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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 13th OF APRIL, 2024

WRIT PETITION No. 5984 of 2005

BETWEEN:-

PROFESSOR VIJAY KUMAR AGRAWAL, AGED ABOUT 48 YEARS S/O LATE SHRI RAM AGRAWAL RESIDENT OF ARUN NAGAR, ALPA AAYA VARG SOCIETY, PRESENTLY PROFESSOR AND HEAD OF THE DEPARTMENT OF CHEMISTRY, AWADHESH PRATAP SINGH VISHWAVIDYALAY, REWA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ANIL KHARE - SENIOR ADVOCATE ASSISTED BY SMT. TANVI AGARWAL - ADVOCATE)

AND

- 1. AWADHESH PRATAP SINGH VISHWAVIDYALAYA &O (MADHYA PRADESH)**
- 2. KULADHIPATI AWADHESH PRATAP SINGH VISHWAVIDYALAY RAJ BHAVAN BHOPAL (MADHYA PRADESH)**
- 3. UNIVERSITY GRANTS COMMISSION THROUGH ITS SECRETARY BAHADURSHAH ZAFAR MARG NEW DELHI (DELHI)**
- 4. DR. SMT. UGAM KUMARI CHOUHAN D/O NOT MENTION, AGED ABOUT 55 YEARS, OCCUPATION: PRESENTLY PROFESSOR SCHOOL/ DEPARTMENT OF ENVIRONMENTAL BIOLOGY AWADHESH PRATAP SINGH VISHWAVIDYALAY REWA (MADHYA PRADESH)**
- 5. DR. AJAI KUMAR AWASTHI S/O NOT MENTION, AGED ABOUT 48 YEARS, OCCUPATION: PROFESSOR SCHOOL/ DEPARTMENT OF ENVIRONMENTAL BIOLOGY AWADHESH PRATAP SINGH VISHWAVIDYALAY REWA (MADHYA PRADESH)**

6. DR. RAHASYA MANI MISHRA S/O NOT MENTION, AGED ABOUT 47 YEARS, OCCUPATION: PROFESSOR SCHOOL/ DEPARTMENT OF ENVIRONMENTAL BIOLOGY AWADHESH PRATAP SINGH VISHWAVIDYALAY REWA (MADHYA PRADESH)
7. DR. DADAN PRASAD TIWARI S/O NOT MENTION, AGED ABOUT 55 YEARS, OCCUPATION: PROFESSOR OF PHYSICS AWADHESH PRATAP SINGH VISHWAVIDYALAY REWA (MADHYA PRADESH)
8. DR. CHANDRA DEV SINGH S/O NOT MENTION, AGED ABOUT 48 YEARS, OCCUPATION: PROFESSOR DEPARTMENT OF ANCIENT INDIAN HISTORY CULTURE AND ARCHAEOLOGY AWADHESH PRATAP SINGH VISHWAVIDYALAY REWA (MADHYA PRADESH)
9. DR. SMT. ANJALI SHRIVASTAVA D/O NOT MENTION, AGED ABOUT 48 YEARS, OCCUPATION: PROFESSOR OF PSYCHOLOGY AWADHESH PRATAP SINGH VISHWAVIDYALAY REWA (MADHYA PRADESH)
10. DR. DEEPA SHRIVASTAVA D/O NOT MENTION, AGED ABOUT 52 YEARS, OCCUPATION: PROFESSOR DEPARTMENT OF BUSINESS ECONOMICS AWADHESH PRATAP SINGH VISHWAVIDYALAY REWA (MADHYA PRADESH)
11. DR. RAJIV DUBEY S/O NOT MENTION, AGED ABOUT 47 YEARS, OCCUPATION: PROFESSOR DEPARTMENT OF BUSINESS ECONOMICS AWADHESH PRATAP SINGH VISHWAVIDYALAY REWA (MADHYA PRADESH)

....RESPONDENTS

(SHRI VIBHUENDRA MISHRA - ADVOCATE FOR THE CAVEATOR)

WRIT PETITION No. 9793 of 2019

BETWEEN:-

DR. RAHASYAMANI MISHRA S/O SHRI S.P. MISHRA, AGED ABOUT 60 YEARS, OCCUPATION: PROFESSOR A.P.S. UNIVERSITY REWA GAYATRI NAGAR WARD NO. 10 REWA (MADHYA PRADESH)

....PETITIONER

*(BY SHRI SANJAY K. AGRAWAL - SENIOR ADVOCATE ASSISTED BY
SIDDHARTH KUMAR SHARMA - ADVOCATE)*

AND

1. THE STATE OF MADHYA PRADESH THR THE PRINCIPAL SECRETARY DEPT. OF HIGHER EDUCATION GOVT. OF M.P. MANTRALAYA VALLABH BHAWAN (MADHYA PRADESH)
2. CHANCELLOR OF UNIVERSITY BHOPAL RAJ BHAWAN BHOPAL (MADHYA PRADESH)
3. AWADHESH PRATAP SINGH VISHWAVIDYALAYA THROUGH REGISTRAR REWA (MADHYA PRADESH)

....RESPONDENTS

*(SHRI MANAS MANI VERMA - GOVERNMENT ADVOCATE FOR THE STATE)
(SHRI DIVYKRISHNA BILAIYA - ADVOCATE FOR RESPONDENT NO. 3)*

WRIT PETITION No. 9937 of 2019

BETWEEN:-

1. PROF. C.D. SINGH S/O LATE SHRI U.B. SINGH, AGED ABOUT 62 YEARS, OCCUPATION: PROF. APS UNIVERSITY REWA R/O. TF-5, APS UNIVERSITY CAMPUS (MADHYA PRADESH)
2. PROF UGAM KUMARI CHAUHAN W/O SHRI RATAN SINGH CHAUHAN OCCUPATION: RETD PROFESSOR R/O E-6, FORTUNE GLORI, TILAK NAGAR (MADHYA PRADESH)

....PETITIONERS

(BY SHRI ARPAN PAWAR - ADVOCATE)

AND

1. CHANCELLOR APS UNIVERSITY REWA RAJ BHAWAN BHOPAL (MADHYA PRADESH)
2. APS UNIVERSITY THR. ITS REGISTRAR DISTT. REWA (MADHYA PRADESH)
3. UNIVERSITY GRANTS COMMISSION THR. ITS SECRETARY SHAHADUR SHAH ZAFAR MARG

(DELHI)

4. PROF. VIJAY KUMAR AGRAWAL APS UNIVERSITY
DISTT-REWA (MADHYA PRADESH)
5. STATE OF MADHYA PRADESH THR. PRINCIPAL
SECRETARY MANTRALAYA BHOPAL (MADHYA
PRADESH)

.....RESPONDENTS

(SHRI DIVYKRISHNA BILAIYA - ADVOCATE FOR RESPONDENT NO. 2)
*(SHRI MANAS MANI VERMA - GOVERNMENT ADVOCATE FOR
 RESPONDENT NO. 5)*

WRIT PETITION No. 10042 of 2019

BETWEEN:-

DADAN PRASAD TIWARI S/O LATE BRINDAWAN
TIWARI, AGED ABOUT 69 YEARS, OCCUPATION:
RETIRED PROFESSOR AWADHESH PRATAP SINGH
UNIVERSITY ANANTPUR REWA (MADHYA PRADESH)

.....PETITIONER

*(BY SHRI K. C. GHILDIYAL - SENIOR ADVOCATE ASSISTED BY SHRI
 MANOJ KUMAR RAJAK - ADVOCATE)*

AND

1. AWADHESH PRATAP SINGH UNIVERSITY, REWA
THROUGH REGISTRAR REWA (MADHYA
PRADESH)
2. THE CHANCELLOR AWADHESH PRATAP SINGH
UNIVERSITY REWA BHOPAL MP (MADHYA
PRADESH)
3. THE UNIVERSITY GRANT COMMISSION
THROUGH ITS SECRETARY BAHADUR SHAH
JAFAR MARG NEW DELHI (DELHI)

.....RESPONDENTS

(SMT. NIRMALA NAYAK - ADVOCATE FOR RESPONDENT NO. 3)

WRIT PETITION No. 10150 of 2019

BETWEEN:-

1. DR ANJALI SHIRVASTAVA W/O UMESH KUMAR

SRIVASTAVA, AGED ABOUT 62 YEARS,
OCCUPATION: PROFESSOR AND HEAD
DEPARTMENT OF PSYCHOLOGY PROFESSOR
INCHARGE SOCIAL WORK 1/29/510 MIG MANAS
NAGAR NEAR BANK COLONY REWA (MADHYA
PRADESH)

2. DR. DEEPA SHRIVASTAVA W/O SHRI KAMAL
SHRIVASTAVA, AGED ABOUT 65 YEARS,
OCCUPATION: RETIRED PROFESSOR OF
BUSINESS ECONOMICS AWADHESH PRATAP
SINGH UNIVERSITY REWA B 407 SHILPI UPVAN
ARUN NAGAR (MADHYA PRADESH)
3. DR. RAJIV DUBEY S/O DR. R.C DUBEY, AGED
ABOUT 61 YEARS, OCCUPATION: PROFESSOR AND
HEAD DEPTT. OF BUSINESS ECONOMICS
AWADHESH PRATAP SINGH UNIVERSITY REWA
D/49-50 NIRMAL EMPIRE PHASE 2 SAMAN
(MADHYA PRADESH)

.....PETITIONERS

*(BY SHRI ANIL KHARE - SENIOR ADVOCATE ASSISTED BY MS. TANVI K.
AGRAWAL - ADVOCATE)*

AND

1. STATE OF MADHYA PRADESH THROUGH
PRINCIPAL SECRETARY DEPARTMENT OF
HIGHER EDUCATION VALLABH BHAWAN,
(MADHYA PRADESH)
2. CHANCELLOR AWADHESH PRATAP SINGH
UNIVERSITY, RAJ BHAWAN BHOPAL (MADHYA
PRADESH)
3. UNIVERSITY GRANTS COMMISSIOER THROUGH
SECRETARY BAHADUR SHAH ZAFAR MARG
(DELHI)
4. AWADHESH PRATAP SINGH UNIVERSITY
THROUGH REGISTRAR SIRMOUR ROAD
ANANTHPUR (MADHYA PRADESH)
5. PROF. VIJAY KUMAR AGRAWAL S/O SHRI RAM
AGRAWAL, AGED ABOUT 62 YEARS,
OCCUPATION: ARUN NAGAR AAY VARG SOCIETY
PRESENTLY PROFESSOR DEPT. OF CHEMISTRY
AWAESH PRATAP SINGH VISHWAVIDYALAYA
(MADHYA PRADESH)

(SHRI VED PRAKASH TIWARI - ADVOCATE FOR RESPONDENT NO. 4)
(SHRI VIBUDHENDRA MISHRA - ADVOCATE FOR RESPONDENT NO. 5)

These petitions coming on for orders this day, the court passed the following:

ORDER

These bunch of petitions raise similar issue. One of the petition namely W.P. No. 5984/2005 is at the behest of the complainant Professor Vijay Kumar Agrawal claiming that he was appointed as 'Lecturer' in Chemistry on 28/01/1985. Thereafter, he was directly recruited and appointed as 'Reader' in Awadhesh Pratap Singh University w.e.f. 30/09/1993 and then his case was considered for promotion to the post of 'Professor' under the Career Advancement Scheme in the University departments and in terms of said Career Advancement Scheme, he was granted promotion from the post of 'Reader' to 'Professor' w.e.f. 30th September, 2001 Annexure P-12.

Petitioner's grievance is that private respondents i.e. respondent nos. 4 to 11 out of whom, some of the private respondents have filed individual petitions before this High Court namely, Dr. Rahasyamani Mishra petitioner in W.P. No. 9793/2019, respondent no. 9; Dr. Anjali Shrivastava, respondent no. 10; Ms. Deepa Shrivastava & Dr. Rajiv Dubey who are petitioners in W.P. No. 10150/2019; respondent no. 7 Dadan Prasad Tiwari petitioner in W.P. No. 10042/2019; and respondent no. 8 Dr. C.D. Singh petitioner in W.P. No. 9937/2019 were granted promotion as 'Professor' in violation of the U.G.C. norms and the University regulations from a date when they had not completed eight years of service as 'Reader' which is a mandatory requirement according to the petitioner Dr. Vijay Kumar Agrawal. Thus, giving them an undue march over the petitioner in the cadre of 'Professor'.

Consequently in the said petition, relief is sought to set aside the orders Annexures P-12 and P-13 dated 8/10/2003 and 24/04/2004 as they adversely affect the petitioner and to command respondent nos. 1, 2 and 3 to restore the seniority of the petitioner.

The private respondents have filed their individual petitions mainly challenging the orders passed by the Secretary and His Excellency the Governor and Chancellor of Awadhesh Pratap Singh University, Rewa annulling the promotion orders of individuals namely Dr. Smt. Ugam Kumari Chauhan, Dr. Ajay Kumar Awasthy, Dr. Rahasyamani Mishra, Dr. C.D. Singh, Dr. Anjali Shrivastava, Dr. Deepa Shrivastava, Dr. Rajiv Dubey and Dr. Dadan Prasad Tiwari treating them to be in violation of the Ordinance No. 4 (B) under Madhya Pradesh Universities Act, 1973 and also being in violation of the instructions issued by the University Grants Commission from time to time.

Shri Anil Khare, learned Senior Advocate, Shri K.C. Ghildiyal, learned Senior Advocate, Shri Sanjay K. Agrawal, learned Advocate, Shri Arpan Pawar, learned counsel and Shri Vibhudendra Mishra, learned counsel are heard.

Shri Vibhudendra Mishra, learned counsel appearing for Dr. Vijay Kumar Agrawal submits that his only grievance is that the private respondents could not have stolen march over the petitioner Dr. Vijay Kumar Agrawal as they were junior to him in the cadre of 'Reader' and in violation of the Ordinance and other provisions contained in the U.G.C. regulations, they have been given a march over the petitioner and thus with the passing of the order Annexure P-17 in W.P. No. 10150/2019, his grievance stands ventilated if the said order which is under challenge in the connected writ petitions filed at the instance of the private respondents is maintained.

Shri Anil Khare, learned Senior Advocate submits that he will be

addressing the court treating W.P. No. 10150/2019 as the lead case and will be referring to the documents annexed therewith. He submits that Annexure P-16 is the order of promotion dated 8/10/2003 whereby promotion to the post of 'Professor' was given from different dates starting from 2nd November, 2000. (Dr. Smt. Ugam Kumari Chouhan 19th November, 2004), (Dr. Ajay Kumar Awasthy 19th November, 2004), (Dr. Rahasyamani Mishra - 19th January, 2000), (Dr. Anjali Shrivastava 30th January, 2002), (Dr. Deepa Shrivastava 15th July, 2002), (Dr. Rajiv Dube 16th July, 2002) and Dr. Chandradev Singh was given promotion on 29th January, 2002.

It is submitted that thereafter in the year 2004, Dr. Dadan Prasad Tiwari was given promotion as 'Professor' and then cancellation of these promotion orders after lapse of 13 to 15 years by the impugned order Annexure P-17 is arbitrary and illegal.

Referring to U.G.C. regulations on minimum qualifications for appointment and Career Advancement of Lecturers, Readers and Professors in the Universities and colleges issued by University Grants Commission as contained in Annexure P-12, Clause 2.6.0 provides that the "The Selection Committee for promotion to the post of Professor should be the same as that for direct recruitment. For the promotion from Reader to Professor, the following method of promotion may be followed. The candidate should present herself/himself before the Selection Committee with some of the following :

- a) Self-appraisal reports (required)
- b) Research contribution/books/articles published.
- c) Any other academic contributions.

The best three written contributions of the teacher (as defined by her/him) may be sent in advance to the Experts to review before coming for the selection. The candidate should be asked to submit these in 3 sets with the application.

- d) Seminars/Conferences attended.
- e) Contribution to teaching/academic environment/institutional corporate life.
- f) Extension and field outreach activities.

It is submitted that Clause 2.8.0 provides that "if the number of years required in a feeder cadre are less than those stipulated in this notification, thus entailing hardship to those who have completed more than the total number of years in their entire service for eligibility in the cadre, may be placed in the next higher cadre after adjusting the total number of years."

This situation is likely to arise as in the earlier scheme, the number of years required in a feeder cadre were much more than those envisaged under this notification.

Thus, it is submitted that when Clause 2.8.0 of U.G.C. regulations itself provides for adjustment of number of years spent as Lecturer, then petitioners herein having been appointed as Lecturers on different dates starting from year 1983 to 1985 having put in more than 16-17 years were entitled to be promoted as 'Professor' in the Career Advancement Scheme.

Referring to Annexure P-14 which contains Ordinance 4 (B) [Reference Section 37 (XV) and 49 A] and provides for eligibility and procedure for promotion on the post of 'Professor' from Reader and after prescribing a minimum of eight years of experience as a Reader under Clause 8 (1) (a) and

Clause 10 which deals with procedure in sub-clause (3) that "If the number of years required in a feeder cadre are less than those stipulated in this notification, thus entailing hardship to those who have completed more than the total number of years in their entire service for eligibility in the cadre, may be placed in the next higher cadre after adjusting the total number of years, and that having been done does not call for any interference.

It is also submitted that Annexure P-18 is the minute of the meetings of the Executive Council which took place on 8/10/2003 which had considered all these aspects and, therefore, the order passed by the Executive Council on due consideration of the Ordinance and the U.G.C. regulations could not have been set aside lightly.

Reliance is placed on the judgment of the Supreme Court in **Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Cooperative Housing Society, Jaipur and others (2013) 5 SCC 427** wherein referring to para 27, it is submitted that executive instructions have no statutory force and they cannot override the law. Therefore, any notice, circular, guidelines etc. which run contrary to statutory laws cannot be enforced.

This submission is made while making reference to the subsequent U.G.C. clarifications etc. which have been referred to in the impugned order, Annexure P-17 specifically refers to clarifications given by U.G.C. on 21/02/2002, 8/07/2003, 31/03/2004 and 10/09/2005 referred to in the impugned order.

Reliance is placed on the judgment of the Supreme Court in **Director General of Posts and others Vs. B. Ravindran and another (1997) 1 SCC**

641 wherein referring to para 16, it is submitted that subsequent orders issued in 1978 and 1983 were supplementary in nature and did not have a binding force.

Under these circumstances, the Government could not have, under the guise of a clarificatory order, taken away the right which had accrued to such reemployed pensioners with retrospective effect by declaring that while considering hardship, the last pay drawn at the time of retirement was to be compared with initial pay plus pension whether ignorable or not ?

Reliance is also placed on the judgment of the Supreme Court in **Regional Manager, Bank of Baroda Vs. Anita Nandrajog (2009) 9 SCC 462** and reading paragraph 12, it is submitted that the clarification is infact an amendment to the earlier clause 17 (b), hence will have no retrospective effect in the absence of any expressed intention to that effect. The termination order was passed on 25/08/1989 whereas the above clarification was made in 1990 when the service of the respondent had already come to an end.

Thus, placing reliance on this judgment, it is submitted that there will be no retrospective application of the clarifications and thus subsequent clarifications issued by the U.G.C. will not be applicable to the actions taken by the University, granting promotion to the private respondents in the lead case and the petitioners in subsequent petitions.

Reliance is also placed on the judgment of the Supreme Court in **Prabhakar Ramakrishna Jodh Vs. A.L. Pande and another (1965) 2 SCR 713**. Referring to para 5 of the said judgment, it is submitted that "College Code" made by the University in exercise of statutory power conferred by Section 32 and Section 6(6) of the Act being intra vires of the powers of the University contained in Section 32 read with Section 6 (6) of the

Act, then the provisions of Ordinance 20 otherwise called the "College Code" have the force of law.

Thus, it is submitted that Ordinance 4(B) has force of law and that will not take away the accrued rights of the parties.

Reliance is also placed on the judgment of M.P. High Court at Indore Bench in **V.D. Jha Vs. Devi Ahilya Vishwa Vidyalaya, Indore and others** in Manu/MP/0752/2009 to submit that petitioners were never given any opportunity of hearing and, therefore, the action of the Chancellor is illegal and arbitrary.

Before passing impugned order Annexure P-17, an opportunity of being heard must be given to the petitioner.

Reliance is also placed on the judgment of the Supreme Court in **Mangilal Vs. State of M.P. (2004) 2 SCC 447** and referring to para 10, it is submitted that "even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties, whose rights and interest are likely to be effected by the orders that may be passed and making it requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise."

Shri K.C. Ghildiyal, learned Senior Advocate in his turn submits that the law laid down in **Dr. M.S. Mudhol and another Vs. S.D. Halegkar and others (1993) 3 SCC 591** wherein in para 7, it is held that "Whatever may be the reasons which were responsible for non-discovery of want of qualifications of the first respondent for a long time, the fact remains that the court was moved in the matter after a long lapse of about nine years.

The post of the Principal in a private school though aided, is not of such

sensitive public importance that court should find itself impelled to interfere with the appointment by a Writ of Quo Warranto even assuming that such a writ is maintainable.

This is particularly so when the incumbent has been discharging his functions continuously over a long period of nine years when the court was moved and today about 13 years have elapsed.

Reading this judgment, it is submitted that a decision after fifteen to sixteen years of promotion cannot be a subject matter of writ of Quo Warranto as has been filed by Dr. Vijay Kumar Agrawal. While adopting other arguments put forth by Shri Anil Khare, learned Senior Advocate, it is submitted that the petition filed by Dr. Vijay Kumar Agrawal deserves to be dismissed and that by the petitioners be allowed on the touchstone of the ratio of law laid down by the Supreme Court in the case of Dr. M.S. Mudhol (supra).

Shri Sanjay K. Agrawal, learned Advocae reiterates Clause 2.8.0 referred to above as contained in U.G.C. regulations 2000 to point out that the purpose of hardship Clause is to mitigate the hardship, in as much as earlier Lecturer was given a senior scale on completion of six years of service and then selection grade or was promoted as Reader taking about 13 years for a person appointed as a Lecturer to become a Reader whereas subsequently in terms of Regulations of 2000, the requirement to become eligible for promotion as Reader is nine years and, therefore, it gave rise to two categories of Readers who had become Reader after completing 13 years of length of service and another category of Readers who became Readers after completing nine years of total service and, therefore, if the rule for promotion to the post of Professor is made unstretchable by ignoring Clause 2.8.0, then Readers from the earlier stream i.e. those who were appointed prior to coming into force of Regulation

2000 would require 21 years of service to become a Professor whereas appointees and beneficiaries of Regulations 2000 will become Professor on completion of 17 years of service.

It is submitted that clarifications issued by the U.G.C. being subsequent will have no implication and thus clarification dated 22nd July, 2005 and 10th September, 2005 Annexures R-13 and R-14 enclosed with lead case W.P. No. 10150/2019 will not have any retrospective effect.

It is also submitted that in the alternative instead of annulling promotions to the post of Professor, they could have been postponed when the concerned persons completed eight years of service as Reader.

Shri Arpan Pawar also submits that clarification dated 10/09/2005 could not have been considered by the Chancellor of the University for the acts which were already completed when the order of promotion was passed in the year 2003.

Shri Vibhudendra Mishra, learned counsel in his turn submits that as per Ordinance 4 (B), Annexure P-14, enclosed along with the lead petition W.P. No. 10150/2019 under the head of procedure contained in para 10, sub-clause (4) provides that the guidelines and the clarifications as are issued by the U.G.C. from time to time shall apply *mutatis mutandis*. Therefore, it is provided in the Ordinance itself that the guidelines and the clarifications issued by the University Grants Commission from time to time shall apply *mutatis mutandis* and, therefore, those clarifications are to be treated as part of the Ordinance and cannot be said to be a later development having effect of amending the Ordinance.

Shri Ashish Shroti submits that except in case of Dadan Prasad Tiwari,

the only ground to annul promotion of private respondents/petitioners to the post of Professor is non-fulfilment of statutory requirements of the Regulations of having completed eight years of actual service on the post of Reader.

In the case of Dadan Prasad Tiwari, he was not having requisite publications and that is the additional ground for annulling his promotion to the post of Professor.

It is submitted that Annexure R-9 filed along with the return in W.P. No. 9793/2019 be looked into. It is submitted that Annexure R-9 referred hereinabove is dated 21st February, 2002. It is addressed to Professor Nigam, Vice Chancellor of Awadhesh Pratap Singh University, Rewa by the Joint Secretary of the University Grants Commission wherein it is clearly mentioned that "Dear Prof. Nigam, The Commission at its meeting held on 18/01/2002 considered the modification in the procedure for promotion of Reader to Professor under the Career Advancement Scheme in University Departments.

The Commission resolved that the following criteria and terms must be adhered to in selecting a candidate for promotion from Reader to Professor under Career Advancement Scheme in University Departments:-

- (a). that a minimum of 8 years experience as a Reader be an eligibility.
- (b). that minimum of five research publications out of which two could be the books be submitted for evaluation/assessment before the interviews."

Thereafter, it is provided that the aforesaid communication be communicated to all the Universities for minimum compliance w.e.f. 1st March, 2002.

Thus, it is submitted that Annexure R-9 is the clarification specifically addressed to the Vice Chancellor of the Awadhesh Pratap Singh University prior to issuance of promotion order dated 8/10/2003, Annexure P-16, enclosed

along with W.P. No. 10150/2009. Thus, the plea taken by the petitioners/private respondents that requirement of eight years actual experience as Reader was subsequently inserted through clarification is incorrect.

Reference is also made to Annexure R-11, dated 22/09/2003, written by the Dean of College Development Council, Rani Durgawati Vishwa Vidyalaya, Jabalpur, to the Joint Secretary of the University Grants Commission seeking clarification and then its reply vide Annexure R-12 and also to the fact that Annexures R-13 and R-14 also have a reference to the earlier U.G.C. notification dated 24/12/1998 and amended conditions circulated vide U.G.C. letter dated 21st February, 2002 clearly mentioning that no relaxation is provided in the eligibility for promotion to the post of Professor under Career Advancement Scheme.

It is also submitted that a show-cause notice was issued to the concerned officers as is enclosed by the counsel for Awadhesh Pratap Singh University filed in this writ petition as Annexure R-4/2 dated 1/07/2006.

Its reply was also given by the concerned Professor as contained in Annexure R-4/3 and, thereafter, on account of the pendency of W.P. No. 5984/2005, the then Chancellors had kept the proceedings in abeyance but that does not mean that there was lack of promptness on the part of the complainant or that opportunity of hearing was not given to the affected persons.

It is further submitted that in para 13 of the reply filed on behalf of the Chancellor in W.P. No. 9793/2019, it is specifically mentioned that the Chancellor had issued a show-cause notice dated 16/06/2006 to the University in exercise of powers under Section 12 (4) of the Madhya Pradesh Vishwa Vidyalaya Adhiniyam 1973 for annulment of the proceedings relating to

promotion of the petitioner and others.

At earlier point of time, Dr. V. K. Agrawal filed a writ petition in the High Court challenging the promotions made by the Executive Council (W. P. No. 5984/2005 (s)) and since the writ petition was pending in the High Court, the Kuladhipati deferred further action on the representation of Dr. Agrawal.

It is submitted that Clause 10 (3) and 10 (4) of the Ordinance have been considered.

Shri Ved Prakash Tiwari, learned counsel for the University submits that all the actions have been taken by the University in a bonafide and transparent manner.

Shri Anil Khare, learned Senior Advocate submits that a reply to the show-cause notice was not considered by the Chancellor.

Smt. Nirmala Nayak, learned counsel for U.G.C. submits that the amended regulations and rules clearly provide for eight years actual experience on the post of Reader and, therefore, persons not having actual eight years of experience as Reader were not entitled to be given promotion by referring to adjustment clause.

Shri Vibhudendra Mishra, learned counsel submits that Dadan Prasad Tiwari was not having necessary requirements in terms of publication of papers etc. and others were infact having requisite experience as 'Reader' and, therefore, there is no illegality in the order passed by the Chancellor annulling the appointments.

After hearing learned counsel for the parties, three issues emerge for consideration namely whether in terms of the provisions contained in U.G.C. Regulations 2000 specifically under Clause 2.8.0 whether the requirements of eight years of service as Reader as provided in Clause 2.5.0 of the U.G.C.

Regulations 2000 regarding minimum qualificationos for appointment and Career Advancement of Teachers in the University and colleges could have been adjusted in terms of Clause 2.8.0 ?

Whether the respondent University failed to take into consideration the communication made by the U.G.C. dated 21st February, 2002 which are contained in Annexure R-9 filed along with the reply of the Chancellor and addressed to the Vice Chancellor of the Awadhesh Pratap Singh University categorically providing that there should be minimum eight years experience as a Reader be an eligibility and also the fact that amended conditions were circulated vide U.G.C. letter dated 21st February, 2002 as is mentioned in Annexure R-14, then still it can be said that clarification being prospective will not have any application to the actions which were taken while issuing promotion orders dated 8/10/2003 ? The third issue which emerges is whether the aggrieved persons are entitled to the change of date of promotion as suggested by Shri Sanjay K. Agrawal from the date when they had completed eight years of actual service as Reader or not ?

After hearing learned counsel for the parties and going through the record, the matter of the fact is that the statutory provision in the form of U.G.C. regulations as contained in Annexure P-12 in Clause 2.5.0 deals with promotion to the post of Professor. It provides that in addition to the sanctioned posts of Professors, which must be filled in through direct recruitment through All India advertisement, the promotions may be made from the post of 'Reader' to that of 'Professor' after eight years of service as Reader.

Thus, it is evident that the regulations itself provide for eight years of service as Reader to make a Reader eligible for promotion to the post of

Professor. Clause 2.6.0 provides for other requirements like Self-appraisal reports, Research Contribution/books/articles published, other academic contributions, Seminars/Conferences attended, Contribution to teaching/academic environment/institutional corporate life and Extension and Field outreach activities.

Clause 2.8.0 of these Regulations provide that if the number of years required in a feeder cadre are less than those stipulated in this notification, thus entailing hardship to those who have completed more than the total number of years in their entire service for eligibility in the cadre, may be placed in the next higher cadre after adjusting the total number of years.

In para 2.8.0 itself it is provided that this situation is likely to arise as in the earlier scheme, number of years required in a feeder cadre were much more than those envisaged under this notification.

Thus, it means that Clause 2.8.0 is a specific instance to mitigate the hardship arising out of operation of two different schemes. As submitted by Shri Sanjay K. Agrawal, learned Advocate, at an earlier point of time, the period taken to become a Reader was atleast 13 years whereas under the Regulations of 2000, a Lecturer become entitled to be promoted as Lecturer Senior Scale on completion of six years of service after regular appointment with relaxation of one year and two years respectively for those who completed M.Phil or P.H.D. degree. Thereafter, a Lecturer in senior scale will become eligible for promotion to the post of Reader if she/he has completed five years of service in the senior scale ; obtained a P.H.D. degree or has equivalent published work.

Thus, for a P.H.D. degree holder Lecturer, total period for a Lecturer entry level to move to the post of Reader becomes nine years against thirteen years under the earlier scheme.

Thus, it is evident that Clause 2.8.0 with the qualification given in the proviso below the Clause makes it abundantly clear that Clause 2.8.0 is meant to mitigate the hardship between the appointees under two different schemes namely a scheme prior to year 2000 and the Regulations of 2000.

In the present case, since all the appointees are prior to that of 2000, who were appointed somewhere between 1983 to 1985 as Lecturer on different dates, and all were promoted as Reader prior to coming into force of Regulations of 2000, clause of hardship will not arise as the authorities of the University was not dealing with two class of persons appointed on the post of Reader prior to coming into force of Regulations of 2000 and those who were appointed after coming into force of Regulations of 2000, even otherwise clarification as contained in Annexure R-9, dated 21st February, 2002 was available prior to the conduct of the meeting of the Executive Council and this is specifically addressed to the Vice Chancellor of Awadhesh Pratap Singh University, Rewa.

Therefore, when there is a specific mention that a minimum of eight years of experience as a Reader be an eligibility and this circular/order was made applicable w.e.f. March 1, 2002, then it cannot be said that this circular as referred to in further communication dated 10th September, 2005 will not have retrospective application is not made out.

There is a clarification prior to the meeting of the Executive Council and that circular being issued prior to the conduct of the meeting of the Executive Council to consider the cases of eligible Readers for promotion, then that circular issued under the U.G.C. Regulations having been issued in exercise of the powers akin to delegate legislation will have the force of law as held by the

Supreme Court in **J. K. Vasavada and others Vs. Chandrakanta Chimanlal Bhavsar and another AIR 1975 SC 2089.**

It is also well settled law as held in **K.H. Siraj Vs. High Court of Kerala and others (2006) 6 SCC 395** (para 62) that Executive instructions can supplement though not supplant statutory rules which may not deal with every aspect of the matter.

Thus, when examined from this aspect then specific communication being available on record, the ratio of law in Director General of Posts and others (supra) in para 16 though provides that subsequent orders were supplementary in nature and were not having binding force in as much as subsequent clarifactory instructions cannot supercede earlier regulations will not be applicable to the facts of the present case, in as much as, there is a U.G.C. clarification contained in Annexure R-9, dated 21st February, 2002, specifically addressed to the Vice Chancellor of Awadhesh Pratap Singh University, Rewa and that will be having a binding force.

Similarly, the law laid down in the case of **Rajasthan State Industrial Development and Investment Corporation** (supra) where a reference is made to para 27 which provides that Executive instructions have no statutory force and cannot override the law is the expoundation of just legal position but at the same time, the fact is that when there are two provisions contained in the same regulation as referred to above in the form of Clause 2.5.0 and Clause 2.8.0 and when proviso below Clause 2.8.0 specifically makes a mention of the fact that Clause 2.8.0 is to mitigate the hardship arising out of operation of two schemes namely one which was operational prior to coming into force of Regulations of 2009 which provided for relaxed norms for promotion to the post of Reader as compared to the earlier norms, then context is to be

understood and applied in the correct perspective and provisions of Clause 2.8.0 cannot be applied de hors the context.

Thus, when examined from this point of view, it is true that the Ordinance made by the University has a statutory force but it is to be given a true meaning and import in terms of the aforesaid explanation as contained in the proviso below Clause 2.8.0 of the Regulations of 2000 and that clarifactory posts being expounded by the U.G.C. prior to the meeting of the U.G.C. council on 21st February, 2002 itself will be binding on the respondent University and the petitioners and, therefore, the law laid down in the case of **Prabhakar Ramakrishna Jodh** (supra) will have no application to the facts and circumstances of the case.

As far as the law laid down in the case of **Dr. M.S. Mudhol** (supra) is concerned, in para 7, it is only provided that delay of about nine years in filing the petition and looking to the post of a Principal in a private school, it was decided that it does not impel the court to interfere with the appointment by a writ of Quo Warranto.

In the present case, we are dealing with the promotion to the post of Professor in the State University governed by the statutes, Ordinances and regulations and, therefore, the ratio of law in case of **Dr. M.S. Mudhol** (supra) where the post of Principal in a private school was involved, will have no application to the facts of the present case. Infact, in view of recent pronouncements of Hon'ble Supreme Court in case of **St. Mary's Education Society and another Vs. Rajendra Prasad Bhargava and others [2022 Live Law (SC) 709]**, infact a writ is not maintainable in case of private educational institutions and, therefore, when examined from that aspect also, the

law laid down in the case of **Dr. M.S. Mudhol** (supra) will be of no application or assistance to the petitioners.

Infact, the law in regard to requirement of experience is concerned, the judgment in **Union of India Vs. M. Bhaskar (1996) 4 SCC 416**, it is held that period of experience has to be computed from the date of actual promotion and not from any retrospective date. In the case of **State of Maharashtra and others Vs. Vijay Vasant Rao Deshpande (1998) 7 SCC 81**, it is held that where eight years of service is prescribed as requisite experience for the benefit of promotion scheme, only those who were regularly appointed and not those who were appointed on adhoc basis were eligible.

Thus, actual experience which is required to be seen is on the post of Reader and private respondents/petitioners having failed to complete eight years of experience by virtue of their promotion as Reader on 19/11/1996 in all the cases of the private respondents in Dr. Vijay Kumar Agrawal and 3/05/1997 in the case of Dadan Prasad Tiwari, they will be entitled to be promoted as Professors only on completion of eight years of actual service as Reader i.e. w.e.f. 20/11/2004 for others and 3/05/2005 in the case of Dr. Dadan Prasad Tiwari subject to fulfilment of other conditions provided in regulations made in this behalf.

As far as issue of issuance of show-cause notice is concerned, notice was issued by the University. In reference to the notice issued by the Chancellor of the University in terms of the provisions contained in Section 12 (3) of the Madhya Pradesh Vishwa Vidyalaya Adhiniyam 1973, since the issue in regard to eligibility was to be adjudged on the basis of factual matrix, issuance of notice and reply was sufficient. As far as in the factual background, none of the persons affected have disputed their actual date of promotion as

Reader as 19.11.1996/3.05.1997 and once that date is not disputed, then what was only required to be seen by the Chancellor while exercising authority under Section 12 (4) of the Vishwa Vidyalaya Adhiniyam 1973 is whether there was any infraction of Regulations of 2000 or the Ordinance 4 (B) of the University vis-a-vis clarification issued by the U.G.C. on 21st February, 2002 and if there was no conflict amongst them, then there was no requirement of giving opportunity of personal hearing in terms of the law laid down in the case of **Mangilal** (supra), **V.D. Jha** (supra) and **Anita Nandrajog** (supra) etc.

Thus, when examined from this aspect, then as per the law laid down in the case of **Ashok Kumar Uppal and others Vs. State of Jammu and Kashmir and others (1998) 4 SCC 179**, such power of relaxation is to be necessarily conceded to the employer particularly the State Government or the Central Government but in this case, once that power of relaxation is taken away by the U.G.C. which is the apex regulator of Higher Education in India, then dehors the directives of the regulator, power of relaxation could not have been exercised especially when it is meant to deal with a particular category of cases, facing hardship on account of different criteria for promotion under 2000 Regulations.

Thus, the law laid down in the case of **J. C. Yadav and others Vs. State of Haryana and others (1990) 2 SCC 189** will not be applicable in as much as when a thing is required to be done in a particular manner, then that is to be done in that very fashion and not in any other fashion. Once, the U.G.C. which is the principal regulator has directed to construe eight years of actual experience on the post of Reader for promotion to the post of Professor, then that actual experience is to be taken into consideration and that cannot be

substituted by giving any other interpretation to the directives of the U.G.C. being the Master Regulator. Trying to give other interpretation to the hardship clause which even otherwise has been explained in Clause 2.8.0 itself, being the intention of the framers, and that intention of the framers of the statute is to be given its fullest meaning.

Thus, answering the above issues, it is held that since the clarification issued by the U.G.C. was already available prior to the meeting of the Executive Council which resulted in issuance of promotion orders in September 2003, that could not have been overlooked by the University so to give its own interpretation and thus, the explanation appended to Clause 2.8.0 to explain the meaning of words contained in the Clause became a part and parcel of the clause in terms of the law laid down by the Supreme Court in **Bengal Immunity Co. Ltd. Vs. State of Bihar 1955 SC 661**.

It is also a settled principle of law as held in the **State of Bombay Vs. United Motors (India) Ltd. AIR 1953 SC 252 P. 258** that if the language of the explanation shows a purpose and a construction consistent with that purpose can be reasonably placed upon it, that construction will be preferred as against any other construction which does not fit in with the description or avowed purpose and, therefore, when examined from this aspect only, then the explanation below Clause 2.8.0 could have been applied only to mitigate hardship in cases of candidates coming from two different streams namely those who were promoted as 'Reader' under the scheme prior to Regulation of 2000 and those who would have appeared before the selection committee having been promoted as 'Reader' in the scheme of 2000 and for no other purpose and this court has no hesitation to hold that explanation below Clause 2.8.0 of the Regulation has been misinterpreted despite the clarification issued

by the U.G.C. and, therefore, that misinterpretation having been ironed out by the Chancellor does not call for any interference.

At this stage, it will be appropriate to direct the Executive Council of the APS University to adjust the cases of all affected persons i.e. the private respondents in W.P. No. 5984/2005 on the touchstone of the Regulations of 2000 so to consider their cases for promotion to the post of Professor on completion of eight years of actual service on the post of Reader and subject to fulfilment of requirements of publication of papers/Research papers etc.

The University is directed to do the needful in this behalf by undertaking an exercise within 45 days from the date of receipt of certified copy of the order and if found fit, pass fresh orders of promotion from a retrospective date on which eligibility criteria of eight years experience as Reader and other criteria provided in the relevant Clause 2.6.0 of the U.G.C. Regulations 2000 are fulfilled by each of the private respondents.

Since all the petitioners have retired, their retiral benefits be recalculated after change of date of promotion within a further period of thirty days under communication to the petitioners.

In above terms, the petitions are disposed of.

(VIVEK AGARWAL)
JUDGE