
(2012) 08 RAJ CK 0168

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 747, 2082-84 and 2096 of 2012

Dr. Sophia Gir and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2013) 1 CDR 29 : (2013) 1 RLW 826 : (2013) 1 WLN 264

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : P.S. Bhati, Mr. S.S. Rathore and Mr. M.S. Singhvi, with Mr. Deepesh Beniwal, for the Appellant; G.R. Punia, AAG with Mr. Mahendra Choudhary, Advocates, Mr. Girish Joshi Advocate and Mr. Mukesh Vyas, Advocate for Caveator, for the Respondent

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—In all the above writ petitions, common question is involved, therefore, all these writ petitions are decided by this common order. For the sake of convenience, facts from S.B. Civil Writ Petition No. 747/ 2012 are taken into consideration for discussion. In the writ petition, the petitioners have prayed for quashing Annex.-12 dt. 03.01.2012, Annex.-13 dt. 20.01.2012 and Annex.-11 dt. 21.01.2012 passed by the respondent University. The petitioners were appointed on the posts of Assistant Professor in their respective subjects in the Faculty of Home Science and, after completion of 13 years of service on the said post, they were given promotion on the post of Associate Professor under the prevailing Career Advancement Scheme (CAS). Hence, the petitioners are working on the posts of Associate Professor and for further promotion the respondents did not conduct any process for promotion after 2001 although the petitioners are serving on the posts of Associate Professor for last many years and they are entitled for next promotion on the basis of prevailing UGC/ICAR scheme known as Career Advancement Scheme.

2. The University Grants Commission promulgated CAS regulations minimum qualification for appointment of Teachers and other academic staff of the University which is published in the Official Gazette of Government of India which is placed on record as Annex.-3 to the writ petition.

3. The minimum qualification for promotion under the CAS is prescribed and, as per para 6.4 an Associate Professor completing 3 years of service in stage IV and possessing Ph.D. degree in the relevant discipline shall be eligible to be appointed and designated as Professor, therefore, all the petitioners who are working as Associate Professor become eligible for promotion on the post of Professor under the Career Advancement Scheme (CAS).

4. The State Government adopted U.G.C. Regulations 2010 with certain modifications vide order dt. 29.09.2010 which is placed on record as Annex.-4. The State of Rajasthan while adopting the U.G.C. Regulations 2010 with certain modifications issued letter dt. 27.09.2010 to all the Universities, in which, it is specifically provided in para 4 that Career Advancement Scheme (C.A.S.) on or after 31.12.2008 shall be strictly followed as per revised Regulations, 2010 as stated in para 1.3 of the U.G.C. Letter No. F. 3-1/2009 dt. 30.06.2010. The respondent University sought clarification from the Government for revision of pay-scale of teaching staff and, in reference to that, the State Government issued letter dt. 07.07.2011 (Annex.-6) whereby the State Government specifically informed the respondent University that the matter was forwarded to the Finance Department of the Government of Rajasthan for its clarification and Finance Department of the Government has advised to act as per the guidelines issued by the University Grants Commission, therefore, the respondent University through the Registrar is directed to act, as per the advice of the Finance Department, as per the guidelines contained in the UGC Regulations 2010.

5. The petitioners who were facing stagnation made a representation for conducting the exercise for their promotion to the posts of Professor under the CAS because no promotions were made after 2001 when 42 promotions were given to the teaching staff as Professor and, out of those Professors, 60% Professors have already retired by the end of 2010. In the representation, it is requested that as per the ICAR/UGC guidelines the promotion process should be conducted every year.

6. In pursuance of the representation, the University proceeded to conduct the personal promotion of teachers under the CAS vide Annex.-8. As a consequence, on 14.10.2009, the respondent University invited applications for personal promotion from the posts of Associate Professor under the CAS as per procedure laid down in the UGC Regulations 2010. The Deans and Directors of all the affiliated colleges of the respondent University were directed to invite applications and application format was made available on the official website and last date for applying was fixed as 15.11.2011.

7. All the Associate Professors were held eligible for promotion to the posts of Professor after completing 3 years of service as Associate Professor and also candidates having minimum 5 publications since the period the teacher was posted as Assistant Professor.

8. The respondents issued call-letters to the petitioners on 28.12.2011 whereby the petitioners were directed to appear for interview for personal promotion under the CAS on 24.01.2012 and 25.01.2012 at the University Administrative Office, Udaipur. These dates were fixed for the Faculty of Home Science as different dates were fixed for different faculties beginning from 29/30.12.2011 to continue until February 2012. After receiving call-letters the petitioners were enthusiastically waiting to appear before the selection committee for interview.

9. All of a sudden, the petitioners received letter dt. 21.01.2012 wherein they were informed that in pursuance of the directions from the Government of Rajasthan their interview letter for personal promotion as Professor under the CAS issued on 28.12.2011 stands withdrawn. After receiving aforesaid letter the petitioners took up the case with respondent Authority and sought clarification regarding said development. The respondent University supplied copy of letter dt. 03.01.2012 and letter dt. 20.01.2012, Annexures-12 and 13, respectively. As per the petitioners, on examination of the above documents, it is revealed that the State Government took above decision on the basis of letter of the Government dt. 27.10.2009 issued for revision of pay-scales of teaching staff, in which, clause 2 (xiii) was prescribed under which it is provided that direct recruit Associate Professors completing 3 years of service with AGP of Rs. 9000/- and possessing Ph.D. degree in the relevant discipline shall be eligible to be appointed and designated Professor subject to other conditions of academic performance as laid down by the UGC and if any by the University also. Further, no teacher other than those with Ph.D. degree shall be appointed or designated as Professor. Learned counsel for the petitioners submits that above order of the Government was issued only for revision of pay-scales and had nothing to do with appointment of teachers.

10. As per the petitioners, further enquiry was made that above order was passed on the basis of letter dt. 31.12.2008 of the Ministry of Human Resource Development which carried a similar clause at para 2 (xiii) but did not have any term "direct recruiters" in its language. As per the petitioners, the UGC Regulations 2010 issued by the UGC did not have any term as "direct recruiters" in concerning para 6.4.8. In the above circumstances, it is submitted that there is no bifurcation of the eligibility of direct recruitee Associate Professor or Associate Professors designated under the CAS and no such bifurcation is provided in the UGC Regulations 2010. Therefore, denial of the respondent University for granting eligibility to the petitioner Associate Professors promoted under CAS is totally illegal and in contravention of the UGC Regulations 2010 itself.

11. The petitioners tried to convince the respondents to consider their

candidature as per the Career Advancement Scheme in accordance with the UGC Regulations 2010 and Appendix-I of the Regulations dt. 31.12.2008; but, the authorities refused to redress the issue only on the ground that the University is under obligation to comply the directions of the Government. As per the petitioners, Mohan Lal Sukhadia University has already finalized the selection exercise as per the CAS on 30.09.2011, therefore, the denial of consideration of the candidature of the petitioners who were promoted as Associate Professors under the CAS is arbitrary and violative of Article 14 of the Constitution of India. Therefore, all the above writ petitions have been filed by the petitioners against denial of participating in the process of selection under UGC Regulations 2010 for the posts of Professor.

12. Learned counsel for the petitioners vehemently argued that action of the respondent University for denial of participation of the petitioners for consideration of their candidature for the posts of Professor under the CAS is totally unconstitutional and contrary to the UGC Regulations 2010. According to the petitioners, they all are working as Associate Professors and were designated and granted promotion on the posts of Associate Professor from the posts of Assistant Professor under the CAS and they are performing the same duties as performed by the directly recruited Associate Professors, therefore, the respondent University is required to treat them at par with the directly recruited Associate Professors for the purpose of granting eligibility for promotion to the post of Professor under the Career Advancement Scheme as per UGC Regulations 2010.

13. While inviting attention towards para 6.4.8 of the Regulations 2010 dt. 30.06.2010, it is pointed out that no such different categories are provided in para 6.4.8 of the Regulations. There is no term used as "direct recruits" and for promotion on the post of Associate Professor the scheme is formulated. The scheme is accepted by the Government vide communication dt. 22.09.2010 issued by the Department of Education Group-IV, Government of Rajasthan, Jaipur and forwarded by the Agriculture Department to the respondent University.

14. The Finance Department of Government of Rajasthan advised to act as per the guidelines contained in the UGC Regulations 2010, therefore, as per Government decision to follow CAS, respondent University initiated the process under the CAS for promotion on the posts of Professor and, as a consequence of that, interview letters were issued to the petitioners. It is very strange that inspite of taking final decision by the Government vide communication dt. 22.09.2010 for adopting the CAS another letter was issued by the Government after issuance of notice dt. 03.01.2012, in which, it is mentioned that for promotion on the posts of Professor under CAS only those Associate Professors are eligible who were appointed by way of direct recruitment and completed 3 years of service none else. A specific direction was also issued by the Deputy Secretary, Agriculture Department, Government of Rajasthan on 20.01.2012 while following the aforesaid letter dt. 03.01.2012 that only those Associate

Professors who were appointed by way of direct recruitment and completed 3 years of service shall be considered for promotion under the CAS for the post of Professor. Further it is observed that the matter is under consideration in the Department.

15. Learned counsel for the petitioner vehemently submits that once the whole CAS promulgated by the U.G.C. is accepted for implementation vide communication dt. 22.09.2010 then the said conscious decision cannot be rescinded without any basis because without any modification the UGC Regulations 2010 were accepted by the Government, in which, there is no bifurcation of the eligibility of the candidates who were appointed by way of direct recruitment or by way of promotion under the CAS. Therefore, the communication dt. 03.01.2012 is totally discriminatory for the for the reason that once eligibility is granted and process is commenced then, in between the process, the eligibility which is already finalized cannot be revoked in the fashion the State Government has done vide communication dt. 03.01.2012. Learned counsel for the petitioners invited my attention in support of his contention towards judgments reported in State of Jharkhand and Others Vs. Ashok Kumar Dangi and Others, and State of Bihar and Others Vs. Mithilesh Kumar, and submits that denial of opportunity to participate in the process of selection under the CAS promulgated by the UGC is totally illegal, unconstitutional and against the basic principles of law. Therefore, the respondents may be directed not to snatch the right which is already created in favour of the petitioners to participate in the selection process for the post of Professor under the CAS.

16. Per contra, learned counsel appearing on behalf of the respondent University Mr. G.R. Punia, Addl. Advocate General as well as counsel for the private respondents Mr. M.S. Singhvi, Sr. Advocate argued that neither the UGC Regulations 2010 nor the circular dt. 31.12.2008 issued by the Ministry of Human Resource Development has binding effect on the State Government or the respondent University for the reason that the UGC Regulation 3 provides only minimum qualification for appointment of teachers and other academic staff of the University and colleges and other measures for maintenance of standard in higher education. Circular dt. 31.12.2008 provides scheme of revision of pay of teachers and equivalent cadre in University and colleges following the revision of pay scale of Central employees on the recommendation of the VI Central Pay Commission. Therefore, it is a scheme framed by the MHRD for the purpose, however. Clause 8(p) of the said circular provides that scheme shall be applicable to teachers and other equivalent cadres of library and physical education in all the Central University and colleges thereunder and the institutions deemed to be University whose maintenance expenditure is made by the UGC. Clause 8(f) further provides and empowers State Governments, in their discretion, to take into consideration other conditions and to introduce scales of pay higher than those mentioned in this scheme and may give effect to the revised band/scales of pay. Therefore, the scheme/circular dt. 31.12.2008 (Annex.-15) extends discretion to the State Government for modification in implementation of the

scheme as per their discretion. In other words, neither the UGC Regulations 2010 nor the circular dt. 31.12.2008 is enforceable mutatis mutandis upon the State Government or the respondent University.

17. It is submitted by Mr. G.R. Punia, Addl. Advocate General that the State Government adopted the UGC Regulations and circular dt. 31.12.2008 with certain modification and promotion to the post of Professor under the CAS is available only to directly recruited Associate Professors vide circular dt. 27.10.2009. The aforesaid proposition has been upheld by the Division Bench of this Court in the case of Dr. Zabar Singh Solanki vs. State & Others, D.B. Special Appeal (Writ) No. 101/2011, decided on 20.12.2011 wherein the Division Bench held that the UGC itself has left it to the discretion of the State Government to implement the scheme with certain modifications. In the present case also, the petitioners are seeking benefit of consideration of their eligibility for promotion to the posts of Professor under CAS under the UGC Regulations 2010 circular dt. 31.12.2008 and since the UGC Regulations 2010 and circular dt. 31.12.2008 by itself do not have binding force upon the State Government therefore, the State Government adopted the same with certain modifications which is evident from circular dt. 27.10.2009.

18. It is vehemently argued by the learned Addl. Advocate General that the State Government clarified the position by communication dt. 20.01.2012 (Annex.-13) that only directly recruited Associate Professors who have completed 3 years are eligible for promotion to the post of Professor in CAS as provided in Clause 2 (xiii) of circular dt. 27.10.2009 (Annex.-14). The modification is not only for the petitioners or the employees of the University but it is also for the other State Universities and similar modification/ condition of requirement of promotion under CAS is made applicable to college lecturers on completion of 3 years for the posts of Lecturer (Selection Scale).

19. During the course of arguments, it is pointed out by learned Senior Advocate Mr. M.S. Singhvi, appearing on behalf of the private respondents, that the nexus for laying down the eligibility criteria of directly recruited Associate Professor who have completed 3 years shall be eligible for promotion to the post of Professor under CAS is because the designated Associate Professors like the petitioners have already been granted benefits at four stages viz., (i) Assistant Professor (Senior Scale), (ii) Assistant Professor (Selection Scale) (who have not completed 3 years as on 01.01.2006), (iii) Assistant Professor (Selection Scale) (who have completed 3 years as on 01.01.2006), and (iv) designated as Associate Professor under CAS; meaning thereby, the petitioners and like candidates are not selected as Associate Professor on merit but they are given benefit pursuant to the circular dt. 27.10.2009 (18.11.2009) issued in pursuance of the UGC Regulations 2010 and circular dt. 31.12.2008 with the modifications. It is further contended by learned counsel for the private respondents that directly recruited Associate Professors have been selected and appointed on the said posts through competitive selection process and since, now, promotions are

to be made on the posts of Professor which is highest post in the teaching cadre and some of them may be designated Head of Department/Dean and Directors of various institutions/departments of the University who should be possessed of high academic proficiency and caliber and Associate Professors who are directly recruited through competitive selection process are of high academic profile and they are more meritorious than the designated Associate Professors under the CAS. Therefore, the State Government rightly laid down the criteria of directly recruited Associate Professors who have completed 3 years shall be eligible for promotion to the post of Professor under the CAS.

20. Learned counsel for the respondents invited my attention towards judgment of the Hon'ble Supreme Court reported in Dr. Rashmi Srivastava and Dr. B.D. Srivastava Vs. Vikram University and others, , in which, it is held that distinguishing features in the merit promotee and directly recruited Readers/ Professors clearly form distinct class and they are unequal not only because of their respective source of appointment but also because of the nature and character of their appointment, therefore, they cannot be treated equally for all purposes particularly, seniority and promotion. Learned counsel for the respondents vehemently argued that the petitioners have already been extended benefit at four stages and they cannot equate themselves with the directly recruited Associate Professors simply because they were designated Associate Professors under the CAS, therefore, this writ petition may be dismissed.

21. After hearing learned counsel for the parties, I have examined entire record of the case and also considered the judgments cited by learned counsel for the parties.

22. In this writ petition, it emerges from the facts that the main controversy is with regard to granting eligibility to the Associate Professors who are working on the posts of Associate Professor by virtue of promotion under the Career Advancement Scheme (CAS) viz-a-viz the Associate Professors who were directly appointed as Associate Professors after recruitment and selection. To examine the controversy I have perused the Career Advancement Scheme promulgated by the U.G.C. Which is placed on record as Annex.-3 dt. 30.06.2010, in which, para 6.4.0 provides stages for promotion under the CAS of incumbents and newly appointed Assistant Professors on the posts of Associate Professor. In para 6.4.8, following eligibility is prescribed for promotion under the CAS for the posts of Professor:

6.4.8 Associate Professor completing three years of service in stage 4 and possessing a Ph.D. Degree in the relevant discipline shall be eligible to be appointed and designated as Professor and be placed in the next higher grade (stage 5), subject to (a) satisfying the required credit points as per API based PBAS methodology provided in Table I-III of Appendix IV stipulated in these Regulations, and (b) an assessment by a duly constituted selection committee as suggested for the direct recruitment of Professor, Provided that no teacher, other than those with a Ph.D., shall be promoted or appointed as Professor.

23. The State Government took conscious decision to implement the said CAS which is placed on record as Annex.-5 dt. 22.09.2010 and communicated to all the Universities which reads as under:

Government of Rajasthan

Education (Gr. IV) Department

No. F. 1 (6) Edu. 4/2010 Jaipur,

Dated: 22.09.2010

1. Registrar, University of Rajasthan, Jaipur.
2. Registrar, Maharaja Ganga Singh University, Bikaner.
3. Registrar, V.M.O. University, Kota.
4. Registrar, J.N.V. University, Jodhpur.
5. Registrar, National Law University, Jodhpur.
6. Registrar, M.L.S. University, Udaipur.
7. Registrar, M.D.S. University, Ajmer.
8. Registrar, Kota University, Kota.
9. The Commissioner, College Education, Raj. Jaipur.

Sub:-Regarding adoption of the some provisions of U.G.C. Regulations, 2010, dt. 30.6.2010

Sir,

I am directed to convey the sanction for adoption of the provisions of U.G.C. Regulations, 2010 with the following modifications:-

- (1) The designation of the post of college teachers shall be as it is contained in RCS (Revised pay for Government College Teachers including Librarians and PTIs) Rules, 2009.
- (2) Age of superannuation shall be 60 years.
- (3) Full pension i.e. 50% of average pay or last pay drawn whichever is higher, shall be calculated on 33 years of qualifying service.
- (4) Career Advancement Scheme (C.A.S.) on or after 31.12.2008 shall be strictly as per Revised Regulations, 2010 as stated in para 1.3 of the U.G.C. Letter No. F. 3-1/2009, dt. 30.06.2010.

A copy of the UGC Regulations, 2010 is enclosing herewith for ready reference.

This issues with the Concurrence of F.D. (Rules) vide his I.D. No. 221001054, dt. 23.6.2010.

Sd/-

(Satya Prakash Baswala)

Dy. Secretary to the Govt., Hr. Education

24. In the above communication, the Higher Education Department of the Government of Rajasthan, Jaipur decided and conveyed sanction for adoption of the provisions of revised UGC Regulations 2010 and, in para 4, it is specifically observed that CAS on or after 31.12.2008 shall be strictly given effect as per revised Regulations 2010 as stated in para 1.3 of the U.G.C. Letter dt. 30.06.2010; meaning thereby, for all the academic purposes the Higher Education Department of the State Government took decision to implement the CAS as per revised Regulations 2010, in which, above para 6.4.8 was incorporated without any classification of appointment by direct recruitment by selection or promotion through CAS from the posts of Assistant Professor to the posts of Associate Professor.

25. Vide Annex.-6 dt. 07.07.2010, it was further conveyed to the respondent University by the Agriculture Department of the Government of Rajasthan, Jaipur that the matter of revision of pay-scales of teaching staff of the Agriculture Universities of Rajasthan was forwarded to the Finance Department for its clarification and in return the Finance Department of the Government of Rajasthan has advised to act as per guidelines contained in the U.G.C. Regulations 2010. The communication dt. 07.07.2011 is as follows:

Sub: Revision of pay scales of Teaching Staff (General Faculty/ Librarians and Director Physical Education) of the State Agricultural Universities of Rajasthan.

Ref: Your letter No. F. MPUTA/Estt./Gr.-I/2011/2801 dt. 29/ 30.04.2011.

Sir,

With reference to your above referred letter, the matter was forwarded to the Finance Department for its clarification. In this connection, the Finance Department has advised to act as per the guidelines contained in UGC Regulations 2010.

Therefore, I am directed to inform you to please act as per the advise of the Finance Department.

This has been issued with the concurrence of Finance Department of their ID No. 101101600 dt. 30.06.2011.

Yours faithfully,

Sd/-

Asstt. Secretary to Government.

26. In the above document, it is abundantly clear that a conscious decision was

taken by the State Government to follow the UGC Regulations 2010 with modification but all purposes the Career Advancement Scheme was accepted, therefore, in para 6.4.8, no classification for granting eligibility is provided for the candidates appointed by direct recruitment or by promotion on the posts of Associate Professor. Therefore, the respondent University proceeded to initiate the proceedings for the purpose of granting promotion under the CAS to all the working Associate Professors on the posts of Professor, for which, after taking decision, a communication was sent by the University administration on 14.10.2011 to all the Deans and Directors of all the affiliated colleges of the respondent University whereby directed to invite applications in prescribed format from all the eligible candidates irrespective of the mode of appointment on the posts of Associate Professor. In that communication also, it is reiterated that applications may be invited from the eligible teachers as per provisions and procedure laid down in the UGC Regulations 2010. In pursuance of that, applications were received by the authorities of the University and Registrar, Maharana Pratap University of Agriculture & Technology issued letters to all the candidates irrespective of the mode of appointment on the posts of Associate Professor by direct recruitment or promotion.

27. After receiving call-letters the petitioners were waiting to appear before the selection committee for interview. But, all of a sudden, they received letter from the University whereby their interview letters were withdrawn in pursuance of the directions issued by the Government vide communication dt. 20.01.2012. The petitioners approached the University administration for obtaining the said decision, upon which, their interview letters were withdrawn. The University administration supplied them communication dt. 03.01.2012 which is placed on record as Annex.-12. In the said communication, the State Government gave following directives:

28. In the above communication Annex.-12, it is specifically observed that at the time of considering the candidature for promotion on the posts of Professor under the Career Advancement Scheme only those candidates shall be considered who were appointed through direct recruitment as Associate Professor and have completed more than 3 years of service. It is very strange that in the said communication there is reference of the opinion of the Finance Department of the Government of Rajasthan, upon which, the above decision is taken. It is, however, nowhere stated in the said communication that decision taken by the Government on 22.09.2010 (Annex.-5) has been withdrawn by the State Government; meaning thereby, that decision of the State Government with regard to following the CAS strictly as per revised UGC Regulations 2010 is still in existence, in which, there is no bifurcation for providing eligibility under para 6.4.8. Therefore, apparently it emerges that the State Government initially took final decision to strictly follow the revised Regulations 2010 on or after 31.10.2008 and, now, after initiation of process issued communication dt. 03.01.2012 by which the State Government is rescinding the existing right of those Associate Professors who were promoted under the Career Advancement

Scheme without disturbing their earlier decision communicated vide letter dt. 22.09.2010.

29. In the case of R.M. Sharma vs. State of Rajasthan, decided by the Division Bench of this Court, the Division Bench while examining the controversy with regard to age of superannuation from 60 to 65 years held that there is power left with the State Government to modify the Scheme looking to various factors of education standard and held that decision taken by the State Government not to enhance the age of superannuation from 60 to 65 years is perfectly justified. The said decision was also taken in para 2 of the communication dt. 22.09.2010 and in the same communication a decision was taken to implement the CAS strictly as per guidelines contained in the revised UGC Regulations 2010 and conveyed in the same communication in para 4 dt. 22.09.2010. Therefore, once a decision is taken by the State Government for implementation of the revised UGC Regulations 2010 for the purpose of granting promotion under the CAS, then, it cannot be withdrawn on the basis of opinion given by the Finance Department. In this connection, it is worthwhile to observe that earlier vide communication dt. 07.07.2011 the Finance Department advised the University to act as per guidelines contained in the revised UGC Regulations 2010, in which, there is no separate eligibility prescribed or eligibility is granted only to direct recruiters. According to the revised UGC Regulations 2010, para 6.4.8, all the Associate Professors working in the University are held eligible for promotion on the posts of Professor.

30. Learned counsel for the respondents, Mr. M.S. Singhvi, Sr. Advocate invited attention of this Court towards judgment rendered by the Hon"ble Supreme Court in the case of Dr. Rashmi Srivastava and Dr. B.D. Srivastava Vs. Vikram University and others, . After perusing the said judgment, I am of the opinion that the controversy involved in the cited case was altogether different because the Hon"ble Supreme Court was examining the Scheme in relation to Merit Promotion Scheme of the University and matter was not related with the controversy involved in the case on hand.

31. In the case of State of Bihar and Others Vs. Mithilesh Kumar, , the Hon"ble Supreme Court held that norms and rules as existing on the date when the process of selection begins shall apply and any alteration will not affect the continued process unless specifically the same is given retrospective effect. Here, in this case, a conscious decision was taken by the Higher Education Department of the State Government for implementation of the CAS as per the U.G.C. Guidelines and, now, in the mid of the process of selection under CAS on the posts of Professor, the State Government issued communication dt. 03.01.2012 on the basis of the opinion given by the Finance Department.

32. In my opinion, once a conscious decision is taken by the Higher Education Department for implementation of the guidelines contained in revised UGC Regulations 2010 issued by the University Grants Commission, then, there was no occasion left for the Department to obtain opinion again from the Finance

Department so as to declare those Associate Professors ineligible for the posts of Professor who were working as Associate Professor on promotion under the CAS. In the case of R.M. Sharma vs. State of Rajasthan, the Division Bench of this Court held that there is power left with the State Government to modify the Scheme, therefore, vide communication dt. 22.09.2010 if any decision is taken by the State Government not to enhance the age of superannuation from 60 to 65 years, then, no interference can be made. Therefore, once decision has been taken by the Higher Education Department of the State Government to strictly follow the CAS as per revised UGC Regulations 2010 and process is initiated, then, there was no question of withholding the existing right of the candidates without rescinding earlier decision communicated vide letter dt. 22.09.2010.

33. Para 19 to 24 of the judgment rendered by the Hon''ble Supreme Court in the case of State of Bihar & Others vs. Mithilesh Kumar (supra) are as follows:

19. Both the learned Single Judge as also the Division Bench rightly held that the change in the norms of recruitment could be applied prospectively and could not affect those who had been selected for being recommended for appointment after following the norms as were in place at the time when the selection process was commenced. The respondent had been selected for recommendation to be appointed as Assistant Instructor in accordance with the existing norms. Before he could be appointed or even considered for appointment, the norms of recruitment were altered to the prejudice of the respondent. The question is whether those altered norms will apply to the respondent.

20. The decisions which have been cited on behalf of the respondent have clearly explained the law with regard to the applicability of the rules which are amended and/or altered during the selection process. They all say in one voice that the norms or rules as existing on the date when the process of selection begins will control such selection and any alteration to such norms would not affect the continuing process, unless specifically the same were given retrospective effect.

21. As far as the decision in Umadevi (3) case is concerned, we share the sentiments as set out in para 35 of the judgment but we are only considering a situation where amendments are introduced to a recruitment process after the same has begun. The question of allowing sympathy to affect our judgment does not, therefore, arise in this case. Our focus is not on any individual, but on a legal principle which has been settled by this Court in various decisions, as referred to hereinbefore.

22. There is no reason for us to have any disagreement with the decision of this Court in All India Railway Recruitment Board case regarding the right to appointment even of selected candidates, but this is not a case of the respondent having acquired any indefeasible right which has to be cancelled on account of certain exigencies. On the other hand, this is a case where although selected for the purpose of appointment by BPSC, Patna, the case of the respondent was not even considered as there was a change in policy regarding recruitment in the

meantime.

23. While a person may not acquire an indefeasible right to appointment merely on the basis of selection, in the instant case the fact situation is different since the claim of the respondent to be appointed had been negated by a change in policy after the selection process had begun.

24. In these circumstances, we do not see any reason to interfere with the impugned judgment of the Division Bench of the High Court dt. 18.07.2008, in LPA No. 844 of 2007, affirming the judgment of the learned Single Judge dt. 31.07.2007, in CWJC No. 447 of 2006. The SLP is, therefore, dismissed, without any order as to costs.

34. In this case, it is not in dispute that Associate Professors who were promoted under the CAS and Associate Professors who were appointed directly are possessing the same qualification and performing the same duties and getting remuneration in respective pay-scale, therefore, it is obvious that all the Associate Professors working and performing same duties, even if their appointment was made by adopting different mode, are eligible; and, now, the University is going to grant an opportunity of promotion to the posts of Professor under the CAS.

35. Therefore, the University cannot be permitted to make hostile discrimination on the basis of different mode of appointment of the posts of Associate Professor. The University is under legal obligation to treat all the Associate Professors at par without any discrimination holding them eligible for promotion on the posts of Professor under the CAS for the simple reason that CAS has been promulgated by the University Grants Commission to remove stagnation in promotion. In view of the above it is more than clear that denial of eligibility to the Associate Professors who were promoted under the CAS in violative of Articles 14 and 21 of the Constitution of India.

36. In view of the above discussion, I hold that academic decision taken by the Higher Education Department of the State Government vide Annex.-5 dt. 22.09.2010 cannot be changed on the basis of opinion given by the Finance Department so as to change the eligibility of the candidates for promotion on the posts of Professor, that too, during the process of selection. Therefore, once the UGC Regulations 2010 have been adopted for the purpose of promotion without any bifurcation of direct recruiters and promotees under the CAS while prescribing eligibility for promotion on the posts of Professor from the posts of Associate Professor and the State Government took decision to follow the same, it cannot be changed. The education standards are to be maintained by the UGC and the Higher Education Department of the Government of Rajasthan. But, here, in this case, communication dt. 03.01.2012 which is issued during the process of selection loudly speaks that it has been issued on the basis of the opinion given by the Finance Department who has nothing to do for prescribing any academic qualification for maintaining education standard. Therefore, the

said communication is not sustainable in law. As a result of the foregoing discussion, all these writ petitions are allowed. The impugned communication dt. 03.01.2012 and consequential letters of withdrawal issued to the candidates dt. 21.01.2012 are hereby quashed and set aside. It is hereby directed that the respondent University shall consider the candidature of those Associate Professors for promotion on the posts of Professor under the CAS who are working as Associate Professors after promotion under the CAS for last more than three years as per qualifications laid down in para 06.04.2008 of the UGC Regulations 2010. Consequently, the result of all the candidates who were allowed to appear in the interview for the post of Professor under the CAS as per U.G.C. Regulations 2010 shall now be declared forthwith.