
(2000) 09 RAJ CK 0036

In the Rajasthan High Court

Case No : Civil Special Appeal No. 506 and 679 of 1998

Dr. Jaswant C. Gandhi*

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 25-09-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16

General Clauses Act, 1897 — Section 6

Rajasthan Universities Teachers and Officers (Selection for Appointment) Act, 1974 —
Section 11(1), 11(14), 11(4), 4

Citation : (2001) 1 RLW 95 : (2001) 1 WLC 27 : (2002) 1 WLN 119

Hon'ble Judges : A.R. Lakshmanan, C.J.;Rajesh Balia, J

Bench : Division Bench

Advocate : M.C. Bhoot and M.S. Singhvi, for the Appellant; J.M. Bhandari and
M.R. Singhvi, for the Respondent

Judgement

Dr. Lakshmanan, CJ.

(1). D.B. Civil Special Appeal No. 506/98 is directed against the judgment dated 4.5.98 passed by a learned Single Judge of this Court in S.B. Civil Writ Petition No. 4195/96 whereby the appellant's writ petition has been dismissed. The appellant in this appeal is Dr. Jaswant C. Gandhi.

(2). D.B. Civil Special Appeal No. 679/98 is filed by one Dr. Y.K. Tiwari against the judgment dated 4.5.98 passed in Writ Petition No. 4214/96 by a learned Single Judge of this Court. By consent of both the parties both the special appeals were taken up for final hearing.

(3). The appellant in D.B. Civil Special Appeal No 506/98 filed Writ Petition No. 4195/96 for a mandamus directing the State of Rajasthan respondent No. 1 to create ex-cadre post in the Faculty of Commerce of respondent No. 2 Jai Narain Vyas University, Jodhpur u/s 11(1) and/or 11(14) of the Rajasthan Universities Teachers and Officers (Selection for Appointment) Act, 1974 against the year 1992 or in the alternative and without prejudice against the year 1993. A further

prayer to direct the University to promote the appellant petitioner on the post with retrospective effect with all consequential benefits was also prayed for.

(4). Likewise, Dr. Y.K. Tiwari, the appellant in D.B. Civil Special Appeal No. 679/98 filed Writ Petition No. 4214/96 with a prayer to direct the respondents State of Rajasthan and the University to count services rendered by the appellant petitioner as selected Reader in Punjab University from 3.5.1983 to 1.1.1985 and after counting service to grant promotion benefit under the ex-cadre Scheme u/s 11 of the Act of 1974 and for other consequential prayers. According to the appellant in Special Appeal No. 506/98, under the provisions of Rajasthan Universities Teachers and Officers (Special Conditions of Service) Act, 1974 (hereinafter called the Act) Lecturers, Readers and Professors of the Universities in Rajasthan were appointed by direct recruitment on the recommendations of Selection Committee constituted u/s 4 of the Act. The Lecturers and Readers appointed in the Universities did not have promotion avenues despite the fact that they were otherwise deserving for promotion and majority of Lecturers and Readers get stagnated in the post against which they had been initially appointed without getting any promotion throughout their service. In order to provide incentive and promotional opportunities to the deserving Lecturers and Readers it was decided by the State Government to create ex-cadre posts of Professors and Readers in each Faculty of the University so as to give relief, the Governor of Rajasthan promulgated the Rajasthan Universities Teachers and Officers (Special Condition of Service) Amendment Ordinance 1983 on 3.10.1983. This Ordinance was promulgated to amend the Rajasthan Universities Teachers and Officers (Special Condition of Service) Act, 1974. By this Ordinance the citation of the principal Act was amended as Rajasthan Universities Teachers and Officers (Selection for Appointment) Act, 1974. New section No. 11 was inserted to carry out the above said object. The Ordinance was later on made the Act No. 19 of 1984 and the personal promotion against ex-cadre posts were provided by Sec. 11 of the Act of 1974. The relevant portion of Sec. 11 is reproduced hereunder:-

"11.(1) Notwithstanding anything contained in the relevant law or in this Act, State Government may, in order to provide promotional opportunities to stagnant deserving teachers, create ex-cadre posts of Professors or Readers in each faculty of a University to the extent of one third of eligible persons as on 1st January of each year;

(2) A Lecturer or a Reader in a University shall be entitled to only one personal promotion under this section during his service in any of the Universities subject to his being eligible for such promotion under this section;

(3) When ex-cadre posts are created by the State Government in a faculty of a University, the distribution of such posts within the various departments of the University in a particular faculty Would be made by a committee consisting of the Vice-Chancellor, Dean of the Faculty concerned and the Education Secretary;

(4) The ex-cadre posts of Professors created in a year shall be filled in by

personal promotion in the basis of merit alone from amongst Readers who:

- (a) have been regularly selected to the post of a Reader;
- (b) have, after regular selection put in continuous ten years" service as Reader as on the 1st day to January of the year in which such promotion is to be considered; and
- (c) possess the qualification laid down in the relevant law of the University concerned for appointment to the post of Professor.

xxxx xxxxx xxxx xxxxxx xxx (13). Notwithstanding anything contained in this section, where as teacher, due to retire during the year in which the cases for personal promotion are being considered or during the year next following inspite of his being eligible for such promotion, is not likely to get such promotion because of the want of sufficient number of ex-cadre posts, he may, one year before the date of his retirement, be promoted to such an ex-cadre post of a Professor or, as the case may be, a Reader as may be created by the State Government over and above the number of posts created under sub-section (1).

(14). Notwithstanding anything contained in this section, an ex-cadre post of a Professor or, as the case may be, a Reader over and above the number of posts created under sub-section (1) may be created also where the State Government is satisfied that such a creation is necessary to cover an exceptionally hard case of stagnancy."

(5). On coming into force of this Personal Promotion Scheme the appellant petitioner was asked to opt for it. The appellant opted for this personal promotion scheme. After taking options, the University decided to implement the personal promotion scheme and so ex-cadre posts were prayed to the State Government for the eligible incumbents as on 1.1.1988 and thereafter continuously the University is carrying out the process and asking for ex- cadre posts against each year. For the first time, the State Government implemented the scheme by order dated 23.11.1992 and in all 21 ex-cadre posts were created allotting against each year from 1988, these 21 posts were created u/s 11(1) of the Act. Three posts of Professors were created u/s 11(13) and 11(14) of the Act. It may be noted here that one Shri Bhagwat Swaroop was allotted one ex-cadre post of Professor in Faculty of Arts under Sec. 11(13). He was appointed as Reader on 30.9.1980 but since he retired on 20.9.1988 his case was considered under Sec. 11(13) of the Act of 1974 as a fit case in September 1992 when he had not even completed 10 years of service. Shri G.L. Gehlot was also allotted one ex-cadre post under Sec. 11(13) of the Act against the year 1989 as he retired on 21.5.1989. One D.S. Bhandari was allotted one ex-cadre post of Professor in Engineering Faculty under Sec. 11(14) of the Act against the year 1988. It is thus clear that though the matter was considered in the year 1992 the benefit under the provisions of Sec. 11 was given year wise from 1988 and the ex cadre posts against all the five years i.e. 1988 to 1992 were created as per provisions of Sec.11. It is the case of the appellant petitioner Dr. Jaswant C.

Gandhi that he also completed 10 years of his service as a Reader in the Faculty of Commerce and the University had recommended his case for promotion against an ex-cadre post to be created under Sec.11 as on 1.1.1991 and thereafter his case is being regularly sent to the State Government against each year. It is stated that his name was being recommended for the years 1991, 1992, 1993, 1994, 1995 and 1996 but the matter remained pending. Again, for the second time the scheme for promotion to ex-cadre posts had been implemented by creating 11 posts by the State Government vide communication dated 15.11.1996. This time also Dr. M.R.D. Mehta had been given benefit under Sec. 11(13) of the Act against the year 1995 and Dr. K.C. Mathur against the year 1996 but the appellant petitioner had been denied his right of promotion on ex-cadre post in an arbitrary manner. The University vide communication dated 16.1.1996 requested the State Government for creation of ex-cadre posts of Professors for the years 1993, 1994, 1995 and 1996. A photostat copy of the approval of the Syndicate in pursuance of Section 11 of the Act dated 25.1.1993 is filed and marked as Ex.4. In the year 1991 the University recommended to the State Government for creation of ex-cadre post u/s 11(1) and shown one Dr. P.N. Saxena and the appellant as eligible candidates. However, P.N. Saxena was given promotion. Since then in the Faculty of Commerce the appellant petitioner alone is eligible for personal promotion scheme and though the University has regularly recommended his case, his case has not been considered under Sec. 11(1) on a wrong premise that since he is the only eligible candidate in all these years. 1/3rd post of one candidate cannot be created. It is because of this logic that the University in his communication dated 16.1.1996 recommended and represented the case of the appellant for personal promotion against ex-cadre post to be created either under Sec. 11(1) or under Sec.11(14) but without any result. The Government finally communicated the creation of ex-cadre posts against the years 1993, 1994, 1995, and 1996 denying legitimate right of the petitioner appellant. The petitioner has filed the above writ petition in this Court for the reliefs above extracted.

(6). This writ petition was opposed by the respondent no. 2 by filing a reply. It is stated in the reply that the case of the appellant petitioner Dr. Jaswant C. Gandhi is not covered by Section 11(14) of the Act of 1974 and provisions of this Sub-section deals with such cases where the State Government is satisfied that such a creation is necessary to cover exceptionally hard case of stagnancy. The Government has not given the benefit of Section 11(14) to the appellant petitioner. In such circumstances the case of the appellant is not covered by the provisions of Sec. 11(14) of the Act of 1974. It is further submitted that in the Faculty of Commerce only the appellant is eligible to get the promotion under the provisions of Sec. 11(1) and hence by virtue of the above provisions he cannot get the benefit of Sec. 11(1) and 11(14) of the Act. It is also submitted that the provisions of Sec. 11(1) of the Act of 1974 are not at all applicable in the case of the appellant since the appellant is not going to retire during the year in question or even the next year. It is submitted that a perusal of Sec. 11(14) envisage that

it is only the satisfaction of the State Government for giving the benefits to the Readers under these provisions and the appellant petitioner has not given any sound and convincing reasons to prove his case to be an exceptionally hard case of stagnancy.

(7). The State Government also filed its reply. According to the State the promotions are to be made as per the law as it obtains on the date when promotions are to be made and there is no accrued or acquired right in favour of the appellant petitioner and thus the things are to be given effect to in accordance with existing law and as per Sec. 11 as it stands, the appellant is not entitled to any relief as prayed.

(8). Shethna, J. dismissed the writ petition holding that no relief can be granted by this Court in view of the fact that Sec. 11 does not remain in the Statute any more and that a mandamus cannot be issued since the appellant is not able to satisfy this Court that his fundamental rights guaranteed under the provisions of the Constitution have been violated. The learned Judge has also held that since the provisions of Sec. 11 of the Act have already been deleted from the Statute, no writ of mandamus can be issued, particularly when Sec. 11 under which a relief has been prayed, stands deleted.

(9). Being aggrieved and dissatisfied the appellant petitioner filed Special Appeal No. 506/98 urging the same grounds. It is mentioned in the memo of appeal and also argued by Mr. M.C. Bhoot that the learned Single Judge has committed error in holding that the relief as prayed cannot be granted because Sec. 11 of the Act under which the relief was prayed, stood deleted during the pendency of the writ petition. In this connection it is submitted that this is decided as per the law applicable on the date of start of the lis unless the amendment is retrospective and in the present case the learned Single Judge without going into the provisions of the Rajasthan General Clauses Act has committed an error in dismissing the writ petition.

(10). Dr. Y.K. Tiwari, appellant in D.B. Civil Special Appeal No. 679/98 filed writ petition No. 4214/96 with the prayers as extracted above. The short facts are as follows. The appellant petitioner Dr. Y.K. Tiwari did his LL.M with 55% marks in the year 1974 from the University of Rajasthan, Jaipur and did his Ph.D. in Labour Laws in the year 1983 from the same University. He was selected as Lecturer and served as such from 16.1.1975 to 2.5.1983 in the University Studies in Law, University of Rajasthan, Jaipur. Thereafter he was selected as Reader in Labour Law through the open All India Competition in the Punjab University, Chandigarh and was appointed as such vide order dated 16.4.1983, where he joined on 3.5.1983 and served there from 3.5.83 to 1.1.1985. As the appellant wanted to serve his own State, he applied for the same post of Reader in the said University and as selected as such. He was appointed vide order dated 17.11.1984 (Annex.3). He joined his duties in the said University on 2.1.1985 after being relieved by the Punjab University. According to him his services stood continued as there was no break in his service. The appellant

petitioner had been in service on the post of Reader in law from 3.5.83 because he has served in the University established by Law and that is why his pay was protected by the said University and the University thereby deemed the petitioner appellant to be in continuous service on the post of Reader in Law from 3.5.1983. The appellant in order to get the benefit of the provisions of ex-cadre promotion scheme under the Act of 1974 offered option for above said purpose as laid down u/s 11 of the Act. The State Government made a commitment and was under a contractual obligation to permit the existing Readers to continue to the governed by ex-cadre promotion scheme under Sec. 11 of the Act, According to be conditions laid down in Sec. 11(4) read with explanation of the Act of 1974 the appellant has become eligible to be considered for promotion as on 1.1.94. While sending the case for the creation of ex-cadre post of Professors in various faculties of the University for the years 1994, 1995 and 1996 the Registrar of the University mentioned the case of the appellant for the creation of one post of Professor in Law under Sec. 11(14) of the Ad of 1974 but there was no response. Thus the Government of Rajasthan has not considered the services of the appellant from 3.5.1983 to 1.1.1985 rendered by him as a selected Reader in the Punjab University. The explanation attached to sub-sections(4) and (5) of Sec. 11 of the Act of 1974 clearly provided that for the purpose of seniority and counting of years of service as Reader in services rendered in a University shall also be taken into account. However, the services rendered by a teacher in a college and ad hoc services prior to the regular selection were taken into account by the Government in the past but the services on regular basis rendered by the appellant in a University established by law has not been taken into account. The State Government has issued an order dated 15.11.1996 whereby one post of Professor in law has been created in the 1996 quota out of two Readers eligible. From this sanction order it clearly infers that the eligibility of the appellant as on 1.1.94 has not been considered and appellant's services from 3.5.1983 to 1.1.1985 have not been taken into account otherwise the post should have been given to him in the 1995 quota. It is submitted that the ex-cadre posts of Professors in the faculties are created to the extent of 1/3rd of eligible Readers under Sec. 11(1) of the Act of 1974. In addition to this provision additional posts are created under Sec. 11(13) of the Act in case of Readers who have become eligible and who are due to retire during the year in which the case for personal promotion are being considered or during the year next following. On the basis of stagnancy, the additional posts are also given by the Government under Sec 11(14) of the Act, but the appellant was sought to suffer at both the ends and it will amount to deprivation of his rights. It is relevant to note here that Section 11(14) of the Act was incorporated to create additional posts of Professors in the faculty where injustice is done to any Reader or some junior and Reader of lesser length of service gets a post and senior may not get it for one or the other reasons. The appellant had become eligible u/s 11(1) of the Act of 1974 according to 1/3rd criteria in the years 1994, 1995 and 1996 and that Government should create one post of Professor in the Faculty of Law.

(11). A reply was filed by the respondent no. 1 University adopting the same stand as in the case of D.B. Civil Special Appeal No. 506/98 Dr. Jaswant C. Gandhi vs. State of Rajasthan. It is stated in the reply that the appellant himself had become eligible only on 1.1.96 and hence by no stretch of imagination it can be considered to be a hard case. The State of Rajasthan filed a separate reply on the same lines as in the case of D.B. Civil Special Appeal No. 506/98 Dr. Jaswant C. Gandhi vs. State of Rajasthan.

(12). A learned Single Judge of this Court following his earlier judgment in S.B. Civil Writ Petition No. 4195/96 filed by Dr. Jaswant C. Gandhi dismissed this writ petition holding that this Court cannot compel the State Government by issuing a mandamus to create an ex-cadre post and that too under the provisions of Section 11 of the Act which are deleted and no more in existence the learned Judge while holding that the petitioner has not been able to make out a case of violation of fundamental rights has however, held that there is nothing to show that the amendment has been with retrospective or prospective effect and still at the concluding portion of the judgment held that the provision itself is not more in existence. Being aggrieved the above special appeal has been filed.

(13). We have heard Mr. M.C. Bhoot and Mr. M.S. Singhvi for the appellants and Mr. J.M. Bhandari and Mr. M.R. Singhvi for the respective respondents.

(14). Mr. Singhvi appearing for the appellant Dr. Y.K. Tiwari submitted that the services of the appellant rendered in the Punjab University were counted vide order dated 4.4.1985 and his pay too was protected as is evident from Annexure 5 and, therefore, it is clear that the appellant had been rendering his services as Reader in the Law Faculty of the respondent University since 3.5.1983 and this admits of no doubt or debate. It is also pertinent to refer the provisions of Sec. 11(1) and (4) of the Act of 1974 which provided promotional opportunities to the stagnant deserving teachers and thereby the ex-cadre post of Professor and Reader in each faculty were created to the extent of 1/3rd of eligible persons as on 1st January of each year subject to other provisions as contained in Sec. 11 of the Act. In the same manner reference is made of Sec. 11 (4) of the Act of 1974 which makes provision for creation of the ex-cadre post and the manner and eligibility criteria upon which they are to be filled in. In this way a promise had been made to the teachers including the appellant to be governed by ex-cadre promotion scheme under Sec. 11 of the Act and thereupon the appellant offered his option vide Annex 6. We have already noticed that under the promotion scheme many teachers were given benefit as set out in the writ petition itself like in the Engineering and Arts faculty of the respondent University. We are of the opinion that the appellant in both the appeals were quite eligible as per requirement of Section 11(1) and 11(4) of the Act of 1974 as they substantiated the same by placing on record the relevant materials. The appellant Dr. Y.K. Tiwari was selected Reader since 3.5.1983 and the respondent no.3 in his appeal was also a Reader since 17.11.1984 and thus the appellant is senior most Reader in Law Faculty and as per requirement of Sec. 11(14) the appellant had put in 10

years" service and became eligible in the year 1993. It is also not in dispute that the Vice Chancellor was satisfied that the appellant was an eligible candidate as is clear from Annexure 14. The appellant's case was sent for being considered under Sec. 11 of the Act as is clear from Annexure 15 but unfortunately his case was not considered as his services rendered in the Punjab University were not counted. It is clear from Sec. 11 that the services as Reader should be rendered in a University and admittedly, the Punjab University too is a University established by law. The appellant in fact had drawn attention of the respondent authorities that the said authorities had taken the ad hoc services prior to regular selection into account, whereas he had put in services in a recognised University established by law on being selected at All India level, were not taken and this would amount to discrimination. Under Annexure 16 the University created one post of Professor in Law Faculty in ex-cadre promotion scheme but strangely no additional post was created as was done in respect of the Engineering faculty whereas the University had been requesting the Government to consider the case of the appellant. The Government in the meanwhile decided to repeal the provisions of Sec. 11 of the Act. However, the Assembly had decided that the posts may be given to the eligible Readers who were eligible as on 1st January of 1993, 1994, 1995 and 1996. But strangely, the appellant's case was not considered on the ground that he was appointed in this University in the year 1985.

(15). In our opinion, the appellants have fully justified their grievance on the anvil of Article 14 of the Constitution of India. On the one hand due to inaction of the faculty the posts of Readers were not created according to the strength of. Lecturers and thereby the proportionate posts of Professors could not be created.

(16). Dr. J.C. Gandhi undisputedly became eligible for consideration for appointment as Professor in faculty of Commerce since 1.10.1991 and thereafter his case has regularly been recommended for years 1991 to 1996. Notwithstanding the appellant Dr. J.C. Gandhi in Special Appeal No. 506/98 having become eligible to avail the right of being appointed as Professor under personal promotion scheme since 1991 and there was only one regular post of Professor in Faculty, no post was allotted to the said faculty notwithstanding number of ex-cadre posts created in the years 1992 and 1996 but all were allotted to different faculties leaving faculty of Commerce excluded and on such ex-cadre posts appointments in some cases as noticed above were in fact offered by treating such posts on yearwise basis. Thus members of faculty of Commerce were deprived of benefit of personal promotion scheme on the post of Professor, notwithstanding appellant having become eligible for such appointment since 1.1.1991 and he was constantly recommended by the University for such appointment as Professor under personal promotion scheme for successive years until 1996. Likewise, in the other appeal No. 679/98 when the appellant Dr. Y.K. Tiwari was due for consideration as on 1.1.1994, he was singled out on the ground that his services were not to be counted from 1983 on account of rendering services in Punjab University. The appellants had also been

discriminated on the ground that the scheme of Section 11 has been abolished. As already noticed from the reply by the State of Rajasthan which was also accepted by the learned Single Judge that the provisions of Section 11 have been repealed vide notification dated 27.12.1996. It is pointed out that the notification dated 27.12.1996 was not placed before the Assembly and, therefore, it was not approved and according to Article 123 of the Constitution it ceased to have any effect. The appellant filed a rejoinder to this effect. The State of Rajasthan thereafter changed its stand that the appellant has not been able to show that his case was of hardship and it was also stated that he shall be considered in near future as he has still to serve the Government upto the year 2001. Meaning thereby no stress was led on account of repealing of Sec. 11 of the Act.

(17). Mr. J.M. Bhandari and Mr. MR. Singhvi, learned counsel for the respective respondents reiterated the arguments as advanced in the writ petition before the learned Single Judge.

(18). We have perused the judgment of the learned Single Judge, in our opinion, it is clear from the records that the appellants in both the appeals have made the position explicit that on the ground raised in the writ petition they were entitled for the relief sought for. The learned Judge however did not examine the controversy on merits and dismissed the writ petition. The appellants in both the cases have made out a case of violation of Article 14 of the Constitution of India. We have already considered the reason for not considering the name of the appellant Dr. Y.K. Tiwari. The University was of the view that the services rendered by the appellant in Punjab University were not to be counted. In our opinion, the approach in this regard by the respondents is fallacious. In our view, the definition of University cannot be restricted to region and the only definition is that the University is established by law and so is the case of the appellant as the Punjab University is established by law. Thus it was not open for the respondent University to divest the case of the appellant Dr. Tiwari on such premise which legally is not sustainable. This point has also not been considered by the learned Single Judge and it has escaped consideration. In our view, the case of the appellant Dr. Tiwari and Dr. Gandhi are cases of hard cases of stagnation where due to inaction of the respondents the post of Readers were not created as per the strength of the Lecturers. When the appellant in both the cases fell due for consideration they were not considered and even thereafter. The juniors to the appellants had been promoted as Professors and the appellants were only left on the ground that the Scheme of Sec. 11 of the Act of 1974 itself had been repealed. As rightly pointed out by the counsel for the appellants that there is series of deprivation and discrimination and continued violation of Articles 14 and 16 of the Constitution in the case of both the appellants. In our view the cases of the appellants are the cases of hardship and stagnation and the discrimination with which the appellant had been subjected is writ large.

(19). In our considered view the right which has since accrued to the appellants

under Sec. 11 of the Act of 1974 cannot be taken away under the garb of repealing of Sec. 11 of the Act because such notification dated 15.10.1996 having prospective effect. Sec. 6 of the Rajasthan General Clauses Act, 1955 like Sec. 6 of the Central General Clauses Act clearly envisages the effect of repeal of any enactment. It unequivocally says that where any Rajasthan Law repeals any enactment hitherto made or hereafter to be made then, unless a different intention appears the repeal not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed (at Cl.1(c)) and shall not affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability etc. (per clause 1 (e) of Sec. 6). In the present case right to be considered and appointed as Professor in the Faculty of Commerce and in the Faculty of Law has accrued in favour of appellants in the two appeals before us respectively much before the repeal of Sec. 11 of the Act of 1974 vide notification dated 27.12.96. The legal proceedings for the remedy to enforce rights under the repealed enactment by way of petition under Art. 226 of the Constitution were also filed before the repeal and were pending before this Court as on date of repeal of Sec. 11 of the Act. The petitioners had claimed reliefs inter alia on the ground that the petitioners in respective petitions have been denied the benefit that has accrued to them under Sec. 11 of the Act in breach of their fundamental rights under Articles 14 and 16 of the Constitution. In such event repeal of the provision during pendency of the writ petitions which did not have retrospective operation but were to come in force only prospectively, the pending legal proceedings could not have been terminated on the ground of repeal of Sec. 11 of the Act of 1974.

(20). The law is well settled on the point. In *Rajagopal Reddy vs. Padmini Chandrasekharan* (1), the Supreme Court had held that the Act and Ordinance were not retrospective in operation and the Act did not apply to the pending suits which had already been filed prior to the coming into force of Sec. 4 of the Act. That being so, the learned Single Judge in the present case is not correct in holding that the appellants are not entitled for the relief as prayed for since the Act has been repealed. The same view was taken by the Hon'ble Supreme Court in *C. Gangacharan vs. C. Narayanan* (2). In that case the Supreme Court held that since the proceedings for execution of the decree in favour of the appellant before the Supreme Court were pending when the Benami Transactions (Prohibition of Right to Recover Property) Ordinance, 1988 came into force which is not retrospective in operation and, therefore, will not be applicable in such cases. In *D. Srinivasan vs. Commissioner and others* (3), the Supreme Court held that the Repealing Act cannot be deemed to have taken away rights vested in any person or authority under the repealed Act unless the repealing Act expressly or by necessary implication provides therefor.

(21). In the instant case the Ordinance promulgated by the Governor on December 27, 1996 repealing the provisions of Section 11 of the Act of 1974 provided that it shall come into force at once. Meaning thereby, it has prospective operation and the person who would complete 10 years as Reader on

or after 27.12.96 will have no right to be eligible for promotion. Whereas the appellants became eligible to get the promotion on completion of 10 years" service as on 1.1.1984. In the above two cases the Supreme Court had categorically laid down that the Repealing Act cannot be deemed to have taken away rights vested in any person or authority under the repealed Act unless the repealing Act expressly or by necessary implication provides therefor. It means that the matter or right already accrued will not affect on repealing the statute. If the provisions had been treated to be repealed on 27.12.96, the orders issued by the University promoting the Readers to the post of Professors on the basis of the sanction given by the Government under the impugned order dated 15.11.96 would be bad in law because the orders of promotion were issued on 28.12.96, 31.12.96 and 28.2.97 i.e. after the promulgation of the Ordinance.

(22). There is force and substance in the contention of the learned counsel for the appellants. It is submitted that there is violation of fundamental rights i.e. right to equality in case of the appellants. The government in the instant case vide order dated 23.11.92 created two posts of Professor in the year 1988 in the Faculty of Engineering against two eligible Readers. One post was created under Sec. 11(1) and another under Sec. 11(14). It was because of the fact that both the Readers were selected and joined on the same day and, therefore, there may not be any frustration. Two ex-cadre posts were created in the Faculty of Engineering against two eligible Readers. Same was the position in Faculty of Law when as on 1.1.1996 there were only two eligible Readers in the Faculty of law but only one post was created under Sec. 11(1) inspite of the fact that the Government intended to repeal the provision whereas in the case of Engineering, the posts were further created in the year 1989 and onwards and there were no possibility of repealing or deprivation. Promotions were given to Prof. S.R. Dhariwal of Physics Department who joined on 16.1.85 in the University and Prof. R.P. Tiwari of Mechanical Engineering Department who joined as Reader on 12.2.1985 whereas the appellant Dr. Tiwari joined the University on 2.1.1985. By these two above examples, it is made clear that the appellant Dr. Tiwari was given discriminatory treatment and Articles 14 and 15 of the Constitution were violated. As already noticed, the services of the appellant at Punjab University were not counted by the Government and the appellant was treated to be Reader from 2.1.1985. The provisions of Sec. 11(4) read with explanation appended to sub-clauses (4) and (5) as they were before repealing, provides that a selected Reader must have completed 10 years" service as Reader in a University. It was not provided that the candidate should be Reader in the University where he is serving or in any Universities of Rajasthan. The language used in these sub-clauses show that he should be a Reader in a University. The term "University" should not be construed as defined in the Act because that definition of University is simply to have the applicability and scope of the Act only. Otherwise, the Universities outside the State of Rajasthan will not be within the definition of University. A University here means any University established under the provisions of the State or Central Law recognised by the University Grants

Commission. This is not only the dictionary meaning but the definition as given under the University Grants Commission Act, 1962. Thus the appellant Dr. Tiwari rendered 10 years" service as Reader in a University both in Punjab University as well as in the respondent University as on 1.1.1994 and has become eligible to be promoted as Professor as on 1.1.1994. Since the appellant was alone eligible Reader as on 1.1.1994 in the Faculty of Law his case was recommended as exceptional case for promotion by the then Vice-Chancellor of the University. As on 1.1.1985 Dr. V.P. Bhartiya respondent no. 3 also became eligible on completion of 10 years" service as Reader and, therefore, against two eligible Readers, one post of Professor would have been sanctioned as of right under Sec. 11(1) of the Act as on 1.1.1995 and the appellant should get the chance having longer service as Reader. However, it was not done under the impugned order dated 15.11.96 and that is why before repealing of the provisions, the appellant approached this Court for redressal of his grievance. In our view, the appellant Dr. Tiwari was entitled under Sec. 11(1) of the Act of 1974 for grant of promotion on the basis of his services as Reader rendered from 3.5.1983 at Punjab University and from 2.1.85 in the respondent University and out of the two eligible Readers, it was the bounden duty of the Government to create one post of Professor as on 1.1.1995 in the Faculty of Law whereas the post was sanctioned as on 1.1.1996 ignoring the services of the appellant rendered in Punjab University. Since the claim of the appellant is from 1.1.1995 when the provisions of the Act were in existence, the Government in our view was in error in not counting the services of the appellant rendered in Punjab University in spite of the clear provisions of Sec. 11(4) read with explanation and the categorical rulings of the Supreme Court in the above referred two cases. In *Sharadendu Bhushan vs. Nagpur University, Nagpur (4)*, the Supreme Court was considering a similar case as in the instant matter. In that case the counsel for the University submitted that the appellant was not entitled to the benefit of the service with a college affiliated to the Calcutta University. Repelling the contention, the Supreme Court held that a Teacher is entitled to the benefit of the higher grade if he has the teaching experience of not less than five years and that the emphasis in the circular is on the experience gained by the Teacher while in the employment of the University and not on the continuity of the service. The Supreme Court reversed the decision of the Bombay High Court. The Supreme Court clearly held that experience of University teaching upto the degree classes for a period of 5 years cannot mean that the length of service within the University was the basis, the emphasis in the circular is on the experience gained by the Teacher while in the employment of a University and not on the continuity of the service. For the foregoing reasons we are of the opinion that the violation of legal and fundamental rights of the appellants has been clearly established in the two appeals and the fact of repealing of Sec. 11 of the Act of 1974 has not been effectively pressed by the respondents, thus it cannot in any way stand in the way of the appellants and even otherwise it being prospective and coming into effect on 15.11.1996 cannot govern the case of the appellants, the case of the appellants is of hardship and stagnation and creation of additional post of

Professor would meet the ends of justice and if not considered, they will retire as such despite being seniors and despite being meritorious. Therefore, they cannot be singled out at the hands of the persons who were miles away juniors to them. The impugned judgments in both the appeals are liable to be set aside and quashed and it deserves to be held that the appellants in both the appeals are entitled to the relief claimed in the writ petition including all monetary benefits.

(23). Accordingly, both the Special Appeals are allowed and the impugned judgments are set aside and the writ petitions are allowed with following directions:

(a) In writ petition No. 4195/96 the respondent no. 1 the State of Rajasthan is directed to create one ex-cadre post of Professor in the Faculty of Commerce in addition to ex-cadre post of Professor created by it on 15.11.96 for allotment to different faculties against personal promotion scheme for the years 1993 onwards and respondent no. 2 is directed to appoint Dr. J.C. Gandhi as Professor in Faculty of Commerce against the quota of personal promotion scheme for the year 1993 as per recommendations already made in his favour. The petitioner appellant shall also be entitled to all monetary benefits as a consequential relief.

(b) In Writ Petition No. 4214/96, corresponding to D.B.Civil Special Appeal No. 679/98 the respondents had created one ex-cadre post of Professor for the Faculty of Law vide order dated 15.11.96 by considering only one person, namely, Dr. V.P. Bhartiya as eligible person and made that vacancy available for 1996 to him ignoring the fact that the petitioner Dr. Y.K. Tiwari became eligible prior to Dr. V.P. Bhartiya w.e.f. 1.1.1994 because his period of service as Associate Professor (Reader) at University of Punjab is liable to be reckoned for the purpose of operating the scheme. Therefore, he has been wrongfully ignored for giving benefit of personal promotion scheme since he became eligible but the same has been made available to a person junior to him and became eligible after him. In these circumstances, we direct that one additional ex-cadre post of Professor for the Faculty of Law may be created by respondent No. 1 for the year 1994 and the respondent No. 2 to consider the case of the petitioner appellant for offering appointment against such ex-cadre post under personal promotion scheme by taking into account his services rendered at University of Punjab. It is not disputed that if the said period is counted the petitioner appellant becomes eligible as on 1.1.94 prior to Dr. V.P. Bhartiya who has availed the benefit of ex-cadre post vide order dated 15.11.96 by considering the petitioner to be ineligible for the same. There being no other impediment in the case of the petitioner, we further direct that the respondent No.2 on creation of such ex-cadre post of Professor in Faculty of Law in pursuance of the directions contained herein initiate proceedings for appointing the petitioner appellant as Professor in Faculty of Law under the personal promotion scheme w.e.f. 1.1.1994 and on such appointment being made, the petitioner shall also be entitled to all consequential monetary benefits flowing therefrom.

(c) The direction to be complied with within two months in each case.

(24). There will be no order as to costs.