



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 14040/2021

1. Dr. Karanjeet Kaur D/o Shri Jagdish Singh, Aged About 35 Years, R/o 1/132, Shiv Nagar, 3-E Chhoti, Near Sokhal Medical Store, Ssb Road, Sri Ganganagar, Rajasthan.
2. Dr. Madhu Kumawat D/o Shri Chaina Ram Kumawat, Aged About 37 Years, R/o 19 A/3, Sir Pratap Colony, Paanch Batti Circle, Airport Road, Jodhpur, Rajasthan.
3. Shravan Kumar S/o Shri Chhahana Ram, Aged About 30 Years, R/o V/p Hadetar, Tehsil Sanchore, District Jalore, Rajasthan.

----Petitioners

Versus

1. State Of Rajasthan, Through The Principal Secretary, Higher Education Department, Government Of Rajasthan, Secretariat, Jaipur, Rajasthan.
2. Commissioner, Commissionerate Of College Education, Government Of Rajasthan, Block-Iv, Dr. S. Radhakrishnan Shiksha Sankul, Jawahar Lal Nehru Marg, Jaipur 302015, Rajasthan.
3. Rajasthan Public Service Commission, Through Its Secretary, Ajmer, Rajasthan.
4. University Grants Commission (Ugc), Through The Secretary, Bahadur Shah Zafar Marg, New Delhi.

----Respondents

Connected With

D.B. Civil Writ Petition No. 12080/2020

Mahendar Singh Bairwa S/o Shri Chitir Lal Bairwa, Aged About 35 Years, Category Sc, R/o Qtr No. E-2, 132 Kv Gss, Vidhyut Colony, Bhinmal Bypass Road, Jalore, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through The Principal Secretary, Higher Education Department, Government Of Rajasthan, Secretariat, Jaipur, Rajasthan.
2. Commissioner, Commissionerate Of College Education, Government Of Rajasthan, Block-Iv, Dr. S. Radhakrishnan Shiksha Sankul, Jawahar Lal Nehru Marg, Jaipur- 302015, Rajasthan.
3. Rajasthan Public Service Commission, Through Its Secretary, Ajmer, Rajasthan.
4. University Grants Commission (Ugc), Through The Secretary, Bahadur Shah Zafar Marg, New Delhi.



----Respondents

D.B. Civil Writ Petition No. 12318/2020

Ladu Ram S/o Shri Mana Ram, Aged About 41 Years, Category Sc, R/o Village Dilipgarh, Tehsil Bijowa, District Pali, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through The Principal Secretary, Higher Education Department, Government Of Rajasthan, Secretariat, Jaipur Rajasthan.
2. Commissioner, Commissionerate Of College Education, Government Of Rajasthan, Block-Iv, Dr. S. Radhakrishnan Shiksha Sankul, Jawahar Lal Nehru Marg, Jaipur - 302015, Rajasthan.
3. Rajasthan Public Service Commission, Through Its Secretary, Ajmer, Rajasthan.
4. University Grants Commission (Ugc), Through The Secretary, Bahadur Shah Zafar Marg, New Delhi.

----Respondents

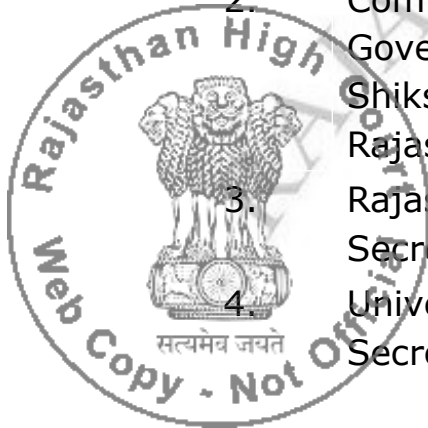
D.B. Civil Writ Petition No. 12689/2020

1. Sahi Lal Vishnoi S/o Shri Bhana Ram Vishnoi, Aged About 35 Years, Category Obc, R/o House No. 4, Keshar Bagh, Jodhpur, Rajasthan.
2. Hanuman Ram Sundwa S/o Shri Kana Ram Sundwa, Aged About 33 Years, Category Sc, R/o Vpo Altawa, District Nagaur, Rajasthan.
3. Dr. Vijay Kumar S/o Shri Krishan Lal, Aged About 45 Years, Category Sc, R/o Krishi Mandi Road, Near Government Hospital, Kuchman City, District Nagaur, Rajasthan.
4. Pawan Kumar Saini S/o Shri Devendra Kumar Saini, Aged About 34 Years, Category Obc, R/o Vpo Mehari, Rajviyan, Tehsil Sardarshahar, District Churu, Rajasthan.
5. Dilip Kumar S/o Shri Kirpal Das, Aged About 33 Years, Category Obc, R/o House No. 441, Deendayal Upadhyay Colony, Jaisalmer, Rajasthan.
6. Kailash Gadhwal S/o Shri Bhoma Ram Gadhwal, Aged About 35 Years, Category Obc, R/o Mukam Jodhras, Tehsil Degana, District Nagaur, Rajasthan.
7. Dr. Shri Kishan Ujjwal S/o Shri Chautha Ram Ujjwal, Aged About 37 Years, Category Sc, R/o 1/a/309, Kudi Bhagtasni Housing Board, Basni, Jodhpur, Rajasthan.

----Petitioners

Versus

1. State Of Rajasthan, Through The Principal Secretary,

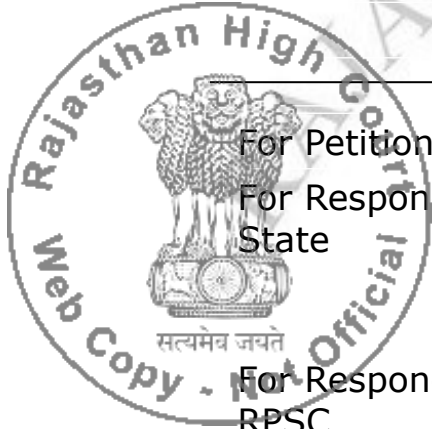




Higher Education Department, Government Of Rajasthan,
Secretariat, Jaipur Rajasthan.

2. Commissioner, Commissionerate Of College Education,
Government Of Rajasthan, Block-Iv, Dr. S. Radhakrishnan
Shiksha Sankul, Jawahar Lal Nehru Marg, Jaipur 302015,
Rajasthan.
3. Rajasthan Public Service Commission, Through Its
Secretary, Ajmer, Rajasthan.
4. University Grants Commission (Ugc), Through The
Secretary, Bahadur Shah Zafar Marg, New Delhi.

----Respondents



For Petitioner(s) : Mr. Nikhil Jain, Mr. Nihar Jain
For Respondent(s)- : Mr. Manish Vyas, AAG
State : Mr. Karan Singh Rajpurohit, AAG
Mr. Kailash Choudhary,
Mr. Rajat Arora
For Respondent- : Mr. Khet Singh Rajpurohit
RPSC

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE SUDESH BANSAL

REPORTABLE

Judgment

Reserved on :: **03/12/2021**
Pronounced on :: **04/01/2022**

By the Court: (Per Akil Kureshi, CJ):

These appeals arise out of common background. They have been heard together and are being disposed of by this common judgment. For convenience, we may record the facts as stated in Civil Writ Petition No. 14040/2021.

2. The petitioners had applied for the post of Assistant Professor in Government colleges for which the Rajasthan Public Service Commission ('RPSC', for short) had issued advertisement dated 18.12.2020 for a total number of 918 posts. According to the petitioners, the qualifications and the method of recruitment as provided in the advertisement and which are followed by the



RPSC, are not in consonance with the guidelines issued by the University Grants Commission ('UGC', for short) in its latest regulations.

3. Initially, RPSC had issued an advertisement for recruitment on 02.11.2020. However, the said advertisement was withdrawn and a fresh advertisement was issued on 18.12.2020. A corrigendum was issued on 07.06.2020 with which we are not concerned. The eligibility criteria prescribed was, good academic record with at least 55% marks or equivalent grade whenever grade system is followed and master's degree in the relevant subject from an Indian university or an equivalent degree from an accredited foreign university. Besides this, the candidate must have cleared the National Eligibility Test conducted by the UGC or the CSIR or similar test, except for candidates who have been awarded Ph.D. degree in accordance to the UGC (Minimum Standards and Procedure for Award of M.Phil./Ph.D. Degree) Regulations, 2009. The definition of 'good academic' record was adopted from the Government circular dated 21.02.2014 which provides as under:-

"good academic record means an average of atleast 55 percent marks in 3 examinations proceeding to masters degree with atleast 50 percent marks in graduation and any one of the secondary/high school/higher secondary/senior secondary or equivalent grades in the points scale wherefrom grading system is followed without including any grace marks and/or rounding of to make it 55 percent or 50 percent as the case may be".

4. The petitioners would point out that in exercise of powers conferred by the proviso of Article 309 of the Constitution, the State Government has framed the Rajasthan Educational Service (Collegiate Branch) Rules, 1986 (hereinafter referred to as 'Rules



of 1986') which pertains to the method of recruitment and service conditions of various teaching staff in the Government colleges, one of the posts being that of Lecturer which is now re-designated as Assistant Professor. As per the Schedule to the said Rules of 1986, the minimum qualification and experience for direct recruitment for the said post is "as laid down from time to time by the University of Rajasthan". The State Government amended the said Rules of 1986 vide notification dated 31.01.2018, by which the definition of term 'Regulations' has been inserted as to mean the University Grants Commission (Minimum Qualification for Appointment of Teachers and other Academic Staff in Universities and Colleges and Other Measures for Maintenance of Standards in Higher Education) Regulation, 2010 as amended from time to time and as adopted by the State Government. Vide this amendment, the existing Schedule to the Rules of 1986 has also been substituted. This Schedule provides method of recruitment, minimum qualifications and experience for direct recruitment etc. for different teaching posts in the Government colleges, one of them being Assistant Professor. The minimum qualification and experience for direct recruitment provided in this Schedule is same as advertised by RPSC in its advertisement dated 18.12.2020.

5. The petitioners further point out that UGC framed fresh Regulations called University Grants Commission (Minimum Qualifications for appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2018 (hereinafter to be referred as the said "Regulation of 2018"). We would take detail note of these Regulations at a later stage.



However, at this stage we may record that these Regulations among other things, provide for recruitment and qualifications of various teaching posts in the universities and colleges. The concept of a good academic record does not find place in these Regulations. The Regulations prescribe the criteria for short-listing the candidates for interview for the post of Assistant Professor in universities and colleges and further provide that such short-listing would be only for interview and the selection should be based on the performance in the interview.

6. The grievance of the petitioners is that the RPSC has not applied the provisions of UGC Regulations of 2018, though the recruitment advertisement was issued after promulgation of the said Regulations. Essentially, the grievance revolves around two parameters of recruitment. Firstly, with respect to the eligibility criteria, that a candidate has to show good academic record as defined and the selection process envisaged by RPSC which consists of written test followed by oral interview. According to the petitioners, both these elements are missing from the UGC Regulations, 2018. They would point out that in these Regulations, there is no mention of requirement that a candidate, in order to be eligible, must possess good academic record. The State Government has inserted a requirement which is not found in the UGC Regulations. During the course of hearing of the arguments, however, this grievance was side-stepped as would be clear hereafter. Main focus of the challenge by the learned counsel for the petitioners was that the RPSC followed selection process vastly different from and in conflict with that prescribed by UGC under its Regulations of 2018.



7. The RPSC has filed a reply in which it is stated that the scheme of examination as mentioned in the advertisement for recruitment is as provided in Rule 19A and Schedule-II inserted vide notification dated 28.07.2015 in the Rules of 1986. It is stated that the RPSC is conducting the selection process on behalf of the State Government who is the recruiting authority. The State Government is therefore proper authority to prescribe the rules as regards the selection and appointment of the candidates to the post in question. It is stated that in response to the advertisement dated 18.12.2020, the Commission has received 1,55,984 applications. The Commission has thereupon proceeded to conduct the written examination as per the scheme notified in the advertisement dated 18.12.2020. The examination was conducted on 22.09.2021 and the Commission is in the process of declaring the result.

8. Shri Nikhil Jain, learned counsel appearing for the petitioners at the outset clarified that all the petitioners satisfy the requirement of good academic record as provided by the State Government and as prescribed in the recruitment advertisement. So far as these petitions are concerned, this issue is not pressed. We therefore have not gone into this aspect of the matter, namely, where in face of the UGC Regulations 2018, the State Government can prescribe the requirement of good academic record as one of the eligibility criteria, though there is no such prescription in the UGC Regulations.

9. Learned counsel for the petitioners however vehemently contended that the method of selection adopted by the RPSC is not in consonance with the UGC regulations and the selection process may therefore be quashed. They drew our attention to the



UGC Regulations, 2018 in order to highlight that for the post of Assistant Professor in colleges, the Regulations provide for short-listing of the candidates on the basis of allotment of marks as prescribed. Thereafter, the selection has to be based only on oral interview. In the present case, the RPSC has not followed this pattern. Instead, a written examination is conducted for all eligible candidates which will be followed by oral interview. This is directly in conflict with the UGC Regulations, 2018. He submitted that in case of conflict between the Central legislation and the State legislation in a subject contained concurrent list, the Central legislation must prevail. The UGC Regulations being the Central legislation, the State legislation must yield to the UGC Regulations.

10. On the other hand, learned Additional Advocate General appearing for the State submitted that the State Rules are not in conflict with the UGC Regulations. Method of recruitment adopted by the RPSC as laid down by the State Government in its statutory Rules, is neither in conflict nor opposed to the UGC Regulations. The State Government has the authority to prescribe its own method of recruitment. The eligibility criteria are in conformity with the UGC regulations. Prescription of good academic record even if not laid down in the UGC Regulations, 2018 can always be provided by the State Government since this would be in addition to the eligibility criteria laid down by the UGC and not in dilution of or providing lower standards than those prescribed by the UGC. He pointed out that more than 1,50,000 candidates have applied in response to the advertisement. It was therefore impossible to hold oral interviews for large number of candidates even after applying method for short-listing as suggested by the UGC and



advocated by the petitioners. The method of holding written test followed by oral interview is therefore just and proper and in any case not impermissible as per the existing statutory framework.

11. As is well known, education including technical education, medical education and universities (subject to the provisions of entries 63, 64, 65 and 66 of List I of Seventh Schedule of the Constitution), vocational and technical training of labour fall under entry 25 of the concurrent list of Seventh Schedule. Under list I of the Union List- the Union legislation has retained the powers to frame laws with respect to certain specified institutions (entry 63); institution for scientific or technical education financed by the Government of India (entry 64); Union agencies and institutions for professional, vocational or technical training, for promotion of special studies or research, for scientific or technical assistance in investigation or detection of crime (entry 65). Entrée 66 of List I pertains to co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Thus, the subject of co-ordination and determination of standards in institutions of higher education is within the exclusive domain of the Union legislation whereas education including technical and medical education and universities falls within the concurrent jurisdiction of the Union as well as the State legislations.

12. The University Grants Commission Act, 1956 ('UGC Act 1956', for short) was enacted to make provision for the co-ordination and determination of standards of universities and for such purpose establish a University Grants Commission. Section 26 of the Act empowers the Commission to make regulations consistent with the Act and Rules made thereunder.



13. In exercise of such powers, the UGC has framed its Regulations of 2018 which are in supersession of earlier Regulations of 2010. It provides that the Regulations are framed for minimum qualifications for appointment and other service conditions of university and college teachers and cadres of Librarians, Directors of Physical Education in support for maintenance of standards in higher education and revision of pay scales. Regulation 3 pertains to recruitment and qualifications. Sub-regulation 3.1 provides that the direct recruitment to the post of Assistant Professor, Associate Professor and Professor in universities and colleges and Senior Professors in universities shall be on the basis of merit through all India advertisement followed by duly constituted selection committee as per the provisions made under these Regulations. Sub-regulation 3.2 provides that the minimum qualifications for such posts shall be as specified by the UGC in these Regulations. Sub-regulation 3.12 provides that no person shall be appointed to such post if such person does not fulfill the requirements of qualifications as provided in schedule I of the Regulations. For Assistant Professor, these Regulations require the eligibility criteria of masters degree with 55 percent marks or equivalent in the concerned subject from an Indian university or an equivalent degree from an accredited foreign university, NET or equivalent pass except as exempt for specified Ph.D. degree holders. A note appended to this eligibility criteria reads as under:-

"Note: The Academic score as specified in Appendix II (Table 3A) for Universities, and Appendix II (Table 3B) for Colleges, shall be considered for short-listing of the candidates for interview only, and the selections shall be based only on the performance in the interview."



Table 3B referred to this note reads as under:-

Table:3B

Criteria for Short-listing of candidates for Interview for the Post of Assistant Professors in Colleges

S.N	Academic Record	Score			
1.	Graduation	80% & Above =21	60% to less than 80% = 19	55% to less than 60% = 16	45% to less than 55% = 10
2.	Post-Graduation	80% & Above =25	60% to less than 80% = 23	55% (50% in case of SC/ST/OBC (non-creamy layer)/PWD) to less than 60% = 20	
3.	M.Phil	60% & above=07	55% to less than 60% = 05		
4.	Ph.D.	25			
5.	NET with JRF	10			
	NET	08			
	SLET/SET	05			
6.	Research Publications (2 marks for each research publications published in Peer-Reviewed or UGC-listed Journals)	06			
7.	Teaching/Post Doctoral Experience (2 marks for one year each)#	10			
8.	Awards				
	International/National Level (Awards given by International Organisations/ Government of India/Government of India recognised National Level bodies)	03			
	State-Level (Awards given by State Government)	02			

However, if the period of teaching/post-doctoral experience is less than one year then the marks shall be reduced proportionately.

Note:

(A)

- | | | | | |
|-------|--------------------|---------|---|-----------|
| (i) | M.Phil.+ Ph.D. | Maximum | - | 25 Marks |
| (ii) | JRF/NET/SET | Maximum | - | 10 Marks |
| (iii) | In awards category | Maximum | - | 03 Marks" |



14. From the above portion of the Regulation 2018, it can be seen that besides laying down minimum eligibility criteria, these regulations also provide in the said note that academic score as specified in the appendix shall be considered for short-listing the candidates for interview and the selection shall be based only on the performance of the interview. As against this, the Government rules contain a scheme for recruitment which envisages a written test followed by oral interview of the eligible candidates. Short question is, is the methodology adopted by RPSC as prescribed by the State government is permissible in background of these facts?

15. It is undisputed position that in a legislation falling in the concurrent list, the State legislation must yield to the Central legislation. In case of a conflict, the provisions made in the Central legislation must prevail. Under the circumstances, wherever the statutory body such as UGC has prescribed the qualification and eligibility criteria for appointment of teaching staff of universities and colleges, it would not be open for the State authority to dilute such requirements by prescribing and following criteria lower than that prescribed by the UGC. However, it is equally well settled that the standards higher than those prescribed by the Central agency can still be applied by the State rule making authority. Reference in this respect can be made to a Constitution Bench judgment of the Supreme Court in the case of **Dr. Preeti Srivastava And Anr. Vs. State of M.P. And Ors., reported in (1999) 7 SCC 120**. In this case it was held that admission to educational courses must be made on a basis which is consistent with the standards laid down by a statute or regulation framed by the Central Government in exercise of its powers under Entry 66 List I. In such cases the minimum standards as laid down by the



Central statute or under it have to be applied with by the State while making admissions. It may in addition lay down other additional norms for admission or regulate admissions in exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down. Thus once the minimum standards are laid down by the authority having the power to do so, any further qualifications laid down by the State which will lead to the selection of better students cannot be challenged on the ground that it is contrary to what has been laid down by the authority concerned, the action of the State would be valid because it does not adversely impinge on the standards prescribed by the appropriate authority. Following observations made be noted:-

"47. There are, however, two cases where there are observations to the contrary. One is the case of the State of M.P. Vs. Nivedita Jain, a judgment of a Bench of three judges. In this case the Court dealt with admission to the M.B.B.S. course in the medical colleges of the State of Madhya Pradesh. The Rules framed by the State provided for a minimum of 50% as qualifying marks for the general category students for admission to the medical colleges of the State. But for the Scheduled Castes and the Scheduled Tribes the minimum qualifying marks were prescribed as 40%. Later on the minimum qualifying marks for the Scheduled Castes and the Scheduled Tribes were reduced to 0. The Court observed:

That it was not in dispute and it could not be disputed that the order in question was in conflict with the provisions contained in Regulation 2 of the Regulations framed by the Indian Medical Council."

But it held that Entry 66 of List-I would not apply to the selection of candidates for admission to the medical colleges because standards would come in after the students were admitted. The Court also held that Regulation 2 of the Regulations for admission to M.B.B.S. courses framed by the Indian Medical Council, was only recommendatory. Hence any relaxation in the rules of selection made by the State Government was permissible. We will examine the character of the



*Regulations framed by the Medical Council of India a little later. But we cannot agree with the observations made in that judgment to the effect that the process of selection of candidates for admission to medical college has no real impact on the standard of medical education; or that the standard of medical education really comes into the picture only in the course of studies in the medical colleges or institutions after the selection and admission of candidates. For reasons which we have explained earlier, the criteria for the selection of candidates have an important bearing on the standard of education which can be effectively imparted in the medical colleges. We cannot agree with the proposition that prescribing no minimum qualifying marks for admission for the Scheduled Castes and the Scheduled Tribes would not have an impact on the standard of education in the medical colleges. Of course, once the minimum standards are laid down by the authority having the power to do so, any further qualifications laid down by the State which will lead to the selection of better students cannot be challenged on the ground that it is contrary to what has been laid down by the authority concerned. But the action of the State is valid because it does not adversely impinge on the standards prescribed by the appropriate authority. Although this judgment is referred to in the Constitution Bench judgment of *Indra Sawhney v. Union of India*, the question of standards being lowered at the stage of post-graduate medical admissions was not before the Court for consideration. The Court merely said that since Article 16 was not applicable to the facts in *Kumari Nivedita Jain's* case Article 335 was not considered there. For post-graduate medical education, where the "students" are required to discharge duties as doctors in hospitals, some of the considerations underlying Articles 16 and 335 would be relevant as hereinafter set out. But that apart, it cannot be said that the judgment in *Nivedita Jain* is approved in all its aspects by *Indra Sawhney v. Union of India*."*

16. The question therefore in the present case is, is the procedure for selection prescribed by RPSC in conflict with the UGC norms? If we peruse the UGC regulations in this context, we find that the note reproduced above speaks of the method of short-listing of candidates for interview for appointment of teaching staff of universities and colleges. Such method is laid down in table 3A and 3B. Table 3B, which pertains to Assistant Professor in colleges prescribes the marks which a candidate



would score on the basis of his or her academic performance in various stages. For example if a candidate has secured above 80 percent marks in graduation, 21 marks would be awarded to the candidate; those who have scored between 60 and 80 marks in the same examination, 19 marks would be awarded and so on. For all candidates with Ph.D. degree 25 marks would be awarded.

Extra marks would be provided for research publication, for teaching experience and awards given at the national and international level and state level. This exercise is to be conducted for the purpose of short-listing the candidates for interview. The note makes it clear that once the candidates are shortlisted, their scores, as provided in table 3B would lose its significance. The selection would be made only on the basis of performance in the interview. Though this exercise of awarding scores is prescribed in table 3B, there is no cut-off provided for short-listing. In other words, there is no clarity under the Regulations as to in what manner the candidates would be short-listed once the scores are assigned as provided in the concerned table.

17. As against this, the State Government has followed its pattern of written test followed by oral interview. To our mind, though the procedure that is adopted by the State Government may be somewhat different from what the UGC Regulations prescribe, this is not a case of irreconcilable conflict between the Central and the State legislation. The State legislation and RPSC, as the recruiting agency, have followed the pattern of written test followed by oral interview, pointing out that it would be impossible to hold oral interviews for large number of candidates who have applied in response to the public advertisement. We may recall, more than 1,50,000 candidates have applied for 918 posts. As



noted, UGC regulations have not provided any cut-off for short-listing the candidates on the basis of scores to be allotted in terms of the table. Even if we permit the degree of latitude to the recruiting agency and expect calling for oral interview candidates 5 times the number of notified vacancies, this would require conducting the oral interview close to 5,000 candidates. The method of written test followed by oral interview adopted by the State Government cannot be seen as irreconcilable conflict with the UGC Regulations. When the note contained in the UGC Regulations refer to purpose of awarding the scores only for short-listing, the essence is that once this task of short-listing is over, these marks shall carry no further significance. The stress therefore is not on the selection to be based only on oral interview; the stress is that the purpose for assigning scores prescribed in the table is for the purpose of short-listing only.

18. In case of **Forum for People's Collective Efforts (FPCE) And Anr. Vs. State of West Bengal And Anr., reported in (2021) 8 SCC 599**, the Supreme Court had the occasion to consider the question of repugnancy of the State law with a Central legislation on a subject matter which falls in Concurrent List. Referring to Article 254 of the Constitution it was observed that such repugnancy would arise under three situations, namely (i) absolute or irreconcilable conflict, (ii) on the principle of occupied field, and (iii) overlap over the same subject matter. After discussing these three situations in detail it was observed that the primary effort in the exercise of judicial review must be an endeavor to harmonise. Repugnancy in other words is not an option of first choice but something which can be drawn where a



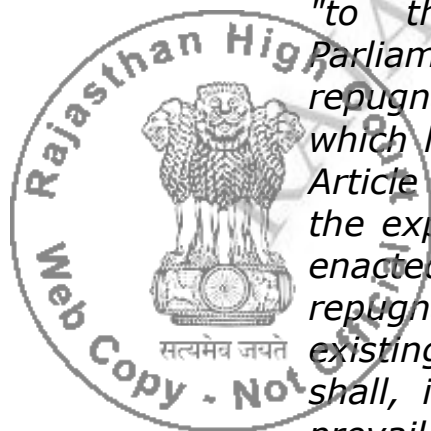
clear case based on the application of one of the three tests arises for determination. Following portion of the judgment need to be noted:-

"132. The initial part of Clause (1) alludes to a law enacted by a state legislature being "repugnant" to a law enacted by Parliament or to an existing law. The concluding part of Clause 1 provides for a consequence, namely that the State law would be void "to the extent of the repugnancy" and the Parliamentary enactment shall prevail. The concept of repugnancy emerges from the decisions of this Court which have elaborated on the context of Clause (1) of Article 254. Clause (2) of Article 254 has also employed the expression "repugnant" while providing that a law enacted by the legislature of a State which is repugnant to a law enacted by Parliament or an existing law on a matter within the Concurrent List shall, if it has received the assent of the President, prevail in the State. The decisions of this Court essentially contemplate three types of repugnancy:

132.1 The first envisages a situation of an absolute or irreconcilable conflict or inconsistency between a provision contained in a State legislative enactment with a Parliamentary law with reference to a matter in the Concurrent List. Such a conflict brings both the statutes into a state of direct collision. This may arise, for instance, where the two statutes adopt norms or standards of behavior or provide consequences for breach which stand opposed in direct and immediate terms. The conflict arises because it is impossible to comply with one of the two statutes without disobeying the other;

132.2 The second situation involving a conflict between State and Central legislations may arise in a situation where Parliament has evinced an intent to occupy the whole field. The notion of occupying a field emerges when a Parliamentary legislation is so complete and exhaustive as a Code as to preclude the existence of any other legislation by the State. The State law in this context has to give way to a Parliamentary enactment not because of an actual conflict with the absolute terms of a Parliamentary law but because the nature of the legislation enacted by Parliament is such as to constitute a complete and exhaustive Code on the subject; and

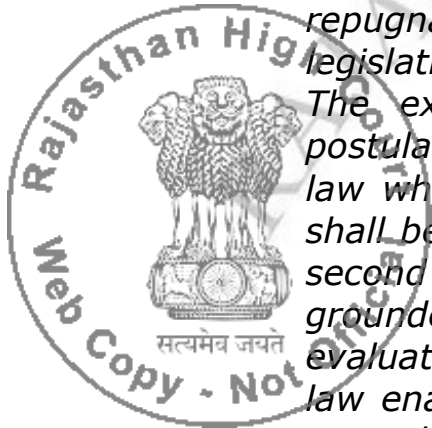
132.3 The third test of repugnancy is where the law enacted by Parliament and by the State legislature regulate the same subject. In such a case the





repugnancy does not arise because of a conflict between the fields covered by the two enactments but because the subject which is sought to be covered by the State legislation is identical to and overlaps with the Central legislation on the subject.

133. The distinction between the first test on the one hand with the second and third tests on the other lies in the fact that the first is grounded in an irreconcilable conflict between the provisions of the two statutes each of which operates in the Concurrent List. The conflict between the two statutes gives rise to a repugnancy, the consequence of which is that the State legislation will be void to the extent of the repugnancy. The expression 'to the extent of the repugnancy' postulates that those elements or portions of the state law which run into conflict with the central legislation shall be excised on the ground that they are void. The second and third tests, on the other hand, are not grounded in a conflict borne out of a comparative evaluation of the text of the two provisions. Where a law enacted by Parliament is an exhaustive Code, the second test may come into being. The intent of Parliament in enacting an exhaustive Code on a subject in the Concurrent List may well be to promote uniformity and standardization of its legislative scheme as a matter of public interest. Parliament in a given case may intend to secure the protection of vital interests which require a uniformity of law and a consistency of its application all over the country. A uniform national legislation is considered necessary by Parliament in many cases to prevent vulnerabilities of a segment of society being exploited by an asymmetry of information and unequal power in a societal context. The exhaustive nature of the Parliamentary code is then an indicator of the exercise of the State's power to legislate being repugnant on the same subject. The third test of repugnancy may arise where both the Parliament and the State legislation cover the same subject matter. Allowing the exercise of power over the same subject matter would trigger the application of the concept of repugnancy. This may implicate the doctrine of implied repeal in that the State legislation cannot co-exist with a legislation enacted by Parliament. But even here if the legislation by the State covers distinct subject matters, no repugnancy would exist. In deciding whether a case of repugnancy arises on the application of the second and third tests, both the text and the context of the Parliamentary legislation have to be borne in mind. The nature of the subject matter which is legislated upon, the purpose of the legislation, the rights which are sought to be protected, the legislative history and the nature and ambit of the statutory provisions are among the factors that provide guidance in the exercise of judicial review.





The text of the statute would indicate whether Parliament contemplated the existence of State legislation on the subject within the ambit of the Concurrent List. Often times, a legislative draftsman may utilize either of both of two legislative techniques. The draftsman may provide that the Parliamentary law shall have overriding force and effect notwithstanding anything to the contrary contained in any other law for the time being in force. Such a provision is indicative of a Parliamentary intent to override anything inconsistent or in conflict with its provisions. The Parliamentary legislation may also stipulate that its provisions are in addition to and not in derogation of other laws. Those other laws may be specifically referred to by name, in which event this is an indication that the operation of those specifically named laws is not to be affected. Such a legislative device is often adopted by Parliament by saving the operation of other Parliamentary legislation which is specifically named. When such a provision is utilized, it is an indicator of Parliament intending to allow the specific legislation which is enlisted or enumerated to exist unaffected by a subsequent law. Alternatively, Parliament may provide that its legislation shall be in addition to and not in derogation of other laws or of remedies, without specifically elucidating specifically any other legislation. In such cases where the competent legislation has been enacted by the same legislature, techniques such as a harmonious construction can be resorted to in order to ensure that the operation of both the statutes can co-exist. Where, however, the competing statutes are not of the same legislature, it then becomes necessary to apply the concept of repugnancy, bearing in mind the intent of Parliament. The primary effort in the exercise of judicial review must be an endeavour to harmonise. Repugnancy in other words is not an option of first choice but something which can be drawn where a clear case based on the application of one of the three tests arises for determination."

19. In the result, we find no reason to interfere. The petitions are dismissed.

(SUDESH BANSAL),J

(AKIL KURESHI),CJ

1,13,14,15-Jayesh/-