran Nair (Sr.), S. Prasanth, SC, Chancellor of Universities of Kerala, T.B. Hood -GP*

**J U D G M E N T**

Education is the fundamental block of life; it not its preparation, but it is life itself. As Joseph Addison said: “*what sculpture is to a block of marble, education is to human soul*”.

2. Teachers, therefore, are nation builders; and a good one instills hope and ignites imagination in students.
3. The golden words of Dr.S.Radhakrishnan rings loud: “*Teacher should be the best minds in the country*”. This is much more when it comes to Institutions of higher education.
4. It is obviously in the above hortative perspective that the University Grants Commission (hereinafter called the 'UGC' for short) brought out its Regulations relating to qualifications and manner of direct appointments to various teaching courses in Universities and Colleges, including Associate Professors.
5. Exacting provisions and stipulations have been made by the 'UGC', to which I will refer presently.
6. This Court is now called upon by the petitioner who is stated to be an Assistant Professor in Malayalam - to decide whether inclusion of the 5<sup>th</sup> respondent in Ext.P4 “Ranked List”, prepared and settled by the 4<sup>th</sup> respondent Selection Committee is in order.
7. Sri.George Poonthottam – learned Senior Counsel, instructed by Sri.P.Santharam appearing for the petitioner, assailed inclusion of the 4<sup>th</sup> respondent in Ext.P4 on various grounds, namely:
  - a) The said respondent does not have sufficient“experience of teaching”, as has been mandated by the “UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018 (hereinafter called as the “UGC Regulations, 2018” for short)”.
  - b) The Selection Committee has acted capriciously, including the 5<sup>th</sup> respondent, even though her academic score is woefully lower than what his client has achieved.
  - c) Alternatively, the 5<sup>th</sup> respondent is ineligible to be included in Ext.P4 because, she does not have either the service or the experience of teaching that are requisite under the “UGC Regulations, 2018”, after she acquired the essential qualification under it, namely “Doctor of Philosophy” (PhD).
8. Interestingly, as an adscititious submission, the learned Senior Counsel argued that Ext.P4 itself is inept and incompetent because it has been shown to be a “Provisional

Ranked List”, prepared by the Selection Committee of the Syndicate of the University, but without the “physical verification of the original documents claiming academic qualifications having been done” (*sic*).

9. In support of his afore submissions, Sri.George Poonthottam – learned Senior Counsel, relied extensively on Regulation 4.1 (II) of the “UGC Regulations, 2018”, which enumerates the eligibility/educational qualifications required for a person to seek direct recruitment as an Associate Professor. He argued that, along with PhD and a Masters Degree with 55%, a candidate has to have a minimum of eight years of experience of teaching and/or research in an academic/research position, equivalent to that of an Assistant Professor; and asserted that, even going by the credentials presented by the 5<sup>th</sup> respondent, she has not achieved this in any manner whatsoever.

10. Sri.George Poonthottam then pointed out that the details of the credentials presented by the 5<sup>th</sup> respondent before the University along with her application, has been produced on record by them through Memo dated 08.11.2022, which shows that she has claimed various spells of service — when she was a Lecturer on contract; while she was pursuing PhD Full Time as a student; when she was working as the Director of Student Services in the Kannur University; as also as an Assistant Director in some other organization, on deputation. The learned Senior Counsel argued that, therefore, even as per the aforesaid declarations, the petitioner's claim of having more than 11 years of “experience in teaching”, is not only untenable, but impossible.

11. As noticed above, the learned Senior Counsel has an alternative argument that experience of eight years of teaching prescribed in “UGC Regulations, 2018”, means that it should be one achieved after acquiring the basic degree, namely PhD. He pointed out that, going by the pleadings on record of the 5<sup>th</sup> respondent herself, she obtained PhD on 08.03.2019; and therefore, that her experience of teaching thereafter, would fall much below the requisite period.

12. As his final submission, Sri.George Poonthottam asserted that Ext.P4 can never be acted upon because it is described as a “Provisional Ranked List”, after an online interview; but, admittedly settled without physical verification of the documents of the candidates.

13. Before I move on to the other learned counsel, I must also record that the petitioner has, today, preferred I.A.No.3/2022, producing therewith two additional documents. These documents have been marked as Exts.P12 and P13, through which, he tries to establish that the marks given to the candidates by the Selection Committee are in error and that the 5<sup>th</sup> respondent could not have been granted any benefit on account of her “ad-hoc” teaching position.

14. However, since these documents have been placed on the files of this Court at the proverbial eleventh hour by the petitioner - after I had decided to deliver the judgment, on completion of the submissions by all learned counsel for the last two days - I do not think that I will be justified in making any reference to the same in this judgment.

15. Treading on, the afore contentions of the petitioner were initially answered by Sri.P.Ravindran learned Senior Counsel, instructed by Sri.I.V.Pramod, learned counsel appearing for the 6<sup>th</sup> respondent – Registrar of the University; and relied extensively on two counter affidavits filed by his client, namely the one dated 22.10.2022 and the other dated 16.11.2022 (filed as an Additional Counter Affidavit). The learned Senior Counsel explained that the aforementioned additional counter affidavit was necessitated because, it was revealed to his client, during the hearing of this matter on 15.11.2022, that certain

vital information had not been placed on record, as also certain germane documents; and pleaded that both the affidavits be read in tandem by this Court.

**16.** Sri.P.Ravindran then explained that the process of selection conducted by the University had two levels: namely, the first one, where the applications of the candidates were scrutinised by a Statutory Scrutiny Committee; and the second, where the candidates found eligible, were interviewed by the Selection Committee on certain broad parameters. He pointed out that the Scrutiny Committee had gone through the documents uploaded by each of the candidates online and had rejected some of them, finding them to be untenable, going by the applicable Regulations of the UGC, as also the Rules applicable to the University; and had finally shortlisted those candidates whose applications were found to be answering the requirements under the above. He submitted that, thereafter, all the candidates so shortlisted were called by the Selection Committee for an interview; and that they, thus, prepared a Ranked List, which was then placed before the Vice Chancellor, to be, in turn, placed before the Syndicate for approval.

**17.** Interestingly, Sri.P.Ravindran - learned Senior Counsel, then impressed upon me, taking me through the Additional Counter Affidavit, that after the Vice Chancellor obtained the Ranked List from the Selection Committee, certain complaints were received, which led to a suspicion as to if inclusion of the 5<sup>th</sup> respondent was in order. He submitted that said Authority, therefore, requested the Registrar to obtain legal opinion and thought it better to obtain a clarification from the UGC itself; and showed me that Ext.R6(e) was thus issued. He added that the UGC never responded; and therefore, that the Vice Chancellor went by the advice given to him by the learned Advocate General of Kerala; subsequently placing Ranked List before the Syndicate, which approved it on 27.06.2022, as is evident from Ext.R6(h). He submitted that, therefore, as matters now stand, Ext.P4 is the "Provisional Ranked List", which will be finalized only after the documents of each candidate is properly verified and found to be genuine; and thus asserted that this writ petition is unnecessary.

**18.** As the parting submission, Sri.P.Ravindran learned Senior Counsel, added that, his client or any other Authority of the University had no reason or purpose to hold sides with any of the parties; and that the fact remains that the Scrutiny Committee acted *bona fide* and fairly, in assessing the "experience of teaching" of each candidate, who was shortlisted for being interviewed, edified on the requisite parameters. He argued that, as far as the 5<sup>th</sup> respondent is concerned, her experience as the Director of Student Services (DSS); and the period when she spent on "deputation" without leave, for the purpose of pursuing PhD, were accepted by the Scrutiny Committee to be part of teaching experience. He contented that, this is an evaluation by the expert Scrutiny Committee and, therefore, that he has nothing more to say on the same; adding that this is the same submission he intends to make with respect to the Selection Committee. He concluded, contending that, as has been well settled, the wisdom of the Selection Committee is based on the proficiency and expertise of its members; and that the same cannot be substituted by anyone else's, including that of this Court.

**19.** Sri.Ranjith Thampan, learned Senior Counsel, instructed by Sri.M.A.Asif – learned counsel appearing for the 5<sup>th</sup> respondent, adopted the afore submissions of Sri.P.Ravindran, but expanded it substantially, relying up on the detailed counter affidavit his client has filed on record, supported by several documents.

**20.** Sri.Ranjith Thampan submitted that the "teaching experience" claimed by his client has been enumerated in paragraph 37 of the counter affidavit. He showed me that the spells claimed by her are:

- a. As Ad-hoc/Temporary/Contract Lecturer in Malayalam at the University Teacher Education Centre;
- b. As Assistant Professor in Vivekananda College, Kunnampulam;
- c. The period spent by her to acquire PhD under the Faculty Development Programme (FDP) of the UGC;
- d. As Assistant Professor in Sree Kerala Varma College, Thrissur;
- e. As Director of Student Services, on deputation to the Kannur University; and
- f. As Assistant Director of “Kerala Bhasha Institute”, Thiruvananthapuram.

21. He then proceeded to explain his client’s contentions *qua* each of the afore spells, however, submitting that as regards the time his client spent as Assistant Professor - both in Vivekananda College, Kunnampulam and Kerala Varma College, Thrissur is concerned, there can be no controversy.

22. Sri.Ranjith Thampan then said that, as far as the Ad-hoc/Temporary/Contract appointment of his client as a Lecturer in the University Teacher Education Centre is concerned, going by Regulation 10.0 of the “UGC Regulations 2018”, it is fully eligible to be counted.

23. Moving on to the period when his client pursued research for obtaining PhD under the “FDP” of the UGC is concerned, Sri.Ranjith Thampan first relied upon Ext.R5(a) letter of the said commission, wherein, it has been stated that “*the period of active service spent on pursuing Research Degree i.e. for acquiring Ph.D degree simultaneously without taking any kind of leave may be counted as teaching experience for the purpose of direct recruitment/promotion to the post of Associate Professor and above*” (sic). He argued that, therefore, there can be no doubt that said period is eligible to be counted as teaching experience; however, then proceeding to fortify it, by Ext.R5(b) - which is the erstwhile “Faculty Improvement Programme” (‘FIP’ for short) of the UGC, which was the precursor of the “FDP” – explaining that this programme entitles a teacher to continue in active service, drawing full salary, even while pursuing full time research. He explained that, when the “FDP” was, thereafter, introduced by the UGC during the period 2012-2017, such provisions were carried forward and he sought this Court’s attention to Clauses 3.1.7 and 3.1.10 thereof, to assert that it is only a “Teacher Fellow” who could have registered for PhD under it; and that he/she is entitled to full salary, with increments and protection of seniority, thus rendering it luculent that same will have to be construed as teaching experience. He explained that this is more so because, Clause 3.4 of the “FDP” Regulations makes it limpid that, if a “Teacher Fellow” leaves the programme mid-way, the salary paid to the substitute teacher will be recovered from him/her.

24. Sri.Ranjith Thampan then argued that, the “FDP” and the acquisition of PhD under it, are vital for the progress of higher education and for substantiation relied upon several judgments, including **Varghese v. State of Kerala** [1989 (2) KLT 333]; **Nirmala Mittal v. State of Haryana and others** [2009 (1) SLR 404]; **State of Haryana and others v. Nirmala Mittal** [2008 (5) SLR 177]; **Saheeda.P. v. State of Kerala and others** [2018 SCC ONLINE KERALA 10110] and **Gangadhar Yeshwantrao Bansode v. Chancellor, Marathwada University and others** [1983 (2) Bombay CR 452]. He then read the last of the afore judgments to assert that, even when a teacher is on full time research for acquisition of PhD, he/she continues in such position and that this has been so affirmately stated by the High Court of Bombay.

25. After explaining as afore, Sri.Ranjit Thampan then took me through Ext.R5(e), which is an order of the Government of Kerala, allowing a teacher — who has been selected under the “FDP” — to be on deputation for the relevant period; and then showed me Ext.R5(j), which is his client’s order of deputation. He argued that the period spent by his client on such deputation certainly would fall within the parameters of “experience of teaching” and that this is so even in the case of other universities, referring to Exts.R5(p) and R5(s), which relates to the Calicut University and the University of Kerala respectively. He, thus, contented that the argument of the petitioner, that the period spent by his client on “FDP” cannot be construed to be teaching or that she was not a teacher during that time, is wholly without basis and lacks forensic reasoning.

26. Having said so, Sri.Ranjith Thampan, thereafter, argued regarding the experience of the petitioner as the Director of the Student Services (“DSS”) of the Kannur University. He asserted that the position of the DSS is vital to a University and that this has been so stated unambiguously by the “Kothari Commission” — which was set up by the Government of India. He submitted that even though the “DSS” is not engaged in active teaching, he/she continues to be a teacher under the provisions of the Act of the University and that this has been clarified by several judgments, including Ext.R5(b), delivered by a learned Single Judge of this Court; as also in **University of Kerala and others v. Dr.K.K.Venu and others** [2014 (3) KHC 149]. He continued to say that, if one examines Ext.R5(w) — which is the “All India Survey on Higher Education” — the post of “DSS” has been given a prime position, placing it after the Vice Chancellor; and hence, that any argument to the contrary, can only be found to be untenable.

27. Virtually, as an alternative submission to the afore arguments relating to the position of “DSS” held by his client, the learned Senior Counsel then submitted that Ext.R5(z3) letter recently received by his client by the University, would show that she was also holding the additional charge of Coordinator of the “National Service Scheme” (NSS); asserting that this is also a teaching post and therefore, that the experience which his client has in such capacity – even assuming that her position as “DSS” would not offer her the same – deserves to be construed as “experience of teaching”.

28. Finally, referring to the experience claimed by his client as the Assistant Director of the ‘Kerala Bhasha Institute’, Sri.Ranjith Thampan submitted that, though Ext.R5 would establish that it is also a teaching position, his client is not relying upon it exclusively.

29. After the afore specific arguments were made, Sri.Ranjith Thampan then submitted that this Writ Petition is not maintainable because the Kannur University has not been arrayed as a party; and he showed me that Section 3(3) of the Kannur University Act, 1996, (hereinafter referred to as ‘the Act’ for short), defines the University to be an organisation with perpetual succession and common seal; predicating that hence, Ext.P4 — being its decision, cannot be subjected to attack without it being on the party array.

30. The learned Senior Counsel concluded his submissions, relying upon Regulation 3.11 of the “UGC Regulations, 2018” explaining that there are two limbs to it, namely:

- a) time taken by a candidate to acquire PhD and
- b) time taken by a candidate in active service to acquire PhD, simultaneously with teaching assignment.

31. The learned Senior Counsel then pointed out that the afore provision has a further limb, which mandates that only regular faculty members up to 20%, shall be allowed to take leave for pursuing PhD; thus contending that, going by the afore Regulations, when a teacher is in active service, pursuing research with simultaneous teaching assignment,

said period would be liable to be reckoned as “experience of teaching”, under the provisions of Regulation 4.1(II) of the 'UGC Regulations, 2018'. He thus prayed that this Writ Petition be dismissed.

**32.** Sri.S.Krishnamoorthy – learned Standing Counsel for the UGC, very pertinently, opposed the afore submissions of Sri.Ranjith Thampan, resting upon the counter affidavit filed on behalf of the 7<sup>th</sup> respondent. He argued that, as per Regulation 4.1(II) of the 'UGC Regulations, 2018', the requirement of ‘experience of teaching’ means actual experience and not which can be construed or inferred. He argued that the post of Associate Professor is extremely vital to a University or to a College and therefore, that it is the specific intent of the UGC that only those with the requisite actual teaching experience be allowed to apply for being directly recruited to it and to be selected; and that this is unmistakable from the fact that the aforementioned Regulation 3.11 of the 'UGC Regulations, 2018', also unambiguously stipulates that only that period of active service of a teacher spent on pursuing research, simultaneously with teaching assignment, will be reckoned as teaching experience.

**33.** Sri.S.Krishnamoorthy elucidated that the words ‘simultaneously with teaching assignment’ in Regulation 3.11 of the 'UGC Regulations, 2018', render it without doubt that even a teacher - who is on active service, obtaining salary and whose seniority is protected, would be entitled to have her/his period of research reckoned as teaching experience only if he/she was able to do it simultaneously with a **teaching assignment**. He then read out from the counter affidavit of his client to drive home the point that it is the specific position of the UGC that, when a teacher is on leave from a teaching assignment — while he/she pursues research degree, said period cannot be construed as “experience of teaching” for the purpose of direct recruitment to the post of Associate Professor; and that the word ‘leave’ has been used not as usually referred in service jurisprudence, but synonymously with the word ‘relieved’.

**34.** Sri.S.Krishnamoorthy explained that when a teacher — who is on full time research — is relieved from teaching assignment and does not engage in any such, that period can only be construed to be one spent in studies and not in teaching. He finished his submissions saying that, as far as the claims of the petitioner, edified on 5<sup>th</sup> respondent's position as the ‘DSS’ or Assistant Director of the ‘Kerala Bhasha Institute’ are concerned, the UGC have no inputs with respect to the same and cannot answer it; and that this has been so averred in their counter affidavit also.

**35.** Sri.T.B.Hood – learned Senior Government Pleader, very interestingly, submitted that he is making submissions not in support of the petitioner or the 5<sup>th</sup> respondent and that Government has no cause, either in their favour or against them. He, however, pointed out that, going by Regulations 6.0 and 6.1 of the 'UGC Regulations, 2018', Table 1 of Appendix II thereof would apply, which makes it perspicuous that a teacher on leave or deputation, for the purpose of obtaining PhD, shall not be subjected to any disadvantage for promotion under the Career Advancement Scheme (CAS); and that this applies in full force to direct recruitment also. He reiteratingly submitted that he is making this submission only to clarify the correct position in law and that Government is not taking sides with any of the parties.

**36.** The afore rival positions being so recorded, I will first take up the contention of Sri.George Poonthottam – learned Senior Counsel, that the requisite teaching experience of a candidate under Regulation 4.1(II) of the 'UGC Regulations, 2018', must be obtained after the basic qualification had been acquired. He referred to several judgments, including **P.K. Ramachandra Iyer and Others v. Union of India and Others** [(1984) 2 SCC 141],

**Sheshrao Jangluji Bagde v. Bhaiyya S/o Govindrao Karale and Others** [(1991) Suppl.(1) SCC 367], **Indian Air Lines Ltd. and Others v. S. Gopalakrishnan** [(2001) 2 SCC 362], **Dixit K.K. and Others v. Rajasthan Housing Board and Another** [2014 KHC 4567] and **Shaila Beegum v. KPSC** [1997 (2) KLT 273], to argue that legal position is now settled that, unless otherwise specified, when the law provides that a candidate must have experience, coupled with basic qualification, it is only that which has been acquired after such qualification had been obtained, is deserving to be reckoned.

37. I do not think any one can quarrel with the proposition of law as argued by Sri.George Poonthottam, but the real question is how this aspect really operates under the 'UGC Regulations, 2018'.

38. As I have already seen above, learned counsel on both sides are relying upon Regulation 3.11 of the 'UGC Regulations, 2018', in support of their contentions.

39. It is the contention of Sri.Ranjith Thampan – learned Senior Counsel, that, even going by Regulation 3.11, the period spent by a teacher during research, simultaneous with teaching assignment, will be reckoned as teaching experience. He argued that, therefore, it clearly stipulates a situation where the period, even prior to the acquisition of PhD, ought to be reckoned.

40. I must say that I find some force in the afore argument, but do not propose to answer it affirmatively at this stage, since it is not an issue that has been impelled specifically, but one that was argued at the time when this matter was heard. Suffice to say, going by the manner in which Regulation 3.11 has been framed, I find some force in the submissions of Sri.Ranjith Thampan; and it is, therefore, obvious that the afore precedents cited by Sri.George Poonthottam would not be applicable, since, as I have already said above, the only declare the law that, unless otherwise specified, the experience must be after the basic qualification. When Regulation 3.11 of the 'UGC Regulations, 2018', gives a whisper to the contrary, I do not think it will be necessary for this Court to continue on the evaluation of same any further.

41. Before I move forward, I must surely deal with the contention of Sri.Ranjith Thampan that this Writ Petition is not maintainable because the University is not on the party array. Interestingly, this contention has been urged only by the 1<sup>st</sup> respondent and not even by the 6<sup>th</sup> respondent – Registrar of the University. I have scanned through the affidavits of the said Authority and it is not even whispered therein that any such contention is being pursued. On the contrary, the functionaries of the University, who are on the party array, have accepted that this Writ Petition is maintainable and have answered every allegation of the petitioner on its merits, supported by the various materials placed on record by them; and obviously, therefore, this contention needs to be evaluated only from the stand point of the 5<sup>th</sup> respondent.

42. That said, what is under challenge in this case is Ext.P4, which is the proceedings of the 6<sup>th</sup> respondent – Registrar of the Kannur University. It is a notification issued by the said Officer, containing the 'Provisional Rank List'; and it is the specific case of the petitioner that it is incompetent, since it has been prepared even without verification of the original documents of candidates, claiming academic qualifications and experience.

43. When the Registrar of the University - who is its statutory Authority under Section 14 of the 'Act' – is on the party array and when he has filed pleadings before this Court without any such contention being raised, I do not think that a challenge to Ext.P4 requires the University to be on the party array; or at least that its absence would be fatal.

44. That now sets the stage for this Court to decide whether the 5<sup>th</sup> respondent has adequate “experience of teaching”, as required under Regulation 4.1(II) of the “UGC Regulations, 2018”, for being directly recruited as an Associate Professor.

45. Indubitably, the aforesaid provision will have to be first read; for which purpose, I extract it under:

*“II. Associate Professor:*

*Eligibility:*

- i) A good academic record, with a Ph.D. Degree in the concerned/ allied/relevant disciplines.*
- ii) A master's Degree with at least 55% marks (or an equivalent grade in a point-scale, wherever the grading system is followed).*
- iii) A minimum of eight years of experience of teaching and / or research in an academic/research position equivalent to that of Assistant Professor in a University, College or Accredited Research Institution/industry with a minimum of seven publications in the peerreviewed or UGC-listed journals and a total research score of Seventy five (75) as per the criteria given in Appendix II, Table 2.”*

46. It is limpid from the afore Regulation that the UGC prescribes a minimum of eight years of experience of teaching and/or research in an academic/research position equivalent to that of Assistant Professor in a University, College or Accredited Research Institution/industry.

47. The words “experience of teaching” certainly have some importance in evaluation of the rival positions of the parties in this case.

48. The UGC takes the affirmative stand that teaching experience is a tangible one and not something which can be merely construed or inferred. It, in fact, relies on Regulation 3.11 of the “UGC Regulations, 2018” in support, which, for easy reading, is also reproduced as under:

*“3.11 The 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 positions. Further the period of active service spent on pursuing Research Degree simultaneously with teaching assignment without taking any kind of leave, shall be counted as teaching experience for the purpose of direct recruitment/promotion. Regular faculty members upto twenty per cent of the total faculty strength (excluding faculty on medical /maternity leave) shall be allowed by their respective institutions to take study leave for pursuing Ph.D. Degree.”*

49. As recorded above, Sri.S.Krishnamoorthy - learned Standing Counsel for the UGC, submitted that whatever be the experience that a candidate may present before the University, the allowance for teaching experience can be granted only for such actual experience and not on the basis whether the post can be construed to be a “teacher” or otherwise. In other words, his specific submission is that a teacher who does not teach, cannot claim teaching experience, even if he/she is brought within the *umbra* of such a designation, either through statutory prescriptions or under the sweep of other executive circulars or orders.

50. The above stand of the UGC certainly is compelling this Court, because it has been conclusively declared by the Hon'ble Supreme Court in various judgments, namely **Gambhirdan K.Gadhvi v.the State of Gujarat and Others [(2022) 5 SCC 179]**, **State of West Bengal v. Anindya sundar Das & Others [AIR 2022 SC 4902]** and **Praneeth K. and Others v. University Grants Commission and Others [2020 KHC 6512]**, that, while making appointments, Universities are bound by the stipulations of the UGC Regulations and cannot travel beyond it, even if the respective State Legislations or Regulations are



to speak to the contrary. This is not in contest and the learned counsel on both sides are in full affirmation of the same.

51. Therefore, what is to be verified in this case is whether the 5<sup>th</sup> respondent has actual “experience of teaching”, which will entitle her to claim the post of Associate Professor through direct recruitment.

52. The vital importance of the requirement of actual teaching experience for direct appointment to an important post like Associate Professor can never be understated.

53. Experience gives a teacher time to test the procedures and lessons on several cohorts of students. Trial and error lead to find the most effective techniques, perfected overtime.

54. Educational Institutions today, are complex organizations, built on student engagement and interactions; and this is where the importance of experienced teachers obtains *acme* relevance. Improvement in the quality of a teacher is often cumulative and incremental; and it takes years of reflective practice to master the craft. It is recognized that experience and effectiveness are linear and that the technique of teaching requires to be constantly honed, brushed-up and kept *au courant*.

55. I am reminded of the famous words of Sri.Mustafa Kemal Ataturk: “A good teacher is like a candle – it consumes itself to light the way for others.”

56. It is in the afore perspective, that one must evaluate the worth of the claims of the 5<sup>th</sup> respondent with respect to the various spells of experience placed before the University, along with her application.

57. The credentials and claims of the 5<sup>th</sup> respondent are, in fact, available from her own counter affidavit, in paragraph 37, which is as under:

“37. This respondent continuing as Assistant Professor from 14.03.2012 till date. During the period she also had following assignments on deputation from 14.3.2012;

Sl. No.	Institution and post held	Period of Service	Experience
1	Lecturer in Malayalam on Adhoc/Temporary/contract, University Teacher Education Centre, Kannur University.	27.06.2001 to 25.02.2002	8 months
2	Lecturer in Malayalam on Ad-hoc/Temporary/contract, University Teacher Education Centre, Kannur University.	05.06.2002 to 28.2.2003	8 months 24 days
3	Assistant Professor, Sree Vivekananda College Kunnankulam.	14.3.2012 to 28.07.2015	3 years 4 months and 15 days
4	Deputation for Faculty Development Programme at Kannur University (with active service and service lien at Sree Vivekananda College Kunnankulam.)	29.07.2015 to 8.2.2018	2 years 6 months and 11 days
5	Assistant Profesor, Sree Kerala Varma College, Thrissur.	09.02.2018 to 06.08.2019	1 year 5 months and 29 days
6	Director of Students Services, on Deputation Kannur University.	07.08.2019 to 15.06.2021	1 year 10 months and 9 days
7	Assistant Professor, Sree Kerala Varma College, Thrissur.	16.06.2021 to 06.07.2021	21 days

8	Assistant Director, Kerala Bhasha Institute, Thiruvananthapuram.	07.07.2021 to 21.10.2021	3 months 15 days
<b>Total Service of the petitioner</b>		<b>11 years and 20 days</b>	

*Therefore, this respondent is having a total teaching/research of experience of 11 years and 20 days as Assistant Professor as on the date of submitting application for the post of Associate Professor. This respondent is therefore fully qualified for being considering for appointment as Associate Professor. Hence the contention raised in the writ petition regarding my eligibility to be appointed as Associate Professor is not only factually incorrect but also misleading.”*

58. The afore would show that the 5<sup>th</sup> respondent claims broadly five categories of service in support of her claim of “experience of teaching”, namely: (a) Ad-hoc/Temporary/Contract lecturer in University Teacher Education Centre; (b) Assistant Professor in two Colleges, namely, “Sree Vivekananda College”, Kunnampulam and “Sree Kerala Varma College”, Thrissur; (c) Deputation for Faculty Development Programme (FDP), to pursue her PhD; (d) Director of Student Services on deputation with the Kannur University and (e) Assistant Director with the “Kerala Bhasha Institute”, Thiruvananthapuram.

59. I proceed to analyze each of the afore claims, within the conspectus of the submissions, pleadings and materials made and placed on record by the rival sides.

60. As far as the claim of the 5<sup>th</sup> respondent regarding teaching experience as **Ad-hoc/Temporary/Contract Lecturer** in the University Teacher Education Centre is concerned, it is *ex facie* impermissible, because Regulation 4.1(II) of the “UGC Regulations, 2018” (afore extracted) would render it without doubt that any position held, to claim such experience, must be equivalent to that of an Assistant Professor in a University, College or Accredited Research Institution/Industry. The 5<sup>th</sup> respondent concedes that she was only working as a **Lecturer** and this is affirmed by the University in the table, which they have produced along with Memo dated 08.11.2022, during two spells, adding to eight months and 24 days, from 2001 upto 2003.

61. Crucially, the answer of the 5<sup>th</sup> respondent to the contentions of the petitioner against this, is couched in paragraph 46 of her own counter affidavit, which merely avers as under:

*“46. It is submitted that this respondent was also engaged on temporary/ad hoc/contract basis as Lecturer in Malayalam in the Kannur B.Ed. Centre for the period form 27.06.2001 to 25.02.2002 and 05.06.2002 to 28.02.2003. The above engagements is also to be treated as qualifying teaching experience in view of clause 10.0 of UGC Regulations.”*

62. Obviously, when the 5<sup>th</sup> respondent admits that her engagement by the University Teacher Centre, Kannur was only as a **Lecturer** and there is no further explanation on it, I fail to understand how the Scrutiny Committee would have accepted it as “experience of teaching” within the mandate of Regulation 4.1(II) of the “UGC Regulations, 2018”. They could not have done so, and it is so declared.

63. I am also persuaded to the afore view because, the 5<sup>th</sup> respondent claims to have worked as a **Lecturer** on Adhoc/Temporary/Contract basis with the University Teacher Education Centre during the period 2001-2003; but, thereafter, there is a large break of nearly nine years, before she claims next teaching experience, as an Assistant Professor of “Sree Vivekananda College”, Kunnampulam. This perhaps may not be very relevant because, Sri.Ranjith Thamban – learned Senior Counsel, asserts that, whatever be the break in service, his client is entitled to claim every bit which is eligible; but I have chosen

to say so only because the highest standards of education may not be able to be achieved, when such experience is also counted, particularly, as I have already said above, it is a continuous experience of a teacher which is important over the years - it providing to him/her cumulative and incremental growth, on a continuous trial and error basis.

64. As far as the spells of experience claimed by the 5<sup>th</sup> respondent as an Assistant Professor in “Sree Vivekananda College”, Kunnankulam and “Sree Kerala Varma College”, Thrissur, is concerned, there is no dispute. It certainly inures to her the full benefit.

65. The next spell, which the 5<sup>th</sup> respondent claims, is when she was on “deputation” for Faculty Development Programme (“FDP”), to pursue her Research, leading to the award of PhD. It is this spell which is under vehement disputation between the parties; and I, therefore, deem it necessary to deal with it in detail, that it requires.

66. No doubt, the “FDP” is a programme designed by the UGC, as is available from Ext.R5(c). It is also doubtless therefrom that a “Teacher Fellowship” will be eligible only to a Teacher who is permanent/confirmed in service. The said document, in Regulation 3.1.7 thereof, then goes on to say that a “Teacher Fellow” is a teacher for all purposes and will receive full salary, with usual increments and protection of seniority, from the parent institution, during the period of such Fellowship; and then stipulates that when a teacher is on such programme, the parent institution can appoint another in his/her place, who will also be paid full salary. There can be no dispute on this because, going by Clause 3.4 of Ext.R5(c), if the Teacher Fellow completes the course and obtains a PhD within the time frame prescribed, both he/she and the substitute teacher will be entitled to hold on to the salary received during the period; but if he/she fails to do so, then provisions have been made to recover the salary paid to the guest faculty from him/her.

67. Turning to the specific case of the 5<sup>th</sup> respondent, I have no doubt that she was continuing as a teacher; and that she was selected for the “Teacher Fellowship” under Ext.R5(c) validly. Though the UGC do not construe it so, Government of Kerala - through Ext.R5(e) order, issued much before Ext.R5(c) was even contemplated - treats the period when such a teacher is on the Research Programme, as being on “deputation”.

68. I do not think this makes any difference, except that it semantically construes slightly different from the usual parlance; but, in effect, what it really achieves is that a teacher is allowed full research opportunity during the entire period, without having to engage in any kind of teaching activity. This is the scheme of Ext.R5(c) – “FDP” of the UGC; and even the petitioner has no different version against the same.

69. Therefore, for all purposes and intents, the 5<sup>th</sup> respondent continued as a “Teacher”, even while under the “FDP”; but the crucial question is whether he/she obtained “experience of teaching” during the said period.

70. There is a huge relevance to this question in the context of Regulation 3.11 of the “UGC Regulations, 2018”, because, going by its second limb – which interestingly is relied upon by the 5<sup>th</sup> respondent herself – it takes in the period of active service spent on **pursuing research degree, simultaneously with teaching assignment** which alone can be construed to be teaching experience.

71. In the case at hand, Sri.Ranjith Thampan – learned Senior Counsel unreservedly conceded, to a pointed question from this Court, that, during the time when his client was pursuing research under the “FDP”, she was not burdened with any teaching assignment and was a Full Time Research Scholar. In fact, even without any such admission being made, this is evident from Ext.R5(m) produced by the 5<sup>th</sup> respondent herself, which defines

her “FDP” as a “full time one”. This is then fortified by the University itself, through Ext.R5(t3) - which is their answer to an application under the Right to Information Act, 2005 - that the period spent on “FDP” will be modulated by Regulation 3.11 of the “UGC Regulations, 2018”.

72. Returning to Regulation 3.11 of the “UGC Regulations, 2018” - and merely as a matter of restatement it is solely that period when a teacher is on research along with a **teaching assignment**, can it inure to him/her the “experience of teaching”, as required under Regulation 4.1(II) thereof. In fact, paragraph 32 of the counter affidavit of the 5<sup>th</sup> respondent itself shows that she is fully aware of this, when she says:

*“Firstly, if a person is not in service as a teacher in a university or college but has undertaken research for the purpose of acquiring Ph.D. degree that period cannot be taken as teaching/research experience in view of the first limb of clause 3.11 of the university Regulation 2018. However, the further portion of clause 3.11 of the university Regulation 2018 would clearly point out two aspects. A person who is a teacher in active service pursuing research period simultaneously with teaching assignment without taking any kind of leave shall be eligible to count the period as teaching experience for the purpose of direct recruitment or promotion. As can be seen from 3rd portion of clause 3.11 of UGC Regulations 2018 it is also mentioned that 20% of the total faculty strength shall be allowed by the respective institution to take study leave for pursuing Ph.D. degree. Hence it is humbly submitted that the stipulation in the first portion of clause 3.11 the time taken for by candidates to acquire Ph.D. degree shall not be considered as teaching/research experience to be claimed for appointment to teaching posts is not applicable to teachers who had undergone research study under the Faculty Development Programme while in service. The persons who are in service are covered by the later part of clause 3.11 of UGC Regulation 2018 and hence the period undergone for Ph.D. degree as regards teachers who are in service can be taken as qualifying service. This is more so since in view of Ext.R5(a) clarification issued by the UGC.”*

73. Indubitably, when the 5<sup>th</sup> respondent admits, without any reservation, that she was a full time PhD scholar under the “FDP”, without any assignment of teaching being given to her, I fail to fathom how she maintains that Regulation 3.11 of the “UGC Regulations, 2018”, would help her.

74. Apodictically, “FDP” is intended to aid a teacher to be in active service, but it can be done, going by its own clauses, in two different manner, namely: simultaneous and along with teaching assignment; or without it. Different consequences follow for the afore two choices and this has been made unmistakably clear by the UGC in Regulation 3.11 of the 2018 Regulations.

75. It is here that the submissions of Sri.S.Krishnamoorthy – learned Standing Counsel for the UGC, assume importance. As I have already recorded above, he argued that it is only when a teacher engages in actual teaching assignment, while pursuing PhD, can he/she claim such period to be “experience of teaching”, along with an application for being directly appointed as an Associate Professor, under Regulation 4.1(II) of the “UGC Regulations, 2018”.

76. I must say that the afore argument has great force and, as long as the UGC takes such a stand – being the author of the Regulations itself – I do not know how this Court can go beyond it or at variance to the same; particularly since, as it is now fully admitted, the binding precedents of the Hon'ble Supreme Court render the law that the Regulations of the UGC will override any contrary position in a Statute or a Legislation of the State.

77. Within the sweep of this issue, I surely must also answer the last submission of Sri.Ranjith Thampan — learned Senior Counsel, that Exts.R5(p) and R5(s), read along

with Ext.R5(e) Government order and Ext.R5(j) order of deputation of his client for the “FDP”, would establish the position that the period spent by her in it is also “experience of teaching”. I am afraid that this argument cannot appeal to me because: for one, Exts.R5(p) and R5(s) have been issued by different Universities; while Ext.R5(j) order of deputation itself shows perspicuously that 5<sup>th</sup> respondent was being offered the benefits under the “FIP” Scheme of the UGC, to undergo the PhD course. There is not as much as a whisper therein - it being also unreservedly admitted - that she had any teaching assignment attached to it, particularly when she was relieved from her parent University, with a substitute teacher posted in her place, as per the provisions of Ext.R5(c).

78. Therefore, though the afore referred period may be counted for her Career Advancement Scheme - which she may get in her Parent University in due course – the 5<sup>th</sup> respondent could not have included it in her “experience of teaching”, under Regulation 4.1(II) of the “UGC Regulations, 2018”, for being directly selected as Associate Professor. This has been affirmed by Sri.S.Krishnamoorthy – learned Standing Counsel for the UGC, who also added that the period spent by the 5<sup>th</sup> respondent in “FDP” is entitled to be reckoned for her promotion under the CAS scheme, but cannot be construed as “experience of teaching” under the aforementioned Regulation, relating to the appointment of an Associate Professor through direct recruitment.

79. I, therefore, am fully convinced that the Scrutiny Committee of the University committed grave error in accepting the assertion of the 5<sup>th</sup> respondent that she has “experience of teaching” while pursuing her PhD under the “FDP”. This could not have been done; and it is so declared.

80. That brings me to the experience claimed by the 5<sup>th</sup> respondent as the Director of Student Services on deputation, with the Kannur University.

81. Treading forward, I have no reason to differ from Sri.Ranjith Thampan – learned Senior Counsel, when he says that the position of Director of Student Services is vital to a University and hence, the citations placed by him in support of the same are fully endorsed by me. Further, even assuming that the post of Director of Student Services comes within the umbra of “Teacher”, going by the provisions of the University Act and other applicable Rules and Regulations, the germane question is whether it provides to the incumbent any “experience of teaching”, as required under Regulation 4.1(II) of the “UGC Regulations, 2018”.

82. As indited earlier, Sri.Ranjith Thampan impressed upon me that the “Kothari Commission” set up by the Government of India, has found the “DSS” to be a very eminent and important part of the academic community; and he relied upon the judgment in **K.K.Venu** (*supra*), to argue that said position is also a “Teacher”, within the purlieus of its statutory and functional definition.

83. However, it cannot be lost sight of that the 5<sup>th</sup> respondent herself understands that “DSS” is not a position which offers the incumbent any teaching assignment or such an opportunity, which is evident from the averments in her counter affidavit contained in paragraph 39, which is as under:

*“In Dr. Zubair M. vs. The University of Calicut, (WP(c). No.7307/2016), this Hon'ble Court has considered the scope of clause 10.0 of the UGC Regulation 2018. In that case petitioner therein even though was appointed in a non-teaching post was a member of academic committee of the Institute of Career Studies and Research, Board of adjudication of Ph.D. thesis in Zoology in M.G. University. The duties and functions of the technician is aiding and assisting the research scholar and also imparting instruction to M.Sc. students. This Hon'ble Court held that as per UGC regulation one need not be a teaching faculty in previous organization to count his past service.*

UGC also recognized service as provided under clause 10.1(1) as qualifying service. In these circumstances, **the duties discharged by this respondent as Director of Student Services is to be counted as past service (though not necessarily in teaching in strict sense)**. In the light of the fact that UGC cannot restrict the reckoning of past service only in the teaching capacity, this Hon'ble Court held that even a person holding the post of Technician would qualify under the UGC Regulation” (Emphasis supplied).

84. When the 5<sup>th</sup> respondent herself admits that the responsibilities of DSS is “not necessarily teaching in strict sense” (sic), one cannot gather how she claims that the period be taken as “experience in teaching”, for the purpose of direct appointment to the post of Associate Professor. Again, the petitioner can have no quarrel with the 5<sup>th</sup> respondent that, in ***Dr.Zubair M. vs. The University of Calicut, (WP(C). No.7307/2016)***, it was held that one need not be a teaching faculty for counting the past service. However, this was rendered in the context of the fact that the petitioner therein was appointed in a non-teaching post as a technician, but when the UGC Regulations brought it within the scope of the word “Teacher”, it was concluded that such services can also be counted.

85. I must say there is a far cry from the concept of “previous service being counted” and that of “experience of teaching”, as stipulated in Regulation 4.1(II) of the “UGC Regulations, 2018”.

86. As seen *ut supra*, the 5<sup>th</sup> respondent is fully aware of this and she says that her activity as “DSS” was “not necessarily in teaching in the strict sense” (sic), but that her responsibilities were as: a Co-ordinator for Inter University Cultural Programmes; a University level Nodal Officer for Anti-Ragging; and as the Authority competent to recommend award of grace marks/grade of UG and PG students in the University/Inter University Arts Festival.

87. What the 5<sup>th</sup> respondent then says, which is perspicuous from the relevant portions of paragraph 38 of her counter affidavit, is that the afore are also “part of teaching activities” (sic). However, nothing has been placed on record to show how she substantiates this; and going by any rational yardstick, the responsibilities of the “DSS” — as described by the 5<sup>th</sup> respondent herself — can never be seen to be remotely “teaching assignment”, as required by the UGC in the 2018 Regulations.

88. When I say this, I am fully cognizant that Sri.Ranjith Thampan - learned Senior Counsel, attempted to show me that the post of “DSS” is equivalent to that of an Assistant Professor in a University, relying on Ext.R5(Z3). The said document contains the replies issued by the Public Information Officer of the Kannur University, in response to the application of the 5<sup>th</sup> respondent under the Right to Information Act; and it records that the essential qualification for appointment as the “DSS” is a second class Masters Degree, with not less that 6 years teaching experience at a University or College level, with “experience in Administration” as being desirable. It is needless to say – as is also admitted – that these qualifications are not those which are required for an Assistant Professor under the “UGC Regulations, 2018”, since a candidate for such post must clear the National Eligibility test, or be equipped with PhD. The argument, therefore, that the “DSS” is equated to the post of an Assistant Professor of a University, even if true - would be of no avail to the 5<sup>th</sup> respondent, in this case, because such an equation would be relevant only to the University for its internal purposes and cannot override the stipulations in the “UGC Regulations, 2018”.

89. I say as afore, also because, Ext.R5(Z3) then goes on to say that the duties of the DSS include student outreach activities, which are part of the curriculum; thus

conspicuously making it clear that the “experience of teaching”, required to apply for direct recruitment as Associate Professor is totally wanting in the said post.

**90.** Axiomatically, the Scrutiny Committee could not have acceded to the 5<sup>th</sup> respondent any “experience in teaching”, during the spell when she functioned as the “DSS” in the Kannur University. It is so declared.

**91.** Presumably, being aware of this, Sri.Ranjith Thampan then argued that, even if the post of “DSS” cannot be construed as one which offers “experience of teaching” to his client, the Scrutiny Committee of the University acted without error in having computed that period also, because she was - during the period when she was the DSS - in additional charge of the post of Co-ordinator of the National Service Scheme (NSS).

**92.** Interestingly, this claim has been made as a passing statement by the 5<sup>th</sup> respondent in paragraph 38 of the counter affidavit, in which, she, in fact, details her duties as “DSS”. It reads as below:

*“It is submitted that this respondent was on deputation as Director of student services, Kannur University from 07.08.2019 to 15.06.2021 i.e., for 1 year 10 months and 9 days with the additional charge of the coordinator of the National Service Scheme. The Director of Student Services is the head of the Department of Student Services. The Department of Student Services is established for the welfare of students of affiliated/constituent colleges and University Departments and to promote and coordinate social and cultural activities among them. The Director of Student Services also serves as the cultural coordinator for the Inter University cultural programmes sponsored by the Association of Indian Universities and other agencies. The Director of Student Services acts as the University level Nodal Officer for Antiragging and has been entrusted to manage the activities related to Anti-ragging measures among institutions under the University. The Director of Students Service is the competent authority to recommend award of Grace Marks/Grade of U.G. and P.G. students in the University/Inter University Arts Festivals. These are part of teaching activities also. This Hon'ble court in the judgment dated 25-05-2012 in WP(c). No.15447/2007 has categorically held that the post of Director of Student Services, (which post the petitioner was on deputation) would answer the definition of teacher. “*

**93.** Luculent from the above, except merely saying that she was in additional charge of the Co-ordinator of the NSS, not even an averment is available that said position had teaching assignment attached to it. There is also no input on record to show the functions and responsibilities of the Coordinator of NSS, save that certain additional documents have been placed on record by her, as Ext.R5(Z4) series. These documents refer to the “Public Notice” of the UGC, containing the curricular frame work and guidelines for “Fostering Social Responsibility and Community Engagement in Higher Education Institutions in India”; and recommends community engagement to all Under Graduate and postgraduate students, so that their appreciation of rural field realities is “holistic, respectful and inspiring”. The details of the framework is available in the rest of the portions of the document; but what is of relevance to this case is Clause 1.3(d) thereof, which offers credit to teachers for the engagement activities saying as under:

*“1.3(d) Providing credit to Teachers for Engagement activities: Performance assessments of teachers, researchers and administrators in HEIs should include review of their involvement and contributions to community engagement in teaching and research. Criteria of and weightage to community engagement by teachers and researchers should be explicitly included in assessments for recruitment, regularisation and promotion (by modifying existing API and other faculty evaluation mechanisms).”*

**94.** Sri.Ranjith Thampan – learned Senior Counsel, relying upon the afore credit provision of Ext.R5(Z4), argued that a teacher who engages in the activities under the framework described therein, would be entitled to weightage and its period included in

assessments for recruitment, regularisation and promotion, by modifying the existing Academic Point Index (API) and other faculty evaluation mechanisms.

**95.** Apart from the fact that there is no averment on record and not even a submission to that effect that a Coordinator of the “NSS” comes within the sweep of the aforesaid framework, the 5<sup>th</sup> respondent is completely silent as to whether there is any teaching assignment involved in the same.

**96.** As is well known, the National Service Scheme is a Central Sector Scheme of the Government of India, Ministry of Youth and Sports Affairs. It provides invaluable opportunity to the student community at various levels to participate in the Government lead activities and programmes, with the aim to provide hands-on-experience to young students in delivering community service. The Scheme is inestimable in value to students, as I have already said above; and has certainly, shown its worth in nation building processes in the past several decades – being the vision of the Father of our Nation, Mahatma Gandhi.

**97.** The involvement of the 5<sup>th</sup> respondent in the NSS surely is one that she can be proud of and she is entitled to claim so; but the real question is whether the activities she has overseen therein as a Coordinator, would inure to her “experience of teaching”, to bring her within the field of choice for being directly selected as Associate Professor, under the “UGC Regulations, 2018”.

**98.** Solely to reiterate, the 5<sup>th</sup> respondent does not have a case anywhere that the activities as a Co-ordinator of the NSS offered her any opportunity to teach students and not even is there a whisper that she had claimed so in her application made before the University. It is rather incredulous and how, merely based on the one line averment in the afore extracted paragraph 38 of the counter affidavit of the 5<sup>th</sup> respondent, the learned Senior Counsel asserts that her position as a Co-ordinator of the NSS would entitle her to treat that period as “experience of teaching”, in support of her application for direct appointment as Associate Professor.

**99.** That being so said, there is another reason why I cannot find favour with the 5<sup>th</sup> respondent on this issue, which is that, going by the Kannur University Ordinances, 1999, the posts of “Director of Students Services”, as also Programme Co-ordinator, National Service Scheme”, are included in the Non-Teaching Service, which is confirmed by them themselves in Ext.P11 information obtained by the petitioner. The pleadings of the University, or that of the 5<sup>th</sup> respondent, do not disclose any contest to this, nor has the validity of the Ordinances or the genuineness of Ext.P11 been challenged before this Court.

**100.** Obviously, the afore two posts are Non-Teaching ones; and, for the sake of argument, even if it is assumed otherwise and treated to be teaching posts, it would still not change the situation because, as said above, unless the same carries with it a teaching assignment or opportunity to engage in the experience of teaching, it could not have been counted by the Scrutiny Committee, while evaluating the credentials of the 5<sup>th</sup> respondent. It is so ordered.

**101.** Finally, we come to the block of experience claimed by the 5<sup>th</sup> respondent as an Assistant Director of the “Kerala Bhasha Institute”, Thiruvananthapuram. I must record that Sri.Ranjith Thampan, learned Senior Counsel, did not seriously press this, but since it is claimed by the 5<sup>th</sup> respondent, I deem it necessary to answer that also.

**102.** It is admitted that the “Kerala Bhasha Institute” is an Academic Publishing House, under the Government of Kerala. The 5<sup>th</sup> respondent says that of Assistant Director therein



carries an equivalent pay as that of the post of Assistant Professor, with the experience prescribed for it, as being 10 years teaching/research experience in a College, University, Institute of higher learning, Research Institute or Industry. On such basis, she asserts that the three months or so that she spent in such post, prior to the making of her application for the post of Associate Professor, was rightly reckoned by the Scrutiny Committee as “experience of teaching” in her favour.

**103.** However, when one reads Ext.R5(X) order of the Government of Kerala - produced by the 5<sup>th</sup> respondent herself, it is clear that the staff of the Institute have been stated to be “almost equivalent” to that of the teaching staff; with duties “such as organising seminar/workshop for teaching staff, non teaching staff and students, serving as advisory body and conducting series of public lectures for teachers and students in higher education sector. Again, the 5<sup>th</sup> respondent says, relying upon various judgments that, since the qualification and experience required for this post is equivalent to that of an Assistant Professor, the period she spent on deputation, should also be reckoned as “experience of teaching”. I am afraid that, for the same reasons already recorded above, this contention of the 5<sup>th</sup> respondent also cannot find favour in law, since there is not even a faint averment in her pleadings that she had engaged in teaching or in teaching assignment, during the period when she was on deputation as the Assistant Director of the Institute. It is so declared.

**104.** The sole surviving contention is that of Sri.T.B.Hood – learned Senior Government Pleader, who argued that, nevertheless all which are stated above, as long as Regulations 6.0 and 6.1 of the “UGC Regulations, 2018” makes it incumbent upon the Kannur University to adopt the procedure as mentioned therein, the provisions of Table 1 of Appendix III thereof, would come into play; and consequently, that the further provisions of its Regulation 10 would enable a candidate to count the periods spent in full time research as “teaching experience”, in satisfaction of the stipulations required under Regulation 4.1(II).

**105.** Pertinently, this is not an argument which has been impelled by any of the parties, including the 5<sup>th</sup> respondent. But if the Government is to take the stand that the provisions of Regulations 6.0 and 6.1 of the “UGC Regulations 2018” ought to have been adopted by the Kannur University, then, perhaps, Ext.P4 may have to fail on that ground alone. This is because, even going by the averments of the 6<sup>th</sup> respondent - Registrar of the Kannur University, there is no indication that these provisions had been followed; but, perhaps, it was not necessary for them to have said either way, in the absence of any specific challenge to it by the petitioner. That apart, these provisions come into play at the stage of selection of the candidates shortlisted by the Scrutiny Committee, but what is being assessed by this Court in this judgment is the entitlement of the 5<sup>th</sup> respondent to pass muster at the first stage - to have been even called for interview. It would be, therefore, unnecessary for me to speak any further on this, since the Government, concededly, has no role to play in the processes and is not taking sides.

**106.** That being so found and said, it is also interesting that the Vice Chancellor himself thought it requisite to address Ext.R6(e) letter to the University, recording that Regulation 3.11 of the “UGC Regulations 2018” leaves “some doubt” on the matter of counting the period spent by an Assistant Professor on deputation, under the “FDP” Programme, as “experience of teaching” for direct recruitment as Associate Professor. However, the Registrar then says that, since the UGC did not respond to this, the Vice Chancellor decided to continue with the selection process and to accept the recommendations of the

Selection Committee; thus, placing it before the Syndicate of the University, leading to Ext.P4 being issued by him.

**107.** Normally, in such circumstances, when there was a doubt in the mind of an Authority as an eminent Vice Chancellor, the selection could not have been taken forward without it being resolved; though I am aware the Registrar asserts that, thereafter, the legal opinion, received from the learned Standing Counsel and that of the learned Advocate General were relied upon. Suffice to say, the Vice Chancellor himself found room for doubt; and it was justified, as now found by this Court.

**108.** The apercus of the afore is that, “experience of teaching” as specified in Regulation 4.1(II) of the “UGC Regulations, 2018” has to be actual teaching experience and not something that can be inferred or construed, either by operation of law or on the strength of executive orders or circulars. The post of an Associate Professor, being an extremely vital and important one in the academic scheme, the UGC found it justified to provide that only a person with requisite actual teaching experience could aspire to be directly recruited to it, particularly when the other requirements for such a post are also extremely exacting.

**109.** However, the *leitmotif* of the arguments of the 5<sup>th</sup> respondent, as I have seen above, is that, since she continued as a Teacher – within the meaning of the term, as available from the Act - her activities must be construed to be “experience of teaching”, notwithstanding the fact that she was not engaged in such during the relevant period. This is precisely what the UGC prohibits – they vehemently stipulating that a person ought to have had the requisite real teaching experience, to be directly appointed as Associate Professor, so as to ensure excellence and the highest standards in the higher education system.

**110.** In the afore context, “experience of teaching” can only be a real fact, and not a fiction or an inference. To paraphrase, unless a candidate is able to demonstrate real experience of teaching, as required by the “UGC Regulations 2018”, he/she could not have had his/her application for direct appointment as Associate Professor, approved by the Scrutiny Committee of the University, which is also a statutory one.

**111.** In the case at hand, as seen above, the Scrutiny Committee proceeded on certain assumptions, especially with respect to the periods of service claimed by the 5<sup>th</sup> respondent, while engaged as “DSS” and/or Co-ordinator of the “NSS”. Certainly, such activities may aid the growth of a person as a good teacher; but that by itself, would not be sufficient, for being considered for direct appointment as an Associate Professor, in the absence of requisite “experience of teaching”.

In the afore circumstances, I allow this writ petition and direct the competent Authority of the University to re-assess the credentials of the 5<sup>th</sup> respondent, implicitly advertent to the holdings and declarations above – specifically available in paragraphs 62, 64, 79, 90, 100 and 103. On such assessment being completed, the Final Ranked List shall be published and further action to effect appointments taken forward, without avoidable delay.