

(1998) 03 PAT CK 0053
In the Patna High Court
Case No : C.W.J.C. No. 5859 of 1996

B.R. Ambedkar Bihar University Teachers Association	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 04-03-1998

Acts Referred:

Bihar State Universities Act, 1976 — Section 35(1), 35(2)

Citation : (1998) 2 PLJR 103

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : A.K.P. Yadav in person, Chandra Shekhar, Ravi Shankar Prasad, S.K. Sinha, Mr. Prabhunath Roy for the B.R. Ambedkar Bihar University, Mr. Ganesh Prasad Singh in CWJC 10687/95 a connected matter and Dr. S.N. Jha in CWJC 7732/96 in connected matter, Shivendra Kishore, V.K. Jha, for the Appellant; Ganga Prasad Roy, for the Respondent

Judgement

Aftab Alam, J.—By order dated 30.7. 1997 this Court constituted a one man committee of Mr. Justice S. Sarwar Ali requesting him to prepare the annual budget for the B. R. A. Bihar University after hearing the Government, the University authorities and other interested parties. After taking up the exercise as requested by this Court Mr. Justice Ali submitted two interim reports dated 3.11.1997 and 2.12.1997. In these reports he identified and formulated certain disputed legal issues which had cropped up in course of preparation of the budget and on which conclusive judicial pronouncement was deemed necessary before a realistic and meaningful budget could be finalised. Copies of the two interim reports were given to Mr. Ganga Prasad Ray, A. A. G. Ill appearing for the State, lawyers appearing for the different Universities and counsel for the petitioners in each of this batch of cases. Later, all the parties were heard at length on February 5, 6, 9 and 10, 1998 on the issues identified in the two interim reports and this order is being passed to answer the legal questions indicated in the two interim reports submitted by the committee.

2. Mr. A. A. G. Ill submitted that the FIRST issue that was required to be

addressed was number of posts which were to be treated as duly sanctioned for budgetary purposes and the number of posts which were non-sanctioned and for which the Government was under no obligation to make any budgetary provision regardless of the fact that some persons might be working against such non-sanctioned posts.

3. After some arguments there was a general unanimity among the parties on this issue. The A.A.G. Ill representing the State, Mr. Ravi Shankar Prasad, counsel for the petitioners in CWJC No. 5859/ 1996, Mr. Prabhunath Roy appearing for the B.R.A. Bihar University, Mr. B. K. Jha, counsel for the T. N. Bhagalpur University, Mr. Chandra Shekhar appearing as amicus curiae and other counsel who at that moment were present in court all agreed that the issue regarding sanctioned and non-sanctioned posts may be answered in the following terms :

Budgetary provisions will be made:

(i) For all posts which were sanctioned by the University Syndicate or sanctioned by the Governing Body of the affiliated colleges and approved by the University Syndicate in accordance with law as it stood prior to 16.5.1977 before coming into force of the Bihar Universities Act, 1976.

(ii) For all posts created after 16.5.1977 with the approval of the State Government as provided u/s 35(1) of the Bihar Universities Act. 1976.

Note: Budgetary provisions will be made for all posts as indicated at serials (i) and (ii) above even though the incumbents should be holding those posts without the prior approval of the State Govt, as provided u/s 35(2) of the Act.

(iii) For all teaching posts in affiliated colleges taken over as constituent units in the fourth phase of conversion in respect of which the concerned universities took a positive decision of regularisation of the incumbent's services in the light of the division bench decision of this court in CWJC No. 4021/1995; date of disposal 31.1.1997 (Bihar Rajya M.S.A.S.K.K. Mahasangh and others vs. State of Bihar and others : 1997 (1) PLJR 533). If the division bench decision of this court is reversed, set aside or modified by the Supreme Court in S.L.R No. 10452/1997 filed at the instance of the State, budgetary provisions, in future, will be made in accordance with the directions of the Supreme Court.

Note: In case the University is still engaged in the exercise and is yet to take a final decision in respect of all the teaching posts under consideration, a provision will have to be made in the budget for the university to make a supplementary demand/budget in accordance with its decision on the question.

(iv) For all non-teaching posts which would be covered by the full bench decision of this court in L.P.A. No. 36/1994, date of disposal 19.2.1997 (Braj Kishore Singh and Others Vs. State of Bihar and Others,).

(v) For all teaching and non-teaching posts for which the B. R. A. Bihar

University might have made recommendations and the State Govt, is yet to take a final decision, the Government should take a decision within three months from the date of this order failing which all such posts will also be deemed to be sanctioned for the purpose of preparing the university budget.

(iv) For all persons appointed on non-teaching posts on compassionate grounds, it is to be clarified here that persons appointed on compassionate grounds in excess of the sanctioned posts would be deemed to hold supernumerary posts. As and when vacancies arise in the sanctioned posts such persons appointed on compassionate grounds would be adjusted against those vacancies. In case a person appointed on compassionate grounds retires before he could be adjusted against any sanctioned post, the post held by him would stand abolished with his retirement.

(vii) For all non-teaching employees employed before 10.5.1986 and who are saved from retrenchment by virtue of the Government decision not to retrench those appointed prior to that date.

(viii) No budgetary provision will be made for and in respect of any post or person not covered by the categories enumerated hereinabove.

4. The SECOND issue on which the learned A.A.G.III addressed the court in the light of the interim reports related to the pay scale and emoluments admissible to the individual teachers working in the Universities. The issue arises in the background of three statutes regarding regularisation of services of purely temporary lecturers and two further statutes providing for promotion of lecturers to the posts of Readers and of Readers to the posts of University Professors. This issue has to be divided into three separate sub-issues which can be formulated thus :

(i) In the light of the three Absorption Statutes what would be the relevant date for the grant of annual increments to lecturers absorbed in regular service under those statutes?

(ii) In the light of the Promotion Statutes what would be the relevant date to reckon the period of qualifying service on completion of which an individual lecturer or Reader would become entitled for promotion to the post of Reader or University Professor as the case may be ? and

(iii) Whether a teacher having been promoted to the post of Reader or University Professor, as the case may be, was entitled to the higher U.G.C. scale of pay or the U.G.C. scale was admissible only to a Reader or a University Professor recruited directly to the post on the basis of an open advertisement and a promotee Reader or University Professor was entitled only to the lower scale of pay ?

5. According to the State, the University authorities in granting annual increments to lecturers and for granting promotion to the higher posts of Reader and University Professor also took into account the period of service rendered by

the concerned teachers in affiliated colleges even prior to the date of their regularisation in service under the Absorption Statutes. As a result, the date from which an individual teacher got annual increments and became entitled to promotion under the Promotion Statutes was significantly shifted backwards. The teachers got promotions and consequently higher scale(s) of pay from a date much in advance from the date permissible under the Act and the Statutes and a substantial and wholly unwarranted financial burden was thus put on the State Government. The State also objected to the promotee Readers and University teachers being paid their salary in the higher U.G.C. scales of pay which according to its case was admissible only to teachers directly recruited on those posts on the basis of an open advertisement.

6. Now I propose to take up each of the three sub-issues of the SECOND issue one by one :

Re : THE RELEVANT DATE FOR THE PURPOSE OF ANNUAL INCREMENT:

The learned A. A. G. III referred to the three Statutes under which services of purely temporary lecturers were regularised from time to time. These are :

(i) Statutes Regarding Regularisation of Services of Purely Temporary Lecturers as approved by the Chancellor on 1.12.1978 (hereinafter referred to as the 1978 Absorption Statute).

(ii) Statutes Regarding Regularisation of Services of Purely Temporary Lecturers, as approved by the Chancellor by letter dated 18.11.1980 (hereinafter referred to as the 1980 Absorption Statutes); and

(iii) Statutes for Regularisation of the Services of Purely Temporary Lecturers appointed on or before the 28th February, 1982, as approved by the Chancellor vide letter dated 28.1.1980 (hereinafter referred to as the 1986 Absorption Statute).

7. A.A.G.III submitted that each of the aforementioned Absorption Statutes specified the date for the grant of annual increments and for reckoning inter se seniority and it was not open to the University to assign any other date(s) for those purposes. Any dates other than those fixed in the Statutes would be contrary to law and the Government would not be bound to shoulder the resultant financial burden.

8. In the 1978 Absorption Statutes which provided for regularisation of services on the basis of the recommendation made by the Bihar Public Service Commission, Clause 2 provided that the seniority of a lecturer regularised in service would be reckoned from the date of the Commission's recommendation and that date would also form the basis for the grant of annual increments to him.

9. The 1980 Statutes which provided for regularisation of service on the basis of the recommendation made by a committee constituted by the Vice Chancellor stipulated (vide clause 4) that the lecturers absorbed in regular service under

those Statutes would draw their increment in the prescribed scale on the date of absorption or on 1.1.1981, whichever was earlier and they would draw their next increment after completion of one year service from that date.

10. In the 1986 Absorption Statutes the relevant provision was contained in clause 4 according to which lecturers absorbed in the regular service under those Statutes would draw their 1st increment in the prescribed scale on completion of one year of service from the dates of their appointments from which they had been continuing in service without any break.

11. Mr. A. A. G. Ill contended that in actual practice lecturers absorbed in regular service under the 1978 and the 1982 Absorption Statutes were granted annual increments not from the date of the Commissioner's recommendation or the committee's recommendation/ 1.1.1981, as provided respectively in the two Statutes but on completion of one year of service from the date of appointment in an affiliated college that is to say, even prior to the date of their regularisation in service.

12. Mr. Ravi Shankar Prasad, learned counsel appearing for the petitioners in this case pointed out that the 1978 Absorption Statutes and the 1980 Absorption Statutes provided different modes of absorption; under the 1978 Statutes absorption was to be made on the basis of recommendation of the Bihar Public Service Commission whereas under the 1980 Absorption Statutes recommendation by a committee constituted by the Vice Chancellor was to form the basis for absorption. The recommendation from the Commission took a much longer time to come and in many cases the recommendations were delayed by several years. Moreover, clause 4 of the 1980 Absorption Statutes, which were approved by the Chancellor on 18.11.1980, provided that the relevant date would be the date of recommendation by the committee or 1.1.1980 whichever was earlier. In actual practice, therefore, the relevant date in respect of lecturers absorbed in regular service under the 1980 Absorption Statutes became 1.1.1981. This resulted in the anomalous position that for many lecturers whose services were regularised under the earlier 1978 Statutes, the relevant date for the purpose of seniority and annual increments became much later than 1.1.1981, the relevant date for lecturers whose services were absorbed under the later 1980 Statutes.

13. This anomalous position was noted by the Inter University Board in its resolution dated 23.3.1981 (annexure 19) and later the Education Commissioner-cum-Secretary, Government of Bihar by his letter dated 16.7.1982 (annexure 20) informed the Vice Chancellor, Bihar University that the Government had decided that the temporary lecturers whose services were regularised or were to be regularised in future will get the benefit of seniority and annual increments from the dates of their appointment in the affiliated colleges but they would not get the differential payment on the basis of annual increments prior to the period 1.7.1981.

14. Mr. Prasad further submitted that it was in the light of the Govt, decision that a similar provision regarding annual increments was made in clause 4 of the 1986 Absorption Statutes.

15. Mr. A.A.G.III sought to contend that a Government decision was contained in the Secretary's letter would not override the provisions contained in the University Statutes and it was on the basis of the statutory provisions alone that the concerned teachers could be granted annual increments.

16. The contention though correct in principle is not acceptable to me in the facts and circumstances of this case. The Government having taken the decision in 1982 cannot be allowed now, after more than fifteen years, to raise this objection and to rely upon the provisions of the Statutes in support of its objection, disowning its own earlier decision in that regard. I, therefore, find and hold that the concerned teachers are entitled to annual increments in terms of the Government decision as contained in the letter dated 16.7.82 and in terms of clause 4 of the 1986 Absorption Statutes.

Re: THE RELEVANT DATE FOR COMPUTING THE PERIOD OF QUALIFYING SERVICE FOR PROMOTION UNDER THE THREE PROMOTION STATUTES

It is one of the more important issues as it requires determination of the date on which individual Lecturers and Readers became entitled to promotion to the posts of Reader and University Professor, as the case may be, under the three Promotion Statutes. It is the case of the State that by wrongly taking into consideration the period of service rendered in an affiliated college even prior to the date on which the service of the concerned lecturer got regularised under the absorption statutes, the University authorities gave a large number of promotions much in advance from their due dates. This has given rise to a substantial financial burden which the State was being asked to shoulder at the time of preparation of the budget. According to the case of the State, qualifying service for promotion to the posts of Reader or University Professor could be taken into account only from the date when the concerned lecturer became "University servant", i.e. came into employment of the University. In other words, from the date when the affiliated college in which he was serving became a constituent unit of the University or his service was regularised in a constituent college.

17. Mr. A. A. G. III referred to the three promotion Statutes under which a large number of promotions were given to lecturers and Readers. These are :

(i) Statutes for Promotion to the Post of Readers, as approved by the Chancellor vide letter, date 18.11.1980 (hereinafter referred to as the 1980 Promotion Statutes).

(ii) Revised Statute for Promotion of Lecturers to Post of Reader, as approved by the Chancellor vide letter, dated 14.11.1981 (hereinafter referred to as the 1981 Promotion Statute).

(iii) Statute for Time bound Promotion of Lecturers to the Post of Readers and for Readers to the Post of University Professors, as approved by the Chancel for vide letter, dated 24.12.1986, repealing the 1981 Promotion Statutes at serial no ii (hereinafter referred to as the 1986 Time Bound Promotion Statutes).

18. In support of the case of the State that qualifying service for promotion under the three Promotion Statutes could be computed only from the date when the service of the concerned lecturer was regularised in a constituent college of the University without taking into consideration the service rendered by him before regularisation of his service in an affiliated college, the Addl. A. G. III relied upon clause 1 of both the 1980 Promotion Statutes and the 1986 Time Bound Promotion Statutes. The relevant portions from clause 1 in the two Statutes are as follows :

The 1980 Promotion Statutes : Clause 1.

Notwithstanding anything to the contrary as contained in the Statute, it is hereby provided that a lecturer serving in a University Department or in a degree college, managed and main tained by the University shall, on the recommendation of University Selection Committee be promoted to the post of Reader, subject to the following conditions :

(a) If he holds a doctorate degree (e.g. Ph.D, D. Litt., or D.Sc), he has completed at least thirteen years of continuous service as a lecturer in one or more Universities, or if he does not hold a doctorate degree he has completed atleast eighteen years of continuous service as a lecturer in one or more Universities."

The 1986 Time Bound Promotion Statutes : Clause 1

"Notwithstanding anything to the contrary as contained in the Statutes:

(1) A lecturer, serving in a University Department or in a degree college managed and maintained by the University shall on the recommendation of the Bihar State University (Constituent Colleges) Service Commission, be promoted on the basis of time bound scheme to the post of Reader, subject to the following conditions :

(a) x x x x

(b) x x x x

(c) that, he has completed atleast ten years of continuous service as lecturer in one or more Universities."

19. On the basis of the afore-quoted provisions (clauses 1 of both the 1980 Promotions Statutes and the 1986 Time Bound Promotion Statutes) Mr. A.A.G.III contended that the period or qualifying service for promotion under the two Statutes could begin only from the date the concerned teacher began serving in a University Department or in a degree college managed and maintained by the University and hence, there would be no question of taking into consideration the

period of service rendered by him in an affiliated college even before his service got regularised under the Absorption Statutes. The contention at first appeared to have some substance but on a deeper consideration I am unable to accept it. The fallacy lies in trying to read the mode of computation of qualifying service in the applicability clause of the Statutes. Having given my anxious consideration to the matter, I am of the view that portions of clauses 1 in the two Statutes relied upon by Mr. A.A.G.III say nothing about the mode of calculation of qualifying service. Clause 1 in each of the two Statutes is the applicability clause and it simply states that promotions under the 1980 Promotion Statutes and the 1986 Time Bound Promotion Statutes would be available only to teachers who on the dates the two Statutes came into force were serving in a University Department or in a degree college managed and maintained by the University. In this regard, it may be noted that another Promotion Statutes applicable to teachers of affiliated colleges including religious and linguistic minority colleges were separately framed. Having thus found that clause 1 of each of the two Statutes is silent on the question of the mode of computation of qualifying service and does not lay down how the period of qualifying service is to be calculated, the question arises as to from what date the period of qualifying service would commence.

20. The answer to this question is to be found in the provisos to clause 1 in each of the three Statutes which are completely overlooked by the State in raising the objection that the period of service rendered in an affiliated college is to be excluded for calculating the qualifying service for promotion. The provisos to which a reference is to be made are as follows :

The provisos to clause 1 in both the 1980 Promotion Statutes and the 1981 Promotion Statutes are identical and are as follows:

"Provided that the period of teaching experience below degree standard shall not be included." And the proviso in question in the 1986 Time Bound Promotion Statutes is as follows :

"Provided that the service rendered in a degree college during the period the college was not affiliated in the subject concerned even upto the Intermediate standard, shall not be taken into account for the purpose of this Statute."

21. To my mind the afore-quoted provisos give sufficient indication that the period of service rendered by a teacher in an affiliated college is not to be excluded for computing his qualifying service for promotion. The proviso to clause 1 in the 1986 Time Bound Promotion Statutes conversely implies that service rendered in a degree college during the period the college was affiliated in the subject upto Intermediate standard would be taken into account for the purpose of qualifying service under those Statutes.

22. The Provisos in the 1980 Time Bound Promotion Statutes and the 1981 Time Bound Promotion Statutes also give similar indication. In order to understand the true import of the provisos in the 1980 and the 1981 Promotion Statutes, it must be borne in mind that no constituent college in any University is below degree

standard. Hence, if the contention of the State that the period of qualifying service must begin from the date the concerned lecturer started serving in a constituent college were to be accepted, the provisos in all the three Promotion Statutes would become completely meaningless, redundant and superfluous and any meaning can be given to the provisos only by holding that the period of service rendered by the concerned teacher in an affiliated college was not to be excluded for calculating his qualifying service for promotion under the three Promotion Statutes.

23. Mr. A.A.G.III then relied upon clause(c) of sub-section(1) of Section 57A which before its amendment in 1985 was as follows :

"(Ga) Sambadh Mahavidyalayon Ke Vaise shikshak jin ki niyukti Mahavidyalaya ke Shashi nikai dwara sirjit padon ke virudh College Sewa Ayog ki asthapna ke purva ki gai thee aur jin ki sewain vishwavidyalaya dwara anumodit hai tatha aise shikshak jin ki niyukui vishwavidyalaya Sewa Ayog/College Sewa Ayog ki anushansa par shashi nikai dwara niyukti hai ki sewain Vishwa Vidyalaya Sewa main antleen ki jane hetu Vishwa Vidyalaya Chayan Samiti ki sahmati ki awshaykta nanin ho gi aur aise shikshako ko yatha isthiti Vishwa Vidyalaya Sewa main angibhutikaran ki tithi se antleen kiya jaa sake ga tatha oon ka variyata ka nirdharan parinyamon dwara nihil niyamon ke anusar ho ga".

24. He laid some emphasis on the latter portion of the afore-quoted provision which states that the service of the lecturer would be absorbed and his seniority would be determined from the date of conversion (of the college) into a constituent unit.

25. The submission once again over looks that clause (c) of section 57A(1) does not negate the benefit of previous service for the purpose of promotion under the Promotion Statutes." Rather, it provides that the service of the concerned lecturer would be absorbed "as it was" (Yatha Isthiti) and it can, therefore, be easily said that though the absorption would take place on the date of conversion of the college into a constituent unit, the absorption would carry with it the benefit of past service.

26. I feel supported in this view by a decision of the Supreme Court in Dr. Asim Kumar Bose Vs. Union of India (UOI) and Others, . In that decision it was held that where statutory rules did not provide that the teaching experience gained in an ex-officio capacity would not count towards the requisite teaching experience, the teaching experience gained by the appellant while holding the post of Radiologist-cum-Associate Professor of Radiology (Ex-Officio) in the Irwin Hospital could not be ignored in determining his eligibility for appointment as Professor of Radiology in Maulana Azad Medical College.

27. It may further be noted that if the objections raised on behalf of the State were to be accepted, the consequential directions may, in all likelihood, infringe upon the definite direction given by the Supreme Court in the same matter in its decision in Patna University vs. Awadh Kishore Prasad Yadav and others, 1994

(2) PLJR (S.C.)11.

28. In that case orders issued by the different Universities reverting a number of teachers from the promoted posts of Reader to the substantive posts of lecturer came under challenge before the High Court. The Universities had issued reversion orders following the resolution dated 10.2.1993 passed by the Bihar State University (Constituent Colleges) Service Commission by which the recommendations made by the Expert Committees for those promotions were held to be irregular. The High Court quashed the reversion orders passed by the Universities. The matter went to the Supreme Court and the Supreme Court directed that the cases of the concerned teachers should be placed before duly constituted committees which after due screening would make report regarding the eligible candidates to the Commission for its recommendation and the Commission would then consider those cases. The operative directions are contained in para 9 of the judgment and the direction at serial No. (viii) is as follows :

"When the promotions are given under the aforesaid time bound promotion scheme, the dates of promotion should be the same as had been given to respondents concerned earlier. Those respondents who have been reverted because of the orders of the Vice-Chancellor concerned, if promoted again, shall also be entitled to the salaries and other emoluments with effect from their earlier dates of promotion."

(emphasis added)

29. It is to be noted here that though the State of Bihar was also a party in that round of litigation, no objection was raised before the Supreme Court regarding the effective date of promotion of the concerned teachers.

30. In my view the clear and definite direction by the Supreme Court in the case of Awadh Kishore Pd. Yadav is an additional and very cogent ground for not interfering with the effective dates of promotions given under the Promotion Statutes.

31. For the reasons discussed above, I find and hold that the period of service rendered by the concerned teachers in the affiliated colleges was rightly taken into account for computing their qualifying service for promotion under the three Statutes and no case is made out to interfere with their effective dates of promotion.

32. Budgetary provisions are to be made accordingly.

Re. ADMISSIBILITY OF THE U.G.C. SCALE OF PAY TO THE PROMOTEE READERS & LECTURERS

33. It is another important issue any decision on which is likely to considerably affect a large number of teachers in the Universities.

It is the case of the State that Reader and University Professors promoted under

the Promotion Statutes were not entitled to the higher U.G.C. scales of pay but were entitled only to the lower pay scales. In this regard it is not needed to elaborate the stand of the State Government. Suffice it to note that it squarely relies upon some "interim" directions issued by a bench of this court at Ranchi in CWJC No. 3345/1994 (R), a case relating to Ranchi University. In that case by order dated 17.12.1997 a bench of this Court took serious note of the indiscipline and irregularities being indulged in the financial affairs of the university and issued some directions. One of those directions clearly said that a teacher promoted under the time bound scheme shall not be given the U.G.C. scale of pay. The relevant extract from the order is as follows :

"One of the options before us is to dismiss : this writ petition and leave the teaching and non-teaching staff of the University and its colleges to fend for themselves. We can tell them that "no doubt, your right has been interfered, but like the Government, we are also helpless in the matter." If we do so, we may expose ourselves to the justified criticism that we have failed to perform our duty under the Constitution. Therefore in the extra-ordinary situation that has arisen, we are compelled to make such directions which may appear to be harsh, but which cannot be avoided. Unusual situations demand unusual solutions. Since we are left with no alternative, we pass the following, orders:

1. x x x x

2. x x x x

3. x x x x

4. In the matter of determining the pay scale payable to a particular teacher, if time bound promotion has been granted, he shall not be given the U.G.C. scale and vice versa."

33A. Mr. A. A. G. Ill submitted that the above direction was in the nature of a general direction and the State Govt, was bound to follow it in case of teachers of all the Universities.

33B. Counsel for the petitioners and counsel representing the different Universities submitted that the directions given by the Ranchi Bench need not be followed because the Ranchi Bench simply gave an interim direction while this court was engaged in the exercise of finally deciding the issue, determining the rights and liabilities of the parties; because the direction was given without discussing the relevant provisions of the Act, the Statutes and the U.G.C. Scheme and without as signing reasons; and because all the relevant provisions were not placed before that Bench.

34. Mr. Ravi Shankar Prasad, counsel for the petitioners admitted that the U.G.S had recommended (in the 6th plan) the scales of pay of Rs. 3700- 5700/-for the post of Reader and of Rs. 4500-7300/-, for the post of University Professor as part of a composite scheme. Under the scheme however, it was also envisaged that the Govt, of India would provide assistance lo the State Governments who

wished to adopt and implement the Scheme of revision of pay scales to the extent of 80% of the additional expenditure involved, that the central financial assistance would be available for the period January 1, 1986 to March 31, 1990 and after that date the respective State Governments would take over the entire responsibility for maintaining the revised scale of pay (see clauses 4, 5 and 6 of the circular dated 17.G.1987 issued by the Ministry of Human Resources Development, Department of Education, Government of India; annexure 22) Mr. Prasad further submitted that there was nothing to prevent the State Government from granting the same pay scales de hors the composite U.G.C. scheme provided the State Government did not ask for any central assistance and met the additional expenditure itself. He submitted that the Promotion Statutes had come into operation in this State much earlier and promotions were given under those Statutes before the U.G.C. came out with its scheme. Therefore, on the question of the pay scales being admissible to the promoted teachers there was some correspondence between the State Government on the one hand and the U.G.C. and the Central Government on the other and the matter was clarified in the letter, dated 15.2.1989 written by the Joint Secretary in the Ministry of Human Resources Development, Department of Education, Government of India to the Commissioner-cum-Secretary, Department of Human Resources Development, Government of Bihar (copy at annexure 29). In that letter, the Central Government made its stand clear which was as follows :

As you have indicated there is another promotion scheme (called time bound promotion scheme) in operation in Bihar. This scheme is not based on nor is similar to the U.G.C. merit promotion scheme. If the State Government of Bihar were to give option to the teachers to be governed by this scheme, they may do so but no central assistance will be available for revising their scales of pay. There cannot be any compromise on this issue."

35. Mr. Prasad then referred to the minutes of the meeting between the Government and the members of the FUTAB and FUSTAB held on May 1 and 2, 1989 in which the following decision was taken on the teachers' demand :

Demands:

1. Implementation of the new pay scales from 1.1.1986 including other facilities recommended by the fourth pay revision commission and the Mehrotra Committee of the U.G.C.

Decision : The representative of the Government regretted their inability to agree to anything beyond what has been announced by the Chief Minister in his broadcast on the 18th March, 1989. However, the representatives of the Federation mentioned that it would be difficult for them to accept this position because of the disparities in the pay scales of the time bound promotion and merit promotion scheme after 1.3.1989. They hoped that the Government would re-consider their decision.

The modalities of arrear payment from 1.1.1986 will be decided in the light of

the decision of the Central Government whether assistance will be available for implementing the revised pay scales and the amount. In case the entire cost of implementing the revised pay scales is to be borne by the State Government and the Central Government assistance is not available, arrears will be paid to teachers in instalments.

The retiring teachers will be paid their full arrears.

36. Prof. A.K.P. Yadav, Secretary, Federation of University and College (Service) Teachers Association, Bihar appearing in person strongly argued that the whole controversy raised by the State Government was misconceived. He submitted that in the case of Readers and University Professors in Bihar it would be erroneous to call their pay scales as the U.G.C. pay scales. Those were the pay scales duly revised by the State Government under its notification dated 17.8.1989 and it was simply that the revised scales were the same as the scales recommended in the U.G.C. scheme. Mr. Yadav submitted that even before the revision of the pay scales in 1989 the promotee Readers and University Professors were getting the pay scale of Rs. 1200-1900/-and Rs. 1500-2500/-respectively which were the unrevised U.G.C. scales of pay. He particularly referred to clause 3 of the 1986 Time Bound Promotion Scheme which provided that promotion under those Statutes would be admissible only in faculties in which the 5th plan U.G.C. scale of pay had been implemented by the University, but a teacher who did not opt for the U.G.C. scale of pay would also be eligible to be considered for promotion to the post of Reader, University Professor, as the case may be, under the Statutes in the old scale of pay.

37. He then invited my attention to the notification dated 7.8.1989 revising the pay scales of University and degree college teachers. He made special reference to paragraphs 18 and 19 of Appendix 1 to this notification which are reproduced below :

"18. The promotions made or due under any existing scheme before 1.3.1989 will not be reopened. However, in such cases the benefit of revision will be available to teachers only from the date of their promotion."

"19. The existing teachers in universities and colleges where the merit promotion scheme formulated by the U.G.C. in 1983 or any other promotion schemes formulated by the State Government are in operation will have an option to continue to be governed by the provisions of those promotion schemes provided that they exercise their option in writing prior to their pay fixation under this scheme. They will also be entitled to the designations envisaged for various categories of teachers in those schemes, but the scale of pay will be as follows :

(i)

Lecturer

Rs.2200-4000/-

(ii)

Reader/Lecturer

Rs. 3000-5000/-

(iii)

(Selection grade) Professor

Rs. 4500-5700/-

38. Mr. Yadav submitted that in fixing the pay scales of Readers and University Professor the afore-quoted provisions were being fully complied with. Mr. Yadav submitted that the directions given by the Ranchi Bench of the High Court, will lead to a situation where the promoted Readers and University Professors will be reverted" back to pay scales which were fixed 20 years ago. He further submitted that during the past 20 years there were atleast two pay revisions for almost all services and it would be unduly harsh to the teachers to relegate them back to the pay scales fixed 20 years ago.

39. Mr. Prabhunath Roy, learned counsel appearing for the Bihar University submitted that payments on the basis of the U.G.C. pay scales had already been made by the State Government which had already released Rs. 20 crores sent by the U.G.C. to the different Universities, for making payment of arrears for the period 1.1.1986 to February, 1989. He submitted that the U.G.C. scheme was first implemented in Bihar in 1966. This was revised in 1973 and was implemented in Bihar with effect from 1.4.1973. The present U.G.C. package came in 1986. The State Government vide circular dated 7.8.1989, issued by the Addl. Commissioner-cum Secretary, Bihar and addressed to the Registrars of all the Universities implemented the Scheme from 1.1.1986, subject to the condition that actual payments would be made from March, 1989. He accordingly submitted that the Government could not now retract from that position

40. In view of the submissions made before me and the materials brought to my notices, I think that the stand taken by the Universities and their teachers is not entirely without substance. I find some legitimacy in the stand taken by them that the question of pay scales concerning promotions made or due under the existing Statutes before 1.3.1989 is no longer open to question and the pay scale of teachers promoted after that date would depend upon the option exercised by them as provided in paragraphs 18 and 19 of Appendix I to the notification dated 7.8.1989.

41. I, however, feel that it would not be quite proper and discreet for me, sitting singly, to make any conclusive judicial pronouncement contrary to the direction given by a bench of this court. I accordingly desist from doing so.

42. Under the circumstances, I would recommend to the committee to make budgetary provisions following the direction made by a bench of this Court at Ranchi in CWJC No. 3345/1994(R). it must, however, be clarified that the

direction made in that writ petition was merely an interim direction and it was given with the object of putting the financial affairs of the University in order so that the University employees may receive their full monthly salary regularly and in time. From the order dated 17.12.1979 passed in that case, it is evident that it does not decide the rights of the teachers promoted under the Promotion Statutes to receive their salary in the U.G.C. scales of pay. Therefore, the committee while making the budget should make allowance that in case the matter is finally decided in favour of the teachers, they would get their differential amount of pay without any delay.

43. The recommendation to the committee to make the budget in accordance with the direction given in CWJC No. 3345/1994(R) is of course a provisional arrangement till the rights of the parties are finally decided in CWJC No. 3345/94(R) or in any other case by an appropriate bench.

44. The Third issue arising from the two interim reports relates to persons who were initially appointed as Laboratory Assistants/Laboratory technicians. They were later given the designation and pay scale of Demonstrator and were allowed the benefit of promotion to the posts of Lecturers and then to the posts of Reader under the Statutes for Promotion of Demonstrators to the post of lecturer (as approved by the Chancellor vide letter dated 18.11.1980). Mr. AAG III submitted that the benefit of promotion under this Statute was available only to Demonstrators appointed following the valid mode of recruitment as provided under sections 57 and 57A of the Act. Persons who were appointed as Laboratory Assistants/Laboratory Technicians without following any valid mode of recruitment could not be deemed to be Demonstrators within the meaning of the Act and the Statutes and by merely redesignating them as Demonstrators and giving them the pay scale of Demonstrator, they could not become entitled to the benefit of promotions under the Statutes concerning Demonstrators.

45. The Committee in its second report, dated 2.12.1997 has enclosed a copy of the letter, dated 16.2.1968 issued by the Principal, L.S. College, Muzaffarpur and addressed to all Laboratory Assistants of that college. It will be useful to reproduce this letter here :

"I have to enclose herewith a copy of Memo No. B/400 dated 11.1.1968 received from the Finance Officer, Bihar University regarding change of designation of Laboratory Assistant to Demonstrator.

You are, therefore, designated as Demonstrators with effect from the 3rd Jan. 1968(date of assent of the Govt.)

This is for your information."

46. The Principal's letter also enclosed the relevant amendments in the University's statutes passed by the University Senate on 26.11.1967 and assented to by the Chancellor vide Memo No. B.S.U.-5-67-17-GS-(J) dated, the 3rd January, 1968 from the Secretary to the Governor, Bihar.

47. The petitioners have also brought on record some letters issued by the Commission by which sanction was accorded to the grant of pay scale of Demonstrator to several Laboratory Assistants pursuant to their redesignation.

48. I was also shown a letter from the Registrar, University of Bihar, addressed to the Principal, L.S. College and to the Heads of different Departments of that college. That letter enclosed a copy of resolution No. 10(b), dated 29.6.69 passed by the University Syndicate. By that resolution the Syndicate noted the absorption of Laboratory Assistants of L.S. College, Muzaffarpur in Bihar University Service of Demonstrators on the basis of letter No. D/Con-607/69/1162 PSC dated 29.4.1969 from the Secretary, Bihar Public Service Commission.

49. As this stage, it is also to be noted that the posts of Laboratory Assistants/Laboratory Technicians were abolished in the State and the question of redesignation of the incumbents to those posts arose directly as a sequel to the abolition of those posts.

50. It is further to be noted that during the past more than 25 years a number of cases came to this Court at the instance of individual Laboratory Assistant/Laboratory Technician from different Universities seeking directions to the concerned authorities to redesignate them as Demonstrators and give them the pay scale of Demonstrator and further to allow them the benefit of promotion under the Statutes in question. One such case which may be usefully referred here was CWJC No. 522/1979 (R). This writ petition was filed by Laboratory Assistants in the Muzaffarpur Institute of Technology, Muzaffarpur who were holding Bachelors Degree in their respective subjects. They asked for a writ of mandamus commending the State Government to designate them as Demonstrators and to give them the U.G. scale prescribed for the post of Demonstrator with effect from 1.4.1973. The case was strongly contested by the State Government but it was finally held by this court that the petitioners in that case who were Laboratory Assistants should be redesignated as Demonstrator as per the U.G. norms. The judgment of this court was duly implemented by the State Government.

51. Having regard to the aforesaid facts and circumstances, I am of the considered view that much water has since flown down the river and it is now rather late in the day to raise any objection to the promotions granted to the Laboratory Assistant/Laboratory Technicians who were given the designation of Demonstrator. On merits too I am of the view that the aim and object of the authorities in redesignating the Laboratory Assistants/Laboratory Technicians and giving them the scale of pay of Demonstrator was to absorb them and to regularise their services on the posts of Demonstrator

52. As I am hearing this matter for the specific purpose of preparation of budget, I think the discussions made above are sufficient to recommend to the Committee to treat the Laboratory Assistants/Laboratory Technicians as having

been given promotions properly following their redesignation as Demonstrators and to prepare the budget accordingly

53. If in an appropriate case it is found by the court that there were no sufficient statutory basis for regularisation of services of Laboratory Assistants" Laboratory Technicians to the posts of Demonstrator, about 30 years ago, it may consider issuing suitable direction(s) to the Government and the Universities In frame appropriate rules/statutes to provide the necessary statutory basis for their regularisation of service.

54. On the basis of the SECOND IN TERIM REPORT dated 2.12.1997 Mr. A.A.G. III framed the following two issues

(i) Whether the non-teaching Class III and Class IV employees of the University were entitled to two time bound promotions available to the Government employees ? and

(ii) Whether the pay scales and other emoluments of the non-teaching Class III and Class IV employees of the University were fixed by the different Universities in accordance with the Government directions as contained in the relevant circulars or in complete disregard of the Government directions?

55. As regards the first question regarding time bound promotions to the non-teaching staff of the Universities, the matter has been decided against the Government and in favour of the University employees by a learned single Judge of this court by judgment and order dated 24.9.1996 passed in CWJC No. 12502/1993. Against this judgment, LPA No. 1255/1995 is admitted for hearing without any order of stay. In that circumstance the order passed by the learned single Judge in CWJC No. 12502/1993 is to be followed in preparing the budget until it is set aside or modified in the letters patent appeal.

56. As regards the second issue concerning the pay scale and other emoluments of the non-teaching Class III and IV employees of the Universities, Mr. Justice Ali has made the following observations in his Second Interim report :

"The expression "Pay scale as sanctioned" as mentioned in Government letter dated 13.10.1982, in my opinion, means finally sanctioned pay scale. It is not applicable to sanction which is conditional and requires approval of some authority. In this situation no advantage can be taken of the University notification for fixation of revised pay scale from 1981. If I am wrong in my approach, I would seek suitable direction from the court in this regard also."

57. I find myself in agreement with the view expressed by Mr. Justice Ali and I recommend that the budget be prepared on that basis.

58. This concludes this Court's answers to the legal questions indicated by the Committee in its two interim reports.

59. I feel it necessary to clarify here that this order is being passed for the broad purpose of preparation of the annual budget of the B.R. Ambedkar Bihar

University. Hence, no findings, observations or comments made in this order are intended to adjudicate upon rights and liabilities of any individual. In case any individual feels aggrieved by any action taken by the University or the Government, purportedly in pursuance of this order, it would be open to the concerned person(s) to seek appropriate relief before a forum available in law. In case such an application is filed before the court, it would be decided on its own merits and in accordance with law.

60. Before parting with the records of the case, I wish to record my deep appreciation for the efforts made by Mr. Justice Ali in this public cause.

61. It is expected that the preparation of budget would now proceed at a rapid pace and a final report and the annual budget would be presented before the court expeditiously and preferably within four months.

62. Put up all these cases for Orders on July 1, 1998. Let a copy of this order be sent to Mr. Justice Ali immediately. Let copies of the order be also given to Mr. A.AG. III, representing the State and Mr. Prabhunath Roy, representing the Bihar University.