

(1993) 04 PAT CK 0005

In the Patna High Court

Case No : C.W.J.C. Nos. 1921 and 2250 of 1993

Dr. Awadh Kishore Prasad Yadav and Others

APPELLANT

Vs

State of Bihar and Others
 Dr. Shambhu Nath Singh
and Others Vs Patna University and Others

RESPONDENT

Date of Decision : 16-04-1993

Acts Referred:

Citation : (1993) 04 PAT CK 0005

Final Decision : Allowed

Judgement

B.C. Basak, C.J.—These are series of writ petitions where question of facts and law are generally common and accordingly, they were heard together. However, in this judgment we shall deal with only two of the petitions which relate to Patna University. In these two writ petitions the challenge is against the order of the Patna University demoting the petitioners from the respective posts held by them.

FACTS-C.W.J.C. No. 1921/93

2. In writ petition C.W.J.C. No. 1921 of 1993 the case made out by the petitioners is as follows, The petitioners are 14 in number and they have challenged the order issued by the Patna University dated 15th February, 1993 (Annexure-10 to the writ petition) issued under the signature of the Registrar of Patna University, being respondent No. 7, whereby the promotion of a large number of teachers from the rank and post of Lecturers to the rank and post of Readers in different Departments of the Constituent Colleges of Patna University, including the petitioners, as also to the rank and post of Professors in respect of some of them, under the Statute for Time-Bound Promotion of Lecturers to the post of Readers and for Readers to the post of University Professors (hereinafter referred to as the Time-Bound Promotion Scheme) has been cancelled as a result of which they allege that they have been reverted and reduced in rank and lower scale. The cases of the petitioners are as follows. The petitioners were originally appointed under the Patna University as lecturers temporarily on different dates between 1967 to 1976. Thereafter they were all appointed substantively on

permanent basis in the said post of lecturer on the recommendation of the Bihar Public Service Commission (hereinafter referred to as BPSC) with effect from different dates between 1967 and 1980. Thereafter all of them were promoted as Readers provisionally on the recommendation of the Screening Committee with effect from different dates in the years 1985 and 1986. Thereafter upon completion of 10 years continuous service they were appointed to the post of Reader on substantive basis on the recommendation of the Bihar State University (Constituent Colleges) Service Commission (hereinafter referred to as "the Commission") itself by several orders passed in the year 1992 and with effect from the dates of the original appointments as Readers on temporary basis. Further, 5 of them i.e. petitioner No. 1, petitioner No. 4, petitioner No. 8, petitioner No. 9 and petitioner No. 11 were further appointed on promotion provisionally to the post of Professor with effect from different dates in the years 1985 (petitioner No. 4), 1986 (petitioner No. 1), 1988 (petitioner No. 11), 1989 (petitioner No. 9) and 1990 (petitioner No. 8j. The details of such appointments and promotions have been given in the chart being annexure to the petition and supported by different documents which are also annexed. The factual aspects of the matter has not been disputed before us by the respondents. The said Time-Bound Promotion Scheme was framed by the Chancellor on the recommendation of the Bihar later University Board and the approval of the State Government which was circulated by the office of the Chancellor vide letter No. B.S.U.-27/25-4032 G S. (1) dated 21-12-1986. This Scheme came into effect from 1-12-1985. By the said Time-Bound Promotion Scheme the provisions for promotion of the Lecturers holding substantive post as Lecturers to the post of Reader were made. The said scheme provides, inter alia, that a Lecturer holding substantive appointment on the post of Lecturer and having completed atleast 10 years of continuous service as Lecturers in one or more University be promoted to the post of Reader on the recommendation of the Commission. It was similarly provided that a Reader possessing the qualification of University Professor prescribed by the University Grant Commission and having completed at least 16 years of continuous service as Lecturer/Reader shall, on the recommendation of the Commission be promoted to the post of University Professor. We shall quote the relevant provisions of the said Scheme later on. According to the procedure prescribed by the said Scheme the cases of the petitioners, before sending to the Commission for recommendation and concurrence, were placed by the University before the Screening Committee constituted by the Vice-Chancellor who was competent and empowered to constitute the Committee. The Screening Committee after screening the eligibility and qualifications, as laid down under the Statutes and examining the service records on the basis of available confidential character rolls or alternatively the certificates granted by the Principals or Head of the Department concerned, found them fit for promotion to the post of Readers and recommended the cases of the petitioners for promotion to the post of Readers. Thereafter the University sent the records of the petitioners along with the recommendations of the Screening Committee to the Commission for its independent scrutiny and concurrence/recommendation in the

said promotion. In the meantime, the University provisionally promoted the petitioners to the post of Readers and notified the said promotion of the petitioners vide Notification No. G/19569 dated 22-7-1987, No. G/17502 dated 29-6-87 and No. G/17817 dated 4-7-1987. The pay of the petitioners in the prescribed scale of Readers was also fixed and on the basis of pay fixation by the University authorities the petitioners are drawing their salary as Readers with effect from the date of their promotion. The Commission after scrutinising the eligibility, qualifications and the service records of the petitioners and finding them fit for promotion sent its concurrence/recommendation to the University, which will be borne out by the impugned notification itself. On the basis of such recommendation of the Commission the Patna University promoted the petitioners substantively as Readers with effect from the date of their provisional promotion as Readers, and by notifications contained in memo No. 195 dated 5-3-1992, and memo No. 2100 dated 4-11-1992 were issued under the signature of the Registrar of Patna University. In the said notifications it has been mentioned that the Lecturers who were promoted as Readers provisionally on recommendation of the Screening Committee, have now been promoted substantively on the basis of the recommendations of the Bihar State University Service Commission with effect from the date of their provisional promotion to the said post. Accordingly, it is evident that the petitioners who were earlier promoted on provisional basis as Readers were promoted to the post of Readers substantively on the receipt of the concurrence/recommendation of the Commission with effect from the same date from which they had been provisionally promoted to the post of Readers. As the pay of the petitioners as Readers had already been fixed by the University authorities and they were drawing their salary as Readers, there was no necessity of re-fixation of their salary for the reasons that the promotion on substantive basis on the recommendation of Commission was made effective from the very date of their provisional promotion. Further, in terms of the provisions of 1986 Statutes, referred to above, some of the petitioners were also considered and granted provisional promotion to the post of Professors on the basis of their qualification, eligibility and prescribed teaching experience coupled with the service records after scrutiny by and on recommendation of the Screening Committee, constituted by the Vice-Chancellor. The names of such Lecturers promoted provisionally as Professors, the notification number and the date from which the promotions were given effect to are noted below:

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No. promotion	Name	Depart- &	Place of post-	Date of Notifica- tion	ment ing provisioal	No.
				date	as	Professor.
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	Dr. Awadh Kisore	Physics.	Science College.	1-4-1986.	G/2847 Pd. Yadav.	dt. 3-5-1989.
2.	Ashok Kumar	Physics.	Science College.	1-2-1985.	-do- Chaudhary.	

3. Ruby Roy. History. Magadh Mahila 10-9-1989. G/2062 College. dt. 8-2-1991.
4. Meena Verma. Economics, -do- 31-1-1990. G/9741 dt. 31-7-1990. 5. Sunanda Banerjee. Political Patna College. 4-9-1988. - Science.
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The service records of the petitioners and other required papers along with the recommendations of the Screening Committee on which basis the petitioner were provisionally promoted as Professor, were sent to the Commission for promotion to the post and rank of Professor. This is still pending before the Commission.

FACTS (Contd.) C.W.J.C. 2250/93.

3. In writ petition No. C.W.JC. 2250/93 the petitioner has challenged reversion orders. Their case is as follows : The petitioners No. 1 Dr. Shambhu Nath Singh who is a teacher in Economics, was initially appointed as Lecturer on 27-7-1976 on the recommendation made by Bihar Public Service Commission by Patna University Notification No. G/13590 dated 12-10-1984. After completion of 10 years of continuous service as Lecturer, the petitioner No. 1 was promoted to the post of Reader on 29-6-1987 vide Notification No. G/14502 dated 29-6-1987 with effect from 20-11-1985. Later on, the said promotion of the petitioner No. 1 was concurred by the University Service Commission vide its order dated 4-11-1991. Consequently, the Patna University promoted the petitioner No. 1 to the post of Reader vide Notification No. G/185 dated 5-3-1992. This concurrence was withdrawn by the Commission on the 12th of February, 1993. The notification was issued accordingly by the University on the 25th of February, 1993.

The petitioner No. 2, Ramashankar Mishra who is a teacher of Statistics, was initially appointed as Demonstrator vide Notification No. G/Adm/1929 dated 1-2-1974. Thereafter, on the basis of recommendation of Selection Committee, he was promoted to the post of Lecturer with effect from 4-9-1976. He was confirmed with effect from 14-11-1980. He was subsequently promoted as Reader on provisional basis with effect from 4-9-1986 vide Notification dated 5-9-1989 on the recommendation of Screening Committee in which two experts, nominated by the Vice-Chancellor, had participated along with other members of the Screening Committee. The University Service Commission gave its concurrence to his promotion as Reader with effect from 24-2-1989 by order dated 7-9-1992, Consequently, the Patna University issued a notification promoting him to the post of Reader with effect from 24-2-1989 on the basis of such concurrence of the Commission vide letter No. 2100 dated 4-11-1992. This concurrence was withdrawn by Commission on 12-2-1993 and a notification was issued by the University accordingly on 15-2-1993.

Petitioner No. 3 Sheela Chaudhary who is a teacher of Maithili was initially appointed as Lecturer on 1-3-1975 on the recommendation made by Bihar Public Service Commission in the department of Maithili, Patna Women's College, Patna University. Later on, she was confirmed in the said post with effect from 1-3-75

vide Patna University Notification No. G/13753 dated 6-8-1979, issued by the Registrar Patna University. Thereafter, on the basis of recommendation made by Screening Committee, set up by the University, she was promoted to the post of Reader in Maithili with effect from 1-3-1985 vide notification dated 25-7-1987. According to the petitioners, apart from all the members of the Screening Committee, two external experts nominated by the Vice-Chancellor had participated in the proceeding of the Screening Committee and only thereafter, she was promoted to the post of Reader. Later on, the University Service Commission gave its concurrence to the promotion of the petitioner No. 3 as Reader with effect from 1-3-1985 vide its order dated 4-11-1991. Consequently, the Patna University issued notification dated 5-3-1992 promoting the petitioner No. 3 to the post of Reader. This concurrence was withdrawn by Commission on 12-2-1993 and a notification to that effect was issued by the University accordingly on 15-2-1993.

The petitioner No. 4 Sheela Prasad who is a teacher of Home Science was appointed as Lecturer on 2-2-1979 on the basis of recommendation made by the Selection Committee constituted by the University authority. Thereafter the petitioner was promoted as Reader in Home Science with effect from 1-2-1985 vide notification No. G/9428 dated 19-9-1989 after the Screening Committee constituted by the Vice-Chancellor had recommended the case of the petitioner for promotion. According to the petitioners all the members including experts had participated in the relevant proceeding of the Screening Committee. Thereafter, the Commission vide its order dated 7-8-1992 gave its concurrence to the promotion of the petitioner as Reader with effect from 14-2-1992. Consequently, a formal notification dated 4-11-1992 was issued by the University promoting the petitioner No. 4 to the post of Reader on the recommendation of Commission. This concurrence was similarly withdrawn by the Commission on 12-2-1993 and the University issued the notification accordingly on 15-2-1993.

The petitioner No. 5 Meena Kishore, a teacher of Psychology, was initially appointed as Lecturer in the Department of Psychology, Patna Women's College on 2-2-1976. She was thereafter promoted to the post of Reader on temporary basis with effect from 3-2-1986 by order dated 22-7-1987. The Commission gave its concurrence to the promotion of petitioner No. 5 to the post of Reader with effect from 3-2-1986 vide order dated 7-8-1992. Consequently, the Patna University promoted petitioner No. 5 to the post of Reader on such recommendation of Commission vide its letter No. 2100 dated 4-11-1992. This concurrence was similarly withdrawn by the Commission on 12-2-1994 and the University issued the notification accordingly on 15-2-1993.

All the petitioners have already completed more than 10 years of continuous service under the University on the relevant date of promotion to the post of Reader. It is further stated that the respondent-University has complied with all the statutory requirements for the purpose of promoting to the post of Reader. It is stated that on enquiry from the office 01 Patna University, as also on enquiry

from the office of the Commission, the petitioners have learnt that the Screening Committee had been constituted by the respondent-University in terms of statutes consisting of Vice-Chancellor, Dean of Faculty of concerned subject, Head of the Department of University and experts nominated by the Vice-Chancellor for the purpose of Screening the promotional cases of each and every candidates including the petitioners on the respective date and two experts nominated by the Vice-Chancellor who were required to participate in the Screening Committee were also physically present at the time of screening of promotional cases in the same meeting. On enquiry, the petitioners have farther learnt that the experts who are required to be present at the time of screening the promotional cases of each and every candidates including the petitioners, were physically present at the time of screening the cases. It is further stated that all the experts who were nominated by the Vice-Chancellor and who participated in the screening process, are highly qualified persons and they occupy special position in the respective fields which cannot be challenged under any circumstances. The petitioners state that all the statutory requirement contemplated under the scheme for time-bound promotion have been fully complied with by the respondent-University authorities in terms of statutes and highly qualified experts and other functionary of the University which are required to be present at the time of meeting of Screening, had participated and after full application of mind, the cases of petitioners were considered for promotion and the petitioners have been found not only eligible but most suitable for promotion to the respective superior post. After screening of their cases by the aforesaid Screening Committee, set up by the Vice-Chancellor, individual names of the petitioners have been sent to the University Service Commission for its concurrence and after full application of its mind, the University Service Commission has approved the cases of all the petitioners for promotion to the post of Reader in terms of statutes and gave its concurrence and only thereafter all the petitioners were promoted to the post of Reader by specific notification issued by the Patna University. The petitioners were peacefully discharging their duties after their promotion to their respective superior post of Reader. But they were shocked to receive the order No. G/497 dated 15-2-1993 contained in Annexure-1, whereby now all the petitioners have been reverted from the post of Reader to the post of Lecturers, The aforesaid order of reversion has been passed without affording any reasonable opportunity or notice to show cause against the proposed order of reversion in complete violation of principles of natural justice and fair play in action even though the petitioners have been visited with civil consequences like loss of their status, rank as also pecuniary loss in an arbitrary, capricious and unreasonable manner. The petitioners state that only ground upon which the petitioners' promotion to the post of Reader has been cancelled, is that the University Service Commission is alleged to have withdrawn the concurrence given for promotion of the petitioners earlier and now hence the University is alleged to have issued the impugned order contained in Annexure-1. The respondent-University Service Commission has acted without jurisdiction in reviewing its own order inasmuch as there is no provision in the

State University Service (Constituent Colleges) Service Commission Act, 1987 which authorises the University Service Commission to cancel or withdraw any concurrence given by it earlier and in that view of the matter, the alleged review by the University Service Commission of their earlier order giving concurrence, is patently illegal, and without jurisdiction and is fit to be quashed. The Bihar State University Service (Constituent Colleges Service) Commission Act, 1986 (Bihar Act No. 18 of 1987) has not conferred any power on the University Service Commission for withdrawing the recommendation of the Commission which has already been made earlier and the University Service Commission has acted without any authority in law is withdrawing the concurrence which has earlier been given for promotion to the petitioners as Reader, after full application of its mind. Moreover, there is no material before the University Service Commission to hold that earlier concurrence given by it in favour of the petitioners for promotion is illegal. The petitioners state that all the petitioners having been confirmed in the post of Reader by notification contained in Annexure-3 series, they have become the holder of a substantive and permanent post in the cadre of Reader and they have a lien on their post on their permanent promotion and as such, the respondent-Patna University has no power under law to cancel the promotion of the petitioners as Reader with retrospective effect or prospective effect in complete violation of principles of natural justice and fair play in action. The petitioners have been visited with civil consequences like loss of status, rank and salary without any prior show-cause notice to the proposed reversion and the petitioners shall suffer immensely in view of their loss in seniority in their cadre inasmuch as persons junior to them, who have been promoted as Reader later on, will continue to hold the post of Reader, whereas the petitioner shall suffer reduction in rank on the allegation of alleged irregularity which has never been pointed out to the petitioners. Moreover, even assuming but not conceding there is some irregularity that shall be deemed to have been wiped out after confirmation of the petitioners in their rank. The petitioners state that the University Service Commission has a limited role in terms of Statutes to test as to whether candidates including the petitioners are eligible or not and once the University Service Commission has discharged its function in testing the eligibility of the petitioner submitting report, the University Service Commission has become functus officio and on account of their alleged withdrawal, promotion of the petitioners to the post of Readers cannot be reviewed or cancelled by the Patna University. The impugned order contained in Annexure-1, is not only in violation of principles of natural justice but it is also in violation of fair play in action and as such, fit to be quashed. The manner in which the petitioners have been reduced in rank on the basis of erroneous assumption of fact and law without personal hearing of the petitioners, fully establishes the fact that the respondents have not only contravened the principles of natural justice but they have also not acted fairly and justly as required under law because the procedure adopted for reduction in the rank of the petitioners is most unjustified and illegal, which visit the petitioner with evil consequences like loss of status, future channel of promotion, as also severe pecuniary loss without any sanction of law.

On enquiry from the office of the Vice-Chancellor, Patna University, as also from the newspaper reporting in the daily Hindi and English newspapers, the petitioners have come to know that a meeting was held in the premises of Raj Bhawan on 1-2-1993 which was attended by all the Vice-Chancellors including the Patna University besides the Hon'ble Chancellor, the Chief Minister, Government of Bihar and the Chairman, University Service Commission, Patna in which it was discussed that the promotion to the post of Readers/ Professors from the post of lecturer was alleged to be not in accordance with the statutes because there has been large scale promotion of lecturers to the post of Readers and of Readers to the post of Professors. The petitioners have also learnt that ways and means were discussed in the meeting as to how the promotion of teachers from lecturer to Reader/Professor can be minimised and if necessary, even by twisting the provision of statutes so that the expenditure so incurred by the University and the State Government can be minimised even in violation of law. The petitioners have also learnt that the Chairman of the University Service Commission Professor Shashi Shokhar Tiwary was also present in the aforesaid meeting, who was directed to re-open the promotional cases with a view to reduce the total strength of promotion to the rank of Readers.

4. FACTS (contd) Case of the University:

On behalf of the Patna University, at the very out-set when the case was opened on behalf of the petitioners, it was made clear by the learned Advocate-General appearing on behalf of the Patna University that the promotion of the petitioners to the post of Reader was confirmed on substantive basis on the concurrence of the Commission. He has further stated that having regard to the fact that such concurrence subsequently cancelled/withdrawn by the Commission, the University had no opinion but to pass the impugned order of demotion. In that view of the matter it is not necessary to deal with the affidavit filed on behalf of the University.

5. FACTS (contd.)-Case of the Commission:

The original counter affidavit on behalf of the Commission was affirmed by its Secretary Sri Soren on 2-3-1993. This was found full of mistakes, and not properly verified. Accordingly leave was given to file a fresh affidavit. Accordingly Sri Soren has affirmed a fresh affidavit on behalf of the Commission on 2-4-1993 wherein it has been stated, inter alia, as follows. The Commission has been created to make recommendation for appointment of Officers and teachers of the Universities and its constituent Colleges. The Commission has been empowered to function in the same way as assigned to the State Public Service Commission in respect of the State Service under Article 320 of the Constitution of India. In this context it may be pointed out that though various allegations were made in the said affidavit, there were no annexed documents to the said affidavit in support of the said allegation. The State Government prepared scheme for giving promotion to the lecturers to the post of Readers and from Readers to the post of University professors on time-bound basis and the same is known as time-bound

promotion scheme. After quoting the relevant provisions of the said statute it was stated as follows : Time-bound promotion though it is personal promotion but the same is not automatic. It shall be made only on the recommendation of the Commission on consideration of experience and C. C. Roll of the teachers concerned only after the same has been duly screened by a Committee. The aforesaid provision also clearly indicates that the Commission gives its recommendation after examining the concerned papers provided by the University concerned. According to the statutes, it is the duty of the University to constitute a screening committee consisting of Vice-Chancellor, the Dean of the Faculty concerned, the H.O.D. of the concerned Department and two experts appointed by the Vice-Chancellor from the panel prepared by the Bihar Inter University Board. Only after screening all the relevant documents by the screening committee all the relevant papers shall be forwarded by the Registrar of the University to the Commission for its recommendation. In the instant case the University forwarded the name of the petitioners along with other persons with the Screening Committee's report and other papers to the Commission for its recommendation. The Commission examined the report of the Screening Committee and other relevant papers concerning the petitioners under the impression that duly constituted Screening Committee has examined the documents of the petitioners and after due screening, the names of the petitioners were sent to the Commission for its recommendation. The Commission under bona fide impression that the cases of the petitioners have been duly examined by the properly constituted Screening Committee, examined the papers forwarded by the University for granting its approval on their promotion and recommended the names of the petitioners for promotion to the post of Readers. Subsequently when the Commission was examining the papers of other Lecturers of the same University, the Commission came to know that the Screening Committee constituted by the University were not properly constituted Screening Committee because in the aforesaid Screening Committee the University has shown the names of some of the persons as expert appointed by the Vice-Chancellor though they are not from the panel prepared by the Bihar Inter University Board. Since the experts appointed by the Vice-Chancellor were not from the panel prepared by the Bihar Inter University Board, hence they cannot be treated as expert. In absence of expert from the panel, the so-called Screening Committee loses its character. On examination the Commission found that in case of the petitioner No. 1 one expert and in cases of petitioner No. 2 to 5 both the experts shown as experts were not from the panel prepared by the Bihar Inter University Board. As soon as the Commission came to know about the aforesaid facts, the Commission realised that even its earlier recommendations were based on reports of committees which cannot be treated as properly constituted screening committee, hence it decided to rectify its mistake i.e., the recommendation based on a document which cannot be treated as a report of the screening committee and, accordingly, the Commission rectified its mistake and communicated the same to the University concerned. The Commission has not reviewed its earlier decision rather it has simply rectified its mistake. The

Commission simply examines the papers duly forwarded by the University and the Commission uses to correspond with the Universities. There is no provision under the Act or the statute under which the Commission can hear the petitioners even for rectifying its mistake. The promotion granted to the petitioners without the recommendation of the duly constituted screening committee itself was illegal, hence even if the Commission has not given an opportunity of hearing to the petitioners, the same cannot be set aside. A writ cannot be issued for quashing even an illegal order for restoring another illegal order. Similar counter affidavit was filed on behalf of the Commission in respect of the other petitioners relating to Patna University.

6. Arguments : On behalf of the petitioners in CWJC No. 1921/93:

M. Tara Kant Jha, learned advocate appearing on behalf of the petitioners in CWJC No. 1921/93 has challenged the impugned order of demotion on various grounds. He has pointed out that obviously and admittedly the impugned orders were passed by the University only on the ground of withdrawal of "concurrence" by Commission and, accordingly, if the withdrawal of concurrence by the Commission is shown to be arbitrary, unauthorised and illegal, the impugned orders of demotion have to be set aside. He has challenged this withdrawal of concurrence on various grounds and submitted that any of them would be sufficient to set aside the withdrawal of the concurrence and consequently the orders of demotion. He has accordingly submitted that in the event it is found that such withdrawal of concurrence is bad on any ground, we need not go into the merits of the other points. His submissions in this respect are, inter alia, as follows:

(a) Once having such concurrence, the same could not be cancelled by the Commission, as it amounts to exercise of power of review and no such power of review has been conferred on the Commission. It is also not permissible to imply the conferment of such power.

(b) In any event, having regard to facts and circumstances of the case, no such power could have been exercised.

(c) No documents or record has been produced to show what was the approved panel regarding the experts to be included in the screening committee and to what extent there was such a departure from the same. In any event if there was any departure, so far as the composition of the screening committee is concerned, as it was for no fault of the petitioners and as there is no allegation against the petitioners personally, such concurrence could not be withdrawn on such ground.

(d) The University has not produced any material or document relating to the composition of the Screening Committee. Accordingly, such action cannot be supported on such ground ;

(e) In any event, such provision regarding composition cannot be treated as

mandatory and there has been substantive compliance in the facts and circumstances of this case. The question of presence or absence of one or more "approved experts" does not vitiate the proceedings of the Screening Committee particularly having regard to the fact that this relates to time bound promotion.

(f) In any event, the petitioners having been confirmed in the post of Reader and there being no fault on the part of the petitioners and the mistake, if any, is that of the University and/or the Commission, it does not and cannot invalidate the selection made ;

(g) Nothing has been shown as to why such a decision was taken by the Commission and no record has been produced in support of the stand taken by the Commission ;

(h) In any event nothing has been shown to the effect that such irregularity in the composition of the Screening Committee has materially affected "the said selection or concurrence by the Commission ;

(i) The petitioners having been confirmed in the post of Reader, they have acquired a lien in that post. Under these circumstances their demotion to the post of lecturer without giving any opportunity of showing cause is in violation of the principle of natural justice and fair play.

(j) Having regard to the Act constituting the Commission, the Commission had no jurisdiction to exercise such power. This is not authorised by Section 10 (b), the only provision, which may be attracted as no question of "principle" was involved in this case.

(k) The petitioners having fulfilled all the qualification, for time bound promotion which in fact, has not been disputed either by the Commission or by the University, such promotion cannot be withdrawn subsequently on such a ground.

In support of his contentions Mr. Jha has relied on the decision in N. Chandramouli Vs. Chikkalakkaiah and Others, ,

7. Arguments (contd.) on behalf of petitioners in 2250/93:

Mr. Mukherjee, learned advocate appearing on behalf of the 5 petitioners in CWJC No. 2550/93 has adopted the argument of Mr. Jha in general, he has also made some additional submission. He has submitted that the order passed by the Commission, which has resulted in the demotion orders, had civil consequence and should have been a speaking order giving reasons. Further, for the same reasons before taking away the right conferred on the petitioners as confirmed Readers, an opportunity to show cause should have been given to the petitioners in accordance with the principles of natural justice and fair play. He has also submitted that the action of the Commission in withdrawing the earlier concurrence given by it amounts to an exercise of the power of review which the Commission did not have. He has further submitted that even if such power of review may be said to have been conferred with the Commission, the same

should have been exercised within a reasonable time which has not been done in the present case. It was further submitted that there has been non-application of mind as would appear from the affidavit affirmed on behalf of the Commission as also the documents produced. In support of his contentions he has also relied on the following decisions:

State of U.P. v. Manbodhan Lal Srivastava AIR 1957 SC 942 ; Owners and Parties interested in M.V. "Valid Pen" v. Fernando Lopez and Ors. AIR 1980 SC 2206; Man Singh v. The State of Bihar and Ors. 1982 CriLJ 392 ; H.C. Puttaswamy and others Vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and others, ; Smt. Saraswati Mishra v. The Chancellor and Ors. 1981 BLJR 27 14 ; Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others, and The State of Gujarat Vs. Patil Raghav Natha and Others, .

8. Arguments (contd.)-On behalf of the Commission:

So far as Mr. Chatterjee, learned advocate appearing for the Commission, is concerned, I have already set out the stand taken by him at the outset. During the course of his submission he has repeated the same and submitted as follows : Withdrawal of the concurrence was made by the Commission not on any ground relating to any fault or laches or lack of qualification on the part of any of the petitioners but inasmuch as subsequent to the grant of concurrence, it was found by the Commission that the Screening Committee was not properly constituted. Accordingly, the concurrence given earlier was withdrawn. He has made it quite clear that if the Court finds that such action is found to be not authorised by law, then the Court will certainly have the power to set aside the impugned orders. So far as the reasons for holding that the composition of the Screening Committee being defective Mr. Chatterjee has submitted that these are broadly divided into three broad grounds so far as the petitioners in C.W.J.C. No. 1921 of 1993 are concerned:

(i) So far as petitioner Nos. 1 to 8, 10, 11 and 14 are concerned, out of the two experts, who had participated in the proceedings of the relevant Screening Committee, one was outside the panel of experts as prepared under the proviso to Clause (2) of Rule 2 of the Time Bound Scheme ;

(ii) So far as petitioner Nos. 9 and 12 are concerned, both the experts, who participated in the relevant proceeding of the screening committee, were outsiders that is, their names were not included in the approved panel of experts.

(iii) So far as petitioner No. 13 is concerned, one of the two experts, as approved, was not present during the relevant meeting of the screening committee.

So far as all the 5 petitioners in C.W.J.C. No. 2550 of 1993 are concerned, a similar stand was taken.

9. Time Bound Promotion Scheme and the Commission Act:

At the first instance we shall set out the relevant provisions of the said Time-Bound Promotion Scheme and the Bihar State (Constituent Colleges) Service Commission Act, 1987 (hereinafter referred to as the Commission Act):

A STATUTE FOR TIME BOUND PROMOTION OF LECTURERS TO THE POSTS OF READERS AND FOR READERS TO THE POSTS OF UNIVERSITY PROFESSORS (as approved by the Chancellor vide LETTER No. BSU-27/85-4032/GS (I), dated 24-12-1986).

Subject: Statute for time bound promotion of Lecturers to the posts of University Professors (BSU 27/85-4032 GS(I) Patna the 24-12-1986).

I am directed to invite a reference on the above subject and to say that the Chancellor on the recommendation" of Bihar Inter University Board and the State Government has been pleased to approve the following statute u/s 10(2) of the Bihar Inter University Board Act, 1981 for implementation in your University.

1. Notwithstanding anything to the contrary as contained in the statute it is hereby provided that:

(i) 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) that he holds the qualification as prescribed for the post of Lecturer under the statute enforced at the time of his appointment as lecturer and has fulfilled the conditions, if any, attached thereto as laid down in the Statute ;

(b) that he holds substantive appointment on the post of Lecturer ; and

(c) that he has completed at least ten years of continuous service as lecturer in one or more Universities:

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

Provided further that the service rendered in more than one University shall be deemed to be continuous if the period elapsed between leaving the service of a University and joining the service of another University does not exceed the normal joining time as prescribed in the service statute.

Note.-(1) As per the relevant Statute, the prescribed minimum qualifications for Lecturers in Arts, Science, Commerce and Education for the purpose of Clause (a) above are as follows:

(i) Pro-1-7-1977 Second Class Master Degree in the subject.

(ii) From 1-7-1977-A first or high Second class (relaxed to bare Second Class in cases of S. T. candidates) Master degree or equivalent degree of a foreign

University in the subject concerned with consistently good academic record followed with Ph. D. or M. Phil degree. For education as above plus a First or High Second Class Master degree in Arts, Science or Commerce. For Music, Home Science and such language, subject in which no university offered Master's degree in the subject, reference may be made to the statute relating to qualifications implemented from 1-7-1977.

(iii) from 1-7-1983 see the relevant Statute.

(2) A Reader, serving in a University Department or in a degree College managed and maintained by the University who has completed atleast twenty-five years of continuous service as teacher, not below the rank of lecturer in one or more Universities, shall on the recommendation of the Bihar State University (Constituent College) Service Commission, be promoted on the basis of time bound scheme to the post of University Professor subject to the conditions given in proviso to Clause (1) above.

(3) A Reader possessing the qualification of a University Professor prescribed by the University Grants Commission serving in a University Department or in a degree College, managed and maintained by the University and who has completed at least 16 years of continuous service as Lecturer/ Reader in one or more Universities, shall on recommendation of the Bihar State University (Constituent Colleges) Service Commission be promoted to the post of University Professor, other conditions remaining the same.

2. Such promotion shall be deemed to be personal promotion. It shall not be automatic but shall be made on the recommendation of the Bihar State University (Constituent College) Service Commission on consideration of experience and C. C. Roll of the teacher concerned:

Provided that where C. C. Rolls have not been maintained before implementation of these Statutes, the cases of teachers who are eligible for promotion as Reader or University Professor on the date of implementation of this Statute shall be considered by the said Commission in the basis of experience and certificates from the Heads of University Departments or Principals of Colleges concerned in regard to satisfactory service of the teachers after the same have been screened by a Committee consisting of the Vice-Chancellor. The Dean of the Faculty concerned, the Head of the University Department concerned and two experts appointed by the Vice-Chancellor from the panel prepared by the Bihar Inter University Board:

Provided further that the report of the Committee in each case shall be referred to the Bihar State University (Constituent Colleges) Service Commission for its recommendation but where in the opinion of the Committee a teacher fulfills the prescribed condition and is found fit to be promoted, the Syndicate may on the recommendation of the Vice-Chancellor pass orders for promotion of such a teacher on a temporary basis till that decision is taken on the recommendation of the said Commission, but in case the Commission does not recommend for

promotion, the temporary promotion given to such a teacher shall cease to be effective immediately:

Also provided that hereafter C. C. Rolls shall be regularly maintained in respect of each teacher according to the procedure and in the form to be approved by the Chancellor for the purpose.

3.

4. Where a teacher is promoted to the post of Reader or University Professor, as the case may be, such a promotion shall take effect from the date on which the lecturer entered the 11th year of his qualifying service as the case may be, or from the 1st February, 1985, whichever is later.

5. The case of teacher if not recommended by the said Commission for promotion as Reader or University Professor may again be considered for promotion after a period of one year has elapsed since his name was last considered. The promotion in such a case shall effect from the date of the recommendation of the Commission.

6...

7...

8. The Lecturer who is promoted as Reader or the Reader who is promoted as University Professor shall from the date of promotion draw his pay in the higher scale which shall be fixed under the relevant provisions of the service Statutes of the University,

9...

10. Appointment to the duly created panel of Readers or University Professors as also promotion under the Merit Promotion Scheme for Readers shall continue to be made on the basis of the prescribed qualification and in the manner prescribed in the Act and the Statutes.

11. The Registrar of the University with the approval of the Vice-Chancellor shall place a list of eligible candidates giving all the required information about each of them along with all the relevant papers including service records "and C.C. Rolls before the Screening Committee to be appointed by the Vice-Chancellor for scrutiny. The Recommendation of the Screening Committee along with all the relevant papers shall be submitted to the Bihar State University (Constituent Colleges) Service Commission and the recommendation of the said Commission shall be placed before the Syndicate at the next meeting for orders.

12. The Statute shall come into force with effect from the first February 1985 in supersession of the statutes approved by the Chancellor on 24-10-1981 vide Governor's Secretariat letter No. BSU 51/81-2779 GS (I) dated 14-11-1981 but all actions taken under the said statutes before the date of implementation of this statute shall be deemed to be valid.

B. Bihar State University (Constituent Colleges) Service Commission Act, 1987
(as amended after 1992 Amending Act)

1. Short title, extent and commencement.-(1) This Act may be called the Bihar State University (Constituent Colleges) Service Commission Act, 1987.

(2) It shall extend to whole of the State of Bihar.

(3) It shall come into force at once.

2. Constitution of the Commission.-(1) The State Government shall by a notification published in the Official Gazette set-up the Bihar State University (Constituent Colleges) Service Commission (hereinafter referred to as the "Commission").

(2) The Commission will be a body corporate, having its head office in Patna which will have perpetual succession and there will be a common seal and will sue or will be sued in the said name.

(3) The Commission shall make recommendations for the appointment of Officers (excluding Chancellor, Vice-Chancellor, Pro-Vice-Chancellor, Dean Student Welfare, and Proctor) and teachers of the Universities and Constituent Colleges as prescribed in the Patna University Act, 1976 (Bihar Act 24 of 1976 and Bihar State Universities Act, 1976 (Bihar Act 23 of 1976) and in respect of appointment/promotion of the said officers and teachers it shall discharge such functions as prescribed for the Commission under the said Acts and statutes made thereunder.

3. Appointment of Chairman and members of the Commission.-(1)

The Commission will have a Chairman and maximum of six members and they shall be whole-timer.

(2) The Chairman and the members of the Commission shall be appointed by the Governor and they shall hold office for a period of three years.

(3) The Governor shall have the power to re-appoint the Chairman or any member on the expiry of his term but in no case the tenure of the appointed or re-appointed Chairman or Member will continue after he attains the age of 62 years.

4. Resignation or removal of Chairman or member of the Commission.-(1) The Chairman or Member of the Commission may, by writing under his hand addressed to the Governor, resign his office. The Chairman or Member of the Commission may be removed from the office by the order of Governor, if he-

(a) is adjudged an insolvent; or

(b) engages himself during his terms of office in any paid employment outside the duties of his office ; OF

(c) is in the opinion of the Governor, unfit to continue in office.

(2) The Chairman or any other member of the Commission may be removed from his office by the order of the Governor on the ground of misbehaviour after an enquiry is held in the manner prescribed by the Governor in the rules to be framed u/s 13.

5. Deleted.

6. ..

7. ..

8. ..

9. ..

10. Duty of the Universities to consult the Commission in certain matters.-It shall be the duty of the Universities to consult the Commission in respect of-

(a) all disciplinary matters affecting the officers and teachers of the Universities in respect of dismissal removal or the reduction in rank;

(b) the principle, to be followed in making promotion, as also, the suitability of the candidates for such promotion.

11. Recommendation of the Commission where not needed.-Notwithstanding anything contained in the Patna University Act, 1976 and the Bihar State University Act, 1976, the appointment of a lecturer, if it is essential in the interest of the College or the University may be made by the Vice-Chancellor of the University concerned as against sanctioned posts for six months only for which no recommendations of the Commission will be needed.

10. Decisions cited.

I shall now consider the several decisions cited before us:

(a) In the case of State of U.P. v. Manbodhan Lal Srivastava AIR 1987 SC 912, it was observed that the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid.

(b) In the case of Parshotam Lal Dhingra Vs. Union of India (UOI), , it was held that in the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years" service or the post is abolished and his service cannot be terminated except by way of punishment of misconduct, negligence, inefficiency of any other disqualification found against

him on proper enquiry after due notice to him. It was further observed that when a servant has right to a post or to rank either under the terms of the contract of employment, express or implied, or under the rules governing the conditions of his service, the termination of the service of such a servant, or his reduction to a lower post is by itself and prima facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto.

(c) In the case of Dr. Benoy Krishna Roy and Another Vs. The Ranchi University and Others, , the petitioners prayed for issue of a writ quashing the appointment and promotion of respondent No. 2 to the post of a Reader. The petitioners contended that the change in the decision to appoint by promotion and not by advertisement was ultra vires, inter alia, on the ground that the manner of appointment of experts was irregular and without jurisdiction. The Division Bench of this Court observed that there was no doubt that there was an irregularity in respect of appointment of experts but this irregularity will not in any way invalidate the recommendation of the Commission (sic) really had to decide as to which of the candidates were entitled to promotion having regard to the change in the Statutes and other circumstances. It was pointed out that it was really a question of determination of the eligibility and presence of experts, therefore, really did not materially affect the matter.

(d) In the case of Dr. Ram Niranjana Tripathy v. Chancellor, Patna University 1970 BLJR 1 it was argued that it was not open to the Commission to make any change in the experts and it must have assistance only from those experts who were originally selected for the purpose. It was contended that if they made changes in the experts as they had done in that case, they had acted against the provisions of Sub-section (2)(1) of Section 26. It was held that there appeared no substance in this connection as there was nothing in Sub-section (2)(1) of Section 26 to show that in no case the Commission can have assistance from experts other than those who are originally selected or invited for the purpose. It was observed that it was true that ordinarily there should be no change in the experts who are originally invited but in cases where either of the experts or both of them are not available or in other unavoidable circumstances, they may have to be changed and new experts invited to assist the Commission.

(e) In the case of Patel Narshi Thakershji and Others Vs. Shri Pradyumansinghji Arjunsinghji, , it was held that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication.

(f) In the case of Mohd. Rashid Ahmad Vs. State of U.P. and Another, , it was held that all the officers and servants of the erstwhile municipal board and other local authorities provisionally absorbed u/s 577(e) or temporarily appointed u/s 577(ee) were entitled to be heard in the matter of their final absorption u/s 112-A read with Rule 6(2)(iii) irrespective of their salary. It was further observed that the very nature of the functions entrusted to the State Government under Rule 6(2)(iii) of the U. P. Palka (Centralised) Services Rules, 1966, for purposes of

final absorption u/s 112-A of the Adhiniyam, implies a duty to act in a quasi Judicial manner. It cannot be denied that an officer or servant provisionally absorbed u/s 577(e) or temporarily appointed u/s 577 (ee) had the right to be considered for the purposes of final absorption. By Section 112-A of the Act, the Legislature created a machinery for determining the suitability or otherwise such officers or servants for absorption in the newly centralised services. The entrustment of this work to the State Government u/s 112-A imposed a corresponding duty or obligation on the Government to hear the officers and servants concerned. It is not correct to say that while it was incumbent on the Divisional Committees to give all officers and servants whose services were proposed to be determined on the ground of suitability an opportunity of a personal hearing, no such duty was cast on the State Government. It was held on facts that the Minister for Local Self Government before passing the impugned order of termination dated July 11, 1967, did not give to the appellant an opportunity of a hearing. The order of termination of his services passed by the State Government, therefore, suffered from a serious legal infirmity.

(g) The case of Ashok Chand Singhvi Vs. University of Jodhpur and Others, , it was an appeal before the Supreme Court which was directed against the judgment of the Rajasthan High Court, whereby the High Court dismissed the writ petition of the appellant challenging the order of the Dean of the Faculty of Engineering of the Jodhpur University putting in abeyance the admission of the appellant in the B. E. Degree Course till further orders. In that case it was argued by learned Counsel appearing on behalf of the respondents that the appellant could not be admitted and his admission was illegal. In this context the Supreme Court observed:

There may be some force in the contention of the learned Counsel but when all facts were before the University and nothing was suppressed by the appellant, would it be proper to penalise the appellant for no fault of his ? The admission of the appellant was not made through inadvertence or mistake, but after considering even all objections to the same, as raised by the said officer-in-charge, admissions, in his note. The appellant was communicated with the decision of the Dean as approved by the Vice-Chancellor admitting him to the Second Year B. E. Course. The appellant deposited the requisite fees and started attending classes when he was told that his admission was directed to be put in abeyance until further orders without disclosing to him any reason whatsoever.

In that case it was submitted on behalf of the University that it was through mistake that the appellant was admitted. In this connection without holding that the Court was unable to accept this contention it was observed as follows:

...Assuming that the appellant was admitted through mistake, the appellant not being at fault, it is difficult to sustain the order withholding the admission of the appellant.

Reference was made to the decision of the Supreme Court in the case of

Rajendra Prasad Mathur v. Karnataka University 1986 SCC 740 and it was observed as follows ;

...The same principle which weighed with this Court In that case should also be applied in the instant case. The appellant was not at fault and we do not see why he should suffer for the mistake committed by the Vice-Chancellor and the Dean of the Faculty of Engineering."

(h) In the case of Owners and Parties interested in Owners and Parties interested in M.V. "ValiPero" Vs. Fernando Lopez and Others, , it was observed by the Supreme Court as follows:

If the word "shall" used in this expression is construed as mandatory, non-compliance of which nullifies the deposition, drastic consequence of miscarriage of justice would ensue even where omission of the witness's signature is by inadvertence and correctness of the deposition as well as its authenticity is undisputed. On the other hand, if the word "shall" used in this expression is treated as directory, the Court will have power to prevent miscarriage of justice where the omission does not cause any prejudice and the defect is only technical....

"Rules of procedure are not by themselves an end but he means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice. Construction of the rule of procedure which promotes justice and prevents its miscarriage by enabling the Court to do justice in myriad situation, all of which cannot be envisaged, acting within the limits of the permissible construction must be preferred to that which is rigid and negatives the cause of justice. The reason is obvious. Procedure is meant to subserve and not rule the cause of justice.

Where the outcome and fairness of the procedure adopted is not doubted and the essentials of the prescribed procedure have been followed, there is no reason to discard the result simply because certain details which have not prejudicially affected the result have been inadvertently omitted in a particular case. This is the pragmatic approach which needs to be adopted while construing a purely procedural provision. Otherwise, rules of procedure will become the mistress instead of remaining the handmaid of justice, contrary to the role attributed to it in our legal system.

(i) The case of Dr. Triloki Nath Singh Vs. Dr. Bhagwan Din Misra and others, was relied upon on behalf of the respondents Bhagalpur University in respect of their writ petition. There the respondents before the Supreme Court filed a writ petition before the High Court, inter alia, stating that the Selection Committee was not a legally constituted Committee and its recommendation should not be acted upon. The High Court allowed the petition. Dismissing the appeal the Supreme Court observed that separate panel of experts was drawn for the subjects of Hindi and Linguistics and separate courses of study were prescribed for M. A. Part I or Part II. The facts of that case are quite different as it was a

case of appointment on posts separately for one Reader in Linguistics in the Department of Hindi and three posts in Hindi. The Supreme Court considered the requirements of the two different posts and the advertisement and held that merely because linguistics is also a subject of study in one paper of Hindi, it cannot be said that linguistics and Hindi language and literature fall under same subject of study in the University. The advertisement did not mention that the post of one Reader in linguistics in the department of Hindi was to be selected as common to more than one subject of study and, accordingly, appointment of experts in the case of Hindi for the selection of Reader in linguistics in the department of Hindi was totally wrong. This decision has no application in the facts of these cases.

(j) In the case of *The State of Gujarat Vs. Patil Raghav Natha and Others*, it was held that even if there is power of revision and even if there is no period of limitation, the power to revise must be exercised in reasonable time which must be determined by the facts of the case and the nature of the order which is being revised.

(k) In the case of *Baleshwar Dass and Others Vs. State of Uttar Pradesh and Others*, it was held that keeping posts temporary for long, sometimes by annual renewals for several years, and denying the claims of the incumbents on the score that their posts are temporary makes no sense and strikes as arbitrary specially when both temporary and permanent appointees are functionally identified.

(l) In the case of *Smt. Saraswati Mishra Vs. The Chancellor, Universities of Bihar and Others*, it was held that the Chancellor has no power to review.

(m) In the case of *H.C. Puttaswamy and others Vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and others*, it was held that even if appointments are irregular and not proper, appointees directed to be treated as regularly appointed on humanitarian ground.

(n) In the case of *A. Tripathi and Another Vs. J.P. Gupta and Others*, it was pointed out that the expert to be nominated by a selection committee need not be an expert in a particular field of speciality as such expression had not been explained either explicitly or by necessary implication. Accordingly, it was held by the Supreme Court that the appointment of any particular person as expert cannot be treated to be per se illegal and as such constitution of the selection committee could not be said to be invalid and the selection made by such committee is not liable to be annulled.

11. Commission's records:

Having regard to the nature of the "affidavit" filed on behalf of the Commission, we called for the original records of the Commission in order to ascertain the real position ; particularly to ascertain the circumstances under which such unusual step, for withdrawal of concurrence already given, was taken by the Commission.

In this connection in order to explain the records produced we examined the Chairman and the Secretary of the Commission on oath. In this connection a peculiar situation had arisen, Firstly, it was stated that there was no formal resolution. Thereafter a "Resolution Book" was produced showing a resolution dated 10-2-1993, the official translation of the relevant portion of which is set out hereinbelow:

With reference to the records, letter dated.. related to the screening committee regarding time-bound promotion forwarded by the University and as per concerning provisions mentioned in Statute No. 4032/GS (1), dated 24-12-1985 regarding time bound promotion of teachers, treating the presence of another expert member in the screening committee in place of the expert member, required in accordance with the said statute irregular, the Commission cancels the recommended teachers.

Then again, at first it was stated that this was the only document relating to the decision to withdraw the concurrence already given. When it was found that this resolution was very abrupt and laconic in nature, which gave no particular, it was stated that there are other documents also. Thereafter a noting file in a folder was produced, on which reliance was placed. I quote hereinbelow the official translation of relevant pages, being pages 5, 6 and 7 of the Noting file reliance on which was placed in this connection. This is dated 11th February, 1993.

S.O.

Above orders along with resolution taken by the Commission dated 10-2-1993 may kindly be perused. Regarding the consent given by the Commission formerly on the basis of 10 years service rendered in Patna University, the list of teachers in different subjects was re-examined by learned member Dr. B. P. Yadav at page 11-15 in which consent was given by the Commission formerly,

Necessary orders of the Commission can be obtained with regard to the list of teachers placed at pages 11-15 who have been marked for reconsideration in different subjects.

Submitted for orders.

Sd/- Illegible. A. O. Secretary

Sd/- Illegible. 11-2-1993 Sd/- Illegible 11-2-1993 Chairman

For orders.

Sd/- Illegible 11-2-1993.

Today on 11-2-1993, as per the subject-matter fixed for consideration, the Commission considered the recommendation made for promotion of the teachers of Patna University from lecturer to reader on the basis of 10 years time-bound promotion and in the light of the records of screening committee of the University. After due consideration, it was decided that on the basis of the said

records the

Expert Committee set up by the University for connected subjects, who are not in accordance with the list of names prepared by Inter University the names of teachers of those subjects (recommended at pages 5-6) are cancelled,

It was also decided that one expert has been mentioned in the list of experts prepared by the Inter-University Board, which has been sent by the said Board vide its letter No. 2221/89 dated 16-6-1989 has been forwarded by the University in the matter of promotion concerning the subject Botany. Screening in the said subject was held on 18-2-89. In that regard required information may be obtained from the University whether the name of concerned expert for the University has been approved by the Inter-University Board on receipt of the said information, decision shall accordingly be taken regarding promotion of teachers promoted in the meeting of the Screening Committee concerned by the said expert.

Page 5 : List of unrecommended teachers under ten years time bound promotion (after re-examination) on completion of 10 years of service under Patna University.

A. Physics Department

(1) Shree Debendar Nath Verma | (2) Shree Kuldip Singh | Letter No. 217 dated 7-8-1992. (3) Abha Rani Yadav |

(4) Smt. Abha Sharan | (5) Shree Ashok Kumar Chaudhary | Letter No. 677 dated 9 (illegi- (6) Shree Awadh Kishore Yadav | ble) 91.

Statistics (1) Shree Ram Shankar Mishra

Zoology (1) Shree Probhakar Bhatt | (2) Shree Sudhir Kumar Shrivastava | Letter No. 677 dated 4-11-1991. (3) Smt. Dipali Chatterjee |

History (1) Smt. Ruby Roy (2) Dr. Ranvijay Kumar (3) Dr. Rambhusan Prasad Singh (4) Dr. Rajendra Ram (5) Smt. Padmalata Sharma Thakur

Political Science (1) Smt. Nidhi Shrivastava (2) Smt. Lila Sinha (3) Smt. Sunanda Banerjee

Sociology Dr. Dharmshila Prasad Dr. Bimla Shukla Dr. Smt. Renu Kumari (Page 6)

Economics (1) Smt. Meera Verma (2) Dr. Kumudini Sinha (3) Dr. Bharti Bagehi (4) Smt. Bimla Sinha (5) Sri Shambhunath Singh (6) Dr. Asha Singh

Psychology (1) Dr. Geeta Sinha (2) Smt. Meena Kishore (3) Dr. (Smt.) Khurshid Jahan (4) Smt. Probha Shukla (5) Smt. Margaria Meriya (6) Dr. Arun Kumar Singh (7) Dr. Chandar Madhav Prasad Singh (8) Smt. Veena Sinha (9) Smt. Meera Sinha

Hindi Dr. Geeta Dwivedi

Malthlli (1) Dr. Phuleshwar Mishia (2) Smt. Shila Chaudhary (3) Dr. Veena Kara

Persian (1) Dr. Khurshid Jehan (2) Dr. Habibul Murshalin

Home Science Smt. Shakuntala Verma Sheela Prasad

Law Shree Ladli Bihari Saran Sayed Ali Mohammad

Botany Dr. Upendra Kishore Prasad Dr. Shardanand Sharma Sd/- (Illegible) Sd/- (Illegible) 11-2-1993. Sd/- (Illegible) 11-2-1993 Sd/- (Illegible) 11-2-1993. Sd/- (Illegible) 11-2-1993. Sd/-(Illegible) Sd/-(Illegible) 11-2-1993 Sd/- (Illegible) 11-2-1993. (Page 7) (Faint) 31-3-1993.

S.O. Kindly see the orders of the Commission on page 6/n. The draft prepared by the Secretary may be issued after the perusal of the Chairman.

Sd/- (Illegible) 12-2-1993 (?) A. O. Seen, 12-2-1993 Above notes may kindly be seen. Secretary The draft may be issued after the approval of the Chairman. The letter may be despatched by registered post.

Sd/- (Illegible) 12-2-1993. Chairman The draft for approval. Sd/- (Illegible) 12-2-1993. (Illegible) 12-2-1993. Sd/- (Illegible) 12-2-1993.

12. Final decision

12.1. It was admitted before us that there was no notice regarding the said resolution dated 10-2-1993 nor there was any agenda regarding the said meeting alleged to have taken place on 10th February as recorded in the "Resolution book". Peculiarly enough, the last meeting before 10-2-1993, as recorded in the resolution book, was about two months back, that is, on the 11th of December, 1992. In between December, 1992 and February, 1993 there is nothing else. After this pasted document stated to be the resolution of the meeting of 10-2-1993, there was no other resolution printed or pasted in the said Resolution Book regarding any subsequent meeting upto now. Moreover, in pages 5, 6 and 7 of the note sheet relied upon no reference was made or reliance was placed on such resolution of 10-2-1993, In their depositions, Secretary and Chairman of the Commission, had admitted that there were, in fact, such meetings in between December, 1992, and February, 1993, and after February, 1993, though the same were not recorded in the resolution book. Moreover, nothing was stated in the resolution as to the circumstances under which the said resolution was passed. It is vague and laconic. This is stated to be a comprehensive decision in respect of all the Universities. Further the only reason given in the resolution is "treating the presence of another expert member in the Screening Committee in place of the expert member required in accordance with the Statute irregular". As pointed out, at the time of the start of the hearing of the case, the reasons given by the learned advocate on behalf of the Commission were three in number which have been quoted above, This does not tally with the reason given in the resolution. The Chairman's explanation regarding this

resolution is that this "nucleous" resolution and he feels that it is "not well worded". According to him "nucleous" resolution means resolution which deals from Lecturer to Reader and Reader to University Professor. According to him some of the resolutions are recorded in the the Resolution Book and some of them are merely kept on the file. According to him the materials before the Commission, before it decided to reconsider the concurrence already given, was the list sent by the Patna University and the list of experts received from the Bihar Inter-University Board. The explanation offered as to why at the stage of giving concurrence the Commission did not think it necessary to check the documents was because at first all the papers were certified by the Registrar and after receiving the panel the Commission found that so many names were from outside the panel. The Chairman had further stated that proceedings were initiated, for opening the question of cancellation of concurrence, because an intimation received from Ranchi University to that effect. Further the reasons given in the Note at pp. 5, 6 and 7, as noted above are also different from the resolution and case first made out. There is no reference in the noting file to the resolution dated 10-2-1993. All these disclose a clear non-application of mind ; a hasty action ; an arbitrary action.

12.2. The Commission has acted improperly, unauthorisedly and in violation of principles of natural justice and fair play. The appointments of the petitioners to the post of Readers were initially made by the University on provisional basis on the recommendations of the Screening Committee by several orders dated 29-6-1987, 4-7-1987 and 22-7-1987 to be effective from 1985/1986. These are Annexures 3, 4 and 5 to the petition in the first case. These appointments were made subject to the approval of the Commission. The papers in connection with these cases were then sent to the Commission for such recommendation under the scheme. These include the papers regarding the Screening Committee. The Commission took a long time for taking its decision in the matter and ultimately it gave such concurrence to the appointment of the petitioners as readers on substantive basis. Such concurrence was in respect of their promotion to the post of Readers which were already made by the University on temporary basis with the approval of the Screening Committee long time back. This was given effect to and relevant notifications were issued by Patna University in implementation of such recommendation of the Commission. For the purpose of consideration of the question of giving such concurrence, it was open to the Commission, as a matter of fact, it was the duty of the Commission, to examine and scrutinise the papers submitted and make any enquiry as it thought fit and to give or not give any such concurrence on the basis of such enquiry and scrutiny of such documents. It is presumed that such a responsible body having such important duty would have performed its duty only after going through all the relevant documents and after ascertaining the proper facts. The facts remain that they had given their concurrence on the basis of the papers before them.

12.3. One of the main questions in this connection is whether they had any such power to withdraw such concurrence. It is well settled that the power of review

cannot be easily implied when it is not expressly conferred. Reference may be made in this connection to the decision in *Patel Narshi Thakershi and Ors. v. Pradyuman Singhji Arjun Singhji* (ibid) mentioned above, In this connection reference may also be made to the case of *Gram Panchayat, Village Kanonda Vs. Director, Consolidation of Holdings, Haryana, Chandigarh and Others*, . Realising this legal implications, this is why it is being contended on behalf of the Commission that it was not a case of "review" but only a case of "correction of mistakes." In my opinion, it is merely a play of words. The Commission had given its concurrence to such confirmation and thereafter it has withdrawn the same. By whatever name it is called, this, in my opinion, amounts to exercise of power of review which the Commission did not have. Reference may also be made in this connection to the case of *Smt. Saraswati Mishra v. Chancellor, Ranchi University* (ibid).

12.4. There is another aspect of the matter. Apart from the question of lack of jurisdiction on the part of the Commission to exercise the power of review, in the facts and circumstances of this case, certainly the exercise of such power for correction of such "mistake" was illegal, improper and unauthorised. Assuming but not admitting that in some cases such power may be inferred, in this case certainly no such power could be exercised. In these cases the Commission had allowed the petitioners to remain there as Reader on provisional basis for a long time. They have given their concurrence on the basis of the papers submitted to them by the University and this continued for some time. Only on the ground that subsequently it was supposed to have been found by the Commission that there were some defects in the composition of the Screening Committee on the basis of which such appointment on provisional basis was made, that they have cancelled their earlier decision for grant of concurrence. No such power exists in the Commission. The mistake, if any, was on the part of the Commission and/or the University and it was not for any fault on the part of the petitioners. The Commission had all the papers before it. It could call for any other paper from any other person or body before taking a decision. It chose not to do so. On the other hand after giving such concurrence, which was given effect to, they decided to re-open the question and rescind their earlier decision. In this connection reference may also be made to the decision in *Ashok Chand v. University of Jodhpur* (ibid).

12.5. Further, having regard to the fact that it is a question of promotion under the time-bound scheme and that there being no allegation that the petitioners did not have the requisite qualification for being appointed to the post of Reader, even if there was such irregularity regarding the composition of the screening committee on the ground that some approved expert did not take part or some one present as expert was not in the approved panel, that cannot be a ground for recalling the concurrence given earlier. Reference may be made in this connection to *Dr. Benoy Krishan Roy v. Ranchi University* (ibid) and *Dr. Ram Niranjana Tripathy v. Chancellor, Patna University* (ibid).

12.6. Assuming that the "Approved" experts were not present in the Screening Committee or that some other expert, other than the approved experts, was present in the proceeding of the Committee, that does not by itself vitiate the proceedings. Reference may be made in this connection to *A. Tripathy v. J.P. Gupta*, (ibid). It has not been shown how the absence of one or more approved experts or presence of one or more experts, who were not in the approved list, has in any way affected the selection. What was the deficiency, if any, has not been shown. Unless it is shown that how such "irregularity", if any has vitiated the selection, it cannot be treated as a nullity. It is not to be treated as a kind of "mandatory provisions" in the sense that mere non-compliance of the same without anything else, would make the selection a nullity. Reference may be made in this connection to *Owners and Parties interested in M.V. "Vali Pero" v. Femando Lopez and Ors.* (ibid).

12.7. There is another aspect of the matter. It was the duty of the Commission not only to act reasonably, but also to act within a "reasonable time. If the Commission had acted promptly and refused to recommend, then under Rule 5 the question of his promotion could be considered next year. The Commission sat tight over the matter for a long time, then decided in favour of the petitioners and then decided to withdraw such approval. This is a high handed action. This is an arbitrary action. This is a case of non-application of mind.

12.8. The other aspect of the matter is that the petitioners were selected to hold such post of Readers temporarily on the recommendation of the Screening Committee. They were holding such posts for a long time. Thereafter, in view of such concurrence by the Commission, the petitioners were confirmed in the post of Reader with effect from the date they were appointed initially on provisional basis. In view of the confirmation they had acquired a lien in the post of Reader. Any order of demotion from the post of such Reader amounts to taking away such lien in the post of Readers. This amounts to reduction in rank by way of penalty. Reference may be made in this connection to *Parshotam Lal Dhingra Vs. Union of India (UOI)*, . I do not see any reason why the same principle would not be applied even if the petitioners do not come within the class of persons covered by Article 311. In my opinion, the termination of their lien in respect of the post of Readers amounts to an action by way of penalty and as no opportunity to show cause was given to them, accordingly, this is in violation of the principle of natural justice and fair play and a nullity.

12.9. There is another aspect of the matter. The impugned order of the University and the cancellation of the concurrence affected the rights of the petitioners having civil and financial consequences. For this reason alone, I am of the opinion that the principle of natural justice and fair play demanded that an opportunity be given to the petitioners before such action was taken. The scope of the principle of natural justice and fair play has been considered by me in details in the *Speakr's case*, CWJC, No. 2709 and 2782 of 1992 : 1992 (2) PLR 406 to which the attentions of the learned advocate were drawn and I need not

repeat the same again.

12.10. In any view of the matter, even if there was any such irregularity, the persons concerned, in the facts and circumstances of the case, should have been treated, on humanitarian grounds, as regularly appointed. Reference may be in this connection to H.C. Pattaswamy and Ors. v. The Hon'ble Chief Justice of Karnataka High Court (ibid).

12.11. Further in facts of these cases, proper reasons should have been given for revoking such concurrence. The case sought to be made out in this regard cannot be accepted. In any event, the reasons given of various stages are inconsistent vague and extraneous. There has been a total non-application of mind.

13. As indicated, various points were argued before us in support of these two cases relating to Patna University and also other writ petitions involving two other Universities, namely, Bhagalpur University and Magadh University. We have dealt with some of them in this judgment. It is not necessary for us to go into the other points and we keep them open. This includes the question whether under the Commission Act the expression "Government" means the Governor in his discretion or Governor on the advice of his Council of Minister. To put it otherwise, whether it is a case where the appointment or removal is to be made by State Government in the name of the Governor, it is to be noted that the expression in the relevant sections of the Act is neither "Chancellor" nor "State Government" but "Governor". The other question, we do not think necessary to go into, though sufficient averments have been made, is whether the action of withdrawal of concurrence was made mala fide, i.e., malice in fact in connection to which some reliance has been placed on some newspapers publications,

14. Conclusions-Final order

14.1. In my opinion, the impugned decision of the Commission with-drawaing the concurrence given earlier was wholly illegal, unauthorised and without application of mind. Accordingly, no effect can be given to the same and the same is set aside. Accordingly, the impugned order of demotion of the petitioners on such basis is also bad, illegal and without jurisdiction and the same is also set aside. The demotion orders be, treated as null and void. The petitioners be given ail the benefits including arrears of salary on the basis that concurrence was never withdrawn and they were never demoted. The petitioners remained and shall continue to remain as confirmed Readers in, substantive capacity. They had and shall continue to have their lien in the post of Reader until and unless such lien is terminated in accordance with law, which includes the principle of natural justice and fair play, by a competent authority acting in a competent manner.

14.2. So far as these petitioners, who were appointed as University Professors on temporary basis provisionally, they shall continue to hold such post temporarily until the question of their confirmation to such post of Professors, which is pending with the Commission, is decided by a duly constituted Commission. The

final decision regarding their confirmation in the post of Professors, must be made by the duly constituted Commission within a period of one month from this date. If no such decision is taken in respect of the cases of the said petitioners within such period, all these petitioners shall be treated as having been confirmed in their post of Professors with effect from the date of their promotion on temporary basis as University Professors.

14.3. So far as the other petitioners in these two petitions are concerned, the question of their promotion to the post of Professors under the "Time Bound programmes" shall be considered in accordance with law by properly constituted Commission within a reasonable time as and when their cases are sent by the University, if not already sent. The University shall also send necessary papers to the Commission within a reasonable time, if not already sent.

The writ petitions are accordingly allowed. However, there will be no order as to cost.

Choudhary S.N. Mishra, J.

15. I agree.