



IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

SRI JUSTICE VIPIN SANGHI, C.J.
AND
SRI JUSTICE RAKESH THAPLIYAL, J.

Judgment reserved on: 18.05.2023
Judgment delivered on : August 04, 2023

WRIT PETITION (S/B) No. 204 OF 2021

Between:

Ghan Shyam Pal.

.....Petitioner.

And

Hemvati Nandan Bahuguna
University and another.

.....Respondents.

Counsel for the petitioner:

Mr. Abhijay Negi, learned counsel for the petitioner.

Counsel for the respondents:

Dr. K.H. Gupta, learned counsel for the respondent no. 1.

Mr. Shobhit Saharia, learned counsel for respondent no. 2.

Ms. Anjali Bhargava, learned counsel for the UGC/ respondent no. 3.

Upon hearing the learned Counsel for the parties, the Court made the following JUDGMENT : (per Sri Rakesh Thapliyal, J.)

1. By the present petition, the petitioner is challenging the order of appointment of respondent no. 2 – Ms. Arushi Uniyal, as Assistant Professor (English), Department of English, in HNB Garhwal University (a Central University) dated 13.03.2021 on the ground that she is not having requisite qualifications, as required for the said post. In addition to this, a further relief is being sought that respondent no. 1 be directed to appoint an eligible candidate on the post of Assistant Professor (English) in the Department of English, under the OBC category.

2. The facts of the present case are that an advertisement dated 22.08.2019 No. HNBGU/ Admin (T) / 2019/02 was issued



by the Registrar of the HNB Garhwal University (a Central University), whereby 7 vacancies of Assistant Professor in the Department of English were advertised. The breakup of 7 vacancies of Assistant Professor in English is as follows: Unreserved - 2, SC - 1, ST - 2, OBC - 2, total 7. The general instructions for the applicants in respect of the advertisement dated 22.08.2019 are brought on record by respondent no. 2 - a selected candidate, by way of supplementary counter affidavit appended as Annexure SCA 1. Certain Clauses of the aforesaid general instructions are necessary to be extracted, which are quoted hereinbelow:

"2. Applicants should possess the prescribed qualifications and experience as on the closing date of application, as prescribed by the University from time to time for the respective posts. The posts advertised carry UGC pay scales plus admissible allowances. The posts are being advertised keeping in view the broad areas of specialization in subjects. However, the Department concerned may have specific requirement of specialization.

3. The applications received shall be screened as per screening guidelines of the MHRD/UGC Regulation for short listing and recommending the applicants to be called for interview.

Mere fulfillment of the qualification or the eligibility criteria does not entitle an applicant to be necessarily considered or called for interview.

Publications 'under submission' or submitted to referees will not be considered towards calculation of marks for publication criteria. Further, all the items for which marks are claimed should be strictly in accordance with the screening guidelines attached with the advertisement.

8. The Shortlisted candidates called for interview should report along with all the testimonials/certificates in original along with valid photo ID (Aadhaar/Voter Id/Driving License/Passport). A set of self-attested photocopy of certificates/testimonials with respect to the qualifications, experience and category as applicable, indicated in the



online application form, duly certified by the applicant should be submitted at the time of interview.

11. *Applications which do not meet the eligibility criteria given in this advertisement and/or are incomplete in any respect shall be summarily rejected. Before applying online, applicants are advised to go through detailed notice available on the website of the University."*

3. The minimum qualifications, as required for appointment, are not mentioned in the advertisement. However, as per the contention of respondent no. 1, as mentioned in paragraph 4 of the counter affidavit, the minimum qualifications for appointment of Teachers and other Academic Staff in the Universities and Colleges, is as per UGC Regulations i.e. *"Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance Standards in Higher Education, 2018"* (hereinafter referred to as the UGC Regulations, 2018), notified on 18.07.2018 by the University Grants Commission. These Regulations are brought on record by respondent no. 1 in its counter affidavit as Annexure No. 1.

4. Regulation 3.1 pertains to the qualifications, which reads as under:

"3.1 The direct recruitment to the posts of Assistant Professor, Associate Professor and Professor in the Universities and Colleges, and, Senior Professor in the Universities, shall be on the basis of merit through an all-India advertisement, followed by selection by a duly-constituted Selection Committee as per the provisions made under these Regulations. These provisions shall be incorporated in the Statutes/Ordinances of the university concerned. The composition of such a committee shall be as specified in these Regulations."



5. Regulation 4.0 pertains to the Direct Recruitment. Regulation 4.1 pertains to qualification for disciplines of Arts, Commerce, Humanities, Education, Law, Social Sciences, Sciences, Languages, Library Science, Physical Education and Journalism & Mass Communication. The eligibility and qualifications, as required for the post of Assistant Professor is mentioned in Clause 4.1 (I), and it is necessary to reproduce the relevant extract of the same:

“4.1 For the Disciplines of Arts, Commerce, Humanities, Education, Law, Social Sciences, Sciences, Languages, Library Science, Physical Education, and Journalism & Mass Communication.

I. Assistant Professor:

Eligibility (A or B):

- i) A Master's degree with 55% marks (or an equivalent grade in a point-scale wherever the grading system is followed) in a concerned/relevant/allied subject from an Indian University, or an equivalent degree from an accredited foreign university.*
- ii) Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC or the CSIR, or a similar test accredited by the UGC, like SLET/SET or who are or have been awarded a Ph. D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of M.Phil/Ph.D. Degree) Regulations 2009 or 2016 and their amendments from time to time as the case may be exempted NET/SLET/SET:.....”*

6. Petitioner and respondent no. 2, both applied for the vacancies meant for OBC Category, for appointment to the post of Assistant Professor (English) in the Department of English. The petitioner submits that he is fully eligible and qualified for the post of Assistant Professor (English), as he is having relevant



Degrees i.e. Ph.D, Master's and UGC NET in the subject of English.

7. Petitioner further contends that since 2016, he had been continuously teaching English in the Department of English, as guest /Contractual Faculty.

8. So far as eligibility and qualifications of respondent no. 2 is concerned, petitioner submits that respondent no. 2 - Aarushi Uniyal comes from a different discipline i.e. "Linguistics". She obtained Master's Degree in subject "Linguistics", and her M.Phil (Master of Philosophy) Degree, as conferred by the Jawahar Lal Nehru University is on the "*Issues and challenges in Hindi Shallow Parsing*". The petitioner has enclosed the Degree of respondent no. 2, as Annexure No. 3. On perusal of these degrees, it clearly reveals that respondent no. 2 is not having degrees in subject "English", rather she has degrees in the subject "Linguistics"

9. Petitioner further contends that as per subject list, as offered by UGC, "English" and "Linguistics" are two different subjects. It is further contended by the petitioner that subject "English" is having Code No. 30, whereas subject "Linguistics" is having Code No. 31 in the UGC NET List.

10. The petitioner has placed on record a table of syllabus for both the subjects i.e. English Code No. 30, and Linguistics Code No. 31. The petitioner has made a reference of other Universities - like Allahabad University, Lucknow University, Banaras Hindu University, as well as Aligarh Muslim University in order to submit that "English" and "Linguistics" are two different subjects. The petitioner submits that the present selection process was carried out in a highly unfair and non transparent manner. He submits that the Professor Mridula Jugran, Dean, and



Professor Shakuntala Rauthan, Head of the Department of English had written notes of dissent with regard to the selection in question. The petitioner states that information sought under the Right to Information Act with regard to the selection of respondent No. 2 has been withheld by the respondent University.

11. The petitioner has placed on record the minutes of meeting dated 13.03.2021, which pertains to the list of selected candidates for Faculty posts under Direct Recruitment.

12. Serial Nos. 6 and 7 pertain to selection in question, wherein in respect of OBC 1 - Shri Dharmendra Kumar is shown to be selected, and in OBC 2 - respondent no. 2 is shown to be selected. In the waiting list, petitioner is shown at serial no. 1 and Shri Dilip Kumar Madhesiya is shown at serial no. 2.

13. The challenge to the appointment of respondent no. 2 on the post of Assistant Professor (English), is premised on the petitioner's contention that respondent no. 2 is not having the requisite eligibility qualifications, as prescribed for the post in question, as she is having degrees in the subject "Linguistics", and subject "Linguistics" is different and distinct from the subject "English", and is not equivalent to the subject "English". The further ground of challenge is that the subject "Linguistics" can neither be considered as allied, nor equivalent to subject "English" and, as such, appointment of the respondent no. 2 suffers from vice of irrationality, arbitrariness and hence, is liable to be quashed.

14. When this petition came up before this Court on 31.08.2022, two submissions advanced by the learned counsel for the petitioner were taken note of. One was that out of the five



Members of the Selection Committee comprising the Chairperson, Head of the Department, Dean and two subject Experts, two Members viz. the Head of the Department and the Dean had dissented to the selection of respondent no. 2, and second was that the Board of Studies and Academic Council of respondent University had not declared the subject “Linguistics”, as allied or equivalent to the subject “English”. On these two submissions, Dr. K.H. Gupta sought time to take instructions and time was granted.

15. This Court, on 13.09.2022, directed the respondent University to make complete disclosure of the stand of the respondent University in respect of marks awarded by the Screening-cum-Scrutiny Committee. Paragraphs 10, 11 and 12 of the order passed by this Court on 13.09.2022 reads as under:

*“10. There is one other aspect on which we would like the University to make complete disclosure. The stand of the respondent University is that the Screening-cum-Scrutiny Committee was constituted, which was also approved by the Academic Council and the Executive Council of the University. The marks awarded by the said Screening-cum-Scrutiny Committee to the candidates have been placed on record, which shows that the petitioner was awarded 70 marks and respondent no.2 was awarded 72 marks. **However, there is nothing placed on record to show that the Academic Council ever applied its mind to the aspect whether the qualification, in Linguistics, could be considered as allied, relevant or concerned to the qualification in English.***

11. In light of the aforesaid, we direct the respondent - University to file an affidavit clarifying the aforesaid aspects. The relevant documents showing the actual composition of the Selection Committee should be disclosed, and it should also be disclosed whether the aforesaid three persons, who have not awarded any marks, were present during the selection process.



12. *There is also nothing placed on record to show that even the Screening-cum-Scrutiny Committee applied its mind to the aforesaid aspects before awarding marks to respondent no.2, who has qualification in Linguistics. The respondent - University should make a complete disclosure on these aspects as well."*

(emphasis supplied)

16. As it appears from paragraph 10 of the order passed by this Court, a specific query was made whether Academic Council ever applied its mind to the aspect whether qualification in "Linguistics" could be considered as allied, relevant or concerned to the qualification in "English".

17. The respondent University filed an affidavit in the form of supplementary affidavit, which was sworn by Registrar - Shri Ajay Kumar Khanduri on 08.09.2022. We have carefully gone through the contents of the said affidavit, and what respondent University contends in the affidavit is *"for selection on the post of Assistant Professor, the Executive Council as well as the Academic Council has empowered the Screening-cum-Scrutiny Committee having Subject Experts to take decision with regard to the suitability of candidates having "concerned / allied / relevant subject" qualification". The Screening Committee is an Expert Body manned by subject Expert which has taken final decision on the candidature of the applicants to be considered by the Selection Committee. In the entire process, the Scrutiny Committee as well as Selection Committee consisted of Subject Experts along with Dean and Head of the Department of the concerned Department."*

18. It is further contended in this affidavit that the Academic Council, as well as Executive Council, had approved the screening procedure, and that there is no other procedure prescribed for screening of the applications, to examine eligibility



of candidates with regard to his / her “concerned/ allied/ relevant” subject.

19. It is further contended that the Executive Council is the principal Executive Body of the University, and the Academic Council is the principal Academic Body of the University to decide about the executive and academic policies of the University respectively. The respondent University further submits that the eligibility for direct recruitment to the post of Assistant Professor is provided in Regulation 4.1 of the UGC Regulations of 2018. The eligibility in the present case is Master’s Degree with 55% of marks in the concerned / relevant / allied subject from an Indian University. It is further submitted that the University vide its resolutions dated 26.09.2019 and 04.10.2019 decided that all the applications shall be scrutinized by the Screening-cum-Scrutiny Committee for direct recruitment of various teaching positions. The composition of the Screening-cum-Scrutiny Committee is also disclosed in the said affidavit. Composition of the Screening-cum-Scrutiny Committee was as under:

- “i. The respective Dean of the School shall be the Chairperson of the Committee of that School.*
- ii. The respective Head of the Department. In case, Head of the Department is not Professor, Professor from allied subject nominated by Vice-Chancellor for scrutiny of the post Professor/ Associate Professor.*
- iii. One Senior Professor from the Department to be nominated by the Vice-Chancellor. In case, there is no Professor in the Department, Professor from allied subject to be nominated by the Vice-Chancellor.*
- iv. One external expert in the subject concerned.*
- v. Professor/ Associate Professor belonging to the SC/ ST/ OBC /Minority/ Women/ Differently abled categories, if any of candidates belonging to these categories is an applicant, to be nominated by the*



Vice-Chancellor, and if any of the above members of the Scrutiny Committee does not belong to that category.

Four members, including external subject experts, shall constitute the quorum.

No member who himself/ herself is applicant or his/ her close relative is applicant for any position will not be part of Screening Cum Scrutiny Committee.

The above Screening Cum Scrutiny Committee is to be placed in the Academic Council and the Executive Council for approval."

20. The respondent University further submits that the Screening-cum-Scrutiny Committee - for screening the applicants, was duly approved vide resolution dated 23.10.2019 and 31.10.2019 by the Academic Council and the Executive Council of the University respectively. For direct recruitment in the Department of English, the Screening-cum-Scrutiny Committee was also constituted, which approved the application of the petitioner and respondent no. 2. After approval of the candidature of respondent no. 2 by the Screening-cum-Scrutiny Committee, Professor Shakuntla Rauthan, Head of Department, had written a dissenting note in the official result sheet. Another dissenting note had been written by the Dean of the concerned Department. Dissent note, written by both the Members of the Selection Committee, was not on merit or ineligibility of respondent no. 2 to be considered for selection. The respondent University in its affidavit further contends that the petitioner has never challenged the recommendations of the Screening Committee dated 24.02.2020 and hence, he has accepted the result of the Screening Committee, as he and respondent no. 2 were short listed for interview by the Selection Committee. The respondent University further submits that the Selection Committee consists of total 8 members, and out of 8 members, the Dean and the Head of the Department had written hand written



dissenting note in vague and unclear manner. The Dean and the Head of the Department had awarded due marks to the petitioner and respondent no. 2 in the interview and the final decision was taken on the basis of total marks received by the candidates, and not on 'consent' or 'dissent' of any Member. The dissenting Members have neither disqualified respondent no. 2 at the screening stage, nor at the interview stage. Hence, selection was done on the basis of final marks obtained by the candidates. The respondent University submits that UGC Regulations of 2018 have been followed by the respondent University. It is further contended by the respondent University that in the present case the Executive Council and the Academic Council, both had approved the constitution of Screening Committee - consist of having subject experts, and they duly interviewed the petitioner as well as respondent no. 2. The respondent University enclosed the minutes of meeting of all the Dean of Schools and Members of Scrutiny Committee held on 04.10.2019. The relevant extract of the said minutes of meetings is being reproduced hereinbelow:

"In light of the provisions under UGC REGULATIONS ON MINIMUM QUALIFICATIONS FOR APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES AND MEASURES FOR THE MAINTENANCE OF STANDARDS IN HIGHER EDUCATION, 2018 Dated 18th July, 2018 issues related to the scrutiny process for the Direct Recruitment of various Teaching Positions in the University were discussed at length in the meeting. All members unanimously resolved the followings:

1. In view of the practical problems encountered during the trial scrutiny of the online applications received by the University, it has been decided to ask all applicants to submit a hard copy of the duly signed application along with educational qualification, Certificates in support of Eligibility,



Reserved Category, Experience Certificate along with Appointment Letter & Form-16, Publications, API score etc. The proof of peer reviewed journal status, impact factor (UGC List Journal Number), authorship claim etc, should be provided with valid document, failing which points will not be allotted. University will not be responsible for any mistake in score due to not providing valid proof. Candidates who have been awarded degrees by recognized foreign Universities should enclose "Equivalence Certificate" issued by Association of Indian Universities.

2. Decision on number of Candidates to be called for interview for the Post of Assistant Professor [Table 3A, Note (B)]

The Screening cum Scrutiny Committee will short-list top 50 applicants or 15 times the number of advertised posts for each category (Unreserved, SC, ST, OBC, PWD, EWS etc.), whichever is higher, from amongst the eligible candidate to be called for interview.

However, if more than one applicant has score equal to the last shortlisted candidate to be called for the interview, all such candidates having equal score shall be considered for interview.

This criterion for short listing of the candidates for interview is to be placed in Academic Council and the Executive Council for approval."

21. The minutes of meeting of Academic Council held on 23.10.2019 is also brought on record by respondent University. Agenda Item no. 30, and the resolution passed by the Academic Council thereon reads as follows :

"Agenda Item No. 30:

Reporting of guidelines for screening / short listing of candidates for appointment to the post of Assistant Professor, Associate Professor and Professor in the University (Annexure-29).



Guidelines recommended by the committee and approved by the Vice-Chancellor for screening / short listing of candidates for appointment to the post of Assistant Professor, Associate Professor and Professor in the University have been notified by the university administration is placed at Annexure for perusal.

Submitted for ratification please.

Resolution:

The Academic Council ratified guidelines for screening/short listing of candidates for appointment to the post of Assistant Professor, Associate Professor and Professor in the University and also ratified the decision and order of the university that have been notified by the university administration in this regard."

22. The minutes of the Executive Council have also been brought on record by the respondent University, in which minutes of Academic Council of the University, held on 23.10.2019, were confirmed by the Executive Council with certain other observations. The respondent University has also brought on record a list of short listed candidates for interviews, for appointment to the post of Assistant Professor (English), in the Department of English, in OBC Category, which was reviewed on 24.02.2020. The dissent note of the two members of the Selection Committee i.e. the Dean and the Head of Department, made in the summary sheet of marks awarded by the Selection Committee is also brought on record by the respondent University, through the affidavit of the Registrar of the University dated 08.09.2022. The extract of the dissent note is being reproduced below:

*"असहमत, चयन प्रक्रिया एकल प्रभाव में हैं
डीन: ए.सी.एल"*

*"I have given my note of dissent.
H.O.D."*



23. This petition was also heard on 27.09.2022 and in paragraph 9 of the order passed by this Court, the Court observed that in the entire process undertaken, there is no express consideration of the issue whether “Linguistics” could be considered as connected, relevant, allied or concerned to subject of “Linguistics” from Indian University. In paragraph 12, this Court has also considered the query raised by the petitioner before UGC before filing of this petition, and the queries raised and UGC response, were produced in paragraph 12 and for ready reference paragraph 12 of the order dated 27.09.2022 is being reproduced as under:

“12. The queries raised by the petitioner to the U.G.C. before filing this petition, has been placed on record by the petitioner. The queries raised and the response given to the said queries by the U.G.C. on 29.06.2021 are being reproduced herein below:-

Point No.	Question of the Applicant	UGC Reply
1	<i>Which agency does it decide the main subjects and its allied subjects in the University? If UGC decides, provide the list of main subjects with its allied subjects.</i>	<i>Central University Section of UGC does not maintain such type of data concerned to Central Universities.</i>
2	<i>Can Linguistic become an allied subject of English where a Central University does not have Linguistic as a subject in the department of English?</i>	<i>However, the Central Universities are autonomous institutions governed under the provisions of their Act and Statutes and Ordinances frame thereunder. The Statutory bodies of the Central Universities are competent/ empowered to deal with various academic matters from time to time with the approval of their Statutory Bodies. Further, these information can be collected from the concerned University as they are also covered under the RTI Act, 2005.</i>



3	<i>How many Central Universities are there in the country where no teaching, no Degree, no Diploma and no Certificates courses are offered in Linguistic but Linguistic is an allied subject of English? If there is any University, provide the list of those Universities.</i>	<i>The Central Universities of UGC do not maintain such type information. However, such type of information may be obtained from the concerned Central Universities, in pursuant to the DoPT O.M. No.10/2/2008-IR dated 24th September, 2010.</i>
4	<i>What is the definition of an allied subject and main subject?</i>	<i>The requested information is in the nature of clarification of information which is not covered under the RTI Act. The public authority under section 2(f) and 2(j) of the RTI Act, 2005 is required to furnish information available any material form. It is not required to either interpret or draw conclusion from the material in its possession, or to solve the problems raised by the applicant or to furnish replies to hypothetical questions."</i>

24. By this order dated 27.09.2022, UGC Counsel was asked to apprise this Court about the dispute / controversy arising in this writ petition and for that purpose the UGC was directed to file an affidavit clearly indicating whether the methodology adopted by the respondent University in the matter of selection of Assistant Professor (English) in its entirety accorded with the requirements of Regulations of 2018.

DISCUSSION

25. We have heard detailed submissions of learned counsels and perused the record of the case and the relevant Regulations and Statutes.



26. The respondent University is a Central University and it is established as a Central University by Act No. 25 of 2009 i.e. the Central University Act, 2009. A copy of the complete Act is also placed on record and we have perused the same. At this juncture, certain provisions of this Act, which are required to be noticed for proper adjudication of the case, being extracted herein below:

“19. Authorities of University.-The following shall be the authorities of the University, namely:-

- (1) the Court;*
- (2) the Executive Council,*
- (3) the Academic Council;*
- (4) the Board of Studies;*
- (5) the Finance Committee; and*
- (6) such other authorities as may be declared by the Statutes to be the authorities of the University.*

21. Executive Council-*(1) The Executive Council shall be the principal executive body of the University.*

2) The constitution of the Executive Council, the term of office of its members and its powers and functions shall be prescribed by the Statutes:

Provided that such number of members as may be prescribed by the Statutes shall be from among the elected members of the Court.”

(emphasis supplied)

“22. Academic Council.-*(1) The Academic Council shall be the principal academic body of the University and shall, subject to the provisions of this Act, the Statutes and the Ordinances, co-ordinate exercise general supervision over the academic policies of the University.*

(2) The constitution of the Academic Council, the term of office of members and its powers and functions, shall be prescribed by the Statutes:



Provided that such number of members as may be prescribed by the Statutes shall be from among the members of the Court."

(emphasis supplied)

27. Section 27 of the Act No. 25 of 2009 pertains to Statutes, and how they are to be made. The Statutes of the University are in Second Schedule. Statute 12 pertains to the powers and functions of the Executive Council, and Statute 14 pertains to powers and functions of the Academic Council. At this juncture, Statue 12 (1), (2) (i) & (ii) are being reproduced hereinbelow:

"12. Powers and functions of Executive Council.-(1) The Executive Council shall have the power of management and administration of the revenues and property of the University and the conduct of all administrative affairs of the University not otherwise provided for

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

(i) to create teaching and other academic posts including Chairs, to determine the number and emoluments of such posts and to define the duties and conditions of service of Professors, Associate Professors, Assistant Professors and other academic staff:

Provided that no action shall be taken by the Executive Council in respect of the number and qualifications of teachers and other academic staff otherwise than after consideration of the recommendations of the Academic council:

(ii) to appoint such Professors, Associate Professors, Assistant Professors and other academic staff including Chairs, as may be necessary, on the recommendation of the Selection Committee constituted for the purpose and to fill up temporary vacancies therein."

(emphasis supplied)



28. Further, Statute 14 pertains to the powers and functions of the Academic Council, which is being quoted below:

“14. Powers and functions of Academic Council. Subject to the provisions of this Act, the Statutes and the Ordinances, the Academic Council shall, in addition to all other powers vested in it, have the following powers, namely:

(a) to exercise general supervision over the academic policies of the University and to give directions regarding methods of instruction, co-ordination of teaching among the Colleges and the Institutions, evaluation of research and improvement of academic standards;

(b) to bring about and promote inter-school co-ordination and to establish or appoint such committees or boards as may deemed necessary for the purpose;

(c) to consider matters of general academic interest either on its own initiative, or on a references by a School or the Executive Council, and to take appropriate action thereon; and

(d) to frame such Regulations and rules consistent with the Statutes and the Ordinances regarding the academic functioning of the University, discipline, residence, admissions, award of fellowships and studentships, fees, concessions, corporate life and attendance.”

(emphasis supplied)

29. We have examined Statutes 12 and 14. From a close scrutiny of these two Statutes, it is very clear that it is only Academic Council, which has the power to take any decision in respect of qualifications of Teachers and other Academic Staff. The Academic Council has powers of general supervision over the academic policies of the University, and to give directions regarding methods of instruction, coordination of teaching among the College and the institutions, evaluation of research and improvement of academic standards.



30. On examination of Statutes and provisions of the Central University Act, 2009, shows that the authority for determination of eligibility, and qualifications are vested upon the Academic Council, as the Academic Council is vested with the powers to decide the academic policies of the University. Therefore, the power to decide - whether a particular subject is allied, relevant or concerned to the qualification prescribed, or having equivalence, is vested with the Academic Council alone. The respondent University states in the affidavit sworn by the Registrar of the University dated 08.09.2022, that the Executive Council as well as Academic Council has empowered the Screening Committee, having subject Experts, to take decision with regard to the suitability of the candidates having “concerned/ allied/ relevant subject” qualification.

31. The stand of the University, that the Academic Council has empowered the Screening Committee to examine the suitability of the candidates having concerned/ allied/ relevant subject is unfounded and is not backed by any resolution of the Academic Council to that effect. The agenda item placed before the Academic Council at Item No. 30, in so far as it is relevant, reads as follows:

“Agenda Item –

Screening-cum-Scrutiny process of the applications received for direct recruitment on various vacant teaching positions of the University

In compliance of the directions received from MHRD regarding appointment on vacant faculty positions of the University, for time-bound screening and scrutiny of the applications received, a meeting of all Dean of Schools and members of Scrutiny committee constituted vide OO No. HNBGU/Admn.(T)/2019/2747 dated 24.09.2019 and HNBGU/Admin.(T)/2019/2754 dated 27.09.2019 was held on 04.10.2019 in chairpersonship of Hon’ble Vice-Chancellor. After approval of the VC following resolutions of the meeting are placed for reporting of the Academic Council :-



1. *Decision on number of Candidates to be called for interview for the post of Assistant Professor [Table 3A, Note (B)]*

The Screening-cum-Scrutiny committee will short-list top 50 applications or 15 times the number of advertised posts for each category (Unreserved, SC, ST, PwBd, EWS etc.), whichever is higher, from amongst the eligible candidate to be called for interview.

However, if more than one applicant has score equal to the last shortlisted candidate to be called for the interviews, all such candidates having equal score shall be considered for interview."

32. The above would show, that the approval of the Academic Council was not ever sought (and it could not have been sought, or granted) to empower the Screening-cum-Scrutiny Committee, to decide on the issue of equivalence of eligibility qualification. Even on perusal of the minutes recorded by the Academic Council in the said meeting against Agenda Item No. 30, does not establish that the Academic Council applied its mind to the issue, that the Screening-cum-Scrutiny Committee should be empowered to decide on the question of equivalence of essential educational qualification much less the issue of equivalence between "Linguistics" and "English" subjects. The minutes does not show that the Academic Council decided to delegate the power of determining equivalence on the Screening Committee. In fact, the minutes show that such an issue did not even arise for consideration by the Academic Council.

33. The stand of the University is wholly unwarranted on two aspects. As per the Statute 14, as stated above, the Academic Council is the only body which is empowered to take decision in respect of the eligibility and qualifications, and whether a particular subject is having equivalence with another subject, or not, this power is vested exclusively on the Academic Council. In any event of matter, the powers which solely vest in the Academic Council cannot be delegated to another body or Committee, since that is an essential and primary function of the Academic Council which it performs on



account of the Academic background, experience and expertise of the members of the said Council. Such a function could not have been delegated, as it is not a ministerial function. It is like saying that a judge – who has the authority to exercise judicial functions, can delegate his judicial functions on some other person or body. Thus, the stand taken by the respondent University that since the Academic Council has empowered the Screening Committee to examine the suitability of the candidates in relation to their eligibility and qualifications, the Screening Committee is also empowered to determine the issue of equivalence is misconceived, and cannot be accepted and as such, this stand is rejected.

34. Another aspect, which this Court is required to consider is - what is the role of Screening Committee-cum-Scrutiny Committee. In reference to this, we have examined the minutes of meeting of members of the Scrutiny Committee held on 04.10.2019, which is enclosed and brought on record by the University and as per Resolution No. 2, the Screening-cum-Scrutiny Committee is only meant for to short list the eligible candidates. A further question arises is, what is the purpose and scope of short listing of the candidates. The purpose of short listing of candidates is to limit the candidates for appearing before the Selection Committee, by eliminating those candidates who, on the face of the record, are found to be ineligible, due to non submission of relevant documents / certificates / testimonials, and who do not possess the necessary qualifications prescribed under the Rules and the Advertisement. On reading of the provisions of the Act No. 25 of 2019, as well as the Statutes 12 and 14 and the minutes of meeting of Screening-cum-Scrutiny Committee, Academic Council and Executive Council shows that the short listing process is not meant to enable the said Committee to determine the equivalence of a particular subject or



qualifications, with that prescribed. It is not for the Screening-cum-Scrutiny Committee to decide on the question of eligibility of a particular candidate, whose eligibility is not *per se* clear on the basis of the prescribed qualifications, and requires determination of issues which fall within the realm of the Academic Council. In the said resolution the Screening Committee resolved as follows :

“In light of the provision under UGC REGULATIONS ON MINIMUM QUALIFICATIONS FOR APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES AND MEASURES FOR THE MAINTENANCE OF STANDARDS IN HIGHER EDUCATION, 2018 Dated 18th July, 2018 issues related to the scrutiny process for the Direct Recruitment of various Teaching Positions in the University were discussed at length in the meeting. All members unanimously resolved the followings:

1. *In view of the practical problems encountered during the trial scrutiny of the online applications received by the University, it has been decided to ask all applicants to submit a hard copy of the duly signed application along with educational qualification certificates in support of Eligibility, Reserved Category, Experience Certificate along with Appointment Letter & Form-16, Publications, API score etc. The proof of peer reviewed journal status, impact factor (UGC List Journal Number), authorship claim etc. should be provided with valid document, failing which points will not be allotted. University will not be responsible for any mistake in score due to not providing valid proof. Candidates who have been awarded degrees by recognized foreign Universities should enclose “Equivalence Certificate” issued by Association of Indian Universities.*
2. ***Decision on number of Candidates to be called for interview for the Post of Assistant Professor [Table 3A, Note (B)]***

The Screening cum Scrutiny Committee will short-list top 50 applicants or 15 times the number of advertised posts for each category (Unreserved, SC, ST, OBC, PwD, EWS etc.), whichever is higher, from amongst the eligible candidate to be called for interview.

However, if more than one applicant has score equal to the last shortlisted candidate to be called for the interview, all such candidates having equal score shall be considered for interview.

This criterion for short listing of the candidates for interview is to be placed in Academic Council and the Executive Council for approval.



3. *List of Journals are to be considered for computation of research score for publications keeping in view the UGC Regulation 2018 and UGC Public Notice F.1-1/2018 (Journal/CARE) Dated 16th September, 2019.*
4. *Regarding consideration of Ph.D. Degree (Clause 3.3, page 58 & Clause 3.11, page 59) and Clause 4.1.1.B of UGC Regulation notification 18th July, 2018 and UGC Public Notice F.1No.20-1/2014(PS) dated 17th March, 2017 are to be noted.*
5. *Counting of Past services for Direct Recruitment should be carefully assessed as per UGC Regulation notification 18th July, 2018 (Clause 10, page 94).*
6. *Candidate(s) shortlisted for the interview of Post of Professor under the eligibility criteria of Outstanding Professionals must be communicated to selection committee by mention in the Remarks column.*
7. *In case of a single application for a particular post or if a single candidate turns up for interview, whether interview/selection process will be further done or not, for this guidelines should be sought from UGC or MHRD.*
8. *Prof. M.M.S. Rauthan, Member, Scrutiny Committee shall coordinate with the Incharge of SAMARTH Portal so as to facilitate the online scrutiny of the application forms received.*
9. ***Screening cum Scrutiny Committee for Direct Recruitment of various Teaching Positions***

The Screening cum Scrutiny Committee for Direct Recruitment of various Teaching Positions in different Schools of the University shall consist of the following persons:

- i) *The Respective Dean of School shall be the Chairperson of the Committee of that School.*
- ii) *The Respective Head of the Department. In case, Head of the Department is not Professor, Professor from Allied Subject nominated by Vice-Chancellor for scrutiny of the post Professor / Associate Professor.*
- iii) *One Senior Professor from the Department to be nominated by the Vice-Chancellor. In case, there is no professor in the department, Professor from Allied Subject to be nominated by the Vice-Chancellor.*
- iv) *One External Expert in the subject concerned.*
- v) *Professor / Associate Professor belonging to the SC/ST/OBC/Minority/Women/Differently-abled categories, if any of the candidates belonging to these categories is an applicant, to be nominated by the Vice-Chancellor, and if any of the above members of the scrutiny committee does not belong to that category.*



Four members, including External subject experts, shall constitute the quorum.

No member who himself/herself is applicant or his/her close relative is applicant for any position will not be part of Screening cum Scrutiny Committee.

The above Screening cum Scrutiny Committee is to be placed in Academic Council and the Executive Council for approval.

Sd/-

(Prof. S.C. Bhatt)

Coordinator, Scrutiny Committee

Approved as proposed above and recommended by the Committee. The following needs to be done :-

- (1) No. 1 & 7 needs to be taken up by DR Recruitment*
- (2) No. 2 & 9 to be placed before the Academic Council and EC for approval but as the process has to be completed in a time bound manner therefore, it may be put as No. 7 DR Recruitment & seek direction from MHRD at the earliest."*

The aforesaid minutes show that the Screening-cum-Scrutiny Committee did not even purport to undertake the exercise of determining the equivalence of the advertised subject with the subject of qualification of a particular candidate.

35. The respondent University seeks to project before this Court, that since the Academic Council had approved the resolution relating to the guidelines for screening / Short-listing of candidates, hence, Screening-cum-Scrutiny Committee was also empowered to determine the eligibility of candidates. This projection of the respondent University is totally misconceived, and cannot be accepted.

36. In respect of the Selection / appointment, the powers of the Executive Council is clearly mentioned in Statute 12(2)(ii), whereby the Executive Council has power to appoint Professors, Associate Professors and Assistant Professors and other academic staff, on the recommendation of the Selection Committee. The



power of the Executive Council is to take a decision for appointment of a recommendee on the recommendation of the Selection Committee.

37. We may now consider, as to what is the eligibility, as required for the post, in question. In reference to this, Regulation 4.1, which has been quoted above, requires - for appointment to the post of Assistant Professor, - Master's Degree with 55% marks (in concerned/ relevant/ allied subject) from the Indian University or equivalent degree from accredited foreign University. On a plain reading of this Regulation, since the post, which is advertised is Assistant Professor (English), Department of English, hence, as per Regulation, 4.1 the relevant subject is "English".

38. Undisputedly, the petitioner is having degree in relevant subject i.e. "English" and there is no doubt on his eligibility for the post, in question. So far as respondent no. 2 - the selected candidate is concerned, admittedly, she is having degree in the subject - "Linguistics". Whether this subject "Linguistics" is allied or equivalent to the subject "English", no material has been placed on record by the respondent University to show that the Academic Council has decided so.

39. Further, respondent University has also failed to bring any material on record to show that, at any point of time, any agenda was placed before the Academic Council for determining the equivalence of subject "Linguistics" with subject "English". As aforesaid, the Academic Council is the only body competent to decide the question of eligibility and qualifications, including equivalence, since as per Statute 14, the Academic Council is vested with the powers to exercise general supervision over the academic policies of the University.



40. In the opinion of this Court, academic policies of the University includes determination of the eligibility and qualifications, and equivalence of a particular subject with another. As we have observed above, the Academic Council has no power to delegate their core and essential function to another Committee.

41. Respondent no. 2 has also filed her counter affidavit. In the counter affidavit, respondent no. 2 gives reference of the provisions of UGC Regulations of 2018 as well as Regulation 4.1, which pertains to the eligibility for direct recruitment and also gives reference to Sections 19, 22 and 26 of the Act No. 25 of 2009 and further gives reference to Statutes 12, 14, 16 and 18. Respondent No. 2 states that there is no challenge to the decision making process by the petitioner in the petition and vague, evasive and frivolous pleadings have been made by the petitioner in the writ petition.

42. We have also gone through the supplementary counter affidavit of respondent no. 2. In paragraph 40 of the supplementary counter affidavit, respondent no. 2 is trying to demonstrate that “English” and “Linguistics” are inseparable subjects and in support of this, respondent no. 2 has explained the meaning of “Linguistics” in the supplementary counter affidavit. Respondent no. 2 has further elaborated the stand of the UGC about the subject contents of the English Honours Course, and M.A. (English). So many attempts have been made to demonstrate that “Linguistics” and “English” are not different. Reference has been made to the Central University, Himachal Pradesh, to claim that “English” and “Linguistics” are relevant and allied subject.



43. As discussed above, the Academic Council is the only authority to determine the eligibility and qualifications of allied subjects, including equivalence of the subjects which, admittedly, was not done in the present case. On the issue whether “Linguistics” subject is equivalent to subject “English”, the Academic Council has been completely bypassed and overlooked by the University. This conduct of the University is very shocking and we deprecate the same. Appointing a candidate, who was not having the primary qualifications, as prescribed for the post, and by bypassing the Competent Statutory Body is highly improper, and we deprecate this conduct of the respondent University.

44. HNB Garhwal University is the Central University, and it is expected that the conduct of the University in selections is transparent and fair. However, it appears that in order to select respondent no. 2, respondent University overlooked and bypassed the Academic Council and took a totally misconceived stand, that since the Academic Council has approved the minutes of the Screening-cum-Scrutiny Committee, and the Executive Council has further approved minutes of Academic Council and hence, the selection is perfectly done, as per the UGC Regulations of 2018, which is totally unacceptable.

45. At this juncture, a reference is being made of supplementary counter affidavit filed by the respondent University sworn by the Registrar of the University on 19.09.2022, wherein a copy of summary of points of the petitioner and respondent no. 2 – the selected candidate, by the Screening-cum-Scrutiny Committee, has been enclosed as Annexure No. 1. Summary point of the petitioner and subject and specialization of the petitioner is mentioned as “English” and is shown to be an



internal candidate. The relevant extract of summary point of respondent no. 2 is quoted below:

<i>Full Name</i>	<i>Arushi Uniyal</i>	
<i>Form No.</i>	<i>AGR3425</i>	
<i>Post</i>	<i>Assistant Professor</i>	
<i>Subject and Specialization</i>	<i>English</i>	
<i>Gender</i>	<i>Female</i>	<i>Caste Certificate</i>
<i>Candidate's Category</i>	<i>OBC</i>	
<i>Applied Category</i>		

Additional Uploads

1. Personal details

<i>Full Name</i>	<i>Arushi Uniyal</i>	<i>Gender</i>	<i>Female</i>
<i>Ex Serviceman</i>		<i>Internal Candidate</i>	

46. It is very strange and surprising that in respect of respondent no. 2 subject and specialization is shown as "English".

47. We take serious note of the fact that subject of specialization of respondent no. 2 is shown as "English". How it is mentioned as "English", when the degrees of respondent no. 2 is in subject - "Linguistics", is beyond our comprehension.

48. In compliance of the order dated 27.09.2022, UGC filed a counter affidavit and in the counter affidavit UGC submits that, as regards to equivalence degree, the same has been left for the employer to decide, as per their requirements with the help of subject Experts in their related field. The stand of the UGC, as explained in paragraph 10 of the affidavit, is quoted for ready reference:



“10. The deponent deposes that as the issue of equivalence of degrees has been left for the employer to decide as per their requirements and the Screening-cum-Scrutiny Committee having shortlisted the candidates and thereafter the Selection Committee having recommended the name of the Respondent No. 2 for appointment to the said post, it can be submitted that if the University has decided the equivalence of English and Linguistics as being an allied or relevant subject for appointment to the said post, then it can be stated that the methodology adopted by the University for appointment to the said post was in line with the UGC Regulations of 2018.”

49. The UGC after filing of counter affidavit, filed another affidavit on 22.05.2023, and in paragraph 2 of the said affidavit, syllabus of English Code 30 and syllabus of Linguistics Code 31, as per University Grants Commission Educational Testing (NET) Bureau, has been elaborated, and submits that both the subjects have separate syllabus. Thus, there is no doubt, that even the UGC considers the subject of “English” and “Linguistics” as separate and distinct.

50. Learned counsel for the respondent University has relied upon several judgments of the Supreme Court. He has first placed reliance upon the judgment of Hon’ble Supreme Court in the case of *Madras Institute of Development Studies and Another Vs. K. Sivasubramaniyan and other (2016) 1 SCC 454*, and has referred paragraphs 12 to 21 of the said judgment. We have gone through this judgment. This case is on a different footing. The issue of eligibility was not in question. The issue, which was dealt by the Supreme Court in this case, was whether a person, who consciously takes part in the selection process, cannot thereafter, turn around and question the method of selection. This proposition is no more *res integra*. Here, the facts of the present case are totally different. By an advertisement, applications were



invited for appointment to the post of Assistant Professor (English), Department of English. However, the Screening-cum-Scrutiny Committee short-listed respondent no. 2, who after selection, was recommended for appointment, though she was not having the qualification in English, and claimed to be eligible on the ground that her qualification could be considered as concerned / relevant / allied to the qualification in English. Short-listing a candidate, who was not having the advertised qualification, and then recommending such candidate for short-listing without taking matter to the Academic Council, and selecting her was totally unwarranted.

51. The second judgment, which has been relied upon by the learned counsel for the respondent University, is in the case of *Ramesh Chandra Shah Vs. Anil Joshi (2013) 11 SCC 309*. We have carefully perused that judgment. The issue, which was dealt with in that judgment, is on a completely different aspect. In that case, the unsuccessful candidates questioned the advertisement and process of selection on the ground that the test conducted by the Board was *ultra vires* to the provisions of the Uttar Pradesh Medical Health and Family Welfare Department Physiotherapist and Occupational Therapist Service Rules, 1998. It is necessary to give reference to paragraphs no. 18 and 24 of the said judgment, which read as under:

“18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.

x x x

24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the Respondents had waived their right to



question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the Respondents."

52. Here, in the present case, petitioner is neither challenging the advertisement, nor the method of selection. The petitioner has challenged the appointment of respondent no. 2 on the ground that she is not having qualification, as required for the post, in question. Therefore, the law laid down by the Hon'ble Supreme Court in the case of *Ramesh Chandra Shah (supra)* are not applicable to the controversy involved in this writ petition. It is settled law under service jurisprudence that candidates, who are having qualifications, as prescribed in the advertisement in conformity with the Rules, can only be considered. Candidates, who do not have requisite qualification, as required can neither be shortlisted nor recommended for selection.

53. The third judgment, which has been relied upon by the respondent University is in the case of *Manish Kumar Shahi Vs. State of Bihar (2010) 12 SCC 576*, and the facts of this case are on a totally different footing. In this case, a question had been raised in respect of prescribing higher percentage of marks for viva voce test / interview for recruitment as judicial officers. In short, in this case, the process of selection was questioned. Therefore, this judgment is not applicable to the present case. Since the petitioner in the present case has not challenged the selection process, rather he has questioned the appointment of respondent no. 2, who is not having qualifications, as prescribed for the post in question.

54. The fourth judgment, which has been relied upon by the learned counsel for the respondent University, is in the case of *UOI and another Vs. Samar Singh & another (1996) 10 SCC 555*. He



has made reference to paragraphs 6 and 8 of the judgment, which read as under:

“06. In the matter of judicial review of a selection for appointment on a particular post the law is well-settled by the decisions of this Court. In Dalpat Abasahed Solunke and Ors. v. Dr. B.S. Mahajan and Ors., it has been laid down :

It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc.

x x x

8. In Major General I.P.S. Dewan v. Union of India and Ors., it has been held that the principle that administrative orders affecting rights of the citizens should contain reasons therefore cannot be extended to matters of selection and unless the rules so require, the Selection Committee/Selection Board is not obliged to record reasons why they are not selecting a particular person and/or why they are selecting a particular person, as the case may be.”

55. After reading the aforesaid judgment, this Court comes to the conclusion that the ratio laid down by the Supreme Court in that judgment is also not applicable to the present case. In the present case, we are not scrutinizing the relative merits of the petitioner and the selected candidate – respondent no. 2. Here, the issue, which this Court is examining is - whether the selected candidate, who did not have the qualification prescribed, could be considered as eligible, without determining the equivalence of subject “Linguistics” with the subject “English” by the Academic



Council. Therefore, this judgment also will not help the respondent University.

56. The fifth judgment, which has been relied upon by respondent University is in the case of *Dalpat Abasaheb Vs. Dr. B.S. Mahajan and others (1990) 1 SCC 305*. This judgment is also not applicable to the present case. In the present case, this Court is not comparing the merits of the candidates assessed by the Selection Committee. Here, the core issue is with regard to the determination of the eligibility and qualification of respondent no 2.

57. The sixth judgment which is relied upon by the respondent University is in the case of *University of Mysore Vs. C. D. Govinda Rao AIR 1965 SC 491*, which, in fact, arose from a writ petition filed under Article 226 of the Constitution of India seeking a writ of Quo Warranto. In paragraph 12 of this judgment, it is observed that whether the foreign degree is equivalent to a High Second Class Master's degree of an Indian University, is purely an academic matter and Courts would naturally hesitate to express a definite opinion, specially when the selection Board of experts considers a particular foreign university degree so equivalent. In fact, this judgment supports the petitioner's submission, that the determination of equivalence between subjects / courses, is a purely academic issue, which could only be determined by the Academic Council.

58. Pertinently, the issue whether subject "Linguistics" is allied or equivalent subject of "English" was never placed before the Academic Council, which is the only competent body to examine whether the particular subject is equivalent / allied or not.



59. Learned counsel for the respondent University has also placed reliance upon the judgment of Delhi High Court in the case of *R.P. Tolani Vs. Union of India 2014 SCC Online Del 3218*, wherein the selection process for the post of Vice-President of ITAT was put to challenge, but the Court refused to interfere in it. The facts of that case are different from present one, as in the present case, the qualification and eligibility of respondent no. 2 is put to challenge.

60. Learned counsel for the respondent University has also placed reliance on the judgment of the Madras High Court in *Dr. G. Chandran Vs The Registrar, Tamil University, Thanjavur and others, W.P. (MD) No. 3441 of 2018 and W.P. (MD) No. 9179 of 2018*, decided on 05.07.2018. In our view, the said judgment has no relevance as there existed an equivalence certificate granting equivalence between Ph.D. in Folklore with Ph.D. in Lexicography. In the present case, there is nothing to suggest that the qualification in M.A. (Linguistics) could be considered equivalent to the qualification in M.A. (English). This judgment also states that academic issues can only be decided by the Academicians, and not by the Court. We completely agree with this proposition, and it is for this reason that we are of the view, that only the Academic Council of the respondent University could have determined the issue of equivalence. It could neither have been determined by the Screening-cum-Scrutiny Committee, nor could it be determined by this Court.

61. In this regard, we may also refer to the judgment of the Madras High Court in *Dr. R. Karthighai Selvan Vs The Government of Tamil Nadu and others, W.P. (MD) No. 12028 of 2019 and W.P. (MD) No. 9061 of 2019*, decided on 18.04.2022, and *Gorakhpur University Aff. College Teacher Association and another Vs State of U.P. and others, Public Interest Litigation (PIL) No. 35375 of 2015*



with *Writ A No. 38658 of 2015*, decided by the Allahabad High Court on 07.09.2015. In **Gorakhpur University Aff.** (supra) the Division Bench, *inter alia*, observed as under :

“Where appropriate, a procedure of short listing may be envisaged where the number of candidates is large. The final stage is the stage of selection. Decision making must be based on eligibility and suitability as defined by the statute. There must be documentation of the process at each stage. The material on the basis of which the decision is arrived at must show an application of mind to the credentials, competence and integrity of candidates. We have indicated the broad parameters and guidelines. The underlying principle is that institutional processes must be well defined, publicised and fair. That will at least in some measure ensure a movement to a system where competence and merit prevail over patronage, transparency prevails over secrecy and the prevailing culture of cynicism is replaced by accountable and responsive governance which promotes public confidence in our institutions.”

62. Shri Shobhit Saharia, learned counsel for the respondent no. 2, has placed reliance upon the judgment of the Supreme Court in the case of *Sajeesh Babu K. Vs. N.K. Santosh and others (2012) 12 SCC 106*. Shri Shobhit Saharia, learned counsel for the respondent no. 2 has made reference to paragraphs no. 14 and 20 of this judgment. The observations made by the Hon’ble Supreme Court in paragraph 20 of the judgment, reads as under:

“20. It is clear that in a matter of appointment/selection by an Expert Committee/Board consisting of qualified persons in the particular field, normally, the Courts should be slow to interfere with the opinions expressed by the experts, unless there is any allegation of mala fides against the experts who had constituted the Selection Committee. Admittedly, in the case on hand, there is no allegation of mala fides against the 3 experts in the Selection Committee. In such circumstances, we are of the view that it would normally be wise and safe for the courts to leave the decision of selection of this nature to the experts who are more familiar with the technicalities/nature of the work. In the case on hand, the Expert Committee evaluated the experience certificates produced by the Appellant herein, interviewed him by putting specific questions as to direct sale, home delivered products, hospitality/service industry etc. and awarded marks. In such



circumstances, we hold that the High Court ought not to have sat as an appellate Court on the recommendations made by the Expert Committee."

63. In this case, the Expert Committee evaluated the experience certificates of the candidate and interviewed him. In this case, there was no issue whether the candidate was qualified or not, therefore, the judgment will not save the respondent no. 2 since this is on a different footing.

64. As discussed above, after perusing the various provisions of Act No. 25 of 2009 and the Statutes, it is clear that whether a particular subject is equivalent, or not to the subject in question, and whether a particular subject is allied, concerned or relevant to the subject in question, or not, can only be determined by the Academic Council and there is no material on record to show that any agenda to determine equivalence was placed before the Academic Council.

65. In the light of the aforesaid, we are of the view that the grievance of the petitioner, that the candidature of respondent No. 2 for the post in question has not been properly considered, is completely justified. The case of respondent No. 2, who possesses qualification in Linguistics, should have been placed before the Academic Council to determine - whether her qualification could be considered as concerned / relevant / allied to the subject of "English", before proceeding to short-list her, and place her case before the selection committee. This procedure has not been adopted by the respondent University. In these circumstances, we quash and set aside the appointment of respondent No. 2 to the post of Assistant Professor (English).

66. We further direct the respondent University to place the issue - whether the qualification of respondent No. 2 in Linguistics could be considered as "*concerned / relevant / allied*" to



the subject of "English". We direct the Academic Council to bestow its consideration to the said aspect by examining all the relevant materials, including the course content of the courses undergone by respondent No. 2, while pursuing Linguistics, and comparing the same with the course content of the subject of "English". The Academic Council shall decide the aforesaid issue by a reasoned and speaking order within the next one month. In case, the Academic Council comes to the conclusion that respondent No. 2 could be considered as having qualification which is concerned / relevant / allied to the subject of "English", her services may be continued without break in service. However, in case, the Academic Council comes to the conclusion that the qualification in "Linguistics" possessed by respondent No. 2 cannot be considered as concerned / relevant / allied to the subject of "English", the respondent University shall proceed to appoint the petitioner to the post of Assistant Professor (English), since he was placed at Sl. No. 2 in the select panel. In that eventuality, the petitioner shall be granted notional appointment from the initial date of appointment of respondent No. 2, and he shall be given notional seniority from that date. His pay shall be fixed on that basis. However, he shall not be entitled to any arrears of pay.

67. The writ petition is allowed with costs quantified at Rs.50,000/- to be paid by the respondent University.

VIPIN SANGHI, C.J.

RAKESH THAPLIYAL, J.