

(2025) 04 AHC CK 0919
In the Allahabad High Court
Case No : Special Appeal No. 788 Of 2024

Banaras Hindu University Varanasi Through Its Vice Chancellor	APPELLANT
Vs	
Dr Bhaktiputra Rohtam And Another	RESPONDENT

Date of Decision : 10-04-2025

Acts Referred:

Citation : (2025) 04 AHC CK 0919

Hon'ble Judges : Saurabh Shyam Shamsheery, J

Bench : Division Bench

Advocate : Dinesh Kumar, Lal Babu Lal, Manish Singh, Naresh Singh Tomar, Sushma Singh, Ashok Kumar Yadav

Final Decision : Disposed Of

Judgement

1. Heard Shri Ajit Kumar Singh, learned Senior Counsel assisted by Shri Hem Pratap Singh, learned counsel for the appellant-respondents and Shri Sanjeev Singh, learned Senior Counsel assisted by Shri Priyansh, learned counsel for the opposite party-petitioner.

ORDER PASSED BY WRIT COURT

2. The instant intra court special appeal under Chapter VIII Rule 5 of the High Court Rules has been preferred against the judgment and order dated 13.2.2024 passed by learned Single Judge in Civil Misc. Writ Petition No.18332 of 2023 (Dr. Bhaktiputra Rohtam v. Banaras Hindu University & Ors.), whereby the writ petition has been allowed. The order passed by the Registrar and Vice Chancellor of the Banaras Hindu University 'BHU' dated 22.5.2023 and 09.10.2023 have been quashed with further direction to Vice Chancellor to immediately constitute a Screening-cum-Evaluation Committee to look into and screen out documents of self appraisal etc. submitted by the petitioner on 04.11.2021 received in Career Advancement Scheme² Promotion Cell on 05.01.2022 and take a decision whether the petitioner was eligible on merit on the basis of documents produced by him to be promoted as Professor under CAS. It was further directed that if it

finds favour with the claim of the petitioner, it shall accord notional promotion to the petitioner with consequential benefits of pay in question as admissible to such promotional post of Professor for revision of pension and other retirement dues with effect from the date the petitioner attained the age of superannuation and accordingly arrears of difference of pension and other retirement dues shall be paid. Learned Single Judge has also directed the BHU to accord re-employment to the petitioner as teacher in the Department of Dharmagam, Faculty of Sanskrit Vidya Dharm Vigyan, BHU, Varanasi, if vacancy exists and appropriate order shall be passed in this regard within three weeks from the date of production of certified copy of this order. For ready reference, the operative portion of the judgment and order dated 13.02.2024 is reproduced as under:-

".....44. In Rejoinder affidavit pleadings have been raised vide paragraph 12 that U.G.C. guidelines being statutory would prevail and that it provides for extension of retired teachers upon re-employment upto 70 years of age and it has also been pleaded vide paragraph 13 of the rejoinder affidavit that post still exists in the department. Thus, it is sought to be pleaded that selection could not be held despite advertisement.

45. I have already held above that U.G.C. Regulations would prevail over the guidelines and whenever guidelines are contrary to regulations, these guidelines would be taken to have stood repealed. So if regulations provide for Assistant Professor and Associate Professor also to be entitled for re-employment, petitioner would be equally entitled. Since it is not the case of respondent-University that petitioner is not entitled to re-employment on his merit, it is held that he is entitled for re-employment as teacher in the department of Dharmagam if vacancy is existing.

46. Thus, in view of the above, writ petition succeeds and is allowed. The orders passed by the Registrar and Vice Chancellor dated 22.05.2023 and 09.10.2023; respectively, impugned in the writ petition and filed as Annexure-1 & 2, are hereby quashed and following directions are issued:-

(i) The Vice Chancellor shall immediately constitute a Screening-cum-Evaluation Committee to look into and screen out documents of self appraisal etc. submitted by the petitioner on 04.11.2021 received in CAS promotion cell on 05.01.2022 and take a decision whether petitioner was eligible on merits on the basis of documents produced by him to be promoted as professor under CAS and if it finds favour with the claim of the petitioner, it shall accord notional promotion to the petitioner with consequential benefits of pay in question as admissible to such promotional post of Professor for revision of pension and other retirement dues only w.e.f. the date petitioner attained his age of superannuation and, accordingly, arrears of difference of pension and other retirement dues shall be paid. Appropriate decision shall be taken within a maximum period of three months from the date of production of certified copy of this order.

(ii) The respondent- University is directed to give re-employment to petitioner as

teacher in the department of Dharmagam, Faculty of Sanskrit Vidya Dharm Vigyan, Banaras Hindu University, Varanasi if vacancy exists and appropriate order shall be passed in the above regard within three weeks of production of certified copy of this order.

47. Cost made easy."

FACTUAL MATRIX

3. Facts in brief giving rise to this intra Court appeal are as under:

4. The appellant-BHU is a Central University enacted by Act No.XVI of 1915 'BHU Act'. The services of employees of BHU are governed by the Act as well as Rules and Regulations framed under the Act. The BHU being Central University is also governed by the Rules, Regulation, Guidelines & Office Memorandum issued from time to time by the Central Government and University Grants Commission 'UGC'. The Executive Council of BHU shall, subject to control of BHU, be Executive Body and shall conduct all administrative affairs of the BHU. As per Section 18 (k) of BHU Act, the emoluments, term and conditions of service of employees of BHU is governed by Ordinance framed by Executive Council. As per Section 18 (3) of BHU Act, the Ordinances may be amended, repealed or added to at any time by the Executive Council of the BHU. The Statute 14 of the BHU Act deals with constitution of the Executive Council. The UGC vide notification dated 18.07.2018 in exercise of powers conferred under Clause (e) and (g) of sub-section (I) of Section 26 read with Section 14 of the University Grants Commission Act, 1956 'UGC Act' and in supersession of the "UGC Regulations on Minimum Qualification for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education 2010" together with all amendments made therein from time to time, has framed "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" 'Regulations, 2018'.

5. The opposite party-petitioner was appointed on the post of Lecturer/ Assistant Professor in the Department of Dharmagam Faculty of Sanskrit Vidya Dharm Vigyan, BHU, Varanasi vide order dated 02.11.2006 of the BHU. Later on he was confirmed on the post of Lecturer/ Asstt. Professor in the said department vide order dated 30/31.01.2008. Thereafter, he was promoted on the post of Associate Professor (Stage-IV) in the Department of Dharmagam vide order dated 04.11.2018 under the CAS and joined on 04.11.2018 itself. According to the CAS of the BHU Teachers, the petitioner was eligible for promotion on the post of Professor after completion of 3 years of service in the Associate Professor Grade i.e. 04.11.2021. As the Selection Committee was not convened, his candidature was not considered for promotion. As such he moved detailed representation dated 21.09.2022 to the BHU. However, nothing was done in this regard. Eventually the petitioner superannuated on 31.12.2022 as Associate Professor (Stage-IV). It is relevant to indicate that he was accorded sessions

benefit and he continued to impart education in the department till 30.06.2023.

6. The petitioner made two representations dated 14.03.2023 and 09.06.2023 to the Vice Chancellor, BHU requesting to promote him on the post of Professor in the Department of Dharmagam w.e.f. 04.11.2021 under CAS and further appoint him on contractual basis for a period of five years till the age of 70 years on contract basis in accordance with Regulation 2.1 of the Regulations, 2018. The representation of the petitioner was turned down by the respondent on 23.05.2023 on the ground that since the petitioner had retired as an Associate Professor and not as a Professor, thus, he was not entitled to be considered for grant of engagement on contractual basis till 70 years. The said order was challenged in Writ-A No.11409 of 2023 (Dr. Bhaktiputra Rohtam v. Union of India & Ors.). Finally, the said writ petition was disposed of on 07.08.2023, the operative portion of same, for ready reference, is reproduced as under:-

"6. This Court entertained the writ petition on 18.07.2023 and pass the following orders.-

"Sri Sanjiv Singh, Senior Advocate assisted by Sri Priyansh, who appears for the writ petitioner, has submitted that the order dated 22.5.2023 passed by the fifth respondent, Registrar (Administration) Recruitment and Assessment Cell, Banaras Hindu University, Varanasi proceeds on misconception of facts and law particularly in view of the fact that as per the U.G.C. Regulations dated 30.6.2010 in particular "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, 2010". Clause 2.3.2 itself provides for reemployment on contract basis beyond the age of superannuation till attaining 70 years subject to availability of vacant positions and fitness, teachers such as Assistant Professor, Associate Professor and Professor.

According to Sri Singh, Senior Advocate on the date of his retirement as on Associate Professor thus he stands covered by the said Regulations. According to Sri Singh, he was legally entitled be accorded promotion as a Professor as per the Regulations but he had been denied the same thus, he can be accorded notional promotion and then considered for extension.

Sri Hem Pratap Singh, who appears for the University has relied upon the U.G.C. guideline dated 15.2.2008 while drawing attention towards Clause 3 at page 2 of the same so as to contend that under the eligible category, the category of superannuated teachers eligible for reemployment is of Professor only and not any other post. According to him the Regulations of the U.G.C. dated 15.2.2008 has not been superseded by virtue of the U.G.C. Regulations dated 30.6.2010.

Matter requires consideration.

Sri H.P. Singh, submits that he shall be filing a counter affidavit within a week.

Put up this case on 27th July, 2023 as fresh."

7. Pursuant to the order passed by this Court a counter affidavit has been filed on behalf of the University sworn by the Law Officer, Banaras Hindu University, Varanasi dated 05.08.2023.

8. Sri Sanjeev Singh, learned Senior Counsel on instructions submits that he does not proceed to file any rejoinder to the counter affidavit and according to him the writ petition be decided at the fresh stage itself without seeking any further response.

9. With the consent of the parties and the joint statement made by them that they do not propose to file any further affidavits the writ petition is being decided at the fresh stage.

10. Sri Sanjeev Singh, learned Senior Counsel has sought to argue that there are two facets of the matter, firstly the fact that the writ petitioner was entitled to be considered for promotion under CAS from the post of Associate Professor to the post of Professor in terms of the UGC guidelines governing the field by the name and nomenclature of UGC Regulation On Minimum Qualification For Appointment Of Teachers And Other Academic Staff In Universities And Colleges And Measures For Maintenance Of Standard In Higher Education, 2018 and according to him the promotion exercise ought to have been conducted in accordance with the said regulation in particular Clause 6.1 which deals with the assessment Clause 6.3 which deals for the criteria for promotion under Career Advancement Scheme laid down under the regulation and according to him Clause 6.3-I an exercise is to be undertaken by the Selection Committee within the three months in advance from the due date subject to the fulfillment of the candidates for being accorded promotion under CAS and the process should be completed within six months from the receipt of the application. He further submits that had the said procedure been put to service and completed within the time bound period the writ petitioner obviously would have been considered for promotion on the post of Professor. Since the said procedure was not adopted and the proceedings were not drawn for conducting exercise for promotion under CAS thus, the petitioner's legitimate right for being promoted on the post of Professor stood extinguished and post retirement now he is being denuded for being considered for extension as a Professor for a further period of 5 years post attainment of 65 years till 70 years. The second argument is this that in the wake of the provisions contained under Clause 2.3.2 of the UGC notification dated 30 June, 2010 as well as the UGC notification dated 18.08.2018 Clause 2.1 which *pari materia* the earlier provisions he had a legitimate claim for being granted extension.

11. Countering the said submission, Sri Hem Pratap Singh, learned counsel for the University, on the other hand, submits that the claims so set up by the writ petitioner is not tenable in the eyes of law as mere attainment of the qualifications and the eligibility does not *ipso facto* confer any right to be promoted as the same is subject to various criteria which is in the shape of the assessment to be done by the Selection Committee duly constituted by the University as per the Act and the statutes and further the availability of the

vacancies. He, thus, submits that though the writ petitioner claims to be possessing the relevant qualifications and might be for whatever reasons the meetings of the selection committee was not convened but that does not confer an indefeasible right as the writ petitioner himself was happy about what he had been conferred with as he though claims to have represented on two occasions but post retirement he also was granted the session benefit and now he is coming in writ jurisdiction claiming his right. Sri Hem Pratap Singh further submits that though the writ petitioner seeks extension on the ground that he was not made entitled for being promoted on the post of Professor, however, again the issue arises, i.e. with regard to the fact that the there is no vacancy lying vacant so as to give a room and to accommodate him is there. Sri Singh who appears for the respondent further argues that though the legal proposition is being sought to be argued by the learned Senior Counsel for the petitioner that in the wake of the provisions contained under Clause 2.3.2 of the 2010 Regulations and Clause 2.1 of the 2018 the Assistant Professors, Associate Professors and Professors are to be considered for re-employment on contractual basis and they would occupy the field and the model guidelines will not play into role as the regulations are after the issuance of the model guidelines of the year 2008, 2010 and 2018 but it would also not be matter to be gone into at this stage particularly when there is no post lying vacant.

12. At this stage, Sri Sanjeev Singh learned Senior Counsel who appears for the writ petitioner on instructions submits that the writ petitioner shall be representing his cause before the third respondent, Vice Chancellor, Banaras Hindu University, Varanasi raising all his grievances, thus, he confines the relief in such a manner.

13. On such a submission being made by Sri Sanjeev Singh learned Senior Counsel for the writ petitioner and Sri Hem Pratap Singh has invited the attention of the court towards Annexure 7 which starts from page 46 and concludes at page 51 of the paper book reference whereof has been given in paragraph 7 of the writ petition so as to contend that the writ petitioner claims to have represented the matter before the Visitor of B.H.U Varanasi and two parallel proceedings cannot be permitted to be availed by the writ petitioner.

14. To such a submission, Sri Sanjeev Kumar Singh submits that he has sent his complaint/representations through E Mail and he does not propose to press it and he submits that the same be treated to be redundant as the writ petition is being decided by this Court itself. Sri Hem Pratap Singh submits that if it is the stand of Sri Sanjeev Singh learned Senior Counsel for the writ petitioner then he has no objection, he submits that a fresh representation be preferred by the writ petitioner before the third respondent who shall advert to all the legal issues.

15. Now since in the writ petition itself an order has been subject matter of challenge dated 22.05.2203 which according to the writ petitioner does not have any legs to stand for the reasons mentioned that it only takes into the 2008 guidelines which accord to learned Senior Counsel for the writ petitioner would

not play a role in view of the fact that there are 2010 and 2018 regulations framed by the University, thus, this Court is of the opinion that the writ petition be disposed of granting liberty to the writ petitioner to prefer a comprehensive representation along with the self attested copy of the writ petition before the third respondent, Vice Chancellor, B.H.U., Varanasi who shall consider each and every aspect of the matter within a period of two months from the date of production of certified copy of the order.

16. Since an order has been put to challenge and as per the parties in question including Sri Hem Pratap Singh while deciding the representation of the writ petitioner the order which is being subject matter of challenge would not come in the way as independent application of mind will be made by the third respondent, thus, this Court in the circumstances of the case is declining to quash the same but the said order shall abide by the final outcome of the orders to be passed therein.

17. Needless to point out that the writ petition has been decided on the basis of the statement made by the parties and, thus, passing of this order may not be construed to be an expression that this Court has adjudicated on the merits of the matter.

18. With the aforesaid observations, the writ petition stands disposed of.

7. In response to the aforesaid direction issued by the Writ Court, the Vice Chancellor, BHU had considered and rejected the claim of the petitioner vide order dated 09.10.2023. The orders dated 22.05.2023 and 09.10.2023 were again subjected to challenge in writ petition in question, to wit, Writ-A No.18332 of 2023 (Dr. Bhaktiputra Rohtam v. Banaras Hindu University & Ors.). The said writ petition was pressed before learned Single Judge for two reliefs viz. (I) Promotion under the CAS from the date he became entitled and (II) for re-employment as a teacher in the department as per Regulation 2.1 of the Regulations, 2018. Eventually, the said writ petition was allowed vide order dated 13.02.2024, which is impugned in this intra court special appeal. The relevant paragraphs 44 to 46 of the judgment dated 13.02.2024 have already been reproduced in paragraph 2 of this judgment.

ARGUMENTS ON BEHALF OF APPELLANTS

8. Shri Ajit Kumar Singh, learned Senior Counsel appearing for the appellant had vehemently argued that the impugned order passed by learned Single Judge is manifestly erroneous and the finding so returned is also contrary to Regulations 2.1, 5, 6, 6.1, 6.2 and 6.3 of the Regulations, 2018. In an arbitrary manner, learned Single Judge has also overlooked the mandatory provisions of Clause 5, 6 and 6.2, which also deal with constitution of Selection Committee and guidelines on selection procedure. Moreso, selection procedure is enumerated in detail in Regulation 2018, which would not only be applicable for direct recruitment but also for promotion under CAS. For considering the candidature under CAS, the Selection Committee is to be constituted. There is also prescribed

criteria for promotion of Associate Professor (Academic Level 13A) to Professor (Academic Level 14). (Ref. Regulation 6.4 C IV (ii) of Regulations, 2018). It was contended that while dealing with the matter, learned Single Judge has erred in law and returned the erroneous finding, which is contrary to the Scheme in question. He submitted that by no stretch of imagination the Statutory Selection Committee as contemplated under Regulations 2018, could be bypassed as such the direction of learned Single Judge directing the Vice Chancellor to constitute Screening-cum-Evaluation Committee for screening of documents and if his claim finds favour, he shall be accorded notional promotion with consequential benefits is contrary to the Regulations, 2018.

9. Learned Senior Counsel appearing for the appellant further submitted that while passing the impugned order, learned Single Judge has not only directed for considering the promotion but in arbitrary manner had also directed to consider the claim of the petitioner-opposite party for considering his re-employment as a teacher in the department, if vacancy exists. He submitted that the BHU, while filing the counter affidavit, had taken a specific stand that since November, 2020 to till date, no selection committee for promotion of teachers under CAS has been conducted in the University. After expiry of tenure of Executive Council in June, 2021 to till date, the Executive Council has not been constituted in the University. Therefore, the promotion of the petitioner under CAS could not be considered by the University due to non-availability of appointing authority i.e. Executive Council.

10. He vehemently submitted that the learned Single Judge has also misconstrued in interpreting the Regulation 6.3 (V) of the Regulations, 2018, which provides, "For the promotion under the CAS, the applicant teacher must be on the role and in active service of the University/ College on the date of consideration by the Selection Committee. Admittedly, in the instant matter, the petitioner was superannuated way back on 31.12.2022. As he was not on roll of the University, the direction of learned Single Judge is totally misdirected and contrary to the Scheme.

11. He submitted that being a Central University, the BHU has to follow the instructions/ guidelines/ Rules issued by the Government of India and the UGC under the UGC Act from time to time in accordance with the provisions contained in Ordinance of BHU for selection of teaching and non-teaching post either by direct recruitment or by promotion. He emphatically argued that the UGC Guidelines, which were issued for re-employment of superannuated teachers in the Central Universities in the year 2008 has not been superseded by the Regulations, 2018 and still holds the field. There is no conflict between UGC Model Guidelines for Re-employment of Superannuated Teachers, 2008 'Guidelines, 2008' and Regulations, 2018. Moreso, in case the Guidelines, 2008 goes, then there would be complete chaos and vacuum. Both the Guidelines, 2008 and Regulations, 2018 hold different field. Learned Single Judge was not justified in holding that the UGC Regulations would prevail over the guidelines

and whenever guidelines are contrary to Regulations, these guidelines would be taken to have stood repealed.

12. He further submitted that the finding returned in para 45 of the impugned judgment and order was infact uncalled for and the same would have very serious ramifications in the Central Universities. Learned Single Judge has nowhere considered that the Guidelines, 2008 deals with the re-employment of superannuated teachers and eligibility criteria of superannuated teachers eligible for re-employment. Successively, the same has been followed and while rejecting the claim he has also relied upon Guidelines, 2008. There was no conflict between Guidelines, 2008 and Regulations, 2018 and both hold different fields and as such the finding returned by learned Single Judge in para 45 is perverse.

13. He lastly submitted that the learned Single Judge had failed to take note of Regulation 2.1, wherein it is also provided further that all such re-employment shall be strictly in accordance with the guidelines prescribed by the UGC from time to time. Regulation 2.1 clearly deals with the situation, wherein subject to the availability of vacant positions and fitness, teachers may be re-employed on contract appointment beyond the age of superannuation. He, therefore, submitted that no such direction can be issued, which is contrary to BHU Act, Statute and Ordinance of University nor any such mandamus can be issued directing the University to pass order, which is directly in conflict with the Regulations, 2018.

ARGUMENTS ON BEHALF OF OPPOSITE PARTY

14. Per contra, Shri Sanjeev Singh, learned Senior Counsel appearing for the petitioner-opposite party has vehemently contended that it is not in dispute that the petitioner was inhering all the requisite qualification/ experience and fulfilled the benchmark, which is required to be considered as Professor under CAS. His candidature was liable to be considered under CAS on 04.11.2021. Towards his claim, without any delay, he had submitted complete details on a format in accordance with Regulations, 2018, which is required for selection and assessment under CAS. Admittedly the application was received in the Selection and Assessment Cell of BHU on 05.01.2022. He was accorded sessions benefit and he continued in the department till 30.06.2023. He submitted that while the petitioner was imparting education in the department, for according promotion under CAS, he has made repeated representations but in arbitrary manners the University had passed orders dated 22.05.2023 and 09.10.2023 denying the claim of the petitioner. The same was subject matter of challenge in the writ petition and learned Single Judge had taken note of the fact that while rejecting the claim in arbitrary manner the BHU had deliberately taken note of only Guidelines 2008. As such while quashing the orders dated 22.5.2023 and 09.10.2023, the matter was remitted by learned Single Judge with a direction to decide the claim of the petitioner with independent application of mind.

15. Learned counsel for the opposite party/petitioner, in this backdrop, submitted

that learned Single Judge has rightly appreciated the facts and law and found that the petitioner, without any fault on his part, had been denied the rightful claim, even though he was eligible to be accorded promotion under the CAS. He submitted that the UGC had formulated the Scheme and specially Regulations, 2018 with an object to accord financial upgradation to a teacher, who is stagnated in the department. Under the CAS in case an incumbent fulfills the minimum required eligibility, the rightful claim of a teacher cannot be denied.

16. He vehemently argued that only objection had been taken by the appellant-respondents for denial of rightful claim that no selection committee for promotion of teachers under CAS has been constituted in the University after November, 2020. The plea was taken that in absence of Executive Council/Appointing Authority in the University, the promotion under CAS could not be considered by the University. Only on account of non-availability of Executive Council, the process related to direct recruitment as well as promotion of teachers under the CAS could not be considered. Nowhere the University had taken any objection qua the eligibility of the petitioner under CAS. He submitted that on account of non-functioning of Executive Council in the University, the rightful claim of the petitioner could not be denied. Learned Single Judge has also extensively considered the Regulations, 2018 and held that the University was not justified in denying the promotion to the petitioner on the ground that no Executive Council was functional in the University. Nowhere the Act or the Ordinance creates any such vacuum and the Vice Chancellor of the BHU also exercises ample power under Section 7-C (5) of the BHU Act. In case any such emergent situation has arisen, which requires immediate action to be taken, the Vice Chancellor shall take such action as he deems necessary and shall report the same for approval at the next meeting to the authority which, in the ordinary course, would have dealt with the matter.

17. He, therefore, submitted that in absence of any such timely decision by the Vice Chancellor and on account of fault of the Vice Chancellor of the University, the petitioner may not be made to suffer for no fault on his part. Moreso, the University has not taken any specific stand, as to what was the impediment and where is the restriction imposed to the Vice Chancellor, who is Executive Head of the University, that he could not even direct for constitution of Screening Committee. He submitted that the objection of the University is totally devoid of merit. Rightful claim had been set up under the Regulations, 2018 and once rightful claim had been denied on a wrong presumption, learned Single Judge had rightly intervened and the matter was remitted to the University to examine the claim of the petitioner. Learned Single Judge while considering the instant matter had considered each and every facet of the Regulations, 2018 and has passed the order with cogent reasons, which requires no interference.

ISSUES BEFORE THE COURT

18. Heard rival submissions and perused the record. From the submissions of learned counsel for the parties, we find that following issues arise for

consideration before this Court:-

“(i) Whether under the Regulations, 2018 the petitioner-opposite party is entitled to be accorded promotion under the CAS from the date he became eligible;

(ii) Whether the petitioner-opposite party is entitled to be accorded re-employment as teacher in the Department as per Regulation 2.1 of the Regulations, 2018?

19. Issue No.(i)

Whether under the Regulations, 2018 the petitioner-opposite party is entitled to be accorded promotion under the CAS from the date he became eligible;

The Regulations, 2018 are issued for minimum qualifications for appointment and other service conditions of University and College teachers and cadres of Librarians, Directors of Physical Education and Sports for maintenance of standards in higher education and revision of pay-scales. Under the CAS Promotion Criteria, detailed procedure is provided under Regulations, 2018 from Associate Professor (Academic Level 13A) to Professor (Academic Level 14). The stages of promotion under Career Advancement Scheme of incumbent and newly appointed Asstt. Professors/ Associate Professors/ Professors is dealt under Regulation 6.4 of the Regulations, 2018. For ready reference, Regulation 6.4, which deals with promotion under CAS from Association Professor (Academic Level 13A) to Professor (Academic Level 14) is reproduced as under:-

“C. Career Advancement Scheme (CAS) for University teachers

I. Assistant Professor (Academic Level 10) to Assistant Professor (Senior Scale/ Academic Level 11)

Eligibility:

i) An Assistant Professor who has completed four years of service with a Ph.D. degree or five years of service with a M.Phil. / PG Degree in Professional Courses, such as LLM, M.Tech, M.V.Sc.and M.D., or six years of service in case of those without a Ph.D./M.Phil./ PG Degree in a Professional course and satisfies the following conditions:

ii) Attended one Orientation course of 21 days duration on teaching methodology;

iii) Any one of the following: Completed Refresher/ Research Methodology Course/ Workshop/ Syllabus Up-gradation

Workshop/ Training Teaching-Learning-Evaluation, Technology Programmes/ Faculty Development Programmes of at least one week (5 days) duration, or taken one MOOCs course (with ecertification) or development of e-contents in four-quadrants / MOOC's course during the assessment period; and

iv) Published one research publication in the peer-reviewed journals or UGC-listed journals during assessment period.

CAS Promotion Criteria :

A teacher shall be promoted if;

- i) He/she gets a 'satisfactory' or 'good' grade in the annual performance assessment reports of at least three/four/five of the last four/five/six years of the assessment period as the case may be (as provided in Appendix II, Table 1), and;
- ii) The promotion is recommended by the screening-cum evaluation committee.

II. Assistant Professor (Senior Scale/Academic Level 11) to Assistant Professor (Selection Grade/Academic Level 12)

Eligibility:

- i) Assistant Professors who has completed five years of service in Academic Level 11/Senior Scale.
- ii) A Ph.D. Degree in the subject relevant/allied/relevant discipline.
- iii) Has done any two of the following in the last five years of Academic Level 11/ Senior Scale: Completed a course / programme from amongst the categories of Refresher Courses/ Research Methodology/ Workshops/ Syllabus Up-gradation Workshop/ Teaching-Learning-Evaluation/ Technology Programmes / Faculty Development Programme of at least two weeks (ten days) duration (or completed two courses of at least one week (five days) duration in lieu of every single course/programme of at least two weeks (ten days) duration), or, completed one MOOCs course in the relevant subject (with e-certification); or contribution towards the development of e-content in 4-quadrant (at least one quadrant) minimum of 10 modules of a course/contribution towards the development of at least 10 modules of MOOCs course/ contribution towards conduct of a MOOCs course during the period of assessment.
- iv) Published three research papers in the peer-reviewed journals or UGC-listed journals during assessment period.

CAS Promotion Criteria:

A teacher shall be promoted if;

- i) The teacher gets a 'satisfactory' or 'good' grade in the annual performance assessment reports of at least four of the last five years of the assessment period, (as prescribed in Appendix II, Table 1) and;
- ii) The promotion is recommended by the Screening-cum-evaluation committee.

III. Assistant Professor (Selection Grade/Academic Level 12) to Associate Professor (Academic Level 13A)

- 1) Assistant Professor who has completed three years of service in Academic Level 12/ Selection grade.

- 2) A Ph.D Degree in the subject concerned/allied/relevant discipline.
- 3) Any one of the following during last three years: completed one course / programme from amongst the categories of Refresher Courses/ Research Methodology Workshops/Syllabus Up-gradation Workshop/ Teaching-Learning-Evaluation Technology Programme/ Faculty Development Programme of at least two weeks (ten days) duration (or completed two courses of at least one week (five days) duration in lieu of every single course/programme of at least two weeks (ten days) duration); or completed one MOOCs course (with certification); or contribution towards the development of e-content in 4-quadrant (at least one quadrant) minimum of 10 modules of a course/ contribution towards development of at least 10 modules of MOOCs course/ contribution towards conduct of a MOOCs course during the period of assessment.
- 4) A minimum of seven publications in the peer-reviewed or UGC-listed journals out of which three research papers should have been published during the assessment period.
- 5) Evidence of having guided at least one Ph.D. candidate. CAS Promotion Criteria:

A teacher shall be promoted if;

- i) He/she gets a 'satisfactory' or 'good' grade in the annual performance assessment reports of at least two of the last three years of the assessment period as specified in Appendix II, Table 1, and has a research score of at least 70 as per Appendix II, Table 2.
- ii) The promotion is recommended by a selection committee constituted in accordance with these Regulations.

IV. Associate Professor (Academic Level 13A) to Professor (Academic Level 14)

Eligibility:

- 1) An Associate Professor who has completed three years of service in Academic Level 13 A.
- 2) A Ph.D degree in the subject concerned/allied/relevant discipline.
- 3) A minimum of ten research publications in the peer-reviewed or UGC-listed journals out of which three research papers should have been published during the assessment period.
- 4) Evidence of having successfully guided doctoral candidate.
- 5) A minimum of 110 Research Score as per Appendix II, Table 2.

CAS Promotion Criteria:

A teacher shall be promoted if;

i) He/she gets 'satisfactory' or 'good' grade in the annual performance assessment reports of at least two of the last three years of the assessment period, as per Appendix II, Table 1, and at least 110 research score, as per Appendix II, Table 2.

ii) The promotion is recommended by a selection committee constituted in accordance with these Regulations.

V. Professor (Academic Level 14) to Senior Professor (Academic Level 15)

A Professor can be promoted to the post of Senior Professor under the CAS. The promotion shall be based on academic achievement, favourable review from three eminent subject - experts who are not of the rank lower than the rank of a Senior Professor or a Professor having at least ten years' of experience. The selection shall be based on 10 best publications during the last 10 years and interaction with a Selection Committee constituted in accordance with these Regulations."

20. It is not in dispute that the petitioner-opposite party had moved the application before the Vice Chancellor, BHU for consideration of his candidature for promotion under CAS on 04.11.2021, which was admittedly received in the relevant department i.e. Selection and Assessment Cell of BHU on 05.01.2022. He made repeated representations and attained the age of superannuation with unblemished track record and later on sessions benefit had also been accorded till 30.06.2023. Under the CAS, the petitioner's claim stood matured as Professor way back on 04.11.2021 as per the procedure prescribed for consideration. Regulation 6.2 provides that the constitution of the Selection Committees and Selection procedure as well as the Assessment Criteria and Methodology for the different posts through direct recruitment or through Career Advancement Scheme shall be in accordance with the Regulations, 2018. Regulation 6.3 provides as under:-

"6.3 The criteria for promotions under Career Advancement Scheme laid down under these Regulations shall be effective from the date of notification of these Regulations. However, to avoid hardship to those faculty members who have already qualified or are likely to qualify shortly under the existing regulations, a choice may be given to them, for being considered for promotions under the existing Regulations. This option can be exercised only within three years from the date of notification of these Regulations."

21. Regulations 6.3 (I) provides that a teacher who wishes to be considered for promotion under the CAS may submit in writing to the university/college, within three months in advance of the due date.

Admittedly, in the instant matter the petitioner had submitted details as required under the Regulation, which is also brought on record along with the writ petition. Nowhere in the counter affidavit or in the instant appeal the BHU had

denied the submission of relevant documents, which were required to be considered under the CAS.

22. The Regulation 6.3 (II) provides as under:-

"II. The Selection Committee specifications as contained in Clauses 5.1 to 5.4 shall be applicable to all direct recruitments of faculty positions and equivalent cadres and Career Advancement promotions from Assistant Professor to Associate Professor, from Associate Professor to Professor, Professor to Senior Professor (in University) and for equivalent cadres."

23. The Regulation 6.3 (III) provides that the CAS promotion from a lower stage to a higher stage of Assistant Professor shall be conducted through a "Screening-cum-Evaluation Committee" following the criteria laid down in Table 1 of Appendix II of the Regulations, 2018. Regulation 6.3 (V) provides that for the promotion under the CAS, the applicant teacher must be on the roll and in active service of the University/ College on the date of consideration by the Selection Committee.

24. In the instant matter much emphasis has been laid by the appellant-University that learned Single Judge has erred while directing for holding the Screening-cum-Evaluation Committee to consider the claim of the petitioner under CAS as admittedly he had already superannuated and not on the roll and in active service of the University and the Selection Committee could also not be held.

25. While deciding the instant issue, we have taken note of entire Regulations, 2018 and the object of CAS, which is to accord promotion from lower stage to higher stage. Detailed tables of Appendix are also provided therein for assessment criteria and methodology (Ref. Regulation 6.1 of Regulations, 2018). The scheme is formulated to accord benefit to the teachers at large under CAS, in case they fulfill the benchmark and minimum grading specified in the relevant assessment criteria and methodology tables. We have also taken note of Regulation 6.3 (VI), wherein time is stipulated for the candidate to offer himself/herself for assessment for promotion. The scheme conceptualised to give time bound upgradation to the teachers at large and no such leverage is given to the University or colleges not to proceed under CAS in time bound manner. Accordingly, in Regulation 6.3 (VI), it is provided that he/ she can do so three months before the due date. Thereafter, the University shall send a general circular twice a year inviting applications for CAS promotion from the eligible candidates. Regulation 6.3 (VI) sub-clause (i) provides that if a candidate applies for promotion on completion of the minimum eligibility period and is successful, the date of promotion shall be from that of minimum period of eligibility. Regulation 6.3 (VI) sub-clause (ii) provides that if, however, the candidate finds that he/ she would fulfill the CAS promotion criteria, as defined in Tables 1, 2, 4 and 5 of Appendix II at a later date and applies on that date and is successful, his/ her promotion shall be effected from that date of the candidate fulfilling the

eligibility criteria. The welfare scheme under the CAS is also extended, which is writ large in Regulation 6.3 (VI) (iii), which provides that the candidate, who does not succeed in the first assessment, he/ she shall have to be re-assessed only after one year. When such a candidate succeeds in the eventual assessment, his/ her promotion shall be deemed to be one year from the date of rejection.

26. In the instant matter, as per the scheme formulated under Regulation 6.3 of the Regulations, 2018, nothing is brought on record that the petitioner lacked any minimum eligibility criteria. We are surprised that on one hand the appellant heavily relied upon Regulation 6.3 (V), which deals with the situation, wherein for promotion under CAS the applicant teacher must be on roll and in active services of the University and on the other hand they themselves had deviated from the next mandate, which is given in detail in para 6.3 (VI), as enumerated above, that the said exercise is to be conducted by the University twice a year inviting applications for CAS promotion from the eligible candidates. The petitioner was eligible to be promoted under CAS w.e.f. 04.11.2021 and admittedly the said application was received on 05.01.2022 in the Selection and Assessment Cell of BHU. Finally he left the department after around 18 months i.e. 30.06.2023. Said situation cannot be appreciated that for vacuum period, wherein Executive Council was not available in the University, the Vice Chancellor was bereft of authority/ power not even to constitute Screening-cum-Evaluation Committee as per the mandate under Regulation 6.3 (III). More so it was not a fresh selection. Under the CAS, promotion is to be accorded purely on the basis of relevant assessment criteria and methodology as enumerated and detailed in the tables under the Regulations, 2018 and that too is to be moved by the candidate himself/ herself on required assessment criteria and methodology proforma.

27. We also take note of the submission and stand of the University taken in the counter affidavit, wherein it has acknowledged that the petitioner's application for promotion under CAS was received on 05.01.2022 and no Selection Committee for promotion under CAS had been constituted by the University since November, 2020 to December, 2023. We are constrained to observe that instead of rectifying or ameliorating the said situation, the University has come with a lame excuse that in absence of Executive Council the University had failed to hold any Screening-cum-Evaluation Committee and accordingly under CAS no benefits have been extended to the teachers since November, 2020. For ready reference, paragraphs 14, 15 & 16 of the counter affidavit filed by BHU in the writ petition before learned Single Judge are reproduced as under:-

"14. That as per record of the University, after completion of 3 years of service as Associate Professor i.e. on 04.11.2021, Dr. Bhaktiputra Rohtam (Petitioner) applied for the promotion on the post of Professor under Career Advancement Scheme (hereinafter referred as CAS). The application of Dr. Bhaktiputra Rohtam (Petitioner) was received on 05/01/2022, by the Recruitment and Assessment Cell, BHU. A true copy of application made by petitioner for promotion as

Professor under CAS, dated 05/01/2022 is being filed herewith and marked as Annexure No.CA-4 to this counter affidavit.

15. That as per record of the University, no Selection Committee for promotion of the teachers under CAS has been conducted in the University after November 2020 to till date. It is further submitted that after expiry of tenure of Executive Council in June 2021, till date. Executive Council of the University has not been constituted. The case of promotion of petitioner under CAS could not be considered by University due to non-availability of appointing authority i.e. Executive Council of the University.

16. That it is pertinent to mention her that, after expiration of tenure of Executive Council in June 2021, till date the new Executive Council of the University has not been constituted, due to which the process related to direct recruitment as well as promotion of teachers under CAS could not be considered."

28. In this backdrop, we have no hesitation to hold that the objection so taken by the University in the light of Regulation 6.3 (V) cannot sustain on account of fault committed by the University itself in not even constituting the Screening-cum-Evaluation Committee for considering the CAS promotion from lower stage to higher stage as per criteria laid down in Table-1 of Appendix-II. In such situation, it can be safely inferred that for the vacuum, which was artificially created by the administration of BHU and specially the Vice Chancellor, the University is responsible.

29. Under the Regulations, 2018 detailed procedure is provided. Each and every University is to ensure to send general circular twice a year inviting applications for CAS promotion from eligible candidates. In absence of any material, the rightful claim of the petitioner cannot be denied taking solitary ground of Regulation 6.3 (V), whereas time bound consideration of claim has also been provided under Regulation 6.3 (VI).

30. It is well settled that when the action of the State or its instrumentalities is not as per the rules or regulations and supported by a statute, the Court must exercise its jurisdiction to declare such an act to be illegal and invalid. Hon'ble the Apex Court in *Sirsi Municipality Vs. Cecelia Kom Francis Tellis* AIR 1973 SC 855, observed that "the ratio is that the rules or the regulations are binding on the authorities." A Constitution Bench of Hon'ble Apex Court in *Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr.* AIR 1975 SC 1331, has observed as under:-

"The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by Courts to invalidate actions in violation of rules and regulations. The existence of rules and regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. The statutory regulations in the cases under consideration give the employees a statutory status and impose restrictions on the employer and the employee with no option to vary the conditions.....In

cases of statutory bodies there is no personal element whatsoever because of the impersonal character of statutory bodies.....the element of public employment or service and the support of statute require observance of rules and regulations. Failure to observe requirements by statutory bodies is enforced by courts by declaring (action) in violation of rules and regulations to be void. This Court has repeatedly observed that whenever a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute."

31. Similar view has also been taken by Hon'ble Apex Court in *Ambica Quarry Works etc. Vs. State of Gujarat & Ors.* AIR 1987 SC 1073 and *Commissioner of Police, Bombay Vs. Gordhandas Bhanji* AIR 1952 SC 16. In both the cases, Hon'ble Apex Court relied upon the judgment of the House of Lord in *Julius Vs. Lord Bishop of Oxford* (1880) 5 AC 214, wherein it was observed as under:-

"There may be something in the nature of thing empowered to be done, something in the object for which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so."

32. In this backdrop, we have carefully examined the Regulations, 2018 and we find that on one hand objection has been raised that the incumbent must be in service/ on roll and on the other hand there is strict provision that twice the reminder is to be given to all the employees for availing the benefit under the scheme in question. Admittedly, the petitioner was on role while moving application and thereafter continued to impart education in the faculty for more than 18 months. In absence of Executive Council of the University a plea was taken that no positive direction could be issued for convening the Screening Committee. In *Commissioner of Police (supra)*, the Apex Court observed as under:-

"Public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order.....An enabling power of this kind conferred for public reasons and for the public benefit is, in our opinion, coupled with a duty to exercise it when the circumstances so demand. It is a duty which cannot be shirked or shelved nor it be evaded, performance of it can be compelled."

33. The University has to act in accordance with Regulations, 2018, and the burden cannot be shifted upon the teacher, who was well deserving and fulfilling all the basic eligibility for upgradation and that so only to the extent of financial upgradation. Strict provisions are incorporated in the Regulations, 2018 with an object to evaluate the teachers, their credentials, their work publications etc. The

provisions are in the nature of welfare and in case there is no cadre vacancy available on higher post, financial benefit can be accorded under CAS. The rightful claim cannot be denied merely on the ground that the petitioner was not on roll and therefore his claim could not sustain.

34. Learned Single Judge has also considered in detail the powers, which are vested in the Vice Chancellor under Section 7-C (5) of the BHU Act. Under the facts and circumstances, we are unable to accept the main objection of the University that in absence of Executive Council, the Screening-cum-Evaluation Committee could not be constituted and in the said period no promotion could be accorded under the CAS, which is only a financial upgradation. We are in respectful agreement with learned Single Judge while directing the Vice Chancellor of the University to immediately constitute Screening-cum-Evaluation Committee.

35. Issue No. (ii)

Whether the petitioner-opposite party is entitled to be accorded re-employment as teacher in the Department as per Regulation 2.1 of the Regulations, 2018?

The second issue is having wide ramification. Regulations, 2018 has been issued under the UGC Act with an object for providing minimum qualification for appointment of teachers and other academic staff of the University and Colleges and measures for the maintenance of standards in Higher Education. Learned Senior Counsel for BHU has placed heavy reliance upon the Model Guidelines for re-employment of superannuated teachers, which was issued by the UGC on 15.02.2008. The Model Guidelines for Re-employment of Superannuated Teachers was formulated by UGC, considering the number of sanctioned teaching posts lying vacant for long period across the country, might be on account of various reasons like non-availability of funds, ban on recruitment, non-availability of suitable candidates, difficulties in filling posts earmarked for reserved category and problems brought out by litigation. In that eventuality institutions were required to have the services of contract appointees and teachers engaged on per lecture basis as well as of research students for performing required academic activities. As a result, such institutions were not able to maintain the quality and standards of their academic programmes and were unable to keep pace with the growing expectations from their stake holders particularly the students.

36. In this backdrop, UGC had also alternatively recommended (as early as in the year 1990) to take care of this problem by selective re-employment of superannuated teachers upto their reaching the age of 65 years. Later on, the Ministry of Human Resource Development vide notification dated 23.03.2007 has extended the age of superannuation to 65 years with a provision for re-employment upto 70 years in case of Centrally funded institutes. The said guidelines were framed by the UGC to facilitate the implementation of the recommendation in the higher education system in the country. The Model

Guidelines provide a framework for the re-employment of superannuated teachers at Universities and Colleges in India.

37. Heavy reliance has been placed by the appellant-University on the letter dated 15.02.2008 of UGC by which it had approved the Model Guidelines, 2008, whereby eligibility criteria of the superannuated teachers for re-employment had to be considered. It has been heavily contended that still the Guidelines, 2008 has not been superseded or rescinded. The Guidelines provides that the category of superannuated teachers eligible for re-employment shall be Professor only in case of Universities and Professors, Readers and Lecturers (Selection Grade) only in the case of Colleges. The Guidelines also provide that the institution shall follow the following principles, while taking up the cases of superannuated teachers for re-employment:-

"a) There shall be vacancies of teachers at the University Department or at the College, remaining unfilled for at least one year.

b) The number of teachers to be re-employed in a University Department and/ or College at any given time shall be limited to 50% of the vacancies identified as above....."

38. In this backdrop, initially the University, while rejecting the claim of the petitioner-opposite party, had taken specific stand that in view of Model Byelaws, 2008 no such re-engagement could be accorded to the petitioner, who had superannuated as Associate Professor. The Model Guidelines, 2008 does not contemplate any such re-engagement of Associate Professor in the University, the same is only available in the College. The Model Guidelines, 2008 deals with the re-employment of superannuated teachers and detailed procedure is provided therein for tenure of appointment, selection criteria, re-employment procedure, emoluments and other privileges.

39. In the impugned judgment, learned Single Judge has failed to appreciate that the Model Guidelines was issued in different perspective for providing minimum qualification for appointment of teachers and other academic staff in the University and Colleges and the measures for the maintenance of standard in higher education. The Regulation 2.1 of Regulations, 2018 clearly provides:-

"2.1 Subject to the availability of vacant positions and fitness, teachers such as Assistant Professor, Associate Professor, Professor and Senior Professor only, may be re-employed on contract appointment beyond the age of superannuation, as applicable to the concerned University, college and Institution, up to the age of seventy years. Provided further that all such re-employment shall be strictly in accordance with the guidelines prescribed by the UGC, from time to time."

(Emphasis supplied)

40. From the bare perusal of the aforesaid provision, it is clear that even though no exhaustive procedure is given under Regulations, 2018. It does provide that subject to the availability of vacant positions and fitness, teachers may be re-

employed on contract appointment beyond the age of superannuation, as applicable to the concerned University, college and Institution, upto the age of seventy years and all such re-employment shall be strictly in accordance with the guidelines prescribed by the UGC, from time to time.

41. We find that learned Single Judge failed to distinguish the Guidelines, 2008, which have provided exhaustive procedure for re-employment of superannuated teachers, whereas Regulations, 2018 has been issued in different context. Nowhere learned Single Judge has dealt with the matter that in absence of any detailed guidelines, which method is to be adopted and by which mode/ method the superannuated teachers could be re-employed. Once the BHU has come up with a categorical stand that still the Model Guidelines, 2008 holds the field, we have no hesitation to hold that Regulations, 2018 deals with entirely different situation. The petitioner-opposite party had not placed any guidelines issued by UGC, which deals with re-employment of superannuated teachers. In such situation, the reasoning and observations made in this regard by learned Single Judge in para 45 of the impugned judgment cannot sustain.

42. This can be viewed from another aspect that in case Model Guidelines, 2008 framed by UGC goes, then there would remain no other detailed provisions in this regard. Once BHU has come with categorical stand that re-employment is accorded in the light of the Guidelines, 2008, we have no hesitation to say that the reasons assigned by learned Single Judge in para 45 of the impugned judgment that in case there is conflict between Regulations and Guidelines framed thereunder, definitely Regulations would prevail, would not sustain. Under the facts and circumstances, as Guidelines, 2008 and Regulations, 2018 are distinct and deal with different situations, there is infact no conflict between the two.

CONCLUSION

43. Considering both the issues as answered above, we find that even otherwise in view of direction issued by learned Single Judge in Para 46 (I), wherein he had directed for constitution of Screening-cum-Evaluation Committee, in case the Committee extends benefit to the petitioner-opposite party under the CAS as Professor, it is always open for him to press an application for re-employment on a contract basis, if any vacancy is available in the Department.

44. In view of above, the impugned judgment and order dated 13.02.2024 stands modified. The special appeal stands partly allowed.