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**(2007) 04 AHC CK 0306**  
**In the Allahabad High Court**

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| Dr. (Mrs.) Seshu Lavania and Another | APPELLANT  |
| Vs                                   |            |
| State of U.P. and Others             | RESPONDENT |

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**Date of Decision :** 13-04-2007

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Uttar Pradesh State Universities Act, 1973 — Section 31(4)(b)

**Citation :** (2008) 2 AWC 1441 : (2007) 3 UPLBEC 98

**Hon'ble Judges :** Rajiv Sharma, J;Pradeep Kant, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Pradeep Kant, J.—The petitioner Dr. (Smt.) Seshu Lavania and Dr. Pradeep Kumar Misra, who were appointed as Lecturer in Botany in Lucknow University, Lucknow (hereinafter referred to as the university) through one and the same selection with effect from November 25,1985, on which post they were confirmed, vide order dated 22.2.1988 with effect from 15.1.1988 and were later on given Senior Scale of Lecturer (Rs. 3,000-5,000), vide order dated 26.8.1991 with effect from 25.11.1990 under the Career Advancement Scheme, as per G.O. dated 7.1.1989 and thereafter were promoted on the post of Reader through a selection committee in the year 1999, but the Selection Grade (Rs. 12,000-18,300) was given to them with effect from 25.11.1998, i.e., after 8 years of service in the Senior Scale, as per the rules, feeling aggrieved by the proposed promotion on the post of Professor of respondent No. 5, Dr. Yogesh Kumar Sharma (hereinafter referred to as the respondent), have approached this Court under Article 226 of the Constitution of India, inter alia, pleading that the petitioners are senior to the respondent in the cadre of Reader and also in the cadre of Lecturer, therefore, the promotion of the respondent to the next higher grade/cadre of Professor without considering the case of the petitioners is prejudicial to their interest and they will become junior by such promotion and that the respondent is not at all eligible for being granted the promotion on the post of Professor under the Career Advancement Scheme, as such the action of

the University is per se illegal, arbitrary and discriminatory. In short, the proposed promotion of the respondent on the post of Professor has compelled the petitioners to approach the Court for restraining the University from making any such promotion.

2. In support of the aforesaid main relief, the petitioners have not only pleaded that the respondent was ineligible, as per the relevant Government orders under the Career Advancement Scheme but also that he was wrongly granted the Senior Scale under the Career Advancement Scheme, vide resolution of the Executive Council dated 3.12.1994 and that he was also illegally and wrongly granted extraordinary leave for a period of five years, i.e., for the period commencing from 1.4.1995 to 31.3.2000 with full pay by the University without the concurrence of the State Government and, therefore, neither the respondent could have been granted the Senior Scale of Lecturer on the date when it was granted nor his five years' break in service could have been treated to be continuous by granting extraordinary leave with full pay, which is not in accordance with the rules, which continuity having been given for the purpose of grant of Senior Scale, makes the aforesaid grant illegal. It is also the case of the petitioners that the respondent, who had worked as Junior Plant Physiologist allegedly under I.C.A.R. Coordinated Research Project from 4.1.1983 to 9.9.1988. was not eligible for being considered for promotion on the post of Professor under the Career Advancement Scheme, as this period of service could not be counted in the University service for the purpose of such promotion.

3. The respondent, in response, challenged the very maintainability of the writ petition on behalf of the petitioners on the ground that admittedly the petitioners themselves were not eligible for being considered for promotion on the post of Professor and, therefore, an ineligible candidate cannot challenge the selection process or the selection of a candidate who has been found eligible by the university for promotion to the next higher post of Professor in the University. His submission is that the petitioners cannot challenge either his consideration for promotion nor the actual promotion, they themselves being ineligible for being considered for the post.

4. Refuting the pleadings of the petitioners in regard to the eligibility of the respondent, it is being vehemently urged that the respondent is fully eligible and that he having completed his service as Lecturer and thereafter Lecturer in the Senior Scale and Reader's grade of required length cannot be divested of his right of promotion on the post of Professor merely because the petitioners feel that they are senior to him and, therefore, must be promoted on the post of Professor before the respondent is promoted.

5. Elaborating the aforesaid plea it is being said that the promotion on the post of Professor under the Career Advancement Scheme can be made only in terms of the Scheme and not otherwise and if the petitioners do not fulfil the requisite conditions for being considered for promotion on the post of Reader, their mere seniority in the cadre of Reader cannot be a ground for denying benefit of the

Scheme to the respondent, who, otherwise is entitled for the said benefit under the Scheme propounded with the principal object of giving promotion to such Lecturers and Readers who fall within the criteria, as laid down therein.

Further submission is that the respondent's service history reveals that he has requisite length of service for the purpose of aforesaid promotion and that the challenge to the grant of Senior Scale to the respondent in the year 1994 and also the grant of extraordinary leave of five years for the period 1.4.1995 to 31.3.2000 are such issues which cannot be reopened in collateral proceedings and that too at such a late stage, besides the fact that the challenge on the grounds urged also does not survive and has no legal basis for holding that the respondent was allowed the Senior Scale in incorrect manner and was granted the extraordinary leave not according to rules.

6. The respondent initially was appointed on temporary leave vacancy as Lecturer (Rs. 700-1,600) in Jai Narain Degree College (an associated college of Lucknow University), on which post he had applied in pursuance of an advertisement and after facing the selection committee and on its recommendation on 13.9.1977. He continued to work as such till 31st May, 1980. After completing his Ph.D., he joined as Junior Plant Physiologist (Rs. 700-1,600) on 4.1.1983 on a temporary post in ICAR Coordinated Research Project in R.B.S. College, Agra, (an affiliated College of Agra University), for which post he was selected on applying in pursuance of an advertisement and on the recommendation of the selection committee, as per the College rules.

7. The respondent's case is that the procedure for appointment of Junior Plant Physiologist in the ICAR, Lucknow, a Research Project in the R.B.S. College, Agra, was akin to the appointment of a Lecturer in the University, where he continued with his services till 9.9.1988. On that very day, i.e., 9.9.1988, he joined as Lecturer (Rs. 2,200-4,000) in the Botany Department of the Lucknow University on a temporary post wherein also he had applied in pursuance of an advertisement published and was selected by the selection committee. The respondent thus continued on the post of Lecturer in continuation of his appointment as Junior Plant Physiologist (previous service) without any break. He was confirmed on the permanent post of Lecturer on 25.11.1990.

8. The Executive Council, on considering the previous service of the respondent in ICAR Coordinated Research Project, subject to the approval of the State Government, on 17.11.1994 protected his pay.

9. A selection committee was held in the year 1994 for promotion to the Senior Scale of Lecturer (Rs. 3,000-5,000) and he was given the said scale with effect from 9.9.1988 under the Career Advancement Scheme, as per the G. O. dated 7th January, 1989, by counting the previous service under the rules. When the respondent was in U.S.A., the selection for the post of Reader was held but since he was on Post Doctoral Research Fellowship, on leave from Lucknow University, he could not face the selection committee, although he was eligible for promotion

on the post of Reader in 1996 and, therefore, when selection committee was held in 2001, he was promoted on the said post on 3.5.2001, whereas the Selection Grade was given with effect from 9.9.1996, i.e., after putting 8 years service in the Senior Scale as per rules. On 3.5.2001, the respondent became eligible for promotion to the post of Professor under Feeder Cadre Scheme, as he was Reader on 3.5.2001 with continuous service of 17 years and, therefore, he submitted a appraisal report but no selection committee was held in Botany between 3.5.2001 to 28.11.2001. The Feeder Cadre Scheme was, however, withdrawn on 28.11.2001.

10. It appears that as a result of some correspondence between the Lucknow University and the State Government, the Readers for whom the selection committee was not held for promotion to the post of Professor in between 3.5.2001 and 28.11.2001 were allowed the benefit of this Feeder Cadre Scheme, as per G.O. dated 3.5.2001 and, therefore, the respondent's name was included in that list alongwith the Readers in Physics, Commerce and other Departments, as per direction of the State Government dated 30.1.2004, which was duly approved by the Executive Council resolving that the benefit of the Feeder Cadre Scheme be allowed to such Readers for the promotion.

11. It is in this background that the selection committee for promotion to the post of Professor in Botany Department was held on 5.7.2004.

12. On the maintainability of the writ petition, suffice would be to say that a candidate who is ineligible for the promoted post would have no locus standi to challenge the promotion or the consideration of the promotion to the next higher post of any eligible candidate. But if a challenge is made to the eligibility of such a candidate on the ground that if he is promoted, the persons challenging his selection, who are otherwise senior in the existing grade, would become junior by virtue of such promotion and thus their right of prior promotion would stand defeated and that ineligible persons would be allowed to steel march over them in the higher cadre of service and thus consequently will also become senior to them, may allow such aggrieved persons to challenge the process of promotion or the promotion of the ineligible candidate but in case the challenge falls on the ground of ineligibility of the candidate, who is likely to be promoted, the challenge would not survive merely on the ground that such persons are senior in the next lower grade, i.e., the existing grade/cadre of service. It is in this light that the challenge raised by the petitioners has to be seen in the present writ petition.

13. The petitioners being conscious of the factual and legal position that in case the respondent's previous service as Junior Plant Physiologist under the I.C.A.R. Project is allowed to be treated as equivalent service to that of the Lecturer in the University or that the grant of five years' extraordinary leave with full pay remains unchallenged, the respondent would be eligible for consideration of his promotion on the post of Professor under the Career Advancement Scheme/ Feeder Cadre Scheme, have chosen to challenge the orders by means of which

the respondent was given the benefit of Senior Lecturer's Scale and also his promotion on the post of Reader besides alleging that in terms of the relevant Government order dated 7th January, 1989, the respondent cannot be held to be eligible for promotion unless he has put in 8 years of service as Reader and would not become eligible merely because he has to his credit the service of 17 years length including on the post of Lecturer and Lecturer in the Senior Scale or in Selection Graded. So far as the challenge to the grant of extraordinary leave of five years is concerned, for the period indicated above, it is the case of the respondent that his pay was protected by the University, subject to the approval of the State Government, which concurrence was later on given, and, therefore, the plea that such leave could not have been granted without the State's concurrence is not open.

14. The grant of extraordinary leave, may be, with or without the concurrence of the State Government, is a matter between the incumbent (respondent) and the University and may be also the State Government, but the petitioners would not have any right to interfere in the matter. The respondent was in the service of the University when he went for his Post Doctoral Research to U.S.A. after due information to the University and with its permission. It was for the University to either grant leave extraordinary or not, as it was not necessary that if the respondent had gone for research abroad, his services should necessarily be given break from the University, particularly when there is a provision under the rules giving authority to the University to grant extraordinary leave for five years. It is hardly of any significance as to whether the extraordinary leave was granted with full pay with the concurrence of the State Government or not, as the protection of full pay would not adversely affect the continuity in service of the respondent, if the leave had been granted even otherwise. The respondent would be treated to be in continuous service of the University during all the period when he was on leave and was in U.S.A. This continuity would be sufficient for reckoning his seniority and protection of his pay scale. The petitioners cannot be said to be prejudiced by grant of extraordinary leave to the respondent and if there was any requirement of concurrence for financial reasons, that was the lookout of the University and the State Government but in no case that would affect any right of the petitioners.

15. For the aforesaid reasons, the challenge to the grant of extraordinary leave of five years to the respondent by the petitioners is not sustainable, being devoid of merit and is rejected.

16. The Career Advancement Scheme, for the first time was introduced by means of the Government order dated 10.9.1987, prescribing revision of the existing scales of pay and also the creation of new scales of pay as Lecturer (Senior Scale), both in the Universities as well as in the affiliated College, Lecturer (Selection Grade) in the University and the Reader prescribing the same pay scale whereas the new scale, namely, Reader (Senior Scale) was also accorded in the University. So far as the Colleges were concerned, there was no

post or scale termed as Reader (Senior Scale). The Scheme in the aforesaid G.O. dated 10.9.1987 was made applicable to the Teachers in all Universities and Colleges administered by the U.P. State Universities Act, 1973, except those who specifically opted in favour of the existing Personal Promotion Scheme/Selection Grade Scheme, provided they had exercised that option in writing within 90 days of the date of issue of the said Government order, as provided in para 19 thereof.

17. The revised scales of pay became effective from 1.1.1986, as given in Annexure-1 to the Scheme. Under Paragraph 11 of the Scheme, the provision for Career Advancement Scheme was introduced, which was more fully described in paragraphs 11, 12, 13, 14, 16 and 17 of the aforesaid Government order. The said paragraphs are quoted below.

11. Every Lecturer will be eligible for placement in a senior scale of Rs. 3,000-5,000 if he/she has--

(a) completed 8 years of service after regular appointment or has reached a basic pay of Rs. 2,800, whichever is earlier:

(b) obtained a M. Phil, or Ph.D. degree, as the case may be, or has to his/her credit research work of equivalent standard:

(c) attended two refresher courses/summer institutes each of at least four weeks duration ; and

(d) consistently satisfactory performance appraisal reports.

12. The requirement of participation in two refresher courses/summer institutes would be suitably relaxed till arrangements for courses/institutes are made. The requirement of M. Phil./Ph. D. will not apply in the case of Lecturer who were appointed prior to the implementation of the 1973 revision.

Explanation:

(i) All Lecturers in the existing scale of Rs. 700-1,600 who have completed 8 years of service on 1.1.1986, will be eligible for placement in the scale of Rs. 3,000-5,000 in accordance with the provisions in paras 11 and 12. The benefit of the relaxation mentioned under para 10 will also be available to them ;

(ii) A regular and systematic appraisal of the performance of teacher should become operational from the academic year 1988-89. Till then, the existing screening mechanism/selection procedure will apply for placement in the Senior Scale. There will be no relaxation in any case from the requirement of consistently satisfactory performance appraisal for placement in the Senior Scale beyond 1989-90.

13. Every Lecturer in the Senior Scale will be eligible for placement in a Selection Grade of Rs. 3,700-5,300 if he/she has?

(a) completed 12 years of service in the senior scale or has reached a basic pay of Rs. 4,375, whichever is earlier ;

(b) attended two refresher courses/summer institutes after placement in the senior scale ; and

(c) consistently satisfactory performance appraisal reports.

14. Placement in the Selection Grade will be through a process of selection by a Selection Committee to be set up under the Statutes of the University concerned or other similar committees set up in accordance with the guidelines to be laid down by the U.G.C.

15. Lecturers in the existing Selection Grade of Rs. 1,200-1,900 in colleges will be eligible, for placement at the appropriate stage in the revised Selection Grade of Rs. 3,700-5,300 in accordance with the pay fixation formula under this scheme. The relaxation envisaged in the case of Lecturers for placement in the Senior Scale in respect of participation in refresher courses/summer institutes as well as performance appraisal will also apply to placement in the Selection Grade.

16. Readers who have completed 8 years of service, and have given good account of themselves in teaching/research/extension will be eligible for placement in the Senior Scale of Rs. 4,500-5,700. Placement in this grade will be on the basis of selection by Selection Committee constituted under the relevant Statutes of the Universities or other similar committees set up in accordance with the guidelines to be laid down by the U.G.C.

17. The Senior Scale for Reader will be restricted to one-third of the total strength of Readers in a University, or College where such posts are sanctioned. In the case of State Government Colleges, one-third of the strength of Readers is to be determined on the basis of the total number of posts sanctioned for all such colleges.

18. In para 18 it was specifically provided that the Scheme of Career Advancement mentioned in paras 11 to 17 would apply to all teachers appointed on or after the date of implementation of the Scheme. It would also apply to all existing incumbents except those who specifically opt in favour of the existing Personal Promotion Scheme/Selection Grade Scheme introduced in the University and the Colleges respectively. It is thus not correct to say, as pleaded by the petitioners that the Government order dated 10.9.1987, only envisaged revision of pay scales and prescription of various scales of pay but did not provide for any Career Advancement Scheme.

19. Thereafter came the Government order dated 7.1.1989, which continued the Career Advancement Scheme and the revision of the pay scales remained effective with effect from 1.1.1986. However, the grant of Senior Scale for the Lecturers, who were Ph. Ds were given different length of service, namely, 5 years and for M. Phil 7 years and for the rest of the Teachers, it was kept intact as 8 years which was the period of requirement of service as Lecturer in the 1987 Government order for having the senior scale. The difference, therefore, between the Government Order dated 10.9.1987 and 7.1.1989 in effect was that

the previous Government Order did not give any relaxation of length of service as Lecturer from 8 year's requirement for getting the senior scale whether such Lecturer was Ph. D or M. Phil but in the subsequent Government Order, the period of requisite length of service as Lecturer was reduced to 5 years for Ph. Ds and 7 years for M. Phil, as against 8 year's requirement. It was also made clear that the senior scale would be admissible to a Teacher even if he has Ph. D and had completed 5 years service prior to 1.1.1986 only from 1.1.1986.

20. Under the G.O. dated 7.1.1989, the provisions regarding Career Advancement Scheme including the eligibility of the senior scale of Lecturer, constitution of selection committee for the purpose and date of award of senior scale were prescribed. Para 10 was regarding the eligibility, which laid down as under:

10. Eligibility-Lecturer in University or in an affiliated/associated college will be eligible for placement in a senior scale of Rs. 3,000-5,000 if he/she has:

(a) Completed 8 years of continuous and full-time service after regular appointment. This service must have been rendered on an approved post after regular selection in Permanent or Temporary capacity in any University or Post Graduate or Under-Graduate degree college or Institute (Imparting instructions in degree and/or Post-graduate courses and/or guiding research) but shall not include service rendered in ad hoc capacity. Provided that benefit of one year or three years, as the case may be, will be allowed to such lecturers as possess M. Phil, or Doctorate Degree:

(b) Participated in two refresher courses/summer institutes each of approximately four weeks duration or engaged in other appropriate continuing education programmes of comparable quality as may be specified by U.G.C. ; and

(c) Consistently satisfactory performance appraisal reports.

Para 11A (3) provided that the date of admissibility of the senior scale could not be before 1.1.1986 and read as under:

(3) If a Lecturer is placed in senior scale in first attempt he will be placed in senior scale from the date it is admissible to him or from 1.1.1986, whichever is later. If he is placed in senior scale in second or subsequent attempt he will be placed in senior scale from the date of order of placement in senior scale.

21. The conditions for promotion as Reader under the aforesaid scheme were prescribed from paragraphs 14 onwards. Para 14 laid down the eligibility conditions and read as under:

14. Eligibility-A Lecturer in University or in Affiliated or Associated College will be eligible for promotion as Reader in the scale of pay of Rs. 3,700-5,000 if he/she has:

(a) completed 8 years of service in the senior scale. Requirement of 8 years service in senior scale will be relaxed, if the total continuous and full time service

of the Lecturer is not less than 16 years. This serviced of 16 years must have been rendered on an approved post after regular selection in temporary or permanent capacity in any University or Post-graduate or Under-Graduate Degree College or Institute within the State (imparting instructions in degree and/or Post graduate courses and/or guiding research) but shall not include service rendered in ad hoc capacity. Provided that benefit of one year or three years, as the case may be, will be allowed to such Lecturer as possesses M. Phil, or Doctorate degree, if this benefit has already not been allowed in senior scale:

(b) obtained a Doctorate degree or an equivalent published work:

(c) made some mark in the areas of the scholarship and research as evidenced by self-assessment, reports of references, quality of publications, contribution to educational renovation, design of new courses and curricula etc. ;

(d) participated in two refresher courses/summer institutes each of approximately 4 weeks duration or engaged in other appropriate continuing education programmes of comparable quality as may be specified by University Grants Commission, after placement in the senior scale ; and

(e) consistently good performance appraisal reports.

22. The next Government order dated 30.6.1992, was issued for giving benefit of previous service to the Lecturers of the Universities/Colleges under the Career Advancement Scheme for granting Senior Scale/Selection Grade. The G. O. recited that the eligibility conditions were being modified for giving benefit of previous service to the Lecturers working with the Universities governed by the U.P. State Universities Act, 1973 and its constituent/affiliated Colleges except the Colleges associated with Sampurnanand Sanskrit Vishwavidyalaya for all whole time Lecturers. This Government order entitled a Lecturer for counting of his service rendered by him in Government aided Non-Government degree college or the State University or a Central University or that of National Laboratory or scientific organization (CSIR, ICAR, DRDO, UGC or in any National Laboratory of Scientific Organization under CSIR, ICAR, DRDO or UGC). The service rendered in either of the aforesaid institutions were thus made available for the purpose of counting requisite length of service for the grant of senior scale or the Selection Grade and if the incumbent fulfils the following conditions:

(i) the post which such a Lecturer had held must carry the equal pay scale to that of Lecturer;

(ii) the previous post should not have carried lesser eligibility qualifications as against the educational qualifications prescribed for the post of Lecturer;

(iii) the Lecturer must be having minimum educational qualification;

(iv) the selection on the previous post should have been made in accordance with the selection process;

(v) the ad-hoc appointment or appointment in leave vacancy should not have

been for a period lesser than one year;

(vi) such Lecturers would not have any claim of seniority in the cadre of Lecturer on the basis of their previous service ; and

(vii) as a consequence of grant of Lecturer (Senior Scale)/Selection Grade, a Lecturer would not be having any other benefit except under the pension scheme.

23. The petitioners assert that the respondent was not entitled to count his service rendered by him as Junior Plant Physiologist in R.B.S. College, Agra, for the aforesaid purpose where as the University has given the said benefit to him for the award of Lecturer senior scale and Selection Grade. We would discuss this issue a bit later, but would first lay down further development in the Career Advancement Scheme, as ensued in pursuance of the subsequent Government orders.

24. Another Government order dated 13th March, 2001, further reduces the requisite length of service for entitlement to the senior scale for Ph. D candidates to 4 years and for M. Phil to 5 years as against the preexisting 5 years and 7 years and for all other Lecturers to 6 years as against 8 years. This Government order was, however, made effective with effect from 27.7.1998, providing therein that all such Lecturers, who had become eligible prior to 27.7.1998 for the award of Senior Scale/Selection Grade, they will continue to be governed/covered by the provisions of the Government order dated, 7.1.1989.

25. We need not enter into the details of Career Advancement Scheme under Government order dated 13th March, 2001, as it was largely amended/substituted by means of the Government order dated 3rd May, 2001. The aforesaid Government order dated 3rd May, 2001 amended/modified the Government order dated 13th March, 2001. This Government order, however, stated that this Career Advancement Scheme applies to the State Universities and Associated/Affiliated Colleges (except the Colleges affiliated to Sampurnanand Sanskrit University, Varansi) and shall come into force with effect from 27.7.1998, namely the date which was given in the Career Advancement Scheme, vide Government order dated 13th March, 2001. It also provided that the Teachers who had become eligible for Senior Scale/Selection Grade/Reader (Promotion)/Professor (Promotion) under the Career Advancement Scheme In force prior to July 27.1998, shall be covered by the provisions of Government order dated 7th January, 1989 and Statutes made earlier in this behalf and the Government order dated March 17,1990. With effect from 27.7.1998, the Teachers would have the opportunity for Career Advancement Scheme (Promotion), as provided under the said Government order. The Scheme, which in effect was the same which was given in the Government order dated 13th March, 2001, with respect to eligibility criteria and other matters, is, however, relevant for the present controversy, as given in para 11 of the Government order dated 3rd May, 2001, which reads as under:

11. If the number of years required in a feeder cadre are less than those

stipulated here above, thus entailing hardship to those who have completed more than the total number of years in their entire service for eligibility in the Cadre, may be placed in the next higher Cadre if found suitable by Selection Committee after adjusting the total number of years in the lower scale in the feeder cadre.

Provided that the incumbent--

(a) was appointed to an existing regular post of Lecturer or Reader or of the equivalent post of teaching and research grade of Lecturer/Reader in a National Institute/College or promoted to a post in addition to the existing post in the feeder cadre in the University/College or any recognised National Institute on the recommendation of the duly constituted Selection Committee in accordance with the prescribed selection procedure as laid down by the University or National Institute or the Government, and

(b) was not found misfit for Career Advancement promotion by the duly constituted screening/selection committee at any instance prior to 27th July, 1998, and

(c) has rendered continuous service in the feeder cadre, i.e., to move from the grade of Reader to the post of Professor, the minimum length of total number of years of continuous service rendered in the respective posts in the feeder cadre (Lecturer/Lecturer Senior Scale/Lecturer Selection Grade/Reader equivalent posts pertaining to teaching/research in National Institute or Colleges) would be seventeen years for those with Ph.D. Degree, eighteen years for those with M. Phil and published work equivalent to Ph.D. Degree and nineteen years for others. For movement from Senior Scale Lecturer into the grade of Reader or Selection Grade Lecturer, the total number of years of continuous service rendered in the feeder cadre of Lecturer/Lecturer Senior Scale or equivalent post of teaching and research would be nine years for those with Ph.D. Degree, ten years for those with M. Phil. Degree and published work equivalent to Ph.D. Degree and eleven years for others.

Para 14, on which also the reliance is being placed by the learned Counsel for the petitioner is also being quoted below:

14. If an incumbent Lecturer/Lecturer in Senior Scale/Lecturer in Selection Grade/Reader (Promotion) is found suitable and is recommended accordingly for promotion to the/next higher Senior Scale/Selection Grade/Reader grade/Professor grade by the duly constituted Screening/Selection Committee at the first instance, the next higher grade would be admissible to him from the date of eligibility or 27th of July, 1998, whichever is later, but the designation (if any) shall be given to him from the date of taking over charge.

26. The respondent has been treated to be eligible for being considered for promotion to the post of Professor under the Scheme in accordance with the provisions of para 11 quoted above, whereas the petitioners" strenuously urged

that the services rendered as Lecturer/Lecturer Senior Scale could not be counted for the purpose of counting 17 years of service, on a correct interpretation being given to para 11, which provides that service in the lower scale of feeding cadre can only be counted for counting the necessary length of service, in the feeding cadre.

Para 11(c) says that all such Readers, who had put in minimum number of 17 years of continuous service on the respective posts in the feeder cadre (Lecturer/Lecturer Senior Scale/Lecturer Selection Grade/Reader/equivalent) posts pertaining to teaching/research in National Institute or Colleges would be entitled to be considered for promotion on the post of Professor. However, on 28.11.2001, para 11 in its entirety was substituted by a new provision by means of which the grant of promotion on the post of Professor from the post of Reader by counting the entire length of service for the purpose of making it 17 years so as to be eligible for the said promotion was done away with. Later on, by means of the Government order dated 25th July, 2002, the aforesaid Government order dated 28th November, 2001, was amended and for promotion on the post of Reader, the requirement of minimum qualifying service of 5 years was done away with and it was provided that total 8 years service with Ph.D. Degree will be qualifying service for promotion on the post of Professor.

27. The petitioners obviously and admittedly had not completed 17 years on 3.5.2001 and 28.11.2001 and thus were not treated eligible for being considered for promotion on the post of Professor in view of the existing provision. With the coming of the Career Advancement Scheme, vide Government Order dated 3rd May, 2001, they would become entitled only after completing of 8 years of service on the post of Reader, which they would be completing in November, 2007.

28. The petitioners, therefore, felt aggrieved, as they stood excluded and rather remained ineligible for being considered for promotion under the Scheme on the post of Professor and the respondent has been found to be eligible in view of the protection given in the Government order dated 13th March, 2001, as amended by the Government order dated 3rd May, 2001.

29. The petitioners do not dispute that under the existing terms of Career Advancement Scheme, they are not eligible for being considered for the post of Professor but their grievance is that that the respondent has been wrongly given the benefit, though he does not fulfil the conditions of equivalence of service while working as Junior Plant Physiologist to that of the post of Lecturer and thus counting of that service for the grant of Senior Scale/Selection Grade, i.e., Reader and thereafter his consideration for promotion on the post of Professor are, all, thus based upon misconception and misreading of the provisions of the Career Advancement Scheme, which calls for interference by this Court.

30. It has also been urged by the, petitioners that the respondent had also appeared in the same selection in which the petitioners were appointed as

Lecturer in the year 1985 but remained unsuccessful and again he could not be selected in 1987 when he made another attempt for being selected as Lecturer and it was only in the year 1988 (9.3.1988), by which time the petitioners had already been confirmed after putting in more than three years continuous service, the respondent was appointed as temporary Lecturer after facing Selection Committee and that he was also confirmed at a later point of time than that of the petitioners, namely, on 25.11.1990, whereas the petitioners were given the Senior Scale of Lecturer with effect from 25.11.1990, after completing five years continuous service, vide order dated 26.11.1991 and, therefore, these facts are sufficient to hold that the petitioners are senior to the respondent, therefore, the respondent cannot be allowed to supersede by granting him promotion on the post of Professor.

31. Mere non-selection of the respondent in the selection held earlier is of no consequence, so far as his right to be considered for promotion on a post under the Career Advancement Scheme is concerned and unless, of course, the petitioners succeed in establishing that the respondent is not eligible or qualified for being considered as such under the relevant Government orders of the Scheme, they will have no claim for opposing the promotion of the respondent simply on the aforesaid history of selection on the post of Lecturer or that they are senior in the Cadre of Lecturer or in the Reader's Cadre if the Scheme provides and gives a right for being considered for promotion on the post of Professor. The respondent's right in this regard cannot be squeezed nor can be curtailed on any plea of the petitioners, who are not admittedly eligible under the Scheme for being considered for promotion on the post of Professor unless they plead and prove that the respondent was not eligible under the Scheme.

32. Relying upon the criteria of equivalence of service rendered previously for being counted towards the length of service on the post of Lecturer, as given in the Government order dated 30th June, 1992 (referred in the earlier part of the judgment), it has been vehemently urged that out of the conditions specified therein, the respondent did not fulfil the two conditions mentioned in Clauses (ii) and (iv), namely, (i) educational qualification as prescribed for the Junior Plant Physiologist were less than the educational qualification prescribed for the post of Lecturer whereas the requirement was that such educational qualification should not be less than the qualification prescribed for the post of Lecturer ; and (ii) his selection was not made in accordance with the prevalent selection process. In substance, the plea is that the educational qualifications for the post of Junior Plant Physiologist were inferior than the educational qualification prescribed for the post of Lecturer.

33. It may be put on record that earlier different qualifications for the post of Lecturer and that of the post of Junior Plant Physiologist were brought on record, but later on, when the Judgment was reserved, and before it could be delivered, an application was moved by the respondent on 9.11.2006 for taking on record certain documents annexing the advertisement issued by the R.B.S. College,

Agra, published in Amar Ujala in the month of December, 1981 in pursuance of which the respondent was appointed on the post of Junior Plant Physiologist and also a photocopy of statute 11.01 under Chapter XI Part I of the First Statutes, which remained in force up to 1990, besides photocopy of the Advertisement No. 7 of 1980 and Advertisement No. 1 of 1984, published on 28th May, 1980 and 15th February, 1984, prescribing the minimum qualification of consistently good academic record with first or high second class Master's degree for the post of Lecturer in the University.

34. Time was granted to the petitioners to file a reply to the said affidavit, which has been filed on 18.12.2006, annexing therewith a copy of the U.P. State Universities First Statutes (Age of Superannuation, Scales of Pay and Qualification of Teachers), 1975, wherein qualifications for lecturers in affiliated and associated colleges, as prescribed, were as follows:

(a) A Doctorate in the subject or study concerned or a published work of a high standard in that subject; and

(b) Consistently good academic record (that is to say, the overall record of all assessments throughout the academic careers of a candidate), with first class or high second class (that is to say, with an aggregate of more than 54 per cent marks) master's degree in the subject concerned or equivalent degree of a foreign University in that subject.

35. Submission is that the aforesaid requirement of having consistently good academic record, not being a prescribed qualification for the post of Junior Plant Physiologist, the said qualification obviously was a lesser eligibility qualification, against the one prescribed for the post of Lecturer.

Further submission is that it is the educational qualification, which was prescribed for the post that matters, and not the qualification, which has been shown in the advertisement for appointment on the post of Junior Plant Physiologist or the actual educational qualifications of the incumbent. Also for the appointment of lecturer a Doctorate Degree or Research Work of equally high standard in the relevant subject is one of the minimum qualifications prescribed for appointment as lecturer whereas no such prescription was made in respect of Junior Plant Physiologist in a project financed by the ICAR.

The fact that the educational qualifications, as prescribed for the post of Junior Plant Physiologist, was of lesser eligibility than the educational qualifications for the post of lecturer, has been strongly disputed by the respondent and for that matter, he relies upon the qualification, which was prescribed for the aforesaid post at the time of his appointment.

36. It is not in dispute that the requirement of having more than 54 per cent marks in aggregate, so as to constitute high second class Master's degree, was no more the requirement even for the post of Lecturer in the University on the date of appointment of the respondent on the post of Junior Plant Physiologist,

which appointment was made in January, 1983.

The correct qualifications for the post of Lecturer in the year 1983 were as follows:

(a) a doctorate degree or research work of an equally high standard in a relevant subject;

(b) consistently good academic record with first or high second class Master's degree or an equivalent degree of Petition allowed foreign University in a relevant subject.

37. The qualifications which were published in the advertisement in December, 1981, in pursuance of which the respondent was appointed on 4.1.1983 on the post of Junior Plant Physiologist cannot be said to be inferior simply because it does not have the requirement of consistently good academic record alongwith the first or high second class Master's degree.

38. The following qualifications for Junior Plant Physiologist in December, 1981, were advertised at the relevant time.

Junior Plant Physiologist (One)

Qualifications:

(A) Essential : (i) Good second class Master's degree in Plant Physiology/ Agricultural Botany or Botany with specialization in Plant Physiology or an equivalent post-graduate qualification:

(ii) Three years experience of teaching/research in Plant Physiology as evidenced by published work.

(B) Desirable : (I) Ph.D. in Plant Physiology, (it) Experience of research on Saline water or saline-alkali soils.

A perusal of the qualifications of the Lecturer and that of the Junior Plant Physiologist, as referred to above, would reveal that there was, in effect, no substantial difference, much less making the educational qualification of the latter post, a lesser eligibility qualification, simply because it did not prescribe for the consistently good academic record, particularly when the requirement of 54 per cent marks in Master's degree for treating it as high second class, was done away with.

39. The qualification of the Junior Plant Physiologist, as was prescribed, namely, good second class Master's degree in Plant Physiology/Agricultural Botany or Botany with specialization in Plant Physiology or an equivalent post-graduate qualification, with three years experience of teaching/research in Plant Physiology as evidenced by published work, with desirability of Ph.D. in Plant Physiology and experience of research on Saline water or saline-alkali soils, cannot be, in any way, said to be lesser eligibility qualification as against the qualification prescribed for the Lecturer.

The Government order dated 30.6.1992 did not say the educational qualification for the post of Lecturer and that of Junior Plant Physiologist should be the "same" or "identical" but it only provided that the previous post should not have carried lesser eligibility qualification, as against the educational qualification, prescribed for the post of Lecturer.

A comparison of the aforesaid two qualifications, namely, for the post of Lecturer and that of Junior Plant Physiologist, would reveal that the qualification prescribed for the latter post, was, in no way, carrying lesser eligibility qualification than that of the Lecture.

40. The qualifications prescribed for the Lecturer nowhere required that the candidate should have any experience of teaching or research in the subject concerned, if he was possessed of consistently good academic record with Ph.D. nor it required the additional qualification of experience of research on any subject for any candidate who was Ph.D. The educational qualifications thus, prescribed for the post of Junior Plant Physiologist, were in fact had added additional educational qualifications, which were not at all prescribed for the post of Lecturer.

41. The words "lesser eligibility" cannot be taken to mean as synonymous to "identical" or the "same qualifications". What is required to be seen is that the two qualifications should be of the same standard and the qualification of Junior Plant Physiologist should not be inferior than the eligibility criteria prescribed for the Lecturer, It can also not be lost sight of that the eligibility qualifications are to be prescribed, looking to the requirement of the job and duties to be performed, and if for that reason some additional qualifications are prescribed for one post, it would not mean that the qualifications prescribed for the other post are inferior.

42. That being so, neither factually nor legally it can be said that the educational qualification for the post of Junior Plant Physiologist ; as advertised and in pursuance where of the respondent was appointed were in any way carrying lesser eligibility qualifications as against the educational qualifications prescribed for the post of Lecturer, as it existed in Statute 11.01 of the Statute of the University on the aforesaid relevant date.

43. The respondent otherwise, in literal sense also, was possessed of the qualifications prescribed by the University Statute for the post of Lecturer, is not being disputed by the petitioners, for which reason also the question of interference on this ground or drawing any adverse inference on the appointment of the respondent on the post of Junior Plant Physiologist is not warranted. The respondent had secured four first class and was Ph.D.

44. It will also be significant to record that the standard of the qualification prescribed for the post of Lecturer as well as that of the Post of Junior Plant Physiologist, their nature and equivalence, did fall within the domain of the expert body, namely, the Committee, who was to consider the grant of senior scale etc. The Court in such matters would rarely delve on this issue, unless, of

course, the decision so taken by the selection committee or the expert body is per se illegal, arbitrary or mala fide. The Committee, after finding that the respondent was entitled to count his period of service on the post of Junior Plant Physiologist, has awarded the senior scale and thereafter the grade of Reader, which decision cannot be said to be perverse or arbitrary and, therefore, also it does not call for any interference by this Court.

45. Though we have recorded our findings with respect to the equivalence of the qualifications of Lecturer and the Junior Plant Physiologist at the relevant time and the manner in which the respondent was appointed on the post of Junior Plant Physiologist but the aforesaid plea of the petitioners deserves to be rejected only on the ground that the appointment of the respondent on the post of Junior Plant Physiologist made in the year 1983 and thereafter his appointment on the post of Lecturer made in the year 1988 and the grant of senior scale in Lecturer's Grade and also promotion to the post of Reader cannot be challenged in collateral proceedings, that too after such a long time. The respondent joined as Lecturer on 9.9.1988 and was given the senior scale in the year 1994 with effect from 9.9.1988 and promotion on the post of Reader on 3.5.2001 with effect from 1996, which grant of scale and promotion is not open to challenge after such a long time and that too in collateral proceedings. For the same reason also the grant of extra-ordinary leave to the respondent for the period commencing from 1.4.1995 to 31.3.2000 with full pay is also not open to challenge, besides the fact that the petitioners cannot be said to be aggrieved by the said grant of leave and more so when the concurrence has already been given by the State Government for full pay. The pleas aforesaid, therefore, stand rejected on this ground also.

46. The next plea which has been raised by the learned Counsel for the petitioners is regarding the manner of selection on the post of Junior Plant Physiologist, as according to them, the Selection Committee was not constituted in accordance with Section 31(4)(b) of the State Universities Act. In the letter dated 3.7.1972 written by the ICAR to the Principal, B.R. College of Agriculture, Agra, U.P., the model qualifications, as were prescribed for the post of Junior Plant Physiologist at that time, were mentioned. Besides, it was also provided in para 11 that the appointments on the post of ICAR project recruitment, rules of the grantee institution would be applicable. The relevant para 11 of the said model qualifications, is being quoted below:

11. The staff on the project/scheme should be chosen by selection and the normal recruitment rules and procedures applicable to the grantee institutions may be followed. Prior approval of the Council will be necessary if any higher starting salary, or out-of-turn increments to the staff, are given or any revision in the pay-scales is to be effected. The scales of pay, allowances etc. to the employees of the project/scheme will be as admissible under the respective grantee institution. The members of the staff on the research projects/schemes will for all practical purposes be treated as employees of the grantee institution,

form part of the approved cadres thereof and will be subject to the administrative control of that institution. In case of a coordinated research project, the Project Coordinator and other staff of the coordinating unit of the project will be recruited by the Council while the other staff employed in the project/centre in a grantee institution shall be appointed by that institution according to the respective recruitment rules but conforming to the minimum qualifications laid down by the Council. In case of recruitment of staff, for all positions corresponding in status to Class II and above, the Council shall have the right to nominate its representative to assist the Selection Committee. In order to avoid unnecessary correspondence, such requests for nomination of representative of the Council should be sent to the Council at least a month in advance and the week in which the Selection Committee is likely to meet should invariably be indicated.

47. In pursuance of the said directive the respondent was interviewed by a Selection Committee consisting of the following:

- (i) Authorised Controller (Additional District Magistrate City, Agra) (as the Committee of Management was not in operation);
- (ii) Principal;
- (iii) Head of Department;
- (iv) Two Experts;
- (v) One representative nominated by I.C.A.R.

48. The Selection Committee thus could not be said to have been constituted in violation of Section 31 (4)(b) of the Act. On this count also the petitioners' objection regarding counting of service of the respondent on the post of Junior Plant Physiologist cannot be upheld.

49. The last argument regarding in-eligibility of the respondent from being considered for promotion to the post of Professor, he having not put in 8 years of service as Reader, which is basic minimum requirement and simply because he has to his credit 17 years of total service including that of Lecturer and Lecturer Senior Scale would not make him entitled for the said promotion is based on the own interpretation of the petitioners of the Government order dated 30.6.1992 and that of 13th March, 2001, as amended/substituted by Government order dated 3rd May, 2001.

50. Interpreting the meaning of the nature of appointment, as given in the Government order dated 30.6.1992, it has been submitted that the service which would be counted for the purpose must be that of Government aided Non-Government Degree College or the State University or a Central University or that of National Laboratory or Scientific Organization (CSIR, ICAR, DRDO, UGC or in any National Laboratory or Scientific Organization under CSIR, ICAR, DRDO or UGC). The argument is that the appointment of the respondent was not under

the I.C.A.R. but on a project in a Degree College.

51. The respondent was undisputedly appointed under the Scheme of I.C.A.R. on its research project with the sanction of the Council on the conditions of eligibility and qualifications being prescribed by the Council as against the advertisement duly issued, by following procedure of selection, as directed by the Council which was in consonance with the selection rules, that governed the grantee institution, namely, R.B.S. College, Agra and, therefore, it cannot be said that service of the respondent as junior Plant Physiologist was not the service under the project of the ICAR or that it was not a service which was defined in the Government order dated 30.6.1992.

52. Quoting the provisions of para 11 read with Sub-clause (c) Dr. L.P. Misra has submitted that the aforesaid clause is only an enabling provision for removing the hardship to a class of Teachers who have completed more than total number of years in the entire service for eligibility in the Cadre but under the pretext of removal of hardship, an ineligible candidate cannot be given the benefit of Career Advancement Scheme. The hardship, according to him, should be bona fide and that it should not affect adversely the rights of any other person, namely, the petitioners. If the respondent had not to his credit 8 years service as Reader, it could not be treated as hardship so as to remove it by interpreting Clause (c) in a manner which defeats the said provision and makes a discriminatory and favoured interpretation. Sub-clause (c) to proviso of para 11 says that if the number of years required in a feeder cadre are less than those stipulated here above, thus entailing hardship to those who have completed more than the total number of years in their entire service for eligibility in the Cadre, may be placed in the next higher Cadre if found suitable by the Selection Committee after adjusting the total number of years in the lower scale in the feeding cadre whereas Sub-clause (c) of the proviso attached to Para 11 defines the service in the feeding cadre, which can be taken into account for counting the requisite length of service.

53. It has been argued by the petitioners that the service which could be counted for the purpose of requisite length of service for promotion to the next higher cadre could be only that of lower scale in the feeder cadre and not the entire length of service including the service which could not be said to be in the lower scale of feeder cadre but even below that. He also submitted that Sub-clause (c) itself envisages continuance of service in the feeder cadre and for the post of Professor, the feeder cadre would be the Reader and, therefore, if there had been any service of lower scale in the cadre of Reader, only that service could have been counted for the requisite length of service for promotion to the post of Professor but there being no such lower scale in the cadre of Reader, it becomes obligatory that a Reader should have completed 8 years of service in the given pay scale in the cadre of "Reader" before he could be promoted to the next higher post of Professor.

54. Elaborating the aforesaid argument, Dr. L.P. Misra further submitted that for

example, if a promotion is to be made on the post of Reader, the service rendered by the Lecturer, both as Lecturer and then in the senior scale would be counted for making 8 years of service in case of a non-Ph. D Lecturer but service rendered as Lecturer or Lecturer Senior Scale would not be available for being counted in the length of service of the Reader for making it a qualifying service of 17 years for being promoted on the post of Professor. Great emphasis has been laid upon the fact that the aforesaid provision was introduced only with a purpose that where two scales of pay, one lower and the other higher, are prescribed to a post in the feeder cadre, the benefit can be given of service under both the scales, including the service in the "lower scale in the feeder cadre" which cannot be given any meaning otherwise so as to enlarge the scope of the said provision or to bring such ineligible candidates who otherwise do not possess the requisite length of service in the feeder cadre for the purpose of promotion to the next higher post. Clarifying the aforesaid stand, it has been emphasized that in the cadre of Reader, there is only one single scale of pay and, therefore, the question of lower scale in the feeder cadre of Reader for promotion to the post in the cadre of Professor could not have arisen nor it is the meaning of the aforesaid provision.

55. The plea has been strongly refuted by Sri Sandeep Dixit, appearing for the respondent, who says that the distinction which is being sought to be made by the petitioners in interpreting the provision of para 11 and in particular Sub-clause (c) of the proviso is pure misconception and an interpretation which on the face of it runs contrary to the specific words used and the language, mentioned.

56. A perusal of the aforesaid provision of para 11 would reveal that for giving benefit of Career Advancement Scheme for promotion to the next higher cadre, may be from the post of Lecturer Senior Scale to the post of Reader or from the post of Reader to the post of Professor, it has been provided that if a person has completed more than the given number of years in his entire service for eligibility in the Cadre, if found suitable the Selection Committee, after adjusting the total number of years in the lower scale of the feeding cadre, may be promoted to the next higher post. The words "entire service" used in para 11 and the "lower scale in the feeder cadre " stand defined and qualified on reading of Sub-clause (c) of the proviso attached to para 11. Sub-clause (c) speaks of "continuous service in the feeder cadre" and then explains the meaning of the said phraseology by saying, i.e., to move from the grade of Reader to the post of Professor, the minimum length of continuous service rendered in the respective posts in the feeder cadre (Lecturer/Lecturer Senior Scale/Lecturer Selection Grade/Reader or equivalent posts pertaining to teaching/research in National Institute or Colleges) would be seventeen years for those with Ph.D. Degree, eighteen years for those with M. Phil and published work equivalent to Ph.D. Degree and nineteen years for others. The words "lower scale in the feeding cadre" incorporated in para 11 have thus been consciously defined in Sub-clause (c) to give full effect to the scheme enunciated therein. The meaning assigned to the phrase "the minimum

length of service in the feeder cadre" by defining the said service in the bracketed portion, following the aforesaid words, leaves no scope of giving any other meaning, than given in the said provision itself. Sub-clause (c) can be read in two parts, one lays down the requirement of rendering continuous service in the feeder cadre of the required length and for that purpose it also defines the minimum length of continuous service in the defined grades of the person who is to be promoted from Lecturer Senior Scale into the grade of Reader or Lecturer Selection Grade or from Reader to the Grade of Professor, as the case may

57. The first qualification or requirement, as enunciated and explicitly clarified is regarding the period of service in the feeder cadre which is to be included for counting requisite length of service, may be 17 years, 18 years or 19 years, as the case may be, for moving from the cadre of Reader to the post of Professor. This definition exclusively and explicitly takes into account continuous service rendered by the teacher as Lecturer/Lecturer Senior Scale and Lecturer Selection Grade/Reader or equivalent posts pertaining to teaching/research in National Institute or Colleges for promotion in the grade of Professor, whereas for promotion from the Senior Scale Lecturer into the grade of Reader or Selection Grade Lecturer it provides that the total number of years of continuous service rendered in the feeder cadre of Lecturer would be 9 years for those Ph.D. and 11 years for others. The aforesaid provision thus envisages promotion, both on the post of Reader as well as that of Professor, from the post of Lecturer/Lecturer Senior Scale and from the post of Reader respectively and also clearly explains the grades, the service, which can be included for calculating the requisite length of service.

58. The petitioners' contention that continuous service rendered on the post of Lecturer/Lecturer Senior Scale cannot be counted under the aforesaid provision towards 17 years continuous service so as to make a Reader eligible for consideration for promotion in the next higher grade of Professor does not flow from the aforesaid provision, rather the provision takes into account both the higher posts, namely, that of Professor as well as that of Reader and defines in no unambiguous terms, the meaning of the service in the lower scale of feeder cadre with respect to both the posts of higher cadre, namely, Professor and Reader. In case the interpretation given by the petitioners is accepted for defining the meaning of continuous service in the lower scale of feeder cadre to mean that it would not include the service rendered as Lecturer/Lecturer Senior Scale when considering the case of promotion to the post of Professor, it would make the later part of the said provision wherein the requisite length of service for promotion on the post of Reader from the post of Lecturer senior scale has been explained, redundant.

59. The provision is absolutely clear and calls for no doubt to hold that the eligibility criteria as determined and emphasized in the aforesaid Government order specifically lays down the counting of service on the post of Lecturer/Lecturer Senior Scale also alongwith the service rendered as Reader while

calculating the entire length of service of 17 years for promotion on the post of Professor and, therefore, no other interpretation can be given to the said provision.

60. The provision has to be interpreted as it is and its language cannot be altered nor the words can be introduced nor take out and unless, of course, there is any ambiguity, the plain and simple meaning which can be attached to the phrase used, has to be given effect to. In other words, if the language and the words incorporated are clear and explicit, they do not call for any interpretation by the Court in a manner, which may alter and defeat the very purpose, intention and object of the said provision.

61. The aforesaid provision was made with a view to remove the hardship of those Lecturers/Lecturer senior scale, who, despite having put in 17 years of service including that rendered on the post of Reader were being deprived of the promotion to the next higher post for want of 8 years service on the post of Reader and likewise also for those who lack requisite length of service on the post of Lecturer senior scale for being promoted on the post of reader. In case any other interpretation is given, the whole purpose of the said provision would stand frustrated and defeated.

62. It may be significant to put on record that the petitioners have not challenged the legality of such conditions as given in para 11 and in particular Sub-clause (c). There is no case of the petitioners that the conditions as laid down in the aforesaid Sub-clause (c) of Para 11 are bad in law or that they are otherwise invalid for any plausible reason. In the absence of any challenge to the legality and validity of the aforesaid conditions, the Court would not be guided by the plea of discrimination or favoured action against the petitioners, as the provision, as it stands, brings the respondent into the field of eligibility for promotion to the post of Professor. Even otherwise, the benefit under the said clause has already been extended to all other eligible teachers in other Departments of the University for removing hardship and stagnation and, therefore, also the same cannot be faulted with.

63. It is also pertinent to take note of the fact that uniformly the said benefit has been given in the University to the Lecturers in different Departments and even persons junior to the respondent have already been promoted to the next higher grade under the provisions of para 11 read with Sub-clause (c). There were, in fact, total 8 Readers who were eligible for being promoted to the post of Professor on completion of 17 years service on 3.5.2001 and 28.5.2001, out of which three have already been promoted in the year 2001 and four out of the remaining ones, have been promoted on the basis of the recommendation made by the Selection Committee held sometime in July-September, 2004, but the respondent alone, who had been interviewed on 5.7-2004 has not been promoted.

64. It may be put on record that when the date for pronouncing the judgment

was fixed, namely, 12.3.2007, Dr. L. P. Misra, before the judgment could be pronounced, submitted that he had already moved an application for bringing certain documents on record in support of his plea that unless a teacher has to his credit actual 8 years of service as Reader, he cannot be given the benefit of promotion to the post of Professor and, therefore, the judgment be deferred. Since the application had already been moved on 21.2.2007 but was not placed before us, therefore, we deferred the pronouncement of the judgment and gave permission to the respondent to file objection, if he so likes. The matter then again came up for hearing on 23.3.2007, when the judgment was finally reserved.

65. Sri Sandeep Dixit, appearing for the respondents had stated that he would not like to file any objection to the aforesaid application and would raise only oral arguments.

66. Dr. L.P. Misra, placing reliance upon the Circular dated 27.5.2003 issued by the University Grants Commission (in short UGC) submitted that for promotion from Reader to Professor under Career Advancement Scheme only such past service shall be counted which was either that as Reader or was in the scale of pay of Reader in the establishments under the Government of India/State Government/Autonomous Body of Government of India or State Government Laboratories and if the person had possessed the qualification equivalent to that of Reader while working in the aforesaid institutions/establishments. He also placed reliance upon another Circular dated 13th March, 2003, reiterating that the past service for promotion from Reader to Professor could be considered only if it was rendered as Reader/Associate Professor in the scale of pay admissible to the post of Reader and even the counting of past services in any other University/ College or Institutes or Laboratories was given up, vide Circular dated 23rd September 2003.

67. Relying upon the aforesaid Circulars he emphasized that since the respondent on the date of selection for the post of Professor had not put in 8 years of service either as Reader or Associate Professor in the pay scale admissible to the post of Reader, therefore, he was not eligible and could not have been promoted by counting his service on the post of Lecturer or Lecturer (Senior Scale).

68. Sri Sandeep Dixit, in response, while submitting that the aforesaid Circulars which are mere guidelines issued by the U.G.C. cannot be binding unless the Statutes are amended, also submitted that in any case the same are not applicable nor can be made applicable in the case of the respondent for the reason (i) the said circulars had been issued after the Feeding Cadre Scheme was withdrawn on 28.11.2001 ; and (ii) under the Government order dated 30th June, 1992 and that of 13th March, 2001, as amended/substituted by Government order dated 3rd May, 2001, the respondent was fully eligible, he being possessed of the qualifications as prescribed therein for promotion to the post of Professor under the Career Advancement Scheme. The Circulars issued

by the U.G.C. after the withdrawal of the Feeding Cadre Scheme are of no relevance for the said Scheme.

69. The aforesaid Circulars issued by the U.G.C. had not been made part of the Statutes and that it cannot be disputed that the Government orders dated 30th June, 1992 and that of 13th March, 2001, as amended/substituted by Government order dated 3rd May, 2001, prescribed the qualifying service for being eligible for being promoted under the Feeding Cadre Scheme to the post of Reader as well as Professor which qualification and the criteria have been clearly and specifically defined. We have already interpreted the aforesaid provision and have recorded our opinion that in terms of the aforesaid Government orders, all service rendered on the respective posts in the feeder cadre (Lecturer/Lecturer Senior Scale/Lecturer Selection Grade/Reader or equivalent posts pertaining to teaching/research in National Institute or Colleges) needed to be of seventeen years for those with Ph.D. Degree, eighteen years for those with M. Phil and published work equivalent to Ph.D. Degree and nineteen years for other. We need not repeat the reasons for arriving at such a conclusion.

70. The respondent became entitled for promotion on 3rd May, 2001 but since no selection committee in Botany was held between 3rd May, 2001 and 28th November, 2001, when the Feeder Cadre Scheme was withdrawn, he was given the benefit under the directive of the State Government dated 30.1.2004, which extended the benefit of the said Scheme for those who became eligible and entitled for promotion up-to 28th November, 2001. The respondent thus was fully eligible and the Circular issued by the U.G.C. in the year 2003 neither relates to the Feeder Cadre Scheme, which stood abolished with effect from 28.11.2001, nor they can be read contrary to the specific Government orders defining the Feeder Cadre, both in respect of the post of Reader and for the post of Professor and length of service of 17 years, as required. For this reason also the selection of the respondent cannot be challenged -nor can be held to be invalid.

71. For the reasons aforesaid, the challenge made by the petitioners to the promotion of the respondent is not tenable. The petitioners are neither eligible nor they have been able to establish that the respondent was not eligible for promotion under the relevant Government orders, under the Career Advancement Scheme/Feeder Cadre Scheme and, therefore, the petitioners do not have any locus standi to challenge the said promotion.

72. For the reasons stated above, the writ petition has no force and is liable to be dismissed.