

(1992) 06 PAT CK 0001

In the Patna High Court

Case No : Civil Writ Jurisdiction No. 1174 of 1990 (R)

Dr. Kishori Prasad Sahu

APPELLANT

Vs

University of Ranchi and Others

RESPONDENT

Date of Decision : 02-06-1992

Acts Referred:

Citation : (1992) 06 PAT CK 0001

Judgement

S.B. Sinha, J.—In this application, the petitioner has prayed for issuance of a writ of or in the nature of mandamus directing the respondent Nos. 1 to 3 to treat the petitioner in continuous service from 5th of March, 1965 upon condonation of breakages in his services as a Lecturer in the affiliated college as well as constituent colleges and also for a declaration that the petitioner is senior to the respondent Nos, 4 to 6.

2. The petitioner has contended that he was appointed as a Research Scholars in the Department of History, Ranchi University, Ranchi and worked in the said capacity from 4-3-1965 to 4-3-1967 and during that period he also performed teaching jobs.

On 29-5-1967, the petitioner allegedly submitted his thesis for obtaining a degree in Doctor of Philosophy (Arts) and in April, 1969 he was conferred with the degree of Ph. D., as would appear from Annexure 2 to the writ application.

3. On 31-5-1967, the petitioner was appointed as a Lecturer in Yodga Satsang College, as would appear from Annexure-3 and 3/A to the writ application. His services were, however, terminated on 1-5-1968.

The petitioner challenged the validity of the said order before the University and by an order dated 23-3-1969, the petitioner was directed to be reinstated in services but in fact he was not reinstated pursuant thereto.

4. The petitioner allegedly was appointed as a Lecturer at Tata College, Chaibassa by the Ranchi University on 7-1-1970 in which post he worked upto 1-5-1970.. He again was appointed as a Lecturer at Marwari College, Ranchi on

1-11-1979, as would appear from Annexure-8/A. The petitioner thereafter was appointed as a Lecturer by the Ranchi University, Ranchi in the post of lecturer in Post Graduate Department of History at Ranchi University, Ranchi on 23-1-1963 (Annexure-9). He was appointed as a Lecturer on the basis of the recommendations of the Bihar Public Commission in the Post Graduate Department at Ranchi with effect from 1-9-1974 (Annexure-9/A). His aforementioned appointment was confirmed by an order dated 10-9-1974 (Annexure-10) and thereafter he was directly recruited as a Reader on the recommendations of the Selection Committee on or about 9-11-1981 and was posted at the Post Graduate Department of History of the Ranchi University, Ranchi (Annexure-11). The petitioner was confirmed in the said post of Reader with effect from 9-11-1981 by an office order dated 4-9-1986 (Annexure-12). He, thereafter, has been promoted to the post of University Professor by an office order dated 1-9-1989 (Annexure-15/B) with effect from 24-1-1989.

The respondent No. 4 joined as Lecturer in Baldeo Sahu College, Lohardaga on 1-9-1964 (Annexure-22). There appears to be some controversy as to whether the respondent No. 4 was appointed on the recommendations of the University Service Commission or not.

The said Baldeo Sahu College became a constituent unit of the Ranchi University on and from 1-4-1977. The respondent No. 4 was conferred with a degree of Doctor of Philosophy and on 14-2-1981 he was promoted to the post of Reader on a temporary basis by an office order dated 9-11-1981 (Annexure-33) with effect from 14-2-1981. The respondent No. 4 had been promoted to the post of University Professor. By an office order dated 5-2-1990, a correction was made to the effect that the said promotion shall be effected from 1-2-1985 as is evident from Annexure-25 of the writ application.

5. The respondent No. 5 was appointed as Lecturer at Doranda College, Ranchi on 7-7-1969, which was then an affiliated college and worked there upto 17-12-1969 (Annexure-26). He, thereafter, worked as Honorary Lecturer in the said College from 18-12-1969 to 15-2-1972. The respondent No. 5 had already been working as a Lecturer at Yogda Satsang College during the period 18-12-1969 to 6-12-1981 (Annexures-26/A and 26/B). He, thereafter was appointed as a Lecturer at Doranda College, Ranchi on 4-12-1981 (Annexure-23) and worked in the said capacity upto 10-4-1983. He was, thereafter, promoted to the post of Reader by an office order dated 7-7-1983 (Annexure-24) with effect 7-7-1982. The respondent No. 5 has been promoted to the post of University Professor. By an office order dated 5-2-1990 (Annexure-25) the said order of promotion was modified to the effect that the same shall take effect on and from 7-7-1985.

6. The respondent No. 6 was appointed as a Lecturer on 15-11-1967 and he worked upto 15-5-1971. Allegedly, there has been breaks in his services during the period 16-5-1971 to 13-11-1972. He, thereafter, again worked on a temporary basis during the period 14-11-1972 to 16-5-1973. It is alleged that

there has been a break in his services again for one day and he worked as a Lecturer with effect from 18-5-1973.

The respondent No. 6 was promoted as a reader, by an office order dated 7-7-1983 with effect from 15-11-1980 (Annexure-27) and he was promoted to the post of University Professor by an office order dated 20-12-1988 with effect from 1-2-1985.

7. According to the petitioner, so far as the respondent No. 6 is concerned, no order has been passed condoning the breaks in his services.

8. The contentions of the University as also the respondent Nos. 4 to 6 in their counter affidavit, as also the supplementary counter affidavits are that the said respondents had continuously been working as a Lecturer respectively for the periods, as indicated hereinbefore and in terms of the Statutes framed by the Ranchi University governing grant of personal promotion to the lecturers, they have been promoted to the post of University Professors on completion of 16 years' continuous services as a Lecturer.

9. Mr. N. K. Prasad, the learned Counsel appearing on behalf of the petitioner has raised a number of contentions in support of this [application].

The learned Counsel submitted that the petitioner was appointed in the post of Reader by an order dated 9-11-1981 as a direct recruit; whereas the respondent Nos. 4 to 6 were promoted to the post of Reader on 6-2-1982, 15-11-1980 and 1-2-1980 respectively and thus the petitioner was senior to the private respondents.

10. The learned Counsel has drawn my attention to Statute No. 10 of the revised Statute for promotion of the Lecturers which is as follows:

Appointment to posts higher than that of Reader and other post of teachers including duly created posts of Readers shall continue to be made only on the basis of the prescribed qualifications and in the manner prescribed in the Act and the Statutes:

Provided that a person who appointed as Reader against a duly sanctioned post without obtaining the recommendation of the Bihar Public Service Commission and has been continuing as such on the post, may be appointed to that post on substantive basis with the approval of the University Selection Committee on the basis of his academic achievements and satisfactory service subject to the condition that--

(i) the post on which he is working is a duly sanctioned post; and

(ii) he holds the qualifications for the posts of Reader as prescribed in the statutes at the time of his provisional appointment as Reader;

The substantive appointment of such a person as Reader shall take effect from the 14th November, 1980 but he shall be senior to those who are promoted as

Reader under these statutes. The existing inter se seniority amongst Readers who were appointed without reference to the Bihar Public Service Commission shall not be affected.

11. According to the Learned Counsel, in view of the Proviso appended to the aforementioned Rule 10, the petitioner was entitled to be appointed as a Reader with effect from 14th November, 1980 in terms thereof, he was to rank senior to respondent Nos. 4 to 6, inasmuch as, they had been given their personal promotion as Reader in terms of the said Statute.

12. Mr. Prasad has further submitted that in view of the fact that the petitioner was senior to the respondent Nos. 4 to 6 in the substantive post of Reader, the Respondent-University has acted illegally and without jurisdiction in promoting the respondent Nos. 4 to 6 in the post of University Professor with retrospective effect, inasmuch as, thereby the petitioner's seniority has been affected.

The Learned Counsel, in this connection, has relied upon the decision of this Court in *Dr. Birendra Kr. Sinha and Ors. v. The State of Bihar and Ors.* 1986 PLJR 925 and in *State of Bihar and others Vs. Sri Akhouri Sachindra Nath and others*, and has contended on the basis thereof that such orders of promotion passed in favour of the respondent Nos 4 to 6 with retrospective effect would be violative of Articles 14 and 16 of the Constitution of India.

13. The learned Counsel has further submitted that even on merits the respondent Nos. 4 to 6 cannot be said to have completed a period of 16 years in service as Lecturers so as to entitle them to be promoted to the post of University Professor on the basis of the aforementioned Statute inasmuch as their seniority has been counted in violation of Rule, 11 of the Rules for determination of seniority.

14. The said Rule 11 reads as follows:

For the purpose of determining the inter se seniority of teachers of constituent Colleges, which were previously affiliated colleges two-thirds of the length of services rendered in such affiliated colleges with effect from the date they joined it on substantive basis till the college became a constituent unit shall be taken into account.

15. It was further submitted that from a perusal of the Statutes from promotion of Lecturers as Readers, it would appear that only a lecturer serving in University Department or in a Degree College managed and maintained by the University could be promoted to the post of Reader.

16. According to the learned Counsel as evidently the respondent Nos. 4 to 6 did not complete 13 years" of completed service as a Lecturer in the University, they could not have been promoted to the post of Reader at all.

It was also contended that as the said respondents could not have been promoted to the posts of Reader, consequently they could not have been

promoted to the posts of University Professor.

17. It was next contended that in any event, the respondent No. 6 having been appointed only on ad hoc basis, could not have ranked senior to the petitioner.

18. Mr. A. Sahay, the learned Counsel appearing on behalf of the respondent Nos. 4 to 6, on the other hand, submitted that the petitioner should be held to be stopped and precluded from questioning the order of promotion of the said respondents inasmuch as the petitioner himself had been promoted to the post of University Professor on the basis of the aforementioned Statute governing the rules for grant of personal promotion on the basis that he had also completed 16 years of service as Lecturer/Reader.

19. The learned Counsel further submitted that on the basis of the averments made by the petitioner himself in his writ application as also in other affidavits, it would appear that the petitioner has not even completed 16 years of continuous service as Lecturer inasmuch as he also worked as a Lecturer in affiliated Colleges, namely, Yogada Satsang College and Marwari College, Ranchi.

The learned Counsel next submitted that in that view of the matter, the petitioner should not be permitted to blow hot and cold at the same time.

20. The learned Counsel further drew my attention to the fact that the petitioner in his writ application itself has prayed for issuance of a writ of or in the nature of mandamus directing the respondents to condone the break of his services, which would be contrary to Rule, 11 of the Statute framed by the University.

It was further submitted that the Statute for promotion of Lecturers as Readers would not stand as a bar in the matter of promotion of the respondents 4 to 6 inasmuch as under the new Statute, the only requirement is that the incumbent must have completed 16 years of continuous service as Lecturer and/or Reader in any one Degree Colleges or in any University.

According to Mr. Sahay, the new Statute does not say that 16 years of service must be in University Department or a Degree Colleges managed and maintained by the University.

It was submitted that the word "maintained and managed" by the University loses all its relevance in the instant case inasmuch as, the respondent Nos, 4 to 6 at the time of their promotion were admittedly posted in constituent colleges.

20. Mrs. I. Sen Choudhary, the learned Counsel appearing on behalf of the University submitted that in terms of Statute of the University, the petitioner is not entitled to any condonation of the breakage in services.

The learned Counsel further drew my attention to Annexure-17 to the writ petition for the purpose of showing that the Syndicate has already adopted a Resolution that even in a case where break in service is condoned, such employee shall have no claim of seniority over others. However, the period of condonation will only count towards increments.

The learned Counsel further drew my attention to the letter dated 4/5th March, 1965, Annexure-1 to the writ application and submitted that from a perusal of the said letter, it would appear that the petitioner was appointed as a whole time Research Scholar on a Scholarship of Rs. 200 per month and thus the question of counting of the period during which the petitioner worked as a Research Scholar for the purpose of computing seniority does not arise.

21. It was further submitted that the petitioner had been suspended on the charges of misconduct and thus it cannot be said that he has an unblemished records of service.

It was further submitted that in the case of respondent Nos. 4 and 5, Rule 11 aforementioned will have no application after coming into force of 1980 Statute.

22. In this case certain facts are admitted. The petitioner was appointed as a Reader with effect from 9-11-1981 on the recommendation of the Selection Committee (Annexure-11). He confirmed as a Reader with effect from the said date. The petitioner was promoted as a University Professor, by a notification dated 1-9-1989 with effect from 24-1-1989 (Annexure-15/B).

23. The respondent No. 4 had been promoted to the post of Reader on 9-11-1981 with effect from 14-2-1981 (Annexure 33 of the second Supplementary Affidavit). The respondent No. 4 had been promoted to the post of University Professor, by a notification dated 5-2-1990 with effect from 1-2-1985.

So far as respondent No. 5 is concerned, he was promoted to the post of Reader by a notification dated 7-7-1983 with effect from 7-7-1982. By a notification dated 5-2-1990 (Annexure-25), he was promoted to the post of University Professor with effect from 7-7-1985.

The respondent No. 6 was promoted to the post of Reader, by a notification dated 7-7-1983 with effect from 15-11-1980 (Annexure-27). By a notification dated 20th December, 1988 (Annexure-28/A), he was promoted to the post of University Professor with effect from 1-2-1985.

The Legislature of the State of Bihar enacted the Bihar State Universities (Universities of Bihar, Bhagalpur and Ranchi) Act, 1960 in order to establish and incorporate affiliated-cum-teaching Universities at Muzzafarpur, Bhagalpur and Ranchi.

Section 2(p) of the said Act defines "teacher" as including Principal, University Professor, Reader, Lecturer and Demonstrator.

In terms of Section 30(i) of the said Act, a Statute could be framed, inter alia, in relation to the number, qualifications, grades, pay and conditions of service of teachers officers and other servants of the University including the creation of new posts, after considering the recommendations of the Syndicate, in the case of posts of teachers and the other servants of the University.

Section 48-A of the 1960 Act, provides for establishment of a University Service Commission for affiliated colleges not belonging to the State Government and its powers and functions.

Section 48-A (8) and (10) of the said Act reads as follows:

48 (A) (8): Establishment of a University Service Commission for affiliated colleges not belonging to the State Government and its powers and functions:

(1) (2) (3) (4) (5)
(6) (7) (8) The Commission shall, wherever feasible, recommend to the government to every post of teacher of the college names of two persons arranged in order of preference and considered by the Commission to be the best qualified therefor.

(9) (10) Notwithstanding anything contained in the preceding subsections, it shall not be necessary for the governing body to consult the Commission if the appointment to a post of teacher is not expected to continue for more than six months and cannot be delayed without detriment to the interest of the college;

Provided that if it is proposed to retain the person so appointed in the same post for a period exceeding six months or to appoint him to another post in the college the concurrence of the Commission shall be necessary in the absence of which the appointment shall be deemed to have been terminated at the end of six months.

(emphasis supplied)

In terms of the provisions of the said Act, Statutes were framed by the University.

The relevant provision of the States are referred to hereinbelow:

Article 171(14) (c) and (D):

Except in the case of colleges owned and maintained by Government and subject to such directions as may be issued by the Syndicate from time to time and subject to the laws of the University, the governing body of every admitted college shall deal with the following matters:

(a) (b) (c) Determination of the cadres and grades of employees other than teachers, creation, suspension and abolition of posts, fixation of the emoluments and the terms of the employees of the college;

(d) Appointment of all staff in accordance with the Act and the Statutes and the rules drawn up for the purposes.

Article 178(1). "All appointments of teacher in admitted colleges shall be made by the governing body of the college concerned on the recommendation of the University Service Commission and shall be subject to the approval of the Syndicate. No such appointments shall be approved unless;

- (a) the post exist or the Vice Chancellor is satisfied that its creation is necessary;
- (b) the claims of teacher, possessing the requisite qualifications and serving in a lower grade in the college for promotion have been examined and rejected;
- (c) the vacancy was duly advertised, except where promotion recommended;
- (d) the person appointed possesses the minimum qualifications prescribed for the post; and
- (e) the appointment was made by the Governing body at its meeting.

Article 179.--The Syndicate shall, after due consideration and enquiry if any, communicate its approval or disapproval of any or on such appointment to the Secretary concerned (with a copy to the Principal of the College) within two months of the receipt of the information. No teacher shall be allowed to join substantive post unless his appointment has been previously approved by the Syndicate.

Article 181(1).--Every substantive appointment to the teaching staff shall be made by the Governing body, on the recommendation of the University Service Commission, on probation for one year and if, at the end of one year of active service as probationer, the appointment is confirmed, the engagement of the teacher shall not be terminated except on ground of inefficiency, or gross negligence of duty, or infirmity, whether mental or physical, or conduct involving moral turpitude or for any other good and sufficient cause, which makes his retention as a teacher in the college undesirable.

Article 211(4)(c).-The Vice-Chancellor shall with the approval of Chancellor, decide whether the post is to be filled by promotion or by direct recruitment after proper advertisement. Before taking such decision, the Vice-Chancellor, in consultation with the Dean of the Faculty concerned and such other experts from amongst the teachers of the University as he may deem fit, in respect of teaching posts and in consultation with whatever experts he may select in respect of other posts, shall determine if any further specialized qualifications in addition to those prescribed in the Statutes should be laid down for the particular post; and in deciding whether the Post is to be filled by promotion or by direct recruitment further specialised qualifications, if any, shall be kept in view.

23 The aforesaid 1960 Act was repealed and replaced by Bihar State Universities Act 1976. The said Act came into force with effect from 1-4-1977.

However prior to coming into force of the said Act successive ordinances were promulgated by the Governor of Bihar in exercise of its power conferred upon him under Article 213 of the Constitution of India.

The first of such ordinances was promulgated on 23-1-1976.

24. Statute No. 9 of the Revised Statute for promotion of lecturers to Readers reads follows:

Revised State for promotion of Lecturers as Readers-(1) Notwithstanding anything to the contrary as contained in the statutes it is hereby provided that a Lecturer, serving in a University department or in a degree college managed and maintained by the University shall on the recommendation of the Selection Committee be promoted to the post of Reader subject to the following conditions:

(a) If he holds a doctorate degree (e. g. Ph. D. D. Litt. D. Dc.) he has completed at least thirteen (13) years of continuous service as a Lecturer in the University, or

If he does not hold a doctorate degree, he has completed at least eighteen years of continuous service as a lecturer in the University:

Provided that the period of teaching experience below degree standard shall not be included, but if a lecturer is transferred from one university to another u/s 67/70 of the Patna/Bihar State Universities. Act, 1976. the continuous service by him in the other University will also be counted subject to such conditions, if any, as may be imposed in the Chancellor's orders.

(b) He holds substantive appointment on the post of lecturer.

(2) Such a promotion shall deemed to be a personal promotion. It shall not be automatic selection Committee on consideration of academic. C.C. Rolls of the Lecturer concerned:

Provided that where C.C. Rolls have not been maintained before implementation of these statutes the cases of Lecturers who are eligible for promotion on the date of implementation of this statute, shall be considered by the University Selection Committee on the basis of academic achievements and the certificate from heads of University Department or Principal of colleges concerned in regard to the satisfactory service of the same has been screened by a committee appointed by Vice. Chancellor for the purpose:

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

(3) Promotion to the post of Readers under the above clause shall be admissible only in the faculties in which the fifth plan UGC scale of pay have been implemented by the University, but a lecturer who did not opt for the UGC Scale of pay shall also be eligible to be considered for promotion to the post of Reader under these Statutes in the old scale of pay i. e. Rs. 850-1250.

(4) Where a lecturer is promoted to the post of a Reader such a promotion shall take effect from the date on which the lecturer entered 14th or 19th year of qualifying service as the case may be or from the date of implementation of these statutes, whichever is later.

(5) The case of a Lecturer, who is not recommended by the University Selection Committee for promotion may again be considered for promotion after a period

of one year he elapsed since his name was last considered. The promotion in such a case shall take effect from the date of the recommendation of the University Selection Committee.

(6) The post of the lecturer, who is promoted to the post of Reader, shall be deemed to be upgraded with effect from the date of such promotion and shall remain upgraded as such till the incumbent continuous to hold post, but the same shall be converted in the post of Lecturer in the event of his appointment to a higher post or when the post falls vacant due to his retirement, resignation, death or otherwise. Nothing in these statutes shall be construed to have created any vacancy on the post of lecturer on promotion of the lecturer to the post of Reader.

(7) The upgraded post shall be deemed to be a substantive post till the promotee holds it, but any temporary vacancy on the post on account of the promotee being on foreign service or officiating or holding another post on temporary basis shall be that of lecturer.

(8) A lecturer who is promoted as Reader, shall from the date of promotion, draw his pay in the Reader's scale which shall be equal to the amount of his pay in the lecturer's scale but if his pay in the lecturer's scale shall be fixed at the stage not above the amount of his pay in the lecturer's scale. The date of increment in the Reader's scale shall be the same as that in the lecturer's scale.

(9) The seniority on the post of Reader shall be determined from the date of promotion but the inter se seniority of the lecurers promoted as Readers on the same date shall be the same as they had on their posts as lecturers.

(10) Appointment to posts higher than that of Reader and other post of teachers including duly created posts of Readers shall continue to be made only on the basis of the prescribed qualifications and in the manner prescribed in the Act and the Statutes;

Provided that a person who was appointed as Reader against a duly sanctioned post without obtaining the recommendation of the Bihar Public Service Commission and has been continuing as such on the post may be appointed to that post on substantive basis with the approval of the University Selection Committee on the basis of his academic achievements and satisfactory service subject to the condition that:

(i) the post on which he is working is a duly sanctioned post; and

(ii) he holds the qualifications for the posts of Reader as prescribed in the statutes at the time of his provisional appointment as Reader;

The substantive appointment for the posts of Reader shall take effect from the 14th November, 1980 but he shall be senior to those who are promoted as Reader under these statutes. The existing inter se seniority amongst Readers who were appointed without reference to the Bihar Public Service Commission

shall not be affected.

(11) The Registrar of the University with the approval of the Vice Chancellor shall place a list of eligible candidates giving required information about them along with all the relevant papers including service records and or CC 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 placed before the University Selection Committee and the recommendation of the University Selection Committee shall be placed before the Syndicate at its next meeting for orders.

(12) These statutes shall come into force with effect 24th of October, 1981.

25. From a plain reading of the aforementioned Statute at the first flush the submission of Mr. Prasad appears to be very attractive. However, if the same is given a literal meaning it would lead to an absurdity and further defeat the very purpose and object of framing of the Statute itself.

There may be three types of lecturers i.e.:

(1) Who had been appointed by the University and was posted in a constituent college and, or any department of the University and had been working throughout:

(2) a lecturer might have appointed as against a sanctioned post in a college when it was a privately managed institution, but, the same became a constituent unit of the University:

(3) a person is appointed in a minority or any other recognised college which is affiliated to the University itself and throughout his career he remains an employee of such an organization.

26. In respect of all the teachers who were appointed as lecturers in category I aforementioned, there does not appear to be any difficulty. In relation to the teachers who are appointed in a minority or any other private Institution would be governed by the provisions of the University Statute and in relation to such an employee. Article 187 shall apply which reads as follows:

Teachers of admitted colleges shall for purposes of promotion, increment, seniority, leave, lien, travelling halting and other allowances be given the same benefit and be subject to the same rules as may be admissible for teachers in the service of the university; provided that where special grades, increments and salaries have been provided in these statutes they shall apply for the purpose of calculation.

27. This aspect of the matter has recently been considered by this Court in *Shri Gopaljee Sahay v. State of Bihar and Ors.* being CWJC No. 1409 of 1991 (R) disposed of on 26th March, 1992, where the statements made at the bar in that case had been taken into consideration that even the teachers who throughout

his career had been working in a privately managed Institution and/ or a minority Institution affiliated to a University would be entitled to the same benefits with regard to personal promotion; the only difference being whereas they would be designated as "College Professor" which is equivalent to the post of Reader and, thereafter, they would be promoted to the post of University Professor.

28. In that case, K. N. Prasad is himself appearing for the petitioner thereof. It may be profitable to notice the following from the judgment of the aforementioned case:

The petitioner has contended that in view of the resolution dated 19-1-1976 which is contained in Annexure 1 to the writ application, a Professor of a Degree College is equal in rank to a Reader of the University. The petitioner was promoted to the post of College Professor in the year 1977. In 1977, the scale of lecturer was Rs. 700 to Rs. 1600 and that of the College Professor was Rs. 1200 to Rs. 1900.

The Ranchi University made a Statute in the year 1988 whereby a policy decision was that a Reader on completion of 8 years of service would be entitled to promotion as University Professor...

29. In that case, it was found:

Section 59 of the Bihar State Universities Act, 1976 provides that relationship between an affiliated College and the University shall be governed by the Statute. Sub-section (5) of Section 59 of the said Act empowers University to regulate conditions of service of teachers of such colleges including the grant of leave with or without allowances and the constitution of pension insurance and provident funds for the benefit of such teachers.

30. Although, the said case related to matter relating to retirement benefit, but in my opinion, the same principles shall apply in the present case, as Article 187 of the relevant Statute governs the matter of promotion also.

31. It is, therefore, evident that whereas the teachers who had initially been appointed in a University or in a degree college of the University would be entitled to promotion in terms of the aforementioned Statute and further in respect of even a lecturer who had been serving in a private/minority Institution would also be entitled to the same benefit, but a teacher who had been appointed in a privately managed Institution and recognised by the University would not be entitled to derive the same benefit only because the said college becomes a constituent unit of the University in the event the contention of Mr. Prasad is accepted. Such a contention would lead to an absurdity and would be unduly harsh and unreasonable.

32. It is, therefore, clear that if so construed. Rule 9 as such would become ultra vires the Constitution of India. In this view of the matter, in my opinion, a reasonable construction of the said Statute No. 9 has to be put. Upon a

reasonable construction, therefore, in my view, what would be necessary for a teacher to obtain personal promotion from the post of lecturer to the post of Reader is that at the relevant time he must be serving in a University or in a degree college managed and maintained by the University. It is not necessary that he, throughout his career, must be serving either in a University department or in a degree college managed and maintained by the University. A teacher, thus, would become entitled to promotion on the basis of the qualification he possessed at the time when he became eligible for being considered therefor.

33. It is not in dispute that respondent Nos. 4 to 6 at all material times had been serving the degree college managed and maintained by the University. It is further relevant to note that all such personal promotions are not automatic but the same has to be on the basis of the recommendations of the University Selection Committee.

34. It is also not in dispute that all teachers were employed in a University or a private Institution would be entitled to such scales of pay as has been recommended by the University Service Commission.

35. In this view of the matter, in my opinion, it is not possible to accept the submission of Mr. N. K. Prasad to the effect that respondent Nos. 4 to 6, in view of the provisions contained in Statute No. 9 aforementioned were not entitled to be promoted to the post of Reader at all. However, there cannot also be any doubt that their promotion would be subject to the approval of the University Selection Committee and other terms and conditions laid down therein.

36. It is true that cadre of Readers and cadre of University Professors are different. Therefore, accordingly where a person enters into the service in a particular cadre, he cannot rank junior to others who were below him in that cadre. Ranchi University Statute, which has the force of law, however, makes a provision for grant of personal promotion. Such a promotion is not regular in the sense that thereby only posts are upgraded in respect of such a teacher who is qualified therefor. A Reader, when directly recruited holds a substantive post in so far as upon his retirement, the said vacancy itself has to be filled up; whereas in a case of personal promotion in terms of Statute No. 9 aforementioned, lecturers were only given personal promotion by way of upgradation of posts and thus in the event of his retirement/resignation, the vacancy caused thereby which would be required to be filled up would be that of a lecturer and not that of a reader.

Such a personal promotion is possible by reason of the provisions in Statutes or rules having the force of a Statute.

37. Personal promotion is granted subject to the fitness and other conditions which may be laid down in the Statute a teacher not by way of a promotion in regular course i.e. need based promotion but because of his long and continuous service of concern working in a particular post. The petitioner himself has been promoted to the post of Professor by way of personal promotion. Had the

University considered that he was directly appointed as a Reader, he would not have become entitled to promotion at all to the post of University Professor. The petitioner himself became a University Professor only on the basis that he has completed the minimum qualification of working as a lecturer, that is, 25 years of service. In such a situation, in my opinion, as the respondent Nos. 4 to 6 have the same qualification as that of the petitioner and in view of the fact that the same rules have been made applicable to all of them, the petitioner is estopped and precluded from contention that the respondent Nos. 4 to 8 could not have been promoted to the posts University Professor. In any event constitutionality of the said rule is not in question.

38. In *Dr. Birendra Kumar Sinha and Ors. v. State of Bihar others*, reported in 1989 PUR 925, this Court held as follows;--

Coming to the next question as to whether it was open to the State Government while issuing notification dated 14-6-1978 to say that the merger of the two branches of the service shall be effective from 1-1-1977. So as to affect the rights of persons including the petitioners 1 to 4 and 6 who had already entered into the senior branch of class II service through direct recruitment, it needs deeper examination. It is well known that it is open to the State Government to issue any order to give any benefit to its employee from a retrospective date. But this right is subject to a restriction that while bestowing any benefit to a class of employees from a retrospective date the right of others, who are members of that very service is not affected. This principle has to be applied even in cases where such benefits are made available through statutory provisions. As such whenever a decision is taken to give benefit of seniority to a class of employees from retrospective date, then such decision must stand the test of Articles 14 and 16 of the Constitution, that it is not affecting the persons, who are already in the service.

39. Similarity in *State of Bihar and others Vs. Sri Akhouri Sachindra Nath and others*, , it has been held that amongst the members of the same grade, seniority is reckoned from the date of their initial entry into the service.

40. In the aforementioned cases, this Court as also the Supreme Court of India had been dealing with the service Rules applicable in the respective cases. In that case the question of grant of personal promotion did not arise for consideration.

41. In the instant case, there are different sources of appointment to the posts of reader one of them being on his completion of certain years of service in terms of the Statute.

42. Similarly a teacher also becomes entitled to a personal promotion to the post of Professor if he fulfils the minimum requirements thereof. Promotion on merits and personal promotions by way of upgradation of posts therefore, stand on a different footing. Grant of personal promotion by way of upgradation of post on fulfilment of requirements thereof, in my opinion, cannot be said to be violative

of Articles 14 and 16 of the Constitution. In any event, as noticed hereinbefore, vires of Revised Statute of Rule 9 has also not been questioned by this petitioner.

43. So far as the matter relating to condonation of breakage of service is concerned, the same is a matter which in my opinion, should be taken into consideration by the University itself. The petitioner, therefore, may file a representation before the authorities of the University. Who shall take into consideration the said aspect of the matter and pass an appropriate order in accordance with law.

44. Further from a perusal of Annexure 24 it is evident that the orders of promotion have been passed on purely provisional basis and in anticipation of the recommendation of the Bihar Public Service Commission. Thus, the appointment of the petitioners in the post of Reader and/or University Professor is subject to the final recommendations of the Bihar Public Service Commission. The Bihar Public Service Commission while granting such orders of promotion therefore would also be entitled to take into consideration as to whether respondent No. 6 and particularly respondent No. 6 could have been promoted with retrospective effect or not. However, so far as petitioner is concerned, he is confirmed in the post of Reader.

45. At this juncture, it is relevant to consider the Rule for determining seniority of the teachers of the Ranchi University which has been adopted by the Syndicate on 10th November, 1969.

Rules 6 of the said reads as follows:

Any advance increment given subsequently in the same cadre and in the same pay scale shall not count for determining seniority.

Rule 9 of the said Rule read as follows:

All permanent employees shall be senior to all temporary employees and all full time employees shall be senior to all part time employees in the similar ranks.

46. It is, therefore, clear from the aforementioned Rules that unless and until the services of the respondent No. 6 are regularised either by grant of approval upon obtaining concurrences of the Commission, he cannot rank senior to the petitioner.

47. In *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, , LM Sharma, J. speaking for the Constitution Bench held:

Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

48. It is not the case of the respondent Nos. 4 to 6 that their services have been regularised in accordance with Rules. Unless the same is done, evidently in terms of the aforementioned decision itself, the respondent Nos. 4 to 6 shall rank junior to the petitioner.

49 In *Rajbir Singh and others Vs. Union of India and others*, , the Supreme Court held as follows:

It is well settled by several decisions of this Court that an appointment against a purely temporary and ad hoc or fortuitous post does not entitle the holder of the post to be a member of the service and as such, such fortuitous or ad hoc appointment does not entitle the holder of the post to get the benefit of the period of such ad hoc or fortuitous service. Nevertheless, if a person is appointed against a substantive vacancy and is subsequently promoted to continue on ad hoc basis to hold such, posts for a number of years, then, in that case, the appointment though made on ad hoc basis has to be taken into consideration in reckoning the seniority of the holder on that basis. In the instant case, there is whisper on the part of the Railway Authority that the appellants who are already members of the service by being appointed in Class IV posts since 1971 and subsequently promoted in 1975 on ad hoc basis after holding regular tests and finding them qualified to be promoted and has actually been regularised and promoted in Class-III service and their services were subsequently regularised in the said posts in 1986. In such circumstances, it cannot be said that such ad hoc service for a period of about 11 years will not be taken into account in determining the seniority of the holder of the Class III post, i.e., the appellants.

50. In the instant case, the actual services rendered by the respondent Nos. 4 to 6 as readers commenced from the respective dates as noticed hereinbefore. Their services have not yet been regularised.

The University, the University Service Commission and the State of Bihar who are competent authorities have not yet approved the promotion of the respondent Nos. 4 to 6 as yet to the post of Professor far less their promotion with retrospective effect.

51. The respondent No. 6 has not yet derived any legal right to hold the said post of reader as also the post of Professor inasmuch as his appointment as reader has not been, regularised and further he has been promoted to the post of Reader on ad hoc basis and subject to concurrence by the College Service Commission.

52. For the reasons aforementioned, this writ application is allowed in part and it

is directed that the petitioner would be treated to be senior to respondent No. 6 so long his appointment as a Lecturer and that too with u retrospective effect is not concurred by the University and the University Service Commission as also the order of his promotion as a Reader.

53. Before parting with this case, it may be mentioned that the concerned authorities who are competent to decide the matter namely University, University Service Commission and the State of Bihar should pass appropriate order with regard to the grant of approval and concurrence of the posts, without in any way being prejudiced by the observations of this Court.

54. It has been noticed by this Court in many cases that the authorities under the Statute and particularly the Commission sits over such matter for a long time. Such delay in the matter of concurrence of promotion given to the lecturers in the post of Readers or Professors sometimes cause undue hardships to the promotes as also to others.

The Commission being a statutory authority is expected to act reasonably which in turn means to act within a reasonable time.

55. In this view of the matter, the University the State and the Commission are hereby directed to finalise the matter of promotion of the petitioner and rerpondenl Nos, 4 to 6 as early as possible and preferably within a period of two months from the date of receipt of a copy of this order.

56. However, in the facts and circumstances of the case, there will be no order as to costs.