

(1998) 02 AHC CK 0133

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 21723 and 22240 of 1995

Dr. Mrs. Krishna Srivastava and Others

APPELLANT

Vs

State of U.P. and Others
Dr. Satyendra Singh Yadav
and Others Vs Chancellor, Allahabad University and Others

RESPONDENT

Date of Decision : 20-02-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 30(1)
Court (Allahabad High Court) Rules, 1951 — Rule 7
General Clauses Act, 1897 — Section 2(13), 3(10), 3(13), 5(1), 5(3)
Uttar Pradesh General Clauses Act, 1904 — Section 4(10), 5(1), 5(2)
Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 — Ordinance 5, 1(2), 12, 15, 15(1)
Uttar Pradesh State Universities Act, 1973 — Section 18, 19, 2(18), 2(19)

Citation : (1998) 2 UPLBEC 1280

Hon'ble Judges : D.K. Seth, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : S.P. Gupta, Ashok Khare, Shailendra, C.P. Gupta, Neeraj Tripathi and Keshri Nath Tripathi, for the Appellant; R.N. Singh, A.A.G., V.B. Singh, P.S. Baghel, R.N. Jain, Vinod Mishra and K.K. Rai, for the Respondent

Final Decision : Disposed Of

Judgement

D.K. Seth, J.—These group of writ petitions have been heard together by the consent of parties since common questions of law and facts are involved in these cases. They are being disposed of by common judgment.

2. After referring to the common facts, we shall refer to the scope of the respective writ petitions separately. The common facts giving rise to the respective cases are summarised as hereinafter.

3. Some vacancies in the post of Readers, Lecturers and Professors arose in the Allahabad University before June, 1993. On 15.6.1993 applications were invited through public advertisements (Annexure-1, 1A and IB) for 8 posts of Lecturers and 4 posts of Readers and one post of Professor in the Department of Chemistry

in the said University. The Petitioners (in writ petition No. 21723 of 1995), hereinafter referred to as the petitioners, were called for interview by letters issued on 26.11.1993. The interviews were held between 12.12.1993 and 15.12.1993. The recommendation of the Selection Committee, excepting that of Dr. Dinesh Mani (petitioner No. 8), was accepted by the appointing authority (Executive Council) in its meeting dated 3.3.1994. Nine out of 10 petitioners joined the posts of Lecturers and Readers respectively on 4.3.1994. On a reference u/s 31(8) of the U.P. State University Act, 1973, the Chancellor approved the name of Dr. Dinesh Mani (petitioner No. 8) on 27.6.1994 (Annexure-15). The appointments of the petitioners excepting that of Dr. Dinesh Mani (petitioner no. 8) were confirmed on 4.3.1995. Subsequently the appointment of the petitioners were cancelled by the State Government by an order dated 3rd July/8th August, 1995 (Annexure-11) in exercise of the power u/s 6 of the Act No. 4 of 1994 and a notice of termination of service dated 7.8.1995 (Annexure-5) were issued to them. These orders have given rise to the writ petition No. 21723 of 1995 filed on 11.8.1995.

3.2. Pursuant to the interim order dated 11.8.1995 passed in the said writ petition No. 21723 of 1995, hereinafter referred to as the first writ petition, the Special Secretary, Higher Education afforded oral hearing to the petitioners on 25.8.1995, on the basis of the petitioners' representation (Annexure-7). The Special Secretary, submitted his report (Annexure-9) on 11.10.1995. The Governor also gave an audience to the petitioners on 13.11.1995. It is alleged that no order has been passed. The petitioners challenged the said report by means of amendment since allowed Dr. Krishna Srivastava, the petitioner No. 1 alone filed yet another writ petition being No. 8265 of 1996 challenging the self same report.

3.3. Apart from the petitioners one Sri T. Padarsami and Sri S. Sunderson were also selected in the same process for two other posts of Readers. But they did not join. Therefore, in February, 1995, the said two posts were advertised. The names of Dr. A.P. Mishra and Dr. Alok Srivastava, figured in the waiting list prepared in the same process through which the petitioners were selected. On their representations, the Chancellor by his order dated 6.6.1995 (Annexure-14) directed the University to appoint them in the said two posts since advertised. But this order having not been complied with, writ petition No. 19104 of 1995 was filed on 17.7.1995 by Dr. A.P. Mishra and Dr. Alok Srivastava. The said writ petition was allowed by this Court on 16.8.1995. But the said judgment was reversed by the Hon'ble Supreme Court through a judgment dated 16.12.1995 in Civil Appeal No. 16988 of 1996.

3.4. Dr. Satyendra Prasad Yadav and Dr. Vimla Vyas (petitioners in writ petition No. 22240 of 1995) had also appeared in the interview held between 12.12.1993 and 15.12.1993. But they were not selected. The reference to the Chancellor u/s 68 of the U.P. State Universities Act, 1973, against the selection of the petitioners, at the behest of Dr. S.P. Yadav and Dr. Vyas and others, was rejected

on 30.4.1995. Challenging the said order Dr. Yadav and Dr. Vyas filed writ petition No. 22240 of 1995. This writ petition was heard alongwith writ petition No. 21723 of 1995.

4. Thus, in writ petition No. 21723 of 1995, the order dated 3rd July/8th August, 1995 (Annexure-11) and the report dated 11.10.1995 (Annexure-9) have been challenged by the petitioners. Whereas in writ petition No. 22240 of 1995, the said Sri Satyendra Singh Yadav and Smt. Vimla Vyas had challenged the order dated 30.4.1995 passed by the Governor rejecting the reference u/s 68 of the U.P. State Universities Act, 1973. In the third writ petition No. 3255 of 1996, Dr. (Mrs.) Krishna Srivastava petitioner No. 1 in writ petition No. 21723 of 1995 alone has challenged the order dated 7.8.1995 and the report dated 11.10.1995. Originally in writ petition No. 21723 of 1995, the report dated 11.10.1995 was not challenged but the said report was brought under challenge in the said writ petition by means of amendment. Thus the third writ petition appears to be a second writ petition in respect of the same cause of action between atleast one of the same petitioners and same set of respondents. Therefore, by reason of provisions contained in Chapter XXII, Rule 7 of the High Court Rules, the second writ petition would not lie. Rule 7 provides that a second writ petition would not be competent where an application has been rejected. In the present case first application had not been rejected. But that would not improve the situation. Since it is against the public policy to maintain two writ petitions even though the first one is not rejected between the same party on self same fact and cause of action, filing of successive writ petitions on the same fact has been held to be an abuse of process of Court as well as against public policy in the case of *S. Tripathi v. Banaras Hindu University* (1993) 1 UPLBEC 448. Therefore, the third writ petition being writ petition No. 3265 of 1996 is being dismissed as not maintainable.

5. In writ petition No. 22240 of 1995 filed by Shri Satyendra Singh Yadav and Smt. Vimla Vyas, the petitioners therein along with the said Shri Alok Srivastava and Dr. A.P. Mishra are parties. The writ petition Nos. 21723 of 1995, 22240 of 1995 and 3265 of 1996 were heard together and the judgments thereon were reserved. The third writ petition is being held to be not maintainable as observed earlier. The learned Counsels for each sets of parties had addressed the Court on the points raised in the respective writ petitions. Since all the parties were aware of the case of each other and addressed the Court, as such without any demur the questions of challenge raised are being decided by the common judgment.

6. For the sake of convenience, we take up both the writ petitions together since the questions involved are inter-connected and inter-dependent upon each other.

7. Learned Counsel Mr. S.P. Gupta assisted by Mr. Ashok Khare had supported the case of the petitioners in writ "petition No. 21723 of 1995. Learned Counsel Mr. Shailendra supported the case of Dr. (Mrs.) Krishna Srivastava, petition in writ petition No. 3265 of 1996. Dr. (Mrs.) Krishna Srivastava is also petitioner No. 1 in writ petition No. 21723 of 1995. On the other hand, learned Counsel Mr. R.N.

Singh made submissions on behalf of Dr. Satyendra Prasad Yadav and Smt. Vimla Vyas, petitioner in writ petition No. 22240 of 1995. Learned Additional Advocate General appeared on behalf of the State Government. He adopted the arguments advanced by Mr. R.N. Singh. Learned Counsel for the University had supported Mr. R.N. Singh. The learned Counsel for both sides had advanced erudite arguments. We propose to deal with the respective arguments as are necessary for deciding the case at hand at appropriate stages.

8. In order to answer the respective questions raised in these cases it will be helpful to refer to respective provisions of the relevant Acts and Ordinances briefly, with reference to the facts of this case.

9. By the Ordinance No. 2 of 1993 an amendment was sought to be brought in the U.P. Public Service (Reservation for Backward Classes) Act, 1989 (U.P. Act 21 of 1989). By reason of the said amendment in effect only the percentage of reservation of backward classes was changed viz. from 15 and 10 per cent in respect of different group of posts, 27% was sought to be reserved for backward classes. It may be noted that the said Act covered only backward classes as mentioned in the Schedule to the said Act and did not include scheduled caste and scheduled tribe for other categories of persons which were sought to be included in the other ordinances promulgated in 1993. U.P. Ordinance No. 3 of 1993 for the first time through legislative enactment envisaged reservation of posts in favour of scheduled caste and scheduled tribe in public services and Ordinance No. 4 of the 1993 similarly made provisions for reservation in public services for physically handicapped and dependents of freedom fighters and Ex-Servicemen. All these three Ordinances Nos. 2, 3 and 4 of 1993 were promulgated on 11.12.1993. Admittedly, the vacancies occurred long before promulgation of the said ordinances. Admittedly, the advertisement was issued on 15.6.1993 namely long before 11.12.1993, but however the interview had taken place between 12.12.1993 and 15.12.1993. The U.P. Act 2 of 1993, 3 of 1993 and 4 of 1993 had received assent of the President on 29.12.1993 and were published in the Gazettee on 30.12.1993. The recommendation of the selection committee were considered by the Executive Council in its meeting held on 3rd March, 1994. Pursuant thereto, nine of the ten petitioners had joined on 4th March, 1994. Admittedly, the public services as defined in Ordinances and Acts 2, 3 and 4 of 1993 did not include services in the University or educational institution. Public service under the said three Ordinances and Acts was not defined to include the service in educational institution and University.

10. In U.P. Act No. 21 of 1989, the reservation was meant "In Public Service and posts in connection with the affairs of the State". The same definition continued with identical expression in U.P. Ordinance No. 2 of 1993. Identical expression was used in U.P. Ordinance No. 3 of 1993 for reservation "in public service and posts in connection with the affairs of the State." In U.P. Ordinance No. 4 of 1993 while reserving posts of physically handicapped etc. had used identical expression "in respect of public service and posts in connection with the affairs of

the State." These three Ordinances 2, 3 & 4 of 1993 were replaced by U.P. Act Nos. 2, 3 & 4 of 1993 respectively. The public service mentioned therein remained unchanged in the Acts replacing the Ordinances. Thus, until the promulgation of U.P. Ordinance No. 5 of 1994 the reservation under the said three Ordinances and Acts were confined to "public Services and Posts in connection with the affairs of the State." Admittedly, the said expression did not include the posts in educational institution or Universities. Ordinance No. 5 of 1994 being U.P. Public Service (Reservation for Scheduled Caste, Scheduled Tribe and other Backward Classes) Ordinance, 1994 was promulgated and published on 11.2.1994. This Ordinance sought to repeal U.P. Act No. 21 of 1989 and U.P. Act No. 3 of 1993. This Ordinance was replaced by Act No. 4 of 1994 which received the assent of the Governor on 22.3.1994 and published on 23.3.1994. Both these Ordinance and Act were given retrospective effect provided in Section 1(2) that "it shall deem to have come into force on 11.12.1993."

11. In Ordinance No. 5 of 1994 for the first time posts in educational institutions and universities were sought to be subjected to reservation by incorporating a definition in Section 2 (c) defining "public service and posts" in connection with the affairs of the State to include (iv) an educational institution owned and controlled by the State Government or which receives grants in aid from the State Government including a University established by or under the Uttar Pradesh Act, except an institution established and administered by minorities referred to in clause (1) of Article 30 of the Constitution. The definition of public services and posts appears to be inclusive. It had included the posts in local authorities, co-operative societies, Board or Corporation or statutory bodies established by or under Central or U.P. Act and owned and controlled by the State Government or Govt. Company, of which 51% paid up capital is held by the State Government and educational institution as defined above and in respect of posts on which reservation was applicable by Government Orders on the date of commencement of the Ordinance. Admittedly services and posts in the University were not subjected to reservation by any Government Order. Thus, so far as those posts which were subject to reservation under the Government Orders on the date of commencement of the Ordinance, were included within the ambit of reservation while those mentioned in other clauses are being sought to be interpreted by Mr. Singh to come into force on 11.12.1993 and therefore, the" selection in the present case is attracted within the ambit of Section 15 read with the Explanation. Whereas the petitioners seek to contend otherwise.

12. Section 15 of the Act 4 of 1994 provides a saving clause with the expression "(1) The provisions of this Act shall not apply to cases in which selection process has been initiated before the commencement of this Act and such cases shall be dealt with in accordance with the provisions of law and Government Orders as they stood before such commencement. Explanation for the purpose of this sub-section the selection process shall be deemed to have been initiated where, under the relevant service rules, recruitment is to be made on the basis of (i) written test or interview only, the written test or the interview, as the case may

be, has started, or (ii) both written test and interview, the written test has started."

13. In order to appreciate the questions raised, it would be necessary to find out first, as contended by Mr. R.N. Singh, as to whether the question" is already a *Stare decisis* and the law in respect of the question at issue has already been declared by the Apex Court in the case of *State of Uttar Pradesh Vs. Dr. Dina Nath Shukla* and another, .

14. Mr. R.N. Singh argued that the said decision in *Dr. D.N. Shukla (supra)*, squarely covers the question raised or the issued involved in this case. The ratio decidendi in the case of *Dr. D.N. Shukla (supra)*, is staring on the face of the petitioners, who, therefore, cannot raise the question again. In view of the ratio so decided in the case of *Dr. D.N. Shukla (supra)*, it is no more open to this Court to embark upon deciding the issue arising out of these cases which is concluded by the said decision and thus is the law declared by the Apex Court in view of Article 141 of the Constitution of India.

15. The questions relevant under Act 4 of 1994 was at issued in the case of *Dr. D.N. Shukla (supra)*, *Dr. Ram Niwas Pandey v. State of U.P. and Ors. (1996) 3 UPLBEC 1869*, *Dr. Anand Prakash Mishra and Ors. v. Chancellor of University of Allahabad and Ors. (1996) 1 UPLBEC 587* and in writ petition No. 1016 of 1994, decided by the Lucknow Bench on 20.3.1997 as well as in *Dr. Vipin Agarwal v. University of Allahabad*, writ petition No. 31297 of 1995, decided on 3.4.1997 [Reported in (1997) 2 UPLBEC 1122]

16. It was urged by Mr. R.N. Singh, learned Counsel for the respondents, that after the decisions in the cases of *Dr. A.P. Mishra (supra)*, and *Dr. D.N. Shukla (supra)*, there is no scope for arguing that the provisions of U.P. Act 4 of 1994 are not attracted in the case of the petitioners who had been interviewed on 12.12.1993, after the said Act has come into force on 11.12.1993 by reason of the Explanation to Section 15 of the said Act.

17. It appears to us that the case of *Dr. D.N. Shukla (supra)*, proceeds to decide an issue that emanated from an advertisement issued by the University of Allahabad on 30.1.1995 inviting applications for the posts of Professors/Readers/Lecturers including the posts reserved for Scheduled Castes, Scheduled Tribes and Backward Classes. The said recruitment was directed to be treated as a unit applying the rule of reservation in respect of all the posts by virtue of a clarification issued by the Government on 19.4.1995. It was argued in the said case that since only one post of each category was advertised, therefore, reservation would not be applicable in respect of those posts. In the said case it was held that the provisions of Act No. 4 of 1994 would very much be applicable in respect of posts and services in the University and that in case of single post the same should be subjected to the roster. Thus, in the said case, the issue was confined to the question of application of Act 4 of 1994 in respect of posts and services in the University with regard .to an advertisement which was published

on 30.1.1995. The issue involved in the present case is as to whether Act 4 of 1994 would be applicable in respect of a recruitment process or selection which had started before the enactment of Act 4 of 1994, but after the deemed enforcement thereof. This question was not at issue in the case of Dr. D.N. Shukla (supra). Therefore, the said question cannot be treated to be a *Stare decisis* as urged by Mr. R.N. Singh.

18. However, a question was raised by Mr. Shailendra that by reason of the distinction of posts and services contained in Section 2 (c) (iv) it is only the Universities established under a State Act are included within the ambit of Act No. 4 of 1994. The University of Allahabad having been established by a Central Act and not under the State Act, Act 4 of 1994 is not applicable to the said University. But, in our opinion this question cannot be raised after the decision in Dr. D.N. Shukla (supra), where in the case of the University of Allahabad it was given.

19. In as much as the definition includes-(a) Educational institutions owned and controlled by the State Government; (b) Educational institutions receiving grant in aid from the State Government; and (c) Universities established by or under a U.P. Act. Admittedly, the Allahabad University is not owned and controlled by the State Government. It is also not established by or under a U.P. Act. The qualification "which receives grant-in-aid from the State Government" qualifies educational institutions which may include University established by or under the U.P. Act. Thus, even if there could be any substance in the argument of Mr. Shailendra that Allahabad University being not a University established by or under a U.P. Act, Act 4 of 1994 may not apply, but in view of the decision in the case of Dr. D.N. Shukla (supra) and Dr. A.P. Mishra (supra), both of which are related to the University of Allahabad, the said question is no more *res Integra*. In view of the Article 141 of the Constitution of India, even if such ground was not raised and contended in the said case, it is binding on us. ;

20. Thus the said decision in the case of Dr. D.N. Shukla (supra), does not preclude this Court from venturing to decide the issue at hand excluding the one referred to in the proceeding two paragraphs.

21. Now the decision in the case of Dr. A.P. Mishra (supra), involves the fact that the name of petitioners therein were kept in the waiting list prepared through a selection initiated in December, 1993. Appointment against two of the vacancies that occurred due to the non-joining of the two of the selected candidates through the said process, were sought to be made after publishing fresh advertisement for filling up the said two posts in February, 1995. The petitioners represented to the Chancellor, who in exercise of the power u/s 68 of the U.P. State Universities Act, 1973, by an order dated 6.6.1995 directed the Vice-Chancellor to appoint the petitioners therein. On a reference made by the Vice-Chancellor by his later dated 15.6.1995, the Chancellor had referred the matter to the Law Department for opinion. On receipt of such information on 8.7.1995, the petitioners therein filed the writ petition on 17.7.1995 for implementing the

direction of the Chancellor issued on 6.6.1995. On this background the said decision proceeded to consider the case of the-petitioner"s concerned arid confined itself to the question as expressed in the said judgment namely, "the only question is whether the Chancellor, "Governor", is right in directing the appellant to appoint respondents (writ petitioners) to the posts of Readers in the Chemistry Department of the Allahabad University." While negating the claim of the petitioners therein the Apex Court had observed that "on their selection they do not acquire any vested right to be post unless the relevant recruitment rules so indicate, the State is under legal duty to fill up or any of the vacancies. The mere existence of the vacancies does not give a legal right to a candidate for appointment. The mere fact that a candidate"s name appears in the list will entitle a candidate to a mandamus that he be appointed. It is, thus, settled law that the process of selection must be in Accordance with law existing on the date of selection. Keeping candidate in the waiting list does not confer any vested right in his favour much less indefeasible right. The appropriate appointing authority is not obliged to fill up the vacancies or to appoint any candidate/ candidates waiting in the list to any resultant vacancy, due to operation of law under the Act, The Vice-Chancellor, therefore, was obliged under the Act and vested with the duty and was right in taking action to have the vacancy notified applying the Section 3 (1) of the Act for recruitment in accordance with law. There is no vested right to a vacancy of a post. Only a person was allowed to be considered according to rules inforce as on the date of consideration. The process of selection started prior to that date requires to be dealt as per pre-existing law. In the face of Section 3 (1) read with Section 15 (1) of the Act, any process for selection initiated after the commencement of the Act be in conformity with the provisions of the Act."

22. Thus the said decision did not address itself as to the applicability of Act No. 4 of 1994 in respect of the selection initiated through the interview held on 12.12.1993 through which the names of the petitioners therein were kept in the waiting list. On the other hand, it had proceeded to determine the right of the petitioners on the basis of the their names being kept in the waiting list for being considered in respect of a vacancy sought to be filled up in or after February, 1995. While considering that question, the Court had held that by reason of their name being included in the waiting list, they did not have any indefeasible right for being considered for appointment after February, 1995. Therefore, the ratio decided therein does not cover the issue involved in the present case. Then again the question in the present case was very much raised and was adverted to by the Court with the observation namely, "the Governor exercising the power u/s 6 of the Act cancelled appointments made in respect of other persons, who came to selected and appointed in violation of the Act. It would, appear that those affected persons filed the writ petition in the High Court which are pending disposal. We made it clear that we are not concerned with the above cancellation in these appeal. Therefore, the controversy thereof is kept at large." The writ petition noted in the observation admittedly is. one of the present ones namely,

the very cancellation impugned herein, referred to in the said observation.

23. Thus it appears that the decision in the case of Dr. A.P. Mishra (supra), also does not cover the question at hand and cannot be said to be a "stare decisis". The cancellation of the appointment involved in these writ petitions has been kept at large and as such can be decided on the basis of the fact and law applicable in respect thereof.

24. The decision in the writ petition No. 1016 of 1994 dated 20.3.1997, reiterated the decision in the case of Dr. R.N. Pandey (supra). The said decision did not refer either to the decision in the case of Dr. D.N. Shukla (supra) or Dr. A.P. Mishra (supra) or Dr. R.N. Pandey (supra). Since the decision in the case of Dr. R.N. Pandey (supra), is the principle source of inspiration behind the argument of Shri S.P. Gupta and Shri Shailendra, we would be dealing with the same later on. Yet, there is another case of Dr. Vipin Agarwal (supra). The said case has referred to all the decisions mentioned above and had noted the ratio decided in the respective cases. Following the decision in the case of Dr. R.N. Pandey (supra), in the said case, it was held that the provisions of U.P. Act 4 of 1994 would not be applicable in respect of the post of Readers and Lecturers but it would not be applicable in respect of the posts of Professors. The said decision made a distinction with regard to the two groups viz. post of Professor on the one hand and those of Readers and Lecturers on the other, on the basis of the order of the Apex Court dismissing the SLP arising out of Dr. R.N. Pandey (supra), affirming the decision with the expressed phrase "the case relating to the appointment of respondents-Professors." This case also deals with the advertisement published on 30.1.1995 and February, 1995. This case also does not concern itself with the issues involved in the present case namely as to whether U.P. Act 4 of 1994 would be attracted in respect of the selection process involved in the present case that had alleged to have been commenced before the enactment of Act 4 of 1994 but affair its deemed commencement.

25. A study of the above decisions reflects that in the case of Vipin Agarwal it has been held that in respect of Professors, Act 4 of 1994 would not apply, but in respect of the posts of Readers and Lecturers, the said Act 4 of 1994 would be applicable, so far as it relate to the University of Allahabad. In the case of Dr. D.N. Shukla (supra) and that of Dr. A.P. Misra (supra), the Apex Court had held that Act No. 4 of 1994 would be applicable in respect of posts and services in the University of Allahabad. No distinction appears to have been made by the Apex Court in respect of post of Professor on the one hand and the post of Readers and Lecturers on the other. However, in the case of Dr. A.P. Mishra, it was only in regard to the post of Readers. The question as to whether it would apply in the case of Professors was not gone into or decided in the said case whereas the post of Professors was mentioned in paragraph 2 of the decision in the case of Dr. D.N. Shukla (supra).

26. The distinction in the case of Dr. Vipin Agarwal (supra), was not made" by reconciling the approval of the Apex Court of the decision in the case of Dr. R.N.

Pandey (supra) and the ratio decided in the case of Dr. A.P. Mishra (supra). With great respect it may be observed that the decision in the case of Dr. Vipin Agarwal (supra), omitted to note the expression Professor existing in the case of Dr. D.N. Shukla (supra), in which no distinction has been made by the Apex Court while holding that Act No. 4 of 1994 is applicable in the case of University of Allahabad. Admittedly, the question of applicability of Act No. 4 of 1994 in the University of Allahabad on the basis of the definition of service and posts u/s 2 (c) (iv) was not consciously gone into in any of the said two decisions in the case of Dr. A.P. Mishra (supra) and Dr. D.N. Shukla (supra), nor was it germane to the issue. But whether raised or not, it seems that it was so decided. Whereas in the case of Dr. Vipin Agarwal (supra), this Court had made a distinction relying on the decision in the case of Dr. R.N. Pandey (supra), since approved by the Apex Court as mentioned above. Admittedly the issue was raised and decided in the case of Dr. R.N. Pandey (supra) and was so approved by the Apex Court using the expression "post relating to appointment of defendants-Professors." This was interpreted in the case of Dr. Vipin Agarwal (supra), to mean that the Supreme Court had approved the finding in the case of Dr. R.N. Pandey (supra), to the extent that Act No. 4 of 1994 is not applicable in respect of Professors but are applicable in respect of Readers and Lecturers.

27. Thus, the decision dated 20.3.1997 in writ petition No. 1016 of 1994 and that in Vipin Agarwal (supra), also do not stand in the way of deciding the present issued. Inasmuch as the issues involved here has not been dealt with in the said cases in the context those have been raised here.

28. On the other hand, it becomes necessary to refer to the decision in the case of Dr. R.N. Pandey (supra). The said case related to the post of Professor in the Lucknow University for which the last date of submitting application was specified as on 20.10.1993 in the advertisement published long before 11.12.1993, the interview whereof had taken place between 4.4.1994 and 22.4.1994. Two of the points involved in the said case were "(3) whether the vacancies which arise before coming into force the amendment, will be covered by the U.P. Act 4 of 1994? and (4) whether the provisions of U.P. Act 4 of 1994 does not apply to-the case of Universities, to which U.P. State Universities Act applies? The Division Bench of Lucknow Bench of this High Court had held that selection process start from the issuance of the advertisement and the selection would be governed in accordance with the existing rules or in accordance with the amended rules where the advertisement expressly provided so and in that event the condition mentioned in the advertisement shall prevail irrespective of the fact whether the vacancy arose before the rules came into force. But if the rules of provisions are silent on the point then ultimate course is that the selection process shall be covered by the rules existing on the date of advertisement.

29. It had further observed in paragraph 35 that "U.P. Act 4 of 1994 does not say that the advertisement, which had been issued prior to coming into force of this Act, shall be governed by the provisions of this Act." It was further held that by

virtue of notification issued u/s 7 of U.P. Act No. 4 of 1994 the Constitution of Selection Committee for recruitment of Professors, Readers and Lecturers to be constituted u/s 31 (4) (a) of the U.P. State Universities Act cannot be affected and the Constitution of such committee constituted after the notification u/s 7 was issued on 29.3.1994. While dealing with Section 15 and Explanation thereof in the said decision it was held that a selection u/s 31 of the U.P. State Universities Act is neither through written test nor through interview and as such the selection process was held to have started with the issue of the advertisement. Relying on Statute 11.05 of the statutes framed under the U.P. State Universities Act such conclusion was arrived at. Admittedly, the same provision governs the recruitment in respect of the Universities of Allahabad.

30. From the scheme of the Act, it appears that in order to implement the provisions thereof, certain formalities are to be complied with. According to Section 3, the percentage of reservation for the different groups mentioned therein, a roster is to be followed. Section 3 uses the expression "in public services and posts, there shall be reserved at the stage of direct recruitment following percentage of vacancies, to which recruitment are to be made in accordance with the roster referred to in sub-section (5)." There are supposed that the reservation is to be made prospectively at the stage of direct recruitment in accordance with the roster. Thus, in the absence of the roster, the reservation of percentage cannot be implemented. The roster appears to be the foundation for implementation of Section 3. Sub-section (5) of Section 3 requires the Government to issue a roster. The expression used is "the State Government shall, for applying reservation under sub-section (1), by a notified order, issue a roster which shall be continuously applied till it is exhausted." Therefore, the State Government was required to issue a roster by a notified order. The expression "shall" also requires prospectively. Section 4 requires the State Government to entrust responsibility of ensuring compliance of the provisions of the Act upon the appointing authority or any office or employee by a notified order. Therefore, the implementation can be made by the appointing authority only when they are entrusted by notification. Section 7 requires nomination of officers for giving representation to the scheduled caste, scheduled tribe and backward classes of citizens in the selection committee by order. Section 12 requires framing of Rules by notification for carrying out the purpose of the Act. Admittedly, this Act had come into force on 11.12.1993 by reason of Section 1 (2). The Ordinance No. 5 of 1994 was promulgated on 11.2.1994. Prior to promulgation of Ordinance No. 5 of 1994, admittedly, the public services and posts did not include University but by fiction of law since 11.12.1993 the public services and posts deemed to include Universities. But then until 11.2.1994 there was no scope for the selection committee to apprehend that such reservation would be applicable even in respect of the services and posts in the University. It would be wholly a situation impossible for carrying out the provisions of the Act before 11.2.1994. Whether in the absence of the required notification u/s 3 (1) or notification u/s 3 (5) or that of u/s 4 or u/s 7, the Act could be implemented

or not, is not a question germane to the issue involved, therefore, we do not propose to address ourselves on the said question. Admittedly, in Section 15 while providing savings clause, it is provided that " the provisions of this Ordinance shall not apply to cases, in which selection process has been initiated before the commencement of this Ordinance and such cases shall be dealt with in accordance with the provisions of law and Government Orders as they stood before such commencement."

31. Mr. Shailendra had sought to make a distinction between commencement of the Act and its enforcement. While Mr. R.N. Singh had pointed out that there is no such distinction and the date of coming into force is the date of commencement. Relying on Section 5 (2) of the U.P. General Clauses Act, it has been argued that there is a distinction between the date -of commencement and the date of coming into operation. It was also argued that commencement is a date on which an Act is factually promulgated and coming into operation is the date on which the Act comes into force.

32. Section 5 (2) of the U.P. General Clauses Act provides that "unless contrary is expressed, an U.P. Act shall be construed as coming into operation immediately on expiration of the day proceeding its commencement." The said provision indicates that unless it is expressed in the Act as to the date of its coming into operation, an Act comes into operation on the day of its commencement. The word "commence" according to Shorter Oxford Dictionary (1993 Edition) means "to begin an action, enter upon, make start or beginning come into operation." Word "commencement" has been given the meanings namely, action, process or time of beginning." According to Lexicon Webster Dictionary, the word "commence" means "to begin, initiate to have first existence, to begin to be, as a new State or character." Word "commencement" has been given the meaning of the act of commencing "rise of origins." In the General Clauses Act Section 3 (13) had defined the word "commencement" with the expression that "commencement used with reference to an Act of Regulation shall mean the day on which the Act or Regulation comes into force". The U.P. General Clauses Act has defined the word "commencement" in Section 4 (10) with the expression that "commencement used with reference to an Act shall mean the day on which Act comes into force. When the word "commencement" has been specifically defined both in General Clauses Act, 1897 and U.P. General Clauses Act and there being no inconsistency in the two definitions, in order to interpret meaning thereof, it is not necessary to refer to the expression used in Section 5 (2) of U.P. General Clauses Act. Similar expression has been used in Section 5(3) of the General Clauses Act. Even then interpretation sought to be given to the expression "commencement" used in Section 5 (2) of the U.P. General Clauses Act appears to be wholly misplaced. Inasmuch as Section 5 deals with the provisions as to when an enactment comes into operation when the Act has not expressed any particular day to come into operation. Section 5(1) of the General Clauses Act provides that in such cases it would come into operation on the day when it receives the assent of the President. Sub-section (3) thereof indicates

the time since when the commencement is to be construed namely on the expiry of the day proceeding the commencement which means even if assent is received in the afternoon, it is to be construed to have been commenced on the beginning of the day namely after expiry of the day proceeding. The time of the day when assent is received is immaterial. Whatever might be the time of the day receiving assent, the whole day is to be construed to be the day of commencement. Section 5 (1) of the U.P. General Clauses Act cannot be distinguished from that of Section 5(1) of the General Clauses Act. Nor can it be so distinguished in respect of Section 5(3) of General Clauses Act and 5 (2) of U.P. General Clauses Act. Therefore, no reliance can be placed on the use of expression commencement in sub-section (2) of Section 5 of the U.P. General Clauses Act for the purpose of interpreting meaning of the word "commencement" in the manner Mr. Shailendra wanted to argue. On the face of the clear expression used in Section 2(13) of the General Clauses Act and Section 4 (10) of the U.P. General Clauses Act "commencement", having been assigned the meaning of the day on which the Act comes into force, the day of actual promulgation is immaterial when the Act expressed a particular day of coming into operation. No distinction can be brought as to the day of commencement and the day of coming into operation.

33. Thus no matter whether the posts and services of the University were included or not after promulgation of Ordinance 5 of 1994 replaced by Act 4 of 1994 by fiction of law the posts and services in the University are deemed to have come within the purview of reservation on the day of its coming into force namely 11.12.1993.

34. Before embarking upon the arguments advanced by Mr. S.P. Gupta on the question of retrospectively, it would be wise to deal with the question as to whether by reason of Explanation to Section 15, U.P. Act 4 of 1994 could at all be applied to the case of the petitioners. Inasmuch as though there might be some substance in the submission of Mr. Gupta to the extent that even if the Act had come into force on 11.12.1993, the same could not have been operated or acted upon in the absence of relevant notifications u/s 3 (1), 3 (5), 4 & 7 respectively, yet it would not be necessary if the case of the petitioner could be excepted by reason of Explanation to Section 15;

35. Section 15 excludes application of the Act to the cases, in which selection process has been initiated before its commencement. The expression "initiation of the selection process" used in Section 15 (1) of the Ordinance has been explained in the Explanation to the effect that "for the purpose of Sub-section (7) the selection process shall be deemed to have been initiated when, under relevant service rules, recruitment is to be made on the basis of-(i) written test or interview only, the written test or the interview as the case may be has started, or (ii) both written test and interview, the written test has started."

36. In our considered view, the words "Sub-section (7) in the Ordinance has been misprinted instead of this sub-section". "Our view is fortified when we find

that the same stands corrected in the Explanation appended to Section 15 of the Act when it has been expressed to the extent that for the purpose of this sub-section the selection process shall be deemed to have been initiated."

37. In the instant case, admittedly there was no written test. Admittedly, the interview was held between 12.12.1993 and 15.12.1993. If simple meaning is given in that event for the present case the interview having been held after 11.12.1993, the provisions of the Act would be attracted and applicable. If it is held that the selection process is neither through written test nor through interview in that event it would be the date of advertisement, on which the selection process is said to have been initiated. By reason of the Explanation attached to Section 15, the selection process is initiated with the advertisement. Qualified meaning to initiation of selection has been brought into being by reason of the Explanation appended to Section 15.

38. Mr. R.N. Singh has not disputed the proposition that the selection process is initiated with the issued of advertisement and the law governing such selection would be the law as it stood on the date of advertisement. But according to him, by reason of the Explanation to Section 15 in the present case by reason of specific provision in the Act, initiation of the selection process is to be construed to have been initiated on the day when interview had started. According to him, the interview having started on 12.12.1993 namely after 11.12.1993 the provisions of the Act are applicable. In the case of R.N. Pandey (supra), this question has been specifically gone into and dealt with reference to advertisement which was issued before 11.12.1993 specifying last date of submission of the application as on 20.10.1993 and interview pursuant thereto had taken place between 4.4.1994 and 22.4.1994, namely not only after the promulgation of Ordinance No. 5 of 1994 but also after the enactment of Act No. 4 of 1994 and the notifications regarding roster etc. were issued. Whereas in the present case the advertisement was issued before 11.12.1993 and the last date of submission of application forms was also specified to be a date before 11.12.1993 and pursuant where to the interview had taken place between 12.12.1993 and 15.12.1993 namely even before the promulgation of the Ordinance and enactment of the Act both, of which by fiction of law came into operation on 11.12.1993. Since the same issue has been decided in the said case, the question involved in the present case is no more *res Integra*.

39. The said question has been answered in the said case in paragraphs 35 to 49 of the said decision. We are in respectful agreement with the reasons given in the said decision. Instead of repeating the reasons ourselves we would like to re-tell the same in the same voice the said decision proceeds as reproduced below:-

"35. Now, we have to see in relation to the provision of U.P. Act No. 4/94 whether the selection process would be governed by the provisions of this Act or in accordance with the rules obtaining before coming into force this Act, U.P. Act No 4/94 does not say that the advertisement which had been issued prior to coming into force of this Act, shall be governed by the provisions of this Act.

36. Section 7, as seen above, provides that where the selection committee is to be constituted either under service rules or otherwise then the State Government may provide for nomination of officers for giving representation to Scheduled Castes. Scheduled Tribes and other Backward Classes. A power has been given to the State Government to notify for nomination of these officers under this Section. The State Government had issued a notification dated .29.3.1994 providing for representation of these members in the committee.

37. According to the learned Counsel for the petitioners, Section 7 clearly provides that if the selection committee is to be constituted in accordance with the service rules only then this provision will apply. The selection committee has been constituted under the U.P. State Universities Act. Reliance has been placed on Section 31 (4) (a) of the U.P. State Universities Act to show that the Constitution of Selection Committee has been provided under the Act. This Section for the sake of convenience maybe reproduced as under:-

"31. (4) (a) The selection committee for the appointment of a teacher of the University (other than the Director of an Institute and the Principal of a constituent college), shall consist of-

(i) The Vice-Chancellor who shall be the Chairman thereof,

(ii) the Head of the Department concerned, provided that the Head of the Department shall not sit in the Selection Committee, when he is himself candidate for appointment or when the post concerned is of a higher rank than his substantive post and in that event his office shall be filled by the Professor in the Department and if there is no Professor by the Dean of the Faculty:

Provided further that where the Chancellor is satisfied that in the special circumstances of the case, a selection committee cannot be constituted in accordance with the preceding proviso, he may direct the Constitution of the selection committee in such manner as he thinks fit.

(iii) In the case of a Professor or Reader, three Experts and in any other case, two experts be nominated by the Chancellor."

38. Thus, a perusal of this Rule goes to show that the Constitution of the selection committee has been provided under the Act where the Vice-Chancellor is to head the committee as Chairman. The provision of expert has also been made and the Chancellor has to nominate the experts. The provision regarding experts is contained in Section 31 (5) (a), which is also reproduced for the sake of convenience as below:-

"31. (5) (a) A panel of six or more experts in each subject of study shall be drawn up by the Chancellor after consulting the corresponding Faculty in Indian Universities or such academic bodies or research institutions in or outside Uttar Pradesh as the Chancellor may consider necessary. Every expert to be nominated by the Chancellor under sub-Section (4) shall be a person whose name is borne on such panel.

(b) The board of each Faculty shall maintain a standing panel of sixteen or more experts in such subject of study, and every expert to be nominated by the Vice-Chancellor under sub-section (4) shall be a person whose name is borne (c) on the panel.

(c) A panel referred to in clause (a) or clause (b) shall be revised after every three years.

Explanation 1-For the purposes (c) of this sub-section, a branch of subject in which a separate course of study is prescribed for a post graduate degree or for Part-I or Part-II thereof shall be deemed to be a separate subject of study.

Explanation II- Where the post of teacher to be selected is common to more than one subject of study, the expert may belong to either "of such subjects of study."

39. Thus, we find that the Chancellor has to draw a panel of experts after consulting with the Faculty of Indian Universities etc. and a panel shall be maintained.

40. Thus, we find that the selection committee in the case of Lucknow University has not been constituted under any service rules but has been constituted under the Act U.P. Act No. 4/94 does not provide that if the selection committee has been constituted under a particular provision of the Act, then the Constitution of that committee shall also be in accordance with the provisions of Section 7 of the U.P. Act No. 4/94. This Act does not supercede or does not make any amendment in Section 31 of the U.P. State Universities Act. The amendment in the Constitution of the selection committee cannot be made by the Govt. Order. Executive instructions, bye-laws, notification, regulation etc. as it is evident that no Govt. Order of executive instruction can amend the provision which is contained in the Statute.

41. As seen the earlier part of the judgment, the Vice-Chancellor is the Chairman of the Selection Committee. In the Government Order dated 29.3.1994 issued under the provisions of U.P. Act No. 4 of 1994, the Chairman has been given power to nominate officers of Scheduled Castes, Scheduled Tribes and other Backward Classes in the Selection Committee. u/s 31 (4) (a) second proviso the Chancellor has been given power to constitute the Committee. If the Committee cannot be constituted in the manner provided under the Section. But Vice-Chancellor has no power to nominate any person to the Selection Committee. Therefore, the provisions of U.P. Act No. 4 of 1994 will not in any way affect the Constitution of the Committee u/s 31 (4) (a) of the U.P. State Universities Act. Thus, the Constitution of the Committee framed for Selection of Professors, in the present case, is legal and proper. Thus, it is held that Section 7 will not come in the way of the Chancellor to constitute a Selection Committee in accordance with the provisions of Section 31 (4) (a) of the U.P. State Universities Act and Section 7 of U.P. Act No. 4 of 1994 shall not apply in such cases.

42. Section 15 of the U.P. Act No. 4 of 1994 provides that the provisions of this

Act will not apply in those cases where the selection process has been initiated before commencement of this Act, and they are to be dealt with in accordance with the relevant service rules. But it has been provided that if the selection is to be held on the basis of interview or written test only, then selection process shall be deemed to have been started when written test and interview started. The Explanation further provides that if both written test and interview are to be held, then process of selection will be deemed have been started from .the date of written test.

43. In the present case, as seen in the earlier part of the judgment, the advertisement was issued much before commencement of the Act but interviews were held between 4.4.1994 to 22.4.1994. These two dates fell after coming into force U.P. Act No. 4 of 1994. Therefore, if it is held that the selection process in the present case started from the date of interview then the provisions of Section 15 of the Act will apply.

44. Learned Counsel for the petitioners have further argued that in the present case even the provisions of Section 15 (1) of the Act will not apply because in the U.P, State Universities Act there is no provision for selection of Professors, Readers and Lecturers by way of written test or interview. A reference has been made to the provisions of Statute 11.05 framed under the U.P. State Universities Act, which is being reproduced below:-

"11.05. (a) Meetings of the Selection Committee for appointment of teachers in the University shall be convened under the orders of the Vice-Chancellor.

(b) The Selection Committee shall not consider the name of a person for appointment as teacher of the University unless he applies for it: Provided that in the case of appointment of a Professor, the Committee may, with the approval of the Vice-Chancellor, consider the names of persons who have not applied.

(c) A member of the Selection Committee shall withdraw from a meeting of the committee or of the Executive Council, as the case may be, if the question of appointment of any of the relatives (as defined in the Explanation to Section 20) of such member is being or is likely to be considered at such meeting."

45. A perusal of this Statute will go to show that the meeting of the Selection Committee is to be convened under the orders of the Vice-Chancellor and a provisions has further been made that in case of appointment of Professors, the Committee, may, with the approval of the Vice-Chancellor, consider the names of the persons who have not applied.

46. It has no where been provided under the U.P. State Universities Act or the Statute that for selection to the post of Professors, Readers and Lecturers, that Selection Committee has to hold written test or interview. Therefore, the selection committee is not bound by any procedure of written test or interview. It has merely to select out the candidates the best on the basis of bio-data furnished by the candidates. As seen in the earlier part of the judgment, that

with the previous approval of the Vice-Chancellor under the provisions of the Statute 11.05 in the case of Professors, the names of the persons, who have not even applied, can also be considered in such meeting. Thus, in the case of Professors there is a definite provision that the candidate need not apply and the selection committee with the approval of the Vice-Chancellor can select a person without his being a candidate. All these provisions show that no interview or written test is provided under the provisions of the U.P. State Universities Act or the Statute framed thereunder.

47. It has also been referred to in the earlier part of the judgment that the Explanation to Section 15 (1) of the U.P. Act No. 4 of 1994 provides that the selection committee shall be deemed to have been initiated where under the relevant rules, the selection is to be made on the basis of written test or interview, as the case may be, has started. In the present case, the U.P. State Universities Act or the Statute does not provide for selection of Professors, Readers and Lecturers through written test or by means of interview. Therefore, this provision will be also not apply.

48. It has further been seen that Section 15 (1) states that the provisions of this Act, will not apply in such cases where the selection process has been initiated before commencement of this Act, but those cases have to be dealt with in accordance with the provisions of law or the Government Order as they stood before commencement of this Act and the Explanation to it also clarifies this position that the selection process is deemed to have been initiated where the written test or interview has started. When under the U.P. State Universities Act, written test or interview is not the pre-requisite condition for selection of Professor, Reader and Lecturer, the provisions of U.P. Act No. 4 of 1994 will not apply in view of specific provisions of Section 15 of this Act.

49. Thus, on the basis of aforesaid discussion, it is held that the provisions of U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994 (U.P. Act No. 4 of 1994) shall not apply to the selection for the post of Professors, Readers and Lecturers under the U.P. State Universities Act."

40. This specific question was not involved either in the case of Dr. A.P. Mishra (supra) and Dr. D.N. Shukla (supra) or in the case of Vipin Agarwal (supra), inasmuch as in all these three cases advertisement was issued on 30.1.1995/ February, 1995. Therefore, in view of the specific expression used in the case of Dr. A.P. Mishra that this question is kept at large and the same having not been attended to and the decision in the case of R.N. Pandey (supra), having been affirmed though with the word "respondent-Professors", yet it cannot be said that the post of Lecturer and Reader were excluded. Then again, the recruitment process as dealt with in the case of Dr. R.N. Pandey (supra), does not make any distinction with regard to recruitment of Reader and Lecturer on one hand and Professor on the other. It is one and the same process which is identical with that of the process followed in the present case. Statute 11.05 deals with the

appointment of teachers. The teachers as defined in Statute 10.01 include admittedly Reader, Lecturer as well as Professor. This fact is not disputed by Mr. R.N. Singh.

41. The order of the Apex Court dismissing Special Appeal against the judgment in the case of R.N. Pandey (supra), cannot be interpreted to mean to have modified the decision and had affirmed only to the appointment of Professor excluding Readers and Lecturers. "

42. Our attention has not been drawn to any provision to show that the U.P. State Universities Act or the Statutes applicable to Allahabad University, it has been anywhere provided that for the purpose of selection of Lecturers and Readers any written test or interview has been provided. In the absence of any such provision, the Selection Committee was not bound by any procedure of written test or interview. It may, however, be said that the case of Dr. R.N. Pandey (supra), having been concerned with the appointment of Professors, the ratio decided therein may be treated to be obiter since the Court was not called upon to decide the issue with regard to Readers and Lecturers. But because of the expression "respondent-Professors" used in the order of Apex Court, it can be well argued that the Apex Court has not approved the ratio that has been decided as obiter.

43. Having examined specific provisions of the State Universities Act and the Statute applicable in the present case, we are of the considered view that a Reader and Lecturer are teachers within the meaning of Section 2 (18) of the U.P. State Universities Act and the petitioners having been appointed in the University, they are teachers of the University. Teacher has been defined to mean "a person employed for imparting instructions or guiding or conducting research in the University or any institute or constituent affiliated or associated College including Principal or Director." Teacher of the University in Section 2 (19) means "a teacher employed by the University for imparting instructions and guiding or conducting research either in the University or any institute or a constituent college maintained by the University. Chapter 10 of first Statute of the University of Allahabad in Statute 10.01 classifies teacher with the following expression:-

"That there shall be following classes of teachers of the University:

(i) Professors, (ii) Readers, and (iii) Lecturers."

44. Thus, there cannot be any doubt that Readers and Lecturers are also teachers in the University. Chapter 11 prescribes for qualifications and appointment of teacher in the University. It has prescribed different minimum qualification for the post of Lecturer, Reader and Professor in Statute 11.01, 11.02 respectively. Section 31, sub-section (1) provides that teachers are to be appointed by the Executive Council on recommendation of the selection committee. Section 31 (10) provides that no selection for any appointment under this Section shall be made except after advertisement of the vacancies in at least three issues of two newspapers having adequate circulation in Uttar Pradesh.

Apart from this provision, there is nothing with regard to the procedure for recruitment of teachers in the University except what is provided in the Statute in Chapter 11. Statute 11.05 provides that advertisement of vacancy referred to in Section 31 (19) shall ordinarily allow to the candidates at least three weeks time from the date of issue of newspaper in which the advertisement is published. Statute 11.05 [clause (b)] provides that for appointment as teachers in the University, the selection committee shall consider the names of those persons who had applied for it except in the case of Professors. Chapter 11 has not provided any provision either for written test or for interview. The only mode that has been provided is that the consideration by the selection committee without prescribing any procedure either for holding written test or interview. Therefore, there is no reason for ours to disagree with the reasoning given in the case of Dr. R.N. Pandey (supra) and by a Division Bench of this Court (Lucknow Bench). For the same reasons, on which Act 4 of 1994 was held to be inapplicable in the case of Readers and Lecturers and reasons which we have mentioned above, we are in full agreement with the ratio decided in the said case with regard to Readers and Lecturers. Thus, we hold that Act No. 4 of 1994 does not affect selection of the petitioners through interview held between 12.12.1993 and 15.12.1993 after the Act had commenced since in the present case selection process is not hit by Explanation to Section 15. Since the selection process does not come within the purview of Explanation to Section 15, the same selection is saved by reason of the savings clause provided in Section 15. Inasmuch as the selection process had started by reason of the advertisement published prior to commencement of the said Act. For these reasons it is not necessary to go into the other questions which have been argued with erudition, emphasis and vehemence by Mr. S.P. Gupta, Mr. Shailendra and Mr. R.N. Singh respectively.

45. Since the selection process is beyond the scope of Act No. 4 of 1994 as has been held earlier, the exercise of the power u/s 6 of the said Act by the Governor was, therefore, wholly without basis, jurisdiction and void ab initio and is non-est in the eye of law. We, therefore, accordingly declare the said order dated 3rd July/8th August, 1995 (Annexure-11 to the writ petition) and the consequent order of termination dated 7th August, 1995 terminating the services of the petitioner (Annexure-5 to the writ petition) void and unsustainable and are accordingly quashed. Accordingly, let a writ of certiorari do issue.

46. Mr. R.N. Singh has not been able to draw our attention to any perversity in the order dated 30.4.1995 passed by the Governor on the reference u/s 68 of the U.P. State Universities Act. We have not been able to persuade ourselves to agree with the contention of Mr. Singh with regard thereto. We, therefore, do not find any reason to interfere with the said order dated 30.4.1995. Writ Petition No. 22240 of 1995 therefore fails.

47. Writ Petition No. 21723 of 1995 thus stands allowed. Writ Petition No. 3265 of 1996 is dismissed as not maintainable as observed in paragraph 4 above. Writ Petition No. 22240 of 1995 is hereby dismissed. There will, however, be no order

as to costs.