HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ No. 8791/2016

Dr. Prashant Mehta S/o Dr. P.M. Mehta, aged about 46 years, 371 3rd C Road, Sardarpura, Jodhpur.

----Petitioner

Versus

1. The National Law University, Jodhpur through its Registrar, Nagaur Road, Mandore, Jodhpur.
2. University Grants Commission, through its Secretary, Bahadurshah Zafar Marg, New Delhi
3. Vice Chancellor, National Law University, Jodhpur.
4. State of Rajasthan through Principal Secretary, Higher Education, Secretariat, Jaipur.

----Respondents

Connected With

D.B. Civil Writ No. 9153/2016

Dr. Manmeeta D/o Shri Babu Lal, aged about 40 years, R/o D-66, Parshavnath City, Sangriya, Jodhpur.

----Petitioner

Versus

1. The National Law University, Jodhpur through its Registrar, Nagaur Road, Mandore, Jodhpur.
2. University Grants Commission, through its Secretary, Bahadurshah Zafar Marg, New Delhi
3. State of Rajasthan through Principal Secretary, Higher Education, Secretariat, Jaipur.

----Respondents

D.B. Civil Writ No. 9223/2016

Dr. Anjana Vyas D/o Late Shri Gopi Krishna Bissa, aged about 45 years, resident of Jalap Mohalla, Near Bisson Ki Pol, Jodhpur.

----Petitioner

Versus

1. The National Law University, Jodhpur through its Registrar, Nagaur Road, Mandore, Jodhpur.
2. University Grants Commission, through its Secretary, Bahadurshah Zafar Marg, New Delhi
3. State of Rajasthan through Principal Secretary, Higher Education, Secretariat, Jaipur.

----Respondents

For Petitioner(s)	:	Mr. Rajesh Joshi, Senior Advocate with Mr. Vineet R. Dave Mr. Kamal Dave
For Respondent(s)	:	Mr. Kuldeep Mathur with Mr. Rajvendra Saraswat Mr. Himanshu Shreemali for the State.

HON'BLE MR. JUSTICE P.K. LOHRA
HON'BLE MR. JUSTICE ARUN BHANSALI

Order

28th May, 2019

Reportable

BY THE COURT (PER P.K. LOHRA, J.):

Petitioners, in these writ petitions, have essentially voiced their grievances against decision dated 27th June, 2016 of the respondent National Law University, Jodhpur (for short, 'NLU') besides claiming other consequential/ancillary reliefs. In order to seek complete redressal of their afflictions, the petitioners have also felt necessity to challenge vires of the University Service Regulations, 2001 (hereinafter referred to as 'Service Regulations'), and therefore, at their behest, Regulations 5 & 6 of the Regulations and amended/inserted Regulations 37 & 38 are questioned in the petitions. That apart, validity of Regulation 2(1)(d) of the Provident Fund Regulations (promulgated by NLU under Section 22 of the Schedule appended to National Law University Act, 1999) (for short, 'PF Regulations') too is assailed.

2. The ritualistic factual matrix, common in all these petitions, unfurls that initial appointment of all the three petitioners pursuant to selection was on contract basis. Petitioner Dr. Manmeeta having qualification of Ph.D. (Physics) to her credit was appointed as Assistant Lecturer in year 2001. Petitioner Dr. Anjana Vyas, having qualification of Ph.D. (Zoology) was initially appointed as Lab Assistant in year 2003 but later on promoted as Teaching Assistant in the year 2005 and thereafter as Assistant Lecturer in the year 2006. Third petitioner Dr. Prashant Mehta with qualification of Ph.D. (Chemistry) joined as Assistant Lecturer in the year 2003. Since inception of their service journey, as per all the petitioners, entrusted duties were discharged by them with utmost satisfaction. With a view to highlight their credentials, it is also pleaded in the petitions that petitioner Dr. Manmeeta earned advancement of service career w.e.f. 11th June, 2010 as Associate Professor to be fixed in higher pay scale with other admissible allowances. Likewise, for petitioner Dr. Anjana Vyas and petitioner Dr. Prashant Mehta this aspect is projected in their petitions w.e.f. 17.05.2008 and 27.07.2008 respectively.

3. Overall, the facts narrated in all the petitions depict longevity of writ petitioners' service tenure and excellence in performance of their duties, as perceived/acknowledged by the NLU. Petitioner Dr. Prashant Mehta in the writ petition has also alleged discrimination in the matter of career advancement and conferment of higher status vis-a-vis other members of teaching staff. Ventilating grievances against treating him contractual

employee, petitioner Dr. Mehta has castigated NLU for meeting out unfair treatment. Almost identical insinuations in this behalf find mention in the writ petition of Dr. Anjana Vyas. However, Dr. Manmeeta, in the writ petition, while showing her annoyance against status of a contractual employee, has otherwise also espoused cause for grant of desired reliefs.

4. Petitioner Dr. Manmeeta, in the petition, projected her academic profile with the other accolades earned, a consistent good academic record right from secondary school education also finds mention in the writ petition. As per the version of the writ petitioner, she was awarded gold medal in B.Sc. Examination of 1996 by Jai Narayan Vyas University for securing first position and "Priyadarshini" award for academic achievements in the year 2004, publishing two books which are viz. "Engineering Physics: Part I" and "Polymer Cyramic Composites for piezoelectric sensors Applications" is also unfurled in the pleadings to highlight credentials. Three students have completed their Ph.D. under her guidance besides completion of research by one incumbent and another pursuing Ph.D. is also incorporated in the pleadings to prove academic excellence.

5. The other petitioner Dr. Prashant Mehta too has mentioned with clarity and precision his academic, research and administrative assignments including publication of number of research papers in reputed national and international journals. His participation in various workshops, seminars, conferences and

continuing legal education programs for lawyers in the State and delivering lectures in these workshops and seminars is also shown depicted as credentials. That apart, some other academic and research activities are also projected in the petition to boast his profile. The third petitioner Dr. Anjana Vyas has essentially dilated on her research experience and training besides showing tenacity in discharge of her duties for earning career advancements from time to time. Research work under the caption "Induction of apotheosis in the Germ cells of adult male rats after exposure to estradiol" is specifically pleaded in the petition for projecting her research abilities.

6. Some facts, concerning course of B.Sc. LL.B.(Hons.), introduced at the threshold of NLU, with aims and objects underlying the same, are also meticulously averred in all the petitions. While attacking the impugned decision to discontinue B.Sc. LL.B.(Hons.) course by NLU, petitioners in unison, categorized the same arbitrary, unreasonable and discretionary. An attempt is also made to assail the decision on the anvil of procedural wrangles and not being founded on relevant materials germane to the matter. Consideration of the sensitive policy matter by High Power Committee twice, without keeping it abreast with the relevant facts and figures besides dealing with the same by various Committees of NLU in a casual and cursory manner is also vociferously canvassed by the petitioners. That apart, the impugned decision of NLU, which entailed discontinuance/ dispensing with services of the petitioners, is also castigated for

lack of objectivity and transparency by them with the aid of invoking principles of natural justice.

7. Petitioners, who right from the inception of their services remained on contract basis, and their term of contract was extended from time to time, in order to lay effective challenge to the impugned decision/order, also took shelter of the Rajasthan Universities Teachers & Officers (Selection for Appointments) Act, 1974 (for short, 'Act of 1974') and UGC Regulations on Minimum Qualifications for Academic Staff in the Maintenance of Standards in Higher Education 2010 (for short, 'Regulations of 2010) framed in exercise of powers conferred under Clause (e) & (g) of sub-section (1) of Section 26 of the University Grants Commission Act, 1956 (for short, 'Act of 1956'). Categorizing impugned decision to discontinue B.Sc. LL.B. (Hons.) course by NLU to be a policy decision of a great significance, having direct ramification on academic excellence of the law course, petitioners have questioned the same and consequential actions on many grounds. While attacking the policy decision, all the petitioners in unison have portrayed it an absolutely arbitrary, unreasonable and dehors the aims and objects behind the concept of 5 years' law course approved by the Bar Council of India.

8. For assailing validity of aforementioned Regulations, Part III of the Constitution enshrining fundamental rights is romped in by the writ petitioners. A special emphasis on Articles 14, 16 & 21 of the Constitution with allegations of flagrant violation thereof find

mention in all the petitions. The petitioners, in unison, pleaded in their petitions that respondent-University, incorporated and established by the State legislative enactment, i.e., National Law University Act, 1999 (for short, 'Act of 1999') for imparting qualitative law education, is discharging public functions and *sui juris,* therefore, falls within the meaning of expression "other authorities" under Article 12, and cannot claim immunity from the constitutional discipline of fundamental rights. Laying emphasis on the functions of the respondent-University, it is averred by the petitioners in their writ petitions that, in the matter of appointment/recruitment of the employees/teaching staff, it cannot deprive individuals from regular employment by keeping them contractual employees or on adhoc term for years together when the works assigned to them are of perennial nature. If the impugned Service Regulations 5 & 6 are critically examined in this behalf, then it would ipso facto reveal that University is resorting to contractual appointment or appointment on adhoc terms wholesomely as if it is established to undertake a project work or any other contingent assignment. Thus, in substance, the petitioners, besides alleging infraction of Article 13, 14 & 16 of the Constitution, have also invoked Article 21 of the Constitution.

9. The petitioners, while challenging amendments in the Service Regulations, have also invoked Article 13 of the Constitution of India by urging that the amendments cannot withstand the test of constitutionality under clause (2) of Article 13. An affirmative attempt is made by all the petitioners to question validity of the

impugned Service Regulations as being contrary to the basic tenets of a welfare State. Regulations 5 & 6 are also challenged on the anvil of not satisfying the requirements of Article 14, 16 and 21 of the Constitution precisely by urging that how and in what manner University can be allowed to treat a faculty member as a casual or contractual employee for years together. Petitioners, while castigating respondent-University for enacting impugned Service Regulations, have submitted that being subordinate legislation, its source is not at all discernible and the impugned Service Regulations are dehors Section 17 of the Act of 1999 which authorizes Executive Council of the University to frame regulations.

10. Taking a dig at the impugned Service Regulations, petitioners with full emphasis have pleaded in the writ petitions that NLU, which is established and incorporated by an Act of the State legislature, by any stretch of imagination cannot be allowed to adopt policy of hire and fire. In substance, longevity of services, which is almost more than a decade in all the three cases, is also cited a ground for challenging the impugned Service Regulations while emphasizing adherence of due selection process at the threshold of their careers vis-a-vis petitioner Dr. Manmeeta and Dr. Prasashant Mehta. Regarding the third petitioner Dr. Anjana Vyas, earning regular promotions from time to time and enjoying status of Assistant Lecturer since 2006 is pleaded in the writ petition to highlight her credentials for assailing policy decision and impugned Service Regulations.

11. The respondent-University, in its reply, refuted all the allegations with emphasis on the status of all the petitioners as contractual employees. It is also averred in the return that all of them have acknowledged their contractual assignment by furnishing undertaking to this effect. The renewal of contractual employment of the petitioners from time to time by the University is also stated in the reply with a plea that the extension was not automatic but subject to satisfactory performance of an individual. While joining issue with the petitioners on the impugned decision of discontinuing B.Sc. LL.B. (Hons.) course, it is submitted by the University that said decision was taken objectively after thorough deliberations at every level. The University, in its counter, has specifically averred that there was sharp decline in the number of students opting for B.Sc. LL.B. (Hons.) course. Elaborating its stand in this behalf, the University has further averred that at the threshold a high power committee, headed by former Chancellor of the University and the then Chief Justice of the Gujarat High Court with other Members, threadbare discussed the issue and by its interim recommendations dated 5th of December, 2014 advised the University to suspend offering B.Sc. LL.B. course for its 1st year students from the Academic Session 2015-16.

12. As per respondent-University, the interim recommendations of the high power committee are then discussed by the Finance Committee in its meeting dated 16th of January 2015 to safeguard financial interests of the University and likewise

Academic Council also examined the same to take care about academic interests in this behalf. The Academic Council of the University, on 17th of January 2015, considered the feasibility of retention of streams that are opted by a very few number of candidates. After due deliberations, Academic Council, while concurring with the policy decision of GNLU, Gandhi Nagar, unanimously, approved the proposal to set a minimum number of 15 candidates to offer a stream course for admission from Academic Year 2015-16. Approved proposal of the Academic Council, to set a ceiling of number of candidates to offer a stream course for admission from Academic Year 2015-16, was then considered by the Apex body, Executive Council, on the same day. The Academic Council, after due deliberations, unanimously approved the proposal submitted for consideration. Immediately, thereafter, the decision of the Executive Council is notified for information on the CLAT website of 2015 and simultaneously it is also clearly outlined in the prospectus of the University with following recitals:

- Minimum of 15 students will be required for offering any of the streams i.e. B.A., B.B.A. and B.Sc. on the basis of CLAT merit.
- The option exercised by the students will not be changed in any circumstances, except for the administrative reason as per the rules.
- If a stream is not offered due to lack of number of students, students opting for that particular stream will be transferred to the other stream on the basis of available seats as per the decision of the Academic Council.

13. Some facts, highlighting gradual decline in number of candidates opting for B.Sc. LL.B. stream are also pleaded by the

respondent-University in the return. It is also averred in the reply that on 11th July, 2015, 17 students of 1st Semester initially opted for B.Sc. stream but pending consideration their applications, out of them 8 students submitted a written request to withdraw from B.Sc. LL.B. stream and consequently only 9 students remained in the B.Sc. LL.B. stream. This sort of situation facilitated issuance of office order dated 5th of August, 2015 to close B.Sc. stream in the University with immediate effect. In substance, the respondent-University took a clear stand in its return that Science Faculty in the University was closed on 15th July, 2015 itself.

14. It is also pleaded by the respondent-University that in the backdrop of availability of science stream in 3rd and 4th Semesters, coupled with the sharp decline in the workload of science faculty for the Academic Session 2015-16, Professor K.K. Banerjee (Chemistry) was relieved. An attempt is also made by the respondent-University to justify its decision of closing Science Faculty by urging that the issue was again taken up by the Academic Council on 16th of January, 2016 and the Academic Council, after due deliberations, unanimously resolved to dispense with B.Sc. LL.B. (Hons.) from the Academic Session 2016-17. The aforesaid decision of the Academic Council, was then placed before the Executive Council on the same day and the Executive Council, while concurring with the decision of the Academic Council, unanimously resolved to dispense with B.Sc. LL.B. (Hons.) from the Academic Session 2016-17. However, with

respect to B.B.A. LL.B., it was resolved that course would be offered if opted by minimum of 20 students.

15. While adverting to teaching and non-teaching staff ratio, the house unanimously resolved to continue services of all non-teaching staff looking to the residential nature of University and other factors subject to decision on retrenchment that may be taken by the University on the basis of deficiency in services, misbehaviour and proven misconduct. The University has also pleaded that finally the matter was placed before the General Council headed by Hon'ble Chief Justice of Rajasthan High Court as ex-officio Chancellor of the University. Having Hon'ble Mr. Justice M.Y. Iqbal – a sitting Judge of Supreme Court, Hon'ble Mr. G.S. Singhvi – former Judge of Supreme Court and Chairman, Competition Appellate Tribunal, Shri N.M. Lodha, Advocate General – representative of the State Government, Professor S.K. Verma – former Director, Indian Law Institute, Senior faculty members and the Registrar. The General Council, after deliberations, unanimously resolved to dispense with B.Sc. LL.B. (Hons.) from Academic Session 2016-17. The final decision to close science faculty eventually led the Executive Council to take a consequential decision in its meeting dated 27th of June 2016 with the Agenda "to consider consequence of no admission in science faculty in the session 2016-17".

16. The respondent-University further submitted that the Executive Council then unanimously resolved that science stream

be wind up and as a consequence all teaching posts of science stream stand abolished, existing faculty be relieved of their job. In case any paper is left out in any Semester, Vice Chancellor may take appropriate decision including engaging a Guest/Visiting faculty. Following the decision, Notice dated 30th of June 2016 was issued by the University whereby services of petitioner Dr. Manmeeta (Physics), Dr. Anjana Vyas (Life Sciences) and other incumbent Dr. Ram Pratap Prajapat (Physics) were dispensed with. On the issue of retention or abolition of post, the University pleaded with emphasis that it is essentially a matter for the Government or the competent authority to decide. It is also averred that in the event of abolition of a department, faculty or the post, status of an incumbent employee whether temporary, permanent or contractual is wholly insignificant. As per the version of respondent-University even in case of permanent employee in such situations, he is to visit the same consequence, i.e. discharge from the service, inasmuch right to hold the post comes to an end. respondent-University in its reply has further averred that when services of an employee comes to an end due to abolition of faculty or post, the said decision/order need not be preceded by the prescribed procedure of removal or dismissal as no stigma is attached to such decision/order.

17. The respondent-University in the pleadings also laid emphasis on 5 years Law course proposed by the Legal Education Committee of Bar Council of India in the year 1994 by urging that it was aimed to modernize the legal education in an integrated

and diversified manner. It is also pleaded in the return that while endeavor of the Bar Council of India was to revitalize legal profession in the competitive era with intent to attract talent which were diverting to other professional areas such as medical and engineering etc. The factum of giving autonomy to the law schools for improving standards of legal education as desired by Bar Council of India is also mentioned in the reply. Some facts concerning reform in legal education, as per report of 1994 submitted by a Committee of judges headed by Justice A.M. Ahmadi, Judge, Supreme Court of India, are also pleaded in the reply. That apart, the establishment of respondent-University and discussions about conferring autonomy on it too are mentioned in the reply.

18. The vital issue concerning the adherence of Act of 1974 by the respondent-University and the discussions on it in presence of Secretary, Education and the then Vice Chancellor of University with its final outcome also formed part of respondents' reply. During discussion, the then Vice Chancellor also clarified that University will not take any maintenance grant and cannot be under executive regulation of State. These facts are essentially pleaded by the respondent-University to clarify its stand about applicability of the Act of 1974. Constitution of a committee under the Chairmanship of a sitting Judge of Rajasthan High Court with a Senior Advocate of Supreme Court and Secretary to the Government Department of Higher Education and corresponding amendment in Statute 9 of the University, as per

recommendations of Committee, is also highlighted in the reply to clarify autonomy of the University with a distinction of a "Mono University" having excellence different from other Universities.

19. Further clarifying its position for maintaining autonomy, it is averred in the reply by the University that it is not receiving any maintenance grant either from UGC or the State Government with a positive assertion that University meets its 100% maintenance expenditure from its own funds, i.e., students' fees. An attempt is made to clarify status and position of the respondent-University vis-a-vis UGC with specific Regulations of 2010. The impugned Service Regulations are also stoutly defended in the reply by University by urging that provision of contractual appointment in the regulations is not dehors Article 14 & 16 of the Constitution. It is also pleaded in the return that nature of appointment depends on perception of management as to the usefulness of the employee and need for incumbent in the position offered to him/her or already been in case of renewal. Respondent-University took a specific stand that contractual appointments work only if same are mutually beneficial to both the contracting parties and not otherwise.

20. On behalf of writ petitioners, rejoinder is also filed to counter some of the new facts brought in by the respondent-University in its return. Besides refuting the new facts in the reply, the petitioners also reiterated their challenge to the impugned Service Regulations with full emphasis. In their subsequent pleadings,

petitioners also took shelter of some legal grounds to substantiate their challenge to the impugned Service Regulations. Apart from rejoinder, the rival parties also filed some additional affidavits and counter affidavits to clarify their stand touching the lis involved in the petitions.

21. Mr. Rajesh Joshi, learned Senior Counsel, espousing cause of petitioners Dr. Manmeeta and Dr. Prashant Mehta, submits that both the petitioners faced selection as per Regulation 13(iv) of the Regulations in adherence of Article 14 & 16 of the Constitution and continued in service for more than a decade with satisfactory performance, pre-supposes that it was a regular selection. Learned Senior Counsel, therefore, urged that in overall scenario treating their appointment as contractual or on adhoc terms is per se arbitrary and unreasonable. Learned counsel would contend that Condition No.3 of the offer letter of appointment with the recitals "in case of satisfactory service, the committee may convert the temporary period into the probation period" further fortifies the contention of the petitioners that the appointment offered was pursuant to regular selection.

22. Elaborating his submissions in this behalf, learned Senior Counsel contends that Regulation 20 prescribes maximum probation period of one year and thereafter on successful completion of probation period by no stretch of imagination appointment of petitioners can be construed as contractual or on adhoc basis. Learned Senior Counsel has also placed reliance on

the term "Probation" under the service jurisprudence for substantiating his argument, which means testing of a person's capacity, conduct or character especially before he is admitted to regular employment. It is also submitted by learned Senior Counsel that advancement in service career of the petitioners with change in designation and giving a new nomenclature, clearly goes to show that for all practical purposes they were treated as regular employees. Granting incentives to the petitioners in the pay scales and allowing UGC pay scales is also buttressed by the learned Senior Counsel with emphasis on longevity of tenure to contend that the duties discharged by them were of perennial nature pursuant to regular selection.

23. Assailing the impugned decision of dispensing with B.Sc. LL.B. (Hons.) course, learned Senior Counsel has vehemently argued that decision is ex-facie unreasonable, arbitrary and discriminatory. It is submitted by learned Senior Counsel that to close B.Sc. LL.B. (Hons.) course, at the threshold, the High Power Committee was not apprised about true and correct factual position and contrary to it wrong facts and incomplete informations are furnished. Elaborating his submissions in this behalf, learned Senior Counsel contends that all subsequent decisions too are vitiated being founded on erroneous and incomplete facts besides basic aims and objects of introduction of five years professional law course. Mr. Joshi, learned Senior Counsel submits that a policy decision is not immune from judicial review inasmuch as it can be subjected to judicial scrutiny if it is

unreasonable, fanciful and not founded on materials which are germane to the matter.

24. Mr. Joshi further argued that adverse consequences and repercussions of any administrative decision/policy decision has to satisfy the test of Article 14 & 21 of the Constitution. Citing serious procedural irregularities in the impugned decision to dispense with B.Sc. LL.B. (Hons.) course, it is urged by learned Senior Counsel that decision to this effect was taken by the Executive Council without soliciting views of the Academic Council, with which primarily such a vital decision concerns.

25. Challenging impugned Service Regulations, it is submitted by learned Senior Counsel that Regulation 5 & 6 are ex-facie arbitrary, unreasonable and discriminatory. Mr. Joshi would urge that duties entrusted to the petitioners by no stretch of imagination can be construed as of casual nature inasmuch as they have continued for more than a decade is sufficient to show that Regulation 5 & 6 per se depict unconscionable terms of contract of employment. It is also submitted by learned Senior Counsel that Regulation 2(1)(d) of Provident Fund Regulations too is arbitrary, unreasonable and discriminatory.

26. It is also contended by learned Senior Counsel that regular deduction of PF contribution from the emoluments paid to the petitioners is yet another significant fact showing status of them as regular employees. Mr. Joshi submits that respondent-

University being an instrumentality of State, while passing the impugned order has completely abdicated concept of a welfare State by adopting policy of hire and fire. Taking aid of Article 13(1) of the Constitution, Mr. Joshi has strenuously urged that impugned Service Regulations are inconsistent with the provisions of Part III of the Constitution and therefore ultra vires. Attacking impugned Service Regulations, learned Senior Counsel contends that these Regulations are per se abrogating and abrizing fundamental rights enshrined under Chapter III of the Constitution and therefore falling short to satisfy the test of basic structure doctrine, is sufficient to declare them ultra vires. Mr. Joshi has also argued that the impugned decision of the respondent-University is dehors Article 21 of the Constitution inasmuch as it has deprived petitioners from their right to livelihood which is an integral facet of right to life.

27. Learned counsel, Mr. Kamal Dave, representing petitioner Dr. Anjana Vyas, has by and large adopted the arguments of learned Senior Counsel espousing cause of other petitioners. Supplementing his argument, Mr. Dave submits that conferring benefits of advancement in service career, by way of promotions from time to time, sufficiently demonstrates nature of the appointment as substantive and her satisfactory performance during entire tenure. While referring to the word "Promotion" in the context of service jurisprudence, Mr. Dave would urge that it signifies advancement in rank, grade, or both. He, therefore, submits that promotion pre-supposes that an incumbent is already

holding a position for being appointed to another post in higher category of the same service depending on the criteria for promotion which are merit, seniority and ability. Learned counsel, has further submitted that while interfering with policy decision Courts are expected to take a cautious approach but that doesn't mean that a policy decision is completely immune from judicial scrutiny.

28. Substantiating his arguments in this behalf, learned counsel has urged that a policy decision which is unsound, based on fact and circumstances which are not relevant and germane to the matter and founded on some facts which are wholly irrelevant or extraneous, is clearly vitiated in law. Mr. Dave further argued that power of the Court is not loathed to lift veil for unearthing truth and determining legitimacy of a policy decision. Learned counsel, Mr. Dave, has also argued that any contract of employment and service rules, detrimental to the employees, if found to be unconscionable, unfair, unreasonable, against public policy and public interest and against principles of distributive justice in the context of Part III & IV of the Constitution, are ex-facie violative of Article 14 of the Constitution. He, therefore, submits that impugned provisions be declared ultra vires and the impugned decision merits annulment.

29. Learned counsels for the petitioners in support of their various contentions have cited following legal precedents:

- Sanchit Bansal & Anr. Vs. Joint Admission Board & Ors. [(2012) 1 SCC 157], State of Tamil Nadu & Ors. Vs. V.K. Shyam Sunder & Ors. (AIR 2011 SC 3470), Institute of Chartered Financial Analysts of India & Ors. Vs. Council of the Institute of Chartered Accountants of India & Ors. [(2007) 12 SCC 210], Rohtas Industries Vs. S.D. Agarwal & Ors. [1969 (1) SCC 325], Sanjay Singh & Anr. Vs. U.P. Public Service Commission, Allahabad & Anr. [(2007) 3 SCC 720], Bhushan Uttam Khara Vs. B.J. Medical College & Ors. [(1992) 2 SCC 220], Union of India Vs. Dinesh Engineering Corporation & Anr. [(2001) 8 SCC 491], Smt. S.R. Venkataraman Vs. Union of India [(1979) 2 SCC 491], Commissioner of Income Tax Bombay & Anr. Vs. Mahindra & Mahindra Limited [(1983) 4 SCC 392], East Coast Railways & Anr. Rao & Ors. [(2010) 7 SCC 789], Sindhi Education Society & Anr. Vs. Chief Secretary, Govt. of NCT of Delhi & Ors. [(2010) 8 SCC 49], Tondon Brothers Vs. State of West Bengal & Ors. [(2001) 5 SCC 664], Bangalore Medical Trust Vs. B.S. Muddappa & Anr. [(1991) 4 SCC 54], Inderpreet Singh Kahlon & Ors. Vs. State of Punjab & Ors. [(2006) 11 SCC 356], Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia & Ors. [(2004) 2 SCC 65], Prabodh Sagar Vs. Punjab State Electricity Board & Ors. [(2000) 5 SCC 630], K. Rajendran & Ors. Vs. State of Tamil Nadu & Ors. [(1982) 2 SCC 273], Parashotam Lal Dhingra Vs. Union of India & Ors. [(1958 SCR 828], Sakal Deep Sahai Srivastava Vs. Union of India & Anr. [(1974) 1 SCC 338], State of Mysore & Anr. Vs. V.H. Srinivasmurthy [(1976) 1 SCC 817], N. Ramanatha Pillai Vs. State of Kerala & Anr. (AIR 1973 SC 2641), Balmer Lawrie & Company Ltd. & Ors. Vs. Partha Sarathi Sen Roy & Ors. [(2013) 8 SCC 345], State of Haryana & Ors. Vs. Piara Singh & Ors. [(1992) 4 SCC 118], Sri Rabinarayan Mohapatra Vs. State of Orissa [(1991) 2 SCC 599], Rattan Lal & Ors. Vs. State of Haryana & Ors. [(1985) 4 SCC 43], Veer Kumar Singh University Vs. Ad-hoc Teachers Association & Anr. Vs. Bihar State University (CC) Service Commission & Anr. [(2009) 17 SCC 184], State of Jharkhand & Ors. Vs. Kamal Prasad & Ors. [(2014) 7 SCC 223], Directorate of Film Festivals & Ors. Vs. Gaurav Ashwin Jain & Ors. [(2007) 4 SCC 737], Karnataka State Private College Stop-gap Lecturers Association Vs. State of Karnataka & Ors. [(1992) 2 SCC 29], Prem Chand, Naib Tehsildar & Ors. Vs. State of Haryana & Ors. [1989(2) SLR 556], Govt. of Karnataka & Ors. Vs. Smt. Gwramma & Ors. (AIR 2008 SC 863), Ambica

Quarry Works Vs. State of Gujarat [(1987) 1 SCC 213], Bhavnagar University Vs. Palittana Sugar Mills Pvt. Ltd. [(2003) 2 SCC 111], Bharat Petroleum Corporation Ltd. & Anr. Vs. N.R. Vairamani & Anr. [(2004) 8 SCC 579], Maharishi Mahesh Yogi Vedic Vishwavidyalaya Vs. State of Madhya Pradesh & Ors. [(2013) 15 SCC 677], Manager Govt. Branch Press Vs. D.B. Belliappa [(1979) 1 SCC 477], Judgment dated 31.03.2015 in D.B. Civil Spl. Appeal No.81/2005 (State of Rajasthan Vs. Dr. Kantesh Khetani & Ors.), Swarn Singh Chand Vs. Punjab State Electricity Board [(2009) 13 SCC 758], R.S. Garg Vs. State of U.P. [(2006) 6 SCC 430], St. Stephen's College Vs. University of Delhi [(1992) 1 SCC 558], Sri Yerneni Raja Ramchander @ Rajababu Vs. State of A.P. [2009 (12) JT 198], Cellular Operators Association of India & Ors. Vs. Telecom Regulatory Authority of India & Ors. [(2016) 7 SCC 703], Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress & Ors. [1991 Supp (1) SCC 600], P. Venugopal Vs. Union of India [(2008) 5 SCC 1], State (NCT of Delhi) Vs. Sanjay [(2014) 9 SCC 772], Kerala Samasthana Chethu Thozhilali Union Vs. State of Kerala & Ors. [(2006) 4 SCC 327], Chandgi Ram Vs. University of Rajasthan [(2001) 10 SCC 556], Kalyani Mathivanan Vs. K.V. Jeyaraj & Ors. [(2015) 6 SCC 363], Meena Kumari Gurjar (Miss) Vs. Union of India [(2016) 3 WLC 274 (DB)], Global Energy Private Limited & Anr. Vs. Central Electricity Regulatory Commission [(2009) 15 SCC 570], Secretary, Mahatama Gandhi Mission & Anr. Vs. Bhartiya Kamgar Sena & Ors. [(2017) 4 SCC 449], S.M. Hamilton Vs. AIIMS [(1990) 3 SCC 39] and, Abdul Hakeem M.A. & Ors. Vs. Mahatma Gandhi University & Ors. (Civil Appeal No.2388-2389/2019, decided on 28.02.2019.

30. Per contra, Mr. Kuldeep Mathur and Mr. Rajvendra Saraswat, learned counsels for respondent-University, while referring to the provisions of NLU Act, Statutes, Ordinances and the Regulations, have strenuously urged that impugned decision is infallible inasmuch as the same is based on objective consideration. Mr. Mathur would contend that as per University Service Regulations,

appointments are offered to the incumbents on contract basis and therefore they are precluded from questioning the terms of the employment. Learned counsel has also contended that the offer of appointment containing requisite terms as per Regulation 5 & 6 of the Regulations was accepted by the petitioners and therefore they are estopped from challenging the terms of the employment.

31. Repudiating arguments of the learned counsels assailing policy decision of the University to discontinue B.Sc. LL.B. (Hons.) Course, it is submitted by Mr. Mathur that this vital issue was discussed threadbare by all the Committees of the University and thereafter in the best financial and academic interests of the University same is taken. Mr. Mathur, for substantiating his arguments in this behalf, has placed heavy reliance on the facts pleaded by the University in its return. Learned counsel at the cost of repetition has further argued that acceptance of the terms of employment by all the petitioners without any demur, in clear and unequivocal terms, is sufficient to invoke doctrine of acquiescence against them and therefore solely on that count they are liable to be non-suited.

32. Mr. Mathur has vehemently argued that respondent-University is enjoying autonomy and therefore it was not obligatory for it to follow the procedure for recruitment provided under the Act of 1974. Learned counsel, in order to substantiate his arguments, has also placed heavy reliance on amended Statute 9 of the University Statutes whereby Clause (1)

was substituted from the original statute containing procedure for selection of teaching staff as per provisions of the Act of 1974. It is also argued by learned counsel that NLU Act of 1999 being special Act and a later Act than the Act of 1974, therefore, will have overriding effect on the earlier Act. Mr. Mathur, while joining issue with the petitioners on UGC Regulations of 2010, has urged that the respondent-University is not receiving any maintenance grant either from UGC or the State Government, and therefore, it is not bound to make compliance of those Regulations. Alternatively, learned counsel would argue that the adverse consequences provided under Section 14 for non-compliance of Rules & Regulations under Section 25 & 26 of the UGC Act are also confined to withholding of grant to the University. He, therefore, submits that those UGC Regulations cannot be construed as mandatory and binding on respondent-University.

33. Mr. Mathur, assisted by Mr. Rajvendra Saraswat, while stoutly defending the impugned Service Regulations, has contended that these Regulations are not at all violating Article 14, 16 & 21 of the Constitution. Mr. Mathur contends that for adjudging vires of any legislative provision, whether of the parent Act or subordinate Legislation, object behind its enactment is a relevant consideration more particularly when a University is involved in imparting qualitative law education. Learned counsel has also argued that a policy decision of the University to dispense with B.Sc. LL.B. Course, entailing discharge of the petitioners, is not justiciable being founded on the facts and circumstances which were relevant

and germane to the matter. While referring to Addl. Affidavit submitted on behalf of University, Mr. Mathur submits that respondent-University has clarified the position about non-receipt of any financial assistant from UGC and State Government as maintenance allowance. Mr. Mathur has also submitted that solely on the basis of continuance of the petitioners, may be for more than a decade, is hardly a ground to question the impugned decision inasmuch as after dispensing with B.Sc. LL.B. (Hons.) Course, their retention in services of University became undesirable. Learned counsel has also argued that a policy decision of the respondent-University based on objective consideration in the best interest of University cannot be made subject matter of judicial review on the strength of euphonious pleas of the petitioners.

34. Countering the arguments of the petitioners about unreasonable and unconscionable terms of the employment, it is argued by learned counsel Mr. Mathur that with the advent of time and in the backdrop of relative bargaining position of the petitioners vis-a-vis University same is not tenable. Learned counsel has further submitted that granting benefit of career advancement with the use of prefix "Promotion" cannot alter the initial terms of the employment of the petitioners which was contractual. While reiterating argument about applicability of the provisions of the Act of 1974, it is also submitted by learned counsel that even if it is assumed that provisions of the said Act are applicable, then too the said ground cannot come to their

rescue because none of the petitioners were subjected to selection in adherence of Section 5 & 6 of the Act of 1974. Mr. Mathur has argued that impugned Service Regulations by any stretch of imagination cannot be construed as violative of Article 14 and 16 of the Constitution of India and also Article 21 of the Constitution. Lastly, Mr. Mathur submits that creation or abolition of post is sole prerogative of the employer or the State Govt. and if the employer has prescribed contractual employment for a tenure or on an adhoc term, the same cannot be categorized as violative of Article 21 of the Constitution.

35. Learned counsels for the respondent-University, to strengthen its case, relied on following decisions:

- State of T.N. & Anr. Vs. P. Krishnamurthy & Ors. [(2006) 4 SCC 517], Hindustan Zinc Limited Vs. The Rajasthan Electricity Regulatory Commission, Jaipur & ors. [2016 (2) WLC (Raj.) UC 409], Maharashtra State Board of Secondary & Higher Secondary Education & Anr. Vs. Paritosh Bhupeshkumar Sheth & Ors. [(1984) 4 SCC 27], P.S. Gopinathan Vs. State of Kerala & Ors. [(2008) 7 SCC 70], Gridco Limited & Anr. Vs. Sadananda Doloi & Ors. [(2011) 15 SCC 16], Jagdish Prasad Sharma & Ors. Vs. State of Bihar & Ors. [(2013) 8 SCC 633], Kalyani Mathivanan Vs. K.V. Jeyaraj and Ors. [(2015) 6 SCC 363], Ashoka Marketing Ltd. & Anr. Vs. Punjab National Bank & Ors. [(1990) 4 SCC 406], State of Himachal Pradesh & Ors. Vs. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh [(2011) 6 SCC 597], University Grants Commission & Anr. Vs. Neha Anil Bobde (Gadekar) [(2013) 10 SCC 519]

36. Mr. Himanshu Shreemali, Counsel for the State, has by and large supported the stand of the University. Mr. Shreemali has

also laid emphasis on autonomy of the respondent-University created under the Act of 1999. It is also submitted by learned counsel Mr. Shreemali that petitioners were contractual employees and therefore solely on the strength of their longevity in services cannot make them eligible for conferment of permanent status as employees. Learned counsel has placed reliance on a decision of Supreme Court in University of Rajasthan and Ors. Vs. Prem Lata Agarwal and Ors. [(2013) 3 SCC 705].

Heard rival parties at length and perused the materials available on record.

37. Well the rival parties have locked horns by articulating submissions touching vires of the Regulations under scanner but then simultaneously at their behest merits of the case are also unfolded with full vigour. We feel shy to scrutinize arguments on merit at the threshold and therefore switch on to examine vires of the impugned Service Regulations. This sort of adjudication is also desirable in the backdrop of reliefs craved by the respective writ petitioners in general barring challenge to vires of some Regulations. Undeniably, all the reliefs in the petitions except challenge to the vires of Regulations can be claimed by the writ petitioners before a Single Bench and, therefore, rigour of Rule 55(xi) of the Rajasthan High Court Rules and order of the Hon'ble Chief Justice dated 28th of February, 2011 has placed these matters for judicial scrutiny of the Bench.

Before proceeding to consider various contentions of the learned Counsel for the parties, it would be appropriate to have a glance at impugned Service Regulations.

38. Regulations 5, 6 of the University Service Regulations, 2001 read as under:

> S/Reg/5 Nature of appointment: The appointment in the University shall be on the basis of contract for a tenure or on ad hoc terms and shall be based on such terms and conditions as may be provided in the Regulation or mutually agreed upon if not provided in the Regulation.
>
> S/Reg/6 Tenure appointment: Tenure appointment shall mean employees appointed in the scale of pay in a post already created by the competent authority of the University for a term of five years renewable at the interval of every five years based on the evaluation made by a Committee appointed by the Vice Chancellor, in the existing terms and conditions or as revised by the authority. Provided that in the case of first appointment the University may give appointment for a shorter period.

Amended/inserted Regulations 37 & 38 of the Regulations are reproduced as infra:

> S/Reg/37- The services of an employee may be discontinued after serving a 30 days' notice or immediately after payment of 30 days salary before the expiry of contractual period on account of consistent ill-health of an employee or factors like lack of workload, work-requirement or any other financial or administrative reasons.
>
> S/Reg/38- The contract of employment may or may not be extended by University depending on the factors like lack of workload, work-requirement, non-

> requirement of the post or any other financial or administrative reasons.
>
> (Inserted pursuant to Resolution of the Executive Council dated 17.01.2016)

Regulation 2(1)(d) of the University Provident Fund Regulations defining "permanent employee", reads as follows:

> (d) "Permanent employee means an employee appointed in regular pay scale in a substantive position, either on the course basis or on contract for fixed period of not less than one year."

39. For adjudging vires of any provision of law, power of judicial review is available to this Court under the Constitution. This basic tool, at the disposal of the Courts to control exercise of discretionary power is called "doctrine of ultra vires". The Courts invoke this doctrine to check excess of bureaucratic power. "Ultra vires" means, "beyond the powers". Justice Douglas of U.S. Supreme Court in United States Vs. Wunderlich 342 US 98 (1951), observed, "Law has reached its finest moments when it has freed man from the unlimited discretion of some Ruler, ….. official, some bureaucrat …..Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other interventions".

Supreme Court in Khudiram Vs. State of West Bengal [(1975) 2 SCC 81], has observed:

> "...there is nothing like unfettered discretion immune from judicial reviewability. The truth is that a Govt. under law, there can be no such thing as unreviewable discretion."

Speaking for the Court, Krishna Iyer J., in case of Baldev Raj Chadha Vs. Union of India & Ors. [(1980) 4 SCC 321] has emphasized that "absolute power is anathema under our Constitutional order" and that "naked and arbitrary exercise of power is bad in the eye of law….."

40. In all these matters, we have been called upon to adjudge validity/constitutionality of some of the Regulations, which are presumably part of subordinate/delegated legislation/instructions having legislative character. Therefore, it would be just and appropriate to examine grounds for challenging the validity, Court's approach and considerations in such matters. The legal position is no more *res integra* that there is a presumption in favour of the constitutionality or the legality of a subordinate legislation and the burden is upon the incumbent, who attacks it to show that it is invalid. Supreme Court in P. Krishnamurthy & Ors.(supra) outlined/recognized following legitimate grounds to challenge a subordinate legislation:

> a) Lack of legislative competence to make the sub-ordinate legislation.
>
> b) Violation of Fundamental Rights guaranteed under the Constitution of India.
>
> c) Violation of any provision of the Constitution of India.
>
> d) Failure to conform to the Statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

> e) Repugnancy to the laws of the land, that is, any enactment.
>
> f) Manifest arbitrariness/unreasonableness (to an extent where court might well say that Legislature never intended to give authority to make such Rules).

The same view is reiterated by Division Bench in Hindustan Zinc Ltd. (supra).

41. Now, making judicial scrutiny of the impugned Service Regulations, if the first ground of challenge to subordinate legislation i.e., "Lack of legislative competence to make the subordinate legislation", is examined objectively and with pragmatic approach, then unhesitatingly we feel persuaded to consider the same very significant. Upon perusal of the parent Act, i.e., Act of 1999, it is abundantly clear that Section 17 envisage framing of Regulations to provide for administration and management of the affairs of the University by vesting such powers in Executive Council. However, it may be observed that Section 17 of the Act of 1999, while delegating powers to Executive Council to frame Regulations, has not provided guidelines. Likewise, under Section 18, an authority of the University is also empowered to make Regulations but for providing any guidelines in this behalf. It goes without saying that parent Act has delegated powers to Executive Council to make subordinate legislation but, we are afraid, power of the delegatee is not unbriddled and uncanalized so as to make subordinate legislation which do not conform to the parent statute

or violate fundamental rights enshrined under Chapter III of the Constitution. If the entire Act of 1999 is examined objectively, then it would *ipso facto* reveal that there is no specific provision prescribing selection procedure and nature of appointments of teaching staff/faculty members or other officials in the University. Therefore, if validity of the Regulations is tested on the anvil of ground (4), i.e., "failure to conform to the statute under which it is made or exceeding the limit of the authority conferred by the enabling Act", then it would be amply clear that the impugned Service Regulations are not edificed on any source envisaged in the parent statute i.e. Act of 1999.

42. At this juncture, even if a benevolent view about validity of subordinate legislation is taken, by adhering to the presumption, we feel shy to bail out impugned Service Regulations. As per respondent-University, the Regulations are framed by the Executive Council in consonance and in conformity with Statute 9 of the University. The original Statute 9 of the University reads as under:

> **9. Powers and functions of the Executive Council.**– Without prejudice to the provisions contained in Sec.5, the Executive Council shall have the following powers and functions, namely:-
>
> (1) to appoint, from time to time, the Dean, Director (Research and Training), the Registrar, the Librarian, the Controller of Examinations, Professors, Associate Professors, Assistant Professors and other members of the teaching staff, as may be necessary, on the recommendations of the Selection Committee constituted under and

in accordance with the provisions of the Rajasthan Universities' Teachers and Officers (Selection for Appointment) Act, 1974 (Act No. 18 of 1974);

Explanation.– The references to Syndicate in the Rajasthan Universities Teachers and Officers (Selection for Appointment) Act, 1974 (Act No. 18 of 1974) shall be construed as references to the Executive council for the purposes of this Act.

(2) to create after Chancellor's recommendation and prior approval of the State Government administrative, teaching, research, ministerial and other necessary posts, as also to determine the number and emoluments of such posts, to specify minimum qualification for appointment to such posts and to appoint persons after due selections as per provisions under sub-sec (1) to such posts on such terms and conditions of service as may be prescribed by the regulations made in this behalf, or to delegate the powers of appointments to such authority or authorities or officer or officers as the Executive Council may, from time to time, by resolution, either generally or specifically, direct:

(3) to grant in accordance with the regulations leave of absence other than casual leave to any officer of the University and to make necessary arrangements for the discharge of the functions of such officer during his absence:

(4) to manage and regulate the finances, accounts, investments, property, other matters and all other administrative affairs of the University and for that purpose to appoint such agents, as it may think fit;

(5) to invest any money belonging to the University, including an unapplied income, in such stock, funds, shares or securities, as it may, from time to time, think fit or in the purchase of immovable property in India, with the like power of varying such investments from time to time:

(6) to transfer or accept transfers of any movable or immovable property on behalf of the University:

(7) to enter into, vary, carry out and cancel contracts on behalf of the University and for that purpose to appoint such officers as it may think fit:

(8) to provide the buildings, premises, furniture and apparatus and other means needed for carrying on the work of the University:

(9) to provide, purchase or accept by donation books for library of the University:

(10) to entertain, adjudicate upon and if it thinks fit, to redress any grievances of the officers of the University, the teachers, the students and the University employees, who may for any reason, feel aggrieved, otherwise than by an act of a court;

(11) to appoint examiners and moderators, and if necessary to remove them and to fix their fees, emoluments and travelling and other allowances, after consulting the Academic Council:

(12) to select a common seal for the University and to provide for the custody of the seal; and

(13) to exercise such other powers and to perform such other duties as may be conferred or imposed on it by or under this Act.

43. The amended Statute came into offing w.e.f. 27th August, 2004 when it was published in Gazette. In juxtaposition to the same, the University Service Regulations were framed before amendment in Statute 9 and made effective more than two years anterior to the amendment in the Statute. Therefore, on the crucial date, i.e. April 1, 2002, these Regulations ought to have been framed by the University as per Statute 9, which was in

vogue. By no stretch of imagination amended Statute 9 can be treated as source of the University Service Regulations. Thus, the plea of the respondent-University to defend impugned Service Regulations by taking shelter of Statute 9 is per se alluring but not of substance. It is nothing but an abortive attempt to put a cart before the horse. This sort of situation has rendered the impugned Service Regulations vulnerable.

44. At this stage, we are also persuaded to examine validity of the impugned Service Regulations on the touchstone of ground (2) & (3); viz., violation of fundamental rights guaranteed under the Constitution and violation of any provision of the Constitution respectively. These two grounds are of very wide amplitude and therefore deserve judicial scrutiny with pragmatic approach. In order to analyze these two grounds, it has become imperative for us to objectively examine the functions and activities carried out by respondent-University. The respondent-University is incorporated and established by the State Legislature vide its enactment of Act of 1999 for imparting quality Law education. We have no hesitation in concurring with the submission of the learned counsel for the University that the respondent-University is involved in imparting quality Law education. However, it is rather difficult to agree with the contention of the learned counsel for the University that quality education can only be imparted by contractual teachers/faculty members and not by a regular faculty. University being an instrumentality of the State cannot be allowed

to adopt policy of total adhocism in the guise of a jejune plea of imparting quality education.

45. There is no National or International University involved in imparting quality Law education, which has not employed regular teaching faculties and simply thriving on contractual teachers or adhoc teachers. Some of the foreign Universities imparting best Law education in the world are not only maintaining teacher and student ratio but employing regular teaching faculty to ensure best results. We may quote some of the examples:

Sr. No.	**Name of University**	**Student-Teacher/faculty ratio**
1.	Harvard University	7:1
2.	University of Oxford	10:1
3.	University of Cambridge	11:1
4.	Yale University	6:1
5.	Stanford University	5:1
6.	New York University	9:1
7.	University of California, Berkeley	17:1
8.	Columbia University	6:1

(*Source: Forbes.com, financialexpress.com, businessinsider.com, usnews.com, facts.stanford.edu, nyu.edu, bestvalueschools.org, and undergrad.admissions.columbia.edu*).

Likewise, the Indian Universities imparting quality Law education too are not employing entire teaching faculties on contract/adhoc basis but employing regular teaching faculties, which is evident from the information uploaded on the respective

websites of the concerned Universities. The examples are as under:

Sr. No.	Name of University
1.	National Law School of India, Bangalore
2.	NALSAR University of Law, Hyderabad
3.	National Law Institute University, Delhi
4.	National University of Juridical Sciences, Kolkatta
5.	ILS Law College, Pune
6.	Symbiosis Society's Law College, Pune

46. Being an instrumentality of the State, respondent-University cannot be absolved from its obligation to enact law, which includes Regulations also in consonance and conformity with Part III of the Constitution enshrining fundamental rights to the citizens. The respondent-University, in our opinion, cannot be allowed to claim special privilege vis-a-vis other instrumentalities of the State or concession in the matter of framing Rule/Regulations prescribing mode of recruitment and other service conditions of the teachers and officers. Article 14 of the Constitution of course permits classification but it prohibits class legislation. Stand of the University, to treat it as separate and distinct class from other other universities/instrumentalities of the State, appears to be quite alluring but it lacks legal foothold. For adjudging validity of a classification within the meaning of Section 14 of the Constitution, twin tests, which are: (i) that the classification must be based on intelligible differentia, and (ii) it must have some nexus with the object sought to be achieved; are to be applied. With utmost regret, we are unable to record affirmation with this

plea of the University that it is a class apart from other Universities/instrumentalities of the State on the touchstone of these twin tests. In overall scenario and upon scrutiny of pleadings, such contention on behalf of respondent-University legally/logically cannot be countenanced.

47. In Central Inland Water Corporation Ltd. & Anr. Vs. Brojo Nath Ganguly & Anr. [(1986) 3 SCC 156], Supreme Court held:

> "As the Corporation is "the State" within the meaning of Article 12, it was amenable to the writ jurisdiction of the High Court under Article 226. It is now well-established that an instrumentality or agency of the State being "the State" under Article 12 of the Constitution is subject to the Constitutional limitations, and its actions are State actions and must be judged in the light of the Fundamental Rights guaranteed by Part III of the Constitution (see, for instance, S*ukhdev Singh and Ors. v. Bhagatram Sardar Singh Raghuvanshi and Anr.*, The International Airport Authority's Case and Ajay Hasia's Case). The actions of an instrumentality or agency of the State must, therefore, be in conformity with Article 14 of the Constitution. The progression of the judicial concept of Article 14 from a prohibition against discriminatory class legislation to an invalidating factor for any discriminatory or arbitrary State action has been traced in *Tulsiram Patel c*ase (at pages 473-476). The principles of natural justice have now come to be recognized as being a part of the Constitutional guarantee contained in Article 14."

Supreme Court, in its Constitution Bench judgment, in the matter of D.T.C. Mazdoor Congress & Ors. (supra) reiterated the same principle. Speaking for the Court, Sawant J., in his concurring judgment, thus, observed:

> "The employment under the public undertakings is a public employment and a public property. It is not only the undertakings but also the society which has a stake in their proper and efficient working. Both

> discipline and devotion are necessary for efficiency. To ensure both, the service conditions of those who work for them must be encouraging, certain and secured, and not vague and whimsical. With capricious service conditions, both discipline and devotion are endangered, and efficiency is impaired.
>
> The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.
>
> Both the society and the individual employees, therefore, have an anxious interest in service conditions being well-defined and explicit to the extent possible. The arbitrary rules, such as the one under discussion, which are also sometimes described as Henry VIII Rules, can have no place in any service conditions."

48. Constitution Bench of Supreme Court in Secretary, State of Karnataka Vs. Uma Devi (3) & Ors. [(2006) 4 SCC 1], observed: "But, a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other considerations. Regular appointment must be the rule." The Court, further held:

> "With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment."

49. Sadananda Doloi (supra), a case relied on by the respondent-University, is of contractual appointment accepted by the employee/officer but the appointment was for a fixed tenure as per Service Regulations which provided contractual appointment to the post in question. Moreover, in the said matter, no challenge was laid to the validity of Service Regulations. The appointment offered to the employee/officer in that case was of Senior General Manager. . HRP, Job Evaluation, Appraisal, Remuneration with a commercial venture and not in an educational institution. Thus, by relying on peculiar facts and circumstances of the case, the Court was persuaded to turn down his plea. Therefore, this judgment cannot render any assistance to the respondent-University.

50. The fundamental right of life and personal liberty, enshrined under Article 21 of the Constitution, is very wide in its scope and applicability, and with the advent of modern strides in jurisprudence, Apex Court, by its series of revolutionary judgments, has widened its connotations and amplifications. In the present scenario, right to life with human dignity with minimum sustenance and shelter, including all those rights and aspects of life which would go to make a man’s life complete and worth living, would form part of life. Therefore, on joining government service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental right

in favour of the Government. The Government, only because it has the power to appoint, does not become the master of the body and soul of the employee. The State may not, by affirmative action be compellable to provide adequate means of livelihood or work to the citizens. But any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending Article 21 of the Constitution.

51. The University being a statutory body is not expected to employ teachers and other officials on contract/*adhoc* basis for years together, more particularly when the duties and functions discharged by them are of perennial nature. When law prohibits, employment of workmen on contract basis for years together if duties assigned to them are of perennial nature, we are afraid how teachers can be treated below par the workmen. In Indian context, the status of a teacher vis-a-vis disciple is at the highest esteem and they are treated with reverence. Section 22 of the Indian Contract Act, 1872 also describes teacher and taught relationship as that of a fiduciary relationship. That apart, this sort of provision is a glaring example of the concept of hire and fire and depriving teachers from the legitimate service benefits. Nebulous and unsatisfactory conditions of service of teaching community create a sense of insecurity which may ultimately result in making education set up ineffective and insufficient. So it

is necessary and desirable to do away with total adhocism or contractual appointment amongst teachers.

52. The respondent-University, having been established and incorporated by the State Legislature, cannot be allowed to enact laws with impunity in utter disregard to Article 13 of the Constitution. In the present matters, the Service Regulations are providing unconscionable terms of the employment, i.e. offering employment on the basis of contract for a tenure or on an adhoc term despite facing ordeal process of selection. The petitioners at the time of joining services were obviously having no alternative but to accept the terms of employment thrusted on them dehors Section 23 of the Contract Act. Therefore, impugned Service Regulations 5, 6 and amended/inserted Service Regulations 37 & 38 of employing teachers on contract basis for a tenure or on adhoc term, providing for termination of contract by giving one month's notice and non renewal/extension of contract of employment in certain contingencies, are manifestly arbitrary and unreasonable. In substance, genus of Regulations 37 & 38 is Regulations 5 & 6 of the Service Regulations. If Regulations 37 & 38 are construed with pragmatic approach, then undoubtedly both these Regulations being consequential and necessary corollary to Regulations 5 & 6 are ex-facie vulnerable and cannot be sustained. The competent authority, while resorting to these two Regulations, is bound to be guided by inhibitions of Regulations 5 & 6 of the Service Regulations consequently arriving at a decision to the

detriment of an employee without objectivity. If the impugned Service Regulations are examined within the parameters of service jurisprudence by applying concept of a model employer vis-a-vis respondent-University being a wing of welfare State, then indisputably we are of the view that impugned Service Regulations are in clear negation of Articles 14, 16 & 21 of the Constitution. Even by applying myopic vision of judicial review for testing validity of impugned Service Regulations on the anvil of these Articles, we are unable to give our nod of affirmation.

53. The other ground, on which vires of the impugned Service Regulations can be subjected to judicial scrutiny, is ground No.5 i.e. repugnancy to the laws of the land, i.e., any enactment. For attacking impugned Service Regulations, learned counsels for the petitioners have taken shelter of the provisions of Act of 1974 by laying stress on Sections 3, 5 & 6 of the Act of 1974. The precise contention of the petitioners is that the procedure for selection provided under the Regulations is dehors the Act of 1974 and repugnancy of the impugned Service Regulations with the provisions of the Act of 1974 is writ large. To counter the argument of the petitioners, respondent-University has essentially pleaded that it is autonomous and the Act of 1999 being special Act any subordinate legislation under this Act cannot be controlled by the provisions of the Act of 1974. We are aghast that respondent-University by simply boosting its credentials as premier law institution and the so-called autonomy which it is

enjoying, cannot be allowed to claim liberty to thwart law of the land.

54. The respondent-University has laid emphasis on autonomy with which it is endowed as per Statute 9 to defend impugned Service Regulations but we feel shy to endorse its defence upon threadbare examination of the Act of 1999 and Statute 9 as on the day when University Service Regulations 5 & 6 were framed and made effective. As observed supra, Statute 9 was amended w.e.f. 27th of August 2004 and the University Service Regulations were framed and enforced from April 1st 2002, its repugnancy with the Act of 1974 is clearly apparent. It may be observed here that in the original Statute 9 there was a clear stipulation about following procedure for appointment of teachers and officers of the University in accordance with the Act of 1974. Regulations 37 & 38 are inserted w.e.f. 17th of January, 2016 and by then all the petitioners completed services of more than a decade, therefore, such substantive provision to their detriment cannot be given posterior effect vis-a-vis them. Otherwise also, both these provisions being consequential to Regulations 5 & 6, entail the same fate as that of Regulations 5 & 6. Statute 9 being a piece of subordinate legislation, in legal parlance, cannot have retrospective effect, nor the same is traceable from available material. There is a presumption of prospectivity, as articulated in the legal maxim "*nova constitutio futuris forman imponere devet non praecraeteritis*" i.e., "A new law ought to regulate what is to

follow, not the path, and its presumption operates unless shown to the contrary by express provision in the statute or is otherwise discernible by necessary implication. A conjoint reading of sub-section (4) & (6) of Section 15 of the Act of 1999 also makes it crystal clear that amendment to a statute shall come into force on its publication in official gazette. Therefore, even by necessary implication amendment in Statute 9 shall not be from retrospective effect.

55. Upon perusal of the Act of 1999 with bird's eye view, we are unable to lay our hand on any provision which has granted exemption to the respondent-University from following procedure for recruitment envisaged under the Act of 1974. Assuming it that Act of 1999 is a special Act vis-a-vis the Act of 1974, which we are afraid not, then too sans any provision, toning down rigor of Sections 3, 5 & 6 of the Act of 1974, it is not possible to concur with the stand of the respondent-University solely on its ambitious plea of autonomy. Section 3 starts with non-obstante clause, therefore, even if it is decades old, no inference can be drawn that subsequent Act of 1999 has impliedly overturned or diluted its overriding effect on other statutes concerning Universities incorporated and established by enactment of State legislature. Strangely, under Regulation 13 of the University Service Regulations, procedure for selection is provided with coram of the committee in clear juxtaposition to Sections 3, 5 & 6 of the Act of 1974.

The learned counsel for parties have advanced contrasting arguments pertaining to the Act of 1974 and the Act of 1999. The petitioners are essentially harping on the Act of 1974 being special statute vis-a-vis the Act of 1999 and conversely Mr. Kuldeep Mathur, learned counsel for the respondent-University has buttressed with full emphasis that being later Act and for other reasons, Act of 1999 is special statute vis-a-vis Act of 1974.

56. The question as to the relative nature of the provisions, general or special, requires determination with reference to the area and extent of their application, either generally or specially, in particular situations. In common parlance, a general statute is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class. Contrary to it, a special statute as the term is generally understood, is one relates to particular persons or things of a class or to a particular portion or section of the State only. Therefore, when a special provision is made on a certain matter, that matter is excluded from general provision. Now, by adhering to these basic principles of interpretation of statutes, if the two Acts are construed, then it would i*pso facto* reveal that undeniably both are the legislative enactments of the State. May be, the Act of 1974 is an earlier legislation but the object of the Act is to provide for selection and appointment of teachers and officers of the Universities in Rajasthan. "Officer" and "Teacher" are defined

under Section 2(iv) and (ix) respectively. Section 2(vi) defines "relevant law", which reads as under:-

> "2(vi) "relevant law" means an enactment of the Rajasthan State Legislature establishing a University in Rajasthan, and it includes the statutes, ordinances, bye-laws, rules, notifications or orders made thereunder and as amended from time to time.

Likewise, Section 2(x) defines "University" as follows:

> "2(x) "University" means a University established in Rajasthan by an Act of the State Legislature;"

Sections 3, 5 & 6 of the Act of 1974 are reproduced as infra:

> **3. Restrictions on appointments of teachers and officers. -** (1) Notwithstanding anything contained in the relevant law, as from the commencement of this Act, no teacher and no officer in any University in Rajasthan shall be appointed except on the recommendations of the selection committee constituted under section 4,
>
> (2) Save as otherwise provided in sub-section (3) every appointment of a teacher or of an officer in any University made in contravention of sub-section (1) shall be null and void.
>
> (3) Nothing herein contained shall apply to the appointment of a teacher or an officer as a stop-gap arrangement for a period not exceeding one year or to the appointment of a part-time teacher or of a teacher or offficer in the pay scale lower than that of lecturer or Assistant Registrar respectively.
>
> *Explanation.* - The expression "appointed" in sub-section (1) shall mean appointed initially and not appointed by way of promotion.

> **5. Constitution of selection committees. -** (1) For every selection of a teacher or of an officer in a University, there shall be constituted a committee consisting of the following:-
>
> (i) Vice-Chancellor of the University concerned, who shall be the Chairman of the committee;

(ii) an eminent educationist to be nominated by the Chancellor for a period of one year;

(iii) an eminent educationist to be nominated by the State Government for a period of one year;

(iv) one member of the Syndicate to be nominated by the State Government for a period of one year; and

(v) such other persons as members specified in column 2 of the Schedule for the selection of the teachers and officers mentioned in column 1 thereof:

Provided that where the appointment of a teacher is to be made in the faculty of agriculture in any University or in any University-College imparting instruction or guiding research in agriculture there shall be one more expert to be nominated by the Syndicate out of a panel of names recommended by the Indian Council of Agriculture Research:

Provided further that the Selection Committee for teaching posts in the faculty of engineering and technology shall also include an expert to be nominated by the Syndicate out of a panel of names recommended by the All India Council of Technical Education.

(2) The eminent educationists nominated under clause (ii) and clause (iii) of sub-section (1) and the member of the Syndicate nominated under clause (iv) of the said sub-section shall be members of every Selection Committee constituted during the course of one year from the date of his nomination:

Provided that the member for a Selection Committee nominated under clauses (ii), (iii) or (iv) of sub-section (1) shall continue to be the member of every Selection Committee even after the expiry of his term until a fresh nomination is made by the Chancellor or, as the case may be, by the State Government subject, however, that fresh nomination of such member for Selection Committee shall be made within a period not exceeding three months from the date of expiry of his term.

(3) No person shall be eligible to be nominated as an expert on any Selection Committee in any one year

if he has been a member of any two Selection Committees during the course of the same year.

6. Procedure of selection committees. - (1) The quorum required for the meeting of a Selection Committee constituted under section 5 shall not be less than five, out of which at least two shall be the experts, if the selection to be made is for the post of a Professor or Reader, and at least one shall be expert, if the selection to be made is for the post of a Lecturer or any other post of a teacher equivalent thereto. The quorum required for the meeting of a Selection Committee for the selection of non-teaching posts shall be not less than one-half of the number of the members of the Selection Committee, out of which at least one shall be an expert.

(2) The Selection Committee shall make its recommendations to the Syndicate. If the Syndicate disapproves the recommendations of the Selection Committee, the Vice-Chancellor of the University concerned shall submit such recommendations along with reasons for disapproval given by the Syndicate to the Chancellor for his consideration and the decision of the Chancellor thereon shall be final.

(3) Every Selection Committee shall be bound by the qualifications laid down in the relevant law of the University concerned for the post of a teacher or, as the case may be, of an officer.

(4) The Selection Committee, while making its recommendations to the Syndicate under sub-section (2), shall prepare a list of candidates selected by it in order of merit and shall further prepare a reserve list in the same order and to the extent of 50% of the vacancies in the posts of teachers or officers for which the Selection Committee was constituted under sub-section (1) of section 5 and shall forward the main list and the reserve list along with its recommendations to the Syndicate.

57. Therefore, upon analyzing the aforementioned definitions and the mandatory provisions contained in Sections 3, 5 and 6,

more particularly Section 3, which starts with non-obstante clause and there being no corresponding provision under the Act of 1999 showing repugnancy with the provisions of the Act of 1974, it is rather difficult to accept euphonious plea of the respondent-University that Act of 1999 is a special statute vis-a-vis Act of 1974. Moreover, the Act of 1974 is governing the province of selection for appointment of teachers and officers in the Universities of the State of Rajasthan, whereas Act of 1999 relates to establishment of respondent-University, therefore, on the touchstone of basic principles of interpretation of statutes, Act of 1999 cannot be construed as special statutes vis-a-vis Act of 1974. It may also be observed here that a wholesome perusal of the entire Act of 1999 clearly reveals that it is conspicuously silent about applicability of the Act of 1974 and containing no repeal or saving clause.

58. Even if, we accept the plea of the respondent-University that Act of 1999 is a special statute, the legal maxim g*eneraliabus specialia derogant,* i.e., things special restrict things general then too the same cannot be invoked in abstract sense because there is no reference in the Act of 1999 to the previous legislation i.e. Act of 1974. Thus, in these circumstances, exception to the aforementioned maxim, i.e., *generalia specialibus non derogant,* which means things generally do not restrict (or detract from) things special, is clearly invocable.

Somervell L.J. in Harlow Vs. Minister of Transport and the Ragbi Portland Cement Co. Limited (1951) 2 KB 98 with concurring judgment of Denning L.J., held that Special Acts are not repealed by general Acts unless there be some express reference to the previous legislation, or necessary inconsistency in the two Acts standing together which prevents the maxim being applied.

Supreme Court in A.B. Krishna & Ors. V/s. State of Karnataka & Ors. [(1998) 3 SCC 495], while examining conflict between general provision vis-a-vis special provision, further elaborated these maxims. The Court held:

> "So far as the question of implied supersession of the Rules made under Section 39 of the Act by the General Recruitment Rules, as amended in 1977, is concerned, it may be pointed out that the basic principle, as set out in Maxwell's Interpretation of Statutes (11th edn., page 168), is that:-
>
> > "A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus non derogant, or, in other words, 'where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act."
>
> This principle was reiterated in Vera Cruz's case, (1884) 10 AC 59, as under:-
>
> "Where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by

> earlier legislation... that earlier and special legislation is not to be held indirectly repealed, altered or derogated from merely by force of such general words without any indication of a particular intention to do so."
>
> Vera Cruz's case was followed in Eileen Louise Nicolle v. John Winter Nicolle, (1992) 1 AC 284, as under:-
>
> > "It is no doubt a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases of which the particular law is but one."
>
> To the above effect, is also the decision of this Court in Maharaja Pratap Singh Bahadur v. Thakur Manmohan Dev, in which it was indicated that an earlier Special Law cannot be held to have been abrogated by mere implication. That being so, the argument regarding implied supersession has to be rejected for both the reasons set out above."

59. In a subsequent decision in case of Allahabad Bank Vs. Canara Bank and Ors.[(2000) 4 SCC 406], Supreme Court had the occasion to consider two special statutes to decide which Act shall override in the event of repugnancy, and the Court held:

> "Alternatively, the Companies Act, 1956 and the RDB Act can both be treated as special laws, and the principle that when there are two special laws, the latter will normally prevail over the former if there is a provision in the latter special Act giving it overriding effect, can also be applied. Such a provision is there in the RDB Act, namely, Section 34. A similar situation arose in *Maharashtra Tubes Ltd. v. State Industrial and Investment Corporation of India* where there was inconsistency between two special laws, the Finance Corporation Act, 1951 and the Sick Industries Companies (Special Provisions) Act, 1985. The latter contained Section 32 which gave overriding effect to its provisions and was held to prevail over the former. It was pointed out by Ahmadi, J. that both special statutes contained non-obstinate clauses but that the

> "1985 Act being a subsequent enactment, the non-obstinate clause therein would ordinarily prevail over the non-obstinate clause in Section 46-B of the 1951 Act unless it is found that the 1985 Act is a general statute and the 1951 statute is a special one".
>
> Therefore, in view of Section 34 of the RDB Act, the said Act overrides the Companies Act, to the extent there is anything inconsistent between the Acts."

Likewise, Supreme Court in Commercial Taxes Officer Vs. Binani Cement & Anr. [(2014) 8 SCC 319] has laid down criteria for determining whether statute is a special or general one and relying on some of the earlier decisions, the Court held:

> "In *Gobind Sugar Mills Ltd. vs. State of Bihar* [(1999) 7 SCC 76] this Court has observed that while determining the question whether a statute is a general or a special one, focus must be on the principal subject-matter coupled with a particular perspective with reference to the intendment of the Act. With this basic principle in mind, the provisions must be examined to find out whether it is possible to construe harmoniously the two provisions. If it is not possible then an effort will have to be made to ascertain whether the legislature had intended to accord a special treatment vis-a-vis the general entries and a further endeavour will have to be made to find out whether the specific provision excludes the applicability of the general ones. Once we come to the conclusion that intention of the legislation is to exclude the general provision then the rule "general provision should yield to special provision" is squarely attracted.
>
> Having noticed the aforesaid, it could be concluded that the rule of statutory construction that the specific governs the general is not an absolute rule but is merely a strong indication of statutory meaning that can be overcome by textual indications that point in the other direction. This rule is particularly applicable where the legislature has enacted comprehensive scheme and has deliberately targeted specific problems with specific solutions. A subject specific provision relating to a specific, defined and descriptable subject is regarded as an exception

> to and would prevail over a general provision relating to a broad subject."

60. It is also quite perplexing that the Act of 1999 nowhere envisage any provision regulating procedure for appointment of teachers and officers of the University and therefore, rigour/effect of the impugned Service Regulations in the form of subordinate/delegated legislation is *per se* not discernible from the Act of 1999. The Notification dated 8th of March, 2002 simply contains following recitals:

> "No.: NLU/JODH/2002/901-9 Date: March, 2002
>
> **Notification**
>
> It is notified that the Executive Council at its meeting held on November 18, 2001, has approved the University Service Regulations 2001 and these Regulations are made effective w.e.f. April 1, 2002.
> A copy of the University Service Regulations 2001 are enclosed herewith.
>
> Registrar"

61. Section 12 of the Act of 1999 simply says that Executive Council shall be the chief executive body of the University and statute 9 which itself is a subordinate legislation, has completely abdicated its powers for regulating the terms of appointment of teachers and constitution of selection committee as well as prescribing service conditions inasmuch as it simply contains constitution of selection committee under the Regulations and so also basis of appointment on tenure or non-tenure basis. The statute being subordinate legislation is bound to adhere the Act of 1999 and not to prescribe mode of appointment, corum of selection committee or service conditions dehors the parent Act.

Thus, the Service Regulations as such are framed by the Executive Council by deriving its powers from a subordinate/delegated legislation i.e. unamended Statute 9 of the University Statutes. It is trite that a delegatee cannot further delegate the powers. In overall scenario, the source and the authority for framing Service Regulations itself is under serious cloud and not traceable from the prevailing Statute 9 as on the day when Service Regulations were made by the Executive Council. Therefore, in our view, by no stretch of imagination these Service Regulations can override the provisions of the special statute, i.e., Act of 1974. That being the position, on the anvil of ground (5) and (6), the impugned Service Regulations cannot satisfy the test of valid subordinate/delegated legislation even by pressing into service presumption in its favour of constitutionality or legality.

62. Adverting to Regulation 2(1)(d) of the University PF Regulations, suffice it to observe that although it envisage expansive meaning to the term "permanent employee", by embracing within it an employee appointed on tenure basis or on contract or a fixed period not less one year, but then same cannot be categorized as infirm on the strength of available material and grounds set out in the petitions. The source of PF Regulations is clearly traceable from Statute 22 of the University Statutes and moreover in overall scenario it is rather difficult to comprehend that its rigour has any adverse effect on the rights of the petitioners. Any provision containing over-inclusive definition of a

term, if not detrimental to an aggrieved person, per se cannot fail the test of reasonable classification within the meaning of Article 14 of the Constitution. In totality, we feel that challenge laid to Regulation 2(1)(d) of the PF Regulations, by the petitioners, lacks legal foothold and per se inconsequential, therefore, cannot be sustained. Thus, challenge to its validity is hereby repudiated.

63. After analyzing the afflictions of the petitioners to the extent of challenge to validity of aforementioned impugned Service Regulations, we feel persuaded to hold that:

I. the impugned Service Regulations 5 & 6, notified on 8th of March 2002 and made enforceable w.e.f. 1st of April, 2002, were ex-facie contrary to then prevailing Statute 9(1) of the University wherein procedure for appointment was prescribed in accordance with the provisions of Act of 1974,

II. despite amendment in Statute 9 of the University, which came into effect on 27th of August, 2004, the Service Regulations 5 & 6 continued to remain repugnant to the provisions contained in Sections 3, 5 & 6 of the Act of 1974 for the reason that applicability of these Sections of the Act of 1974 is not affected by amendment in Statute 9, as the Act of 1999 cannot be construed as a special Statute vis-a-vis Act of 1974,

III. further, the Act of 1999 being sub-silentio about procedure for appointment of teachers and officers of University as nothing contrary to the Act of 1974 find mention therein, lead to an irresistible conclusion that the

Act of 1999 though subsequent legislation does not affect the applicability of the Act of 1974.

IV. the Service Regulations providing for employing teachers on contract basis for a tenure or on ad hoc term only and providing for termination of contract by giving one month's notice are manifestly arbitrary and unreasonable and in clear negation of Articles 14, 16 & 21 of the Constitution,

V. the Service Regulations 37 & 38 being consequential and necessary corollary to Regulations 5 & 6 also suffer from the same vice.

Therefore these Regulations cannot be sustained.

The upshot of above discussion is that impugned Service Regulations 5 & 6 of the Regulations and amended Regulations 37 & 38 are declared ultra vires and the same are struck down. We are clarifying here that we have not touched merits of the case and, therefore, for other reliefs, let these petitions be placed before appropriate Single Bench for decision on merit. The learned Single Judge, while considering the grievances of the petitioners pertaining to other reliefs, is expected to examine the matters dispassionately uninfluenced by the observations made by us supra.

(ARUN BHANSALI),J **(P.K. LOHRA),J**