

(2017) 07 AHC CK 0008
In the Allahabad High Court
Case No : 1212 of 2012

Dr. Sushmita Bhattacharya

APPELLANT

Vs

Chancellor Den Dayal Upadhyaya Gorakhpur University Raj
Bhaw

RESPONDENT

Date of Decision : 04-07-2017

Acts Referred:

Constitution of India, Article 14, Article 14, Article 226, Article 226, Article 226, Article 16(1), Article 16(1), Article 16(1) - University Commission Act, 1956, — Section 14, Section 14, Section 26, Section 26, Section 15(6), Section 15(6), Section 50(6), Section 50(6), Section 31(8)(Ka)

Citation : (2017) 07 AHC CK 0008

Hon'ble Judges : Narayan Shukla, Sheo Kumar Singh

Bench : Division Bench

Advocate : Chandra Bhushan Pandey, Rohit Tripathi, Alok Mathur, Rajesh Chandra Mishra, Sameer Kalia

Judgement

1. By means of present writ petition filed under Article 226 of Constitution of India, the petitioner has assailed the order dated 2.7.2012 passed by Chancellor, Deen Dayal Upadhyaya Gorakhpur University, Gorakhpur, Lucknow, and Executive Council's resolution dated 3.7.2012 on Agenda No.-36A (Annexure Nos.-1 and 2 to the writ petition) with further prayer to issue writ, order or direction in the nature of Mandamus directing the opposite parties to promote the petitioner on the post of Professor in English Department of University from the date of her eligibility under the Career Advancement Scheme (hereinafter called as CAS). 2. Brief facts giving rise to filing of the present writ petition are that the petitioner was appointed as Lecturer in English Department of Deen Dayal Upadhyaya University Gorakhpur on 29.7.1988 and was given senior scale on 29.7.1993. She was further granted the pay scale of Reader w.e.f. 29.7.1998, but the post of Reader was actually given on 13.12.2001. She became eligible for the post w.e.f.

the date and the scale was granted in her favour i.e. 29.7.1998. State of U.P. vide order dated 13.3.2001 directed the Universities to incorporate the provisions relating to Career Advancement Scheme of the University Grant Commission (hereinafter called as U.G.C.) with default stipulation as contemplated under Section 50(6) of the Act. In light of the above Government Order, the CAS was implemented in the Universities. The petitioner became eligible for promotion on the post of professor under the CAS scheme, after putting in 8 years of service in the Reader grade w.e.f. 29.7.2006, but the Executive Council turn down her candidature without assigning any reason and aggrieved by the decision of the Executive Council, the petitioner moved a representation before the Chancellor of University. After considering the representation of the petitioner, the Chancellor of the University has quashed the recommendation on 4.5.2011 and directed the Vice Chancellor of the University to reconstitute the Selection Committee and consider the case of the petitioner for promotion on the post of Professor. On 25.8.2011 the candidature of the petitioner was recommended by the Selection Committee but without any justification it was kept in sealed envelope and later on matter was referred to U.G.C. where the recommendation of the candidature of the petitioner for promotion on the post of Professor, was disapproved and was communicated to the Vice Chancellor. The name of the petitioner was recommended by the Committee on 25.8.2011 and in accordance with provisions of Section 31(8) (Ka), the matter was referred to the Chancellor for the reasons that the Executive Council has not taken the decision since 4 months and by impugned order dated 2.7.2012, the matter was again sent back to consider the benefit of CAS to the petitioner in the light of letter dated 29.2.2012 issued by U.G.C. It is contended by the learned Counsel for the petitioner that the direction to decide the matter of the petitioner in the light of the letter dated 29.2.2012 is without jurisdiction and "Recommendation of the Selection Committee should have been given effect thereto" 3. For determination of these issues, it is necessary to notice the relevant provisions of University Commission Act, 1956 (hereinafter referred to as the, "UGC Act, 1956"), UGC Regulations, 2010, the University Act, 1965 and the statutes framed thereunder. 4. University Grants Commission Act, 1956: UGC Act, 1956 was enacted to make provisions for the coordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission. 5. Section 12 deals with the "function of the Commission", relevant of which is quoted hereunder: "It shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions under this Act, the Commission may- (a) inquire into the financial needs of Universities; (b) ... (c) ... (d) recommend to any University the measures necessary for the improvement of University education and advise the University upon the action to be taken for the purpose of implementing such recommendation; (e) to (i)... (j) perform such other functions as may be prescribed or as may be deemed necessary by the

Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above functions. 6. Section 14 deals with "consequences of failure of Universities to comply with recommendations of the Commission" which is as follows: "If any University [grants affiliation in respect of any course of study to any college referred to in Sub-section (5) of Section 12A in contravention of the provisions of that Sub-section or] fails within a reasonable time to comply with any recommendation made by the Commission Under Section 12 or Section 13, 2 [or contravenes the provision of any rule made under Clause (f) or Clause (g) of Sub-section (2) of Section 25, or of any Regulation made under Clause (e) or Clause (f) or Clause (g) of Section 26,] the Commission, after taking into consideration the cause, if any, shown by the University 3[for Such failure or contraventions may withhold from the University the grants proposed to be made out of the Fund of the Commission." 7. The UGC Regulations, 2010: For the appointment and career advancement of teachers in the Universities and Institutions affiliated to it UGC by Regulation No. F.3-1/2000(PS) dated 4th April, 2000, enacted the University Grants Commission (Minimum qualifications required for the appointment and career advancement of teachers in Universities and Institutions affiliated to it) Regulations, 2000 (hereinafter referred to as the "UGC Regulations, 2000"). 8. The Government of India, Ministry of Human Resource Development Department of Higher Education, New Delhi by letter No. 1-32/2006-U.II/U.I(i) dated 31st December, 2008 communicated the Secretary, University Grants Commission, New Delhi the Scheme of revision of pay of teachers and equivalent cadres in Universities and Colleges following the revision of pay scales of Central Government employees on the recommendations of the Sixth Central Pay Commission. By the said letter, the Government of India directed that there shall be only three designations in respect of teachers in Universities and Colleges, namely, Assistant Professors, Associate Professors and Professors. In the said letter revised Pay Scales, Service Conditions and Career Advancement Scheme for teachers and equivalent positions including the post of Assistant Professors/ Associate Professors/Professors in Universities and Colleges were intimated. Pay scales of Pro-Vice-Chancellor/Vice-Chancellor were also mentioned therein. It was intimated that the said Scheme may be extended to the Universities, Colleges and other higher educational institutions coming under the purview of State legislature, provided State Governments wish to adopt and implement the Scheme subject to the terms and conditions mentioned therein. 9. In view of the aforesaid letter No. 1-32/ 2006-U.II/ U.I(i), dated 31st December, 2008 issued by the Government of India and in exercise of the powers conferred under Clause (e) and (g) of Sub-Section (1) of Section 26 of the UGC Act, 1956, UGC enacted Regulations, 2010 in supersession of the UGC Regulations, 2000. It was published in the Gazette of India on 28th June, 2010 and came into force with immediate effect. Relevant portion of the said Regulations is as follows: UGC REGULATIONS ON MINIMUM QUALIFICATIONS FOR APPOINTMENT of TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES AND MEASURES FOR THE MAINTENANCE of STANDARDS IN HIGHER EDUCATION 2010 To be

published in the gazette of India Part III Sector 4 University Grants Commission Bahadur Shah Zafar Marg New Delhi-110002. No. F.3-1/2009 28 June, 2010 In exercise of the powers conferred under Clause (e) and (g) of Sub-section (1) of Section 26 of University Grants Commission Act, 1956 (3 of 1956), and in pursuance of the MHRD O.M. No. F.23-7/2008-IFD dated 23rd October, 2008, read with Ministry of Finance (Department of Expenditure) O.M. No. F.1-1/2008-IC dated 30th August, 2008, and in terms of the MHRD Notification No. 1-32/2006-U.II/U.I(1) issued on 31st December, 2008 and in supersession of the University Grants Commission (minimum qualifications required for the appointment and career advancement of teachers in Universities and Institutions affiliated to it) Regulations, 2000, issued by University Grants Commission vide Regulation No. F.3- 1/2000(PS) dated 4th April, 2000, together with all amendments made therein from time to time, the University Grants Commission hereby frames the following Regulations, namely: 1. Short title, application and commencement: 1.1. These Regulations may be called the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010. 1.2. They shall apply to every university established or incorporated by or under a Central Act, Provincial Act or a State Act, every institution including a constituent or an affiliated college recognized by the Commission, in consultation with the university concerned under Clause (f) of Section 2 of the University Grants Commission Act, 1956 and every institution deemed to be a university Under Section 3 of the said Act. 1.3. They shall come into force with immediate effect. Provided that in the event, any candidate becomes eligible for promotion under Career Advancement Scheme in terms of these Regulations on or after 31st December, 2008, the promotion of such a candidate shall be governed by the provisions of these Regulations. Provided further that notwithstanding anything contained in these Regulations, in the event any candidate became eligible for promotion under Career Advancement Scheme prior to 31st December, 2008, the promotion of such a candidate under Career Advancement Scheme shall be governed by the University Grants Commission (Minimum Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and institutions affiliated to it) Regulations, 2000 notified vide Notification No. F.3-1/2000(PS) dated 4th April, 2000, as amended from time to time, read with notifications and guidelines issued by the University Grants Commission (UGC) from time to time, in this regard. 10. The Minimum Qualifications for appointment and other service conditions of University and College teachers, Librarians and Directors of Physical Education and Sports as a measure for the maintenance of standards in higher education, shall be as provided in the Annexure to these Regulations. 11. Consequences of failure of the Universities to comply with the recommendations of the Commission, as provision of Section 14 of the University Grants Commission Act, 1956:- If any University grants affiliation in respect of any course of study to any college referred to in Sub-section (5) of Section 12-A in contravention of the provisions of the subsection,

or fails within a reasonable time to comply with any recommendations made by the Commission Under Section 12 or Section 13, or contravenes the provisions of any rule made under Clause (f) of Sub-section (2) of Section 25 or of any Regulations made under Clause (e) or Clause (f) or Clause (g) of Sub-section (1) of Section 26, the Commission after taking into consideration the cause, if any, shown by the University for such failure or contravention, may withhold from the university the grants proposed to be made out of the fund of the Commission.

12. Applicability of the Scheme:- (i) This Scheme shall be applicable to teachers and other equivalent cadres of Library and Physical Education in all the Central Universities and Colleges there-under and the Institutions Deemed to be Universities whose maintenance expenditure is met by the UGC. The implementation of the revised scales shall be subject to the acceptance of all the conditions mentioned in this letter as well as Regulations to be framed by the UGC in this behalf. Universities implementing this Scheme shall be advised by the UGC to amend their relevant statutes and ordinances in line with the UGC Regulations within three months from the date of issue of this letter.

13. From paragraph 8(p)(i) and (v) of Appendix-I dated 31st December, 2008 read with Regulation 7.4.0 we find that the Scheme of Regulation is applicable to teaching staffs of all Central Universities and Colleges thereunder and the institutions deemed to be Universities whose maintenance expenditure is met by the UGC. However, the Scheme under UGC Regulations, 2010 is not applicable to the teaching staffs of the Universities, Colleges and other higher educational institutions coming under the purview of State Legislature, unless State Government wish to adopt and implement the Scheme subject to terms and conditions mentioned therein.

14. Learned Counsel for the respondent has submitted that State Government has directed to all the Universities to incorporate the provisions relating to CAS Scheme of the University in the institute within 15 days with a default stipulation as mentioned in Section 15(6) of the U.P. State Universities Act. The promotion to the post of Professor from the post of Reader is provided at point no.-10 (2)(b) with specific requirement of three written contributions to his/her credit. The petitioner while appearing before the Selection Committee has shown 7 contributions out of which three contributions were prior to the appointment of the petitioner as Reader. It has been submitted that on the relevant date the petitioner was having only two written contributions to her credit and in light of Clause 10(2)(b) of CAS Scheme, she was not found eligible to be considered for promotion.

15. While submitting the reply learned Counsel for the petitioner has submitted that the Registrar of the University vide letter dated 9.12.2011 communicated to the U.G.C. with list of publications submitted by the petitioner, which was evaluated by the experts. The list contained 7 publications and in all these publications three publications are said to be publications prior to the appointment of the petitioner as Reader, remaining 5 may be considered for her promotion. It has been stated by the Registrar to the U.G.C. as per U.G.C. norms dated 21.2.2002 regarding necessary assessment for promotion to the post of Professor, petitioner has submitted 7 publications and she fulfilled all the necessary qualifications for

promotion from the post of Reader to Professor under CAS Scheme as per guidelines issued by the U.G.C. The Selection Committee has recommended to promote the petitioner from Reader to Professor from the date of eligibility under CAS Scheme. The recommendations of experts 1-Former Professor Sri Amar Nath Dewivedi , Former Professor of English, 2- Sri S.Z.Abidi Professor and Head Department of English and Modern European Language, Lucknow, 3- Sri C.P.Singh Professor P.G. Department of Analyze Bodhgaya, has given following observations:- "On the basis of above observations I recommend that the candidate is fit to be promoted to the post of Professor under the relevant statutes of CAS." The only objection raised vide letter dated 29.2.2012 issued from Deputy Secretary to the U.G.C. was that the date of appointment/promotion as Reader w.e.f. 27.7.1998, the petitioner has completed 8 years" period as Reader on 26.7.2006. But the publications sent by the petitioner were observed prior to the appointment of petitioner as Reader." 16. Learned Counsel for the petitioner has submitted that the qualification which was sought from one Deputy Registrar which does not appear to be a decision of the U.G.C. itself, even if the communication does not support the respondents contentions, it does not bar the consideration of a work or publications prior to the candidate being appointed as a Reader. The communication states that the research publications must be written during the eligibility period. It goes on to state, any deviation from these rules may not be approved by the U.G.C., except in specific circumstances fully justified. The communication, therefore does not said that the publications prior to the said period cannot and will not be approved by the U.G.C. This further clarified by the fact that the communication indicates that in certain cases, Research was considered if fully justified. 17. Learned Counsel for the petitioner has submitted that respondents, the University therefore, was not entitled even on the basis of this communication to bar the petitioner from being considered for promotion to the post of Professor. It is also contended by learned Counsel for the petitioner that the notification does not require the work to have been done or published only during the said period of 8 years or during period when the candidate was Reader. In other words it does not bar the Research publications from being evaluated if it was published before the candidate became a Reader. The interpretation of the Officer of the U.G.C. or even of the U.G.C. itself in respect of the notification even if taken into account remaining 5 publications were sufficient in the case of petitioner to be considered for giving benefit of CAS Scheme. 18. Learned Counsel for the petitioner has relied upon (2010)SCC On Line Bom page 598 , the guidelines issued by the U.G.C. includes minimum of 3 Research publications and recommendations of the 3 experts with two the recommendations must be positive in favour of the petitioner. Proviso at point no. 10(2)(b) also specifies the requirement of three publications as teacher. 19. So far as respondents University is concerned the guidelines which are contained in the Regulations provides the recommendation of Selection Committee, constantly good academic annual progress report and performance appraisal report and best three written contributions of the teacher. In this petition the regulation of the University will prevail, which provides the three

written contributions of the teacher not as a Reader and the averments of the respondents in the counter affidavit that the publications should be of the period of Reader has no relevance in light of the guidelines contained in CAS Scheme in the respondents university whereby the requirement of the publications is of teacher. The procedure for cancellation of promotion to the post of Professorship is again guided by the guidelines issued in March 2000 where in clause 2.6.0 provides that the Selection Committee for promotion to the post of Professor should be the same as for the promotion to the Reader to Professor, which are as follows:- 1. Submission of self appraisal report. 2. Research Contributions books, article published. 3. Any other academic qualifications the best three written contributions of the teacher as define her/him may also be sent in advance to the experts. 4. Seminar / Conference contended . 5. Contributions of teaching. 6. Extension and field out teaching activities. Again the guidelines mentioned above provides only three written contributions of the teacher has to be considered the eligibility criteria for promotion of Professor in the CAS Scheme. 20. Learned Counsel for the petitioner has also submitted that while considering the matter of promotion of the petitioner, the respondents has simply endorsed that " not to be promoted from the post of Reader to the post of Professor" without assigning any reason. 21. Similar matter was raised in Dr. Seshu Lavania v. Lucknow University, Lucknow in writ petition no.-1020 (SB) of 2009 whereby this Court while interpreting the provisions and has held that since no reasons have been recorded by the authority concerned, recommendation cannot be taken to be valid recommendation within the meaning of the Statute. In the Professor's case three experts have recommended her candidature but the Executive Council had turn down her recommendation without assigning any reason. It is worthwhile to mention that initially the present writ petition was filed challenging the order dated 2.7.2012 and 3.7.2012 and by means of order dated 10.1.2014 it was dismissed on the ground of availability of appropriate alternate remedy and aggrieved by the aforesaid order, the petitioner preferred an Special Leave, which was converted to Civil Appeal No.-3362 of 2017 , which was finally disposed of by the Hon"ble Apex Court by means of order dated 27.2.2017 and the order dated 10.1.2014 passed by this Court was set aside and the matter was remanded back for decision afresh on merit. The Hon"ble Apex Court while considering the matter on 20.3.2015 directed the opposite parties to maintain status-quo and further vide order dated 6.5.2015 held as follows:- "..... we modify the order and direct that one post meant for the Professor (English) under Career Advancement Scheme (CAS) shall not be filled up. The State of U.P. is directed to file its counter affidavit within four weeks." 22. Learned Counsel for the respondents has submitted that the guidelines issued by the U.G.C. is binding on the University. On the other hand learned Counsel for the petitioner has submitted that recommendation of the U.G.C. does not , if so facto become part of the statute of the University. It requires an amendment of the statutes by the competent authority and in absence of such amendment being carried down by the University itself, the State Government, in exercise of the power under Section 50 (6) of the Act, can issue necessary directions for this purpose.

Nothing has been shown by the respondents that the statute of the University had been amended in the light of the guidelines. The Executive Council of the University shall be the academic authority and shall subject to the provisions of the statute have the control and regulations of teaching an examination within the University and also responsible for the maintenance of standard thereof. 23. Learned Counsel for the petitioner has submitted that in accordance with provisions of Article 246 and Entry 66 of list (1) there is the bifurcation and division of the power to be exercised by the State Legislature in subject mentioned therein. 24. Article 246 demarcates the matters in respect of which Parliament and State Legislature may make laws. The legislative powers of the Central and State Governments are governed by the relevant entries in the three lists given in 7th Schedule. 25. Entry 66 in List I provides for Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Prior to 42nd Amendment, education including Universities subject to the provisions of the Entries 63, 64, 65, 66 of List-I and Entry 25 of List III was shown in Entry 11 of the List II - State List. By 42nd Amendment of Constitution w.e.f. 3rd January, 1977 Entry 11 of List II-State List was omitted and was added as Entry 25 of List-III. At present the aforesaid provisions read as follows: Seventh Schedule List I - Union List 66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. List III - Concurrent List 25.- Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour. 26. Article 254 relates to repugnancy of Law made by the State with the law made by the Parliament. Article 254 reads as follows: "254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States. - (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State." 27. The effect in case of inconsistency between the Legislation made by the Parliament and the State Legislature on the subject covered by List III has been decided by the Court in numerous cases. 28. In State of Tamil Nadu and Anr. v.

Adhiyaman Education and Research Institute and Ors. (1995) 4 SCC 104, this Court noticed that Entry 66 of List I of the Seventh Schedule has remained unchanged from the inception and that Entry 11 was taken out from List II and was amalgamated with Entry 25 of List III. In the said case the Court held as follows: "12. The subject "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions" has always remained the special preserve of Parliament. This was so even before the Forty-second Amendment, since Entry 11 of List II even then was subject, among others, to Entry 66 of List I. After the said Amendment, the constitutional position on that score has not undergone any change. All that has happened is that Entry 11 was taken out from List II and amalgamated with Entry 25 of List III. However, even the new Entry 25 of List III is also subject to the provisions, among others, of Entry 66 of List I. It cannot, therefore, be doubted nor is it contended before us, that the legislation with regard to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions has always been the preserve of Parliament. What was contended before us on behalf of the State was that Entry 66 enables Parliament to lay down the minimum standards but does not deprive the State legislature from laying down standards above the said minimum standards. We will deal with this argument at its proper place. 41. What emerges from the above discussion is as follows: (i) The expression "coordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention. (ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative. (iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of Clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative. (iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case. (v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State

authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law. (vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities de-recognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally." 29. In *Dr. Preeti Srivastava and Anr. v. State of M.P. and Ors.*, (1999) 7 SCC 120, a Constitution Bench of five Judges dealt with the State competence under List III Entry 25 to control or regulate higher education which is subject to standards laid down by the Union of India. The Court noticed that the standards of higher education can be laid down under List I Entry 66 by the Central Legislation and held as follows: "35. The legislative competence of Parliament and the legislatures of the States to make laws Under Article 246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, Entry 11 of List II gave to the State an exclusive power to legislate on "education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III." Entry 11 of List II was deleted and Entry 25 of List III was amended with effect from 3-1-1976 as a result of the Constitution 42nd Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows: 25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour. Entry 25 is subject, inter alia, to Entry 66 of List I. Entry 66 of List I is as follows: 66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254. 36. It would not be correct to say that the norms for admission have no connection with the standard of education, or

that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are: (1) the calibre of the teaching staff; (2) a proper syllabus designed to achieve a high level of education in the given span of time; (3) the student-teacher ratio; (4) the ratio between the students and the hospital beds available to each student; (5) the calibre of the students admitted to the institution; (6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges; (7) adequate accommodation for the college and the attached hospital; and (8) the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged.

37. While considering the standards of education in any college or institution, the calibre of students who are admitted to that institution or college cannot be ignored. If the students are of a high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. Education involves a continuous interaction between the teachers and the students. The pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive, depend as much on the calibre of the students as on the calibre of the teachers and the availability of adequate infrastructural facilities. That is why a lower student-teacher ratio has been considered essential at the levels of higher university education, particularly when the training to be imparted is a highly professional training requiring individual attention and on-hand training to the pupils who are already doctors and who are expected to treat patients in the course of doing their postgraduate courses." 30. In *Annamalai University v. Secretary to Government, Information and Tourism Department and Ors.*, (2009) 4 SCC 590, this Court observed that UGC Act was enacted by Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas the Open University Act was enacted by Parliament in exercise of its power under Entry 25 of List III. It was held that in such circumstances the question of repugnancy between the provisions of the said two Acts, does not arise. The Court while holding that the provisions of the UGC Act are binding on all the Universities held as follows: The UGC Act was enacted by Parliament in

exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas the Open University Act was enacted by Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the Statement of Objects and Reasons of the Open University Act shows that the formal system of education had not been able to provide an effective means to equalise educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.

42. The provisions of the UGC Act are binding on all universities whether conventional or open. Its powers are very broad. The Regulations framed by it in terms of Clauses (e), (f), (g) and (h) of Sub-section (1) of Section 26 are of wide amplitude. They apply equally to open universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC Under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of UGC are all-pervasive in respect of the matters specified in Clause (d) of Subsection (1) of Section 12-A and Clauses (a) and (c) of Subsection (2) thereof." 31. The aforesaid judgment makes it clear that to the extent that the State Legislation is in conflict with Central Legislation including sub-ordinate legislation made by the Central Legislation under Entry 25 of the Concurrent List shall be repugnant to the Central Legislation and would be inoperative. 32. We have noticed and held that UGC Regulations, 2010 is applicable to the Universities, Colleges and other higher educational institutions coming under the purview of the State Legislature when State Government wish to adopt and implement the Scheme subject to the terms and conditions therein. In this connection, one may refer paragraph 8(p) (v) of Appendix-I dated 31st December, 2008 and Regulation 7.4.0 of UGC Regulations, 2010. 33. Learned Counsel for the respondents has submitted that the, Deputy Registrar of the U.G.C. after considering the clarification and material provided by the University has intimated that the case of petitioner cannot be approved for promotion on the post of Professor under the CAS Scheme, on the ground that the petitioner is not having three publications in her credit while working as Reader as enumerated in the scheme itself. While a three experts Committee constituted for this purpose, has examined and evaluated the publications written by the petitioner and recommended her for promotion under the CAS Scheme. 34. It has been contended by learned Counsel for the petitioner that (I) The guidelines which has been issued by the U.G.C. , has not been incorporated in the statute, (II) The Court can examine the publications and experts report and make an assessment regarding arbitrariness with regard to the consideration for promotion in the petitioner's matter. (III) That the petitioner was entitled for promotion w.e.f. 29.7.2006 after completion of 8 years of eligibility criteria. (IV) The guidelines issued in the year 2010 ought not strictly

applicable in the case where the entitlement of the petitioner for promotion was to be considered from the date of eligibility i.e. 29.7.2006. (V) Even if it is applied, required publications are with the petitioner which had been examined and reported with the recommendation of Expert Committee. (VI) The regulation 1.3. as mentioned above provides that in the event, any candidate becomes eligible for promotion under Career Advancement Scheme in terms of these Regulations on or after 31st December, 2008, the promotion of such a candidate shall be governed by the provisions of these Regulations (Regulation 2010), provided further that notwithstanding anything contained in these Regulations, in the event any candidate became eligible for promotion under Career Advancement Scheme prior to 31st December, 2008, the promotion of such a candidate under Career Advancement Scheme shall be governed by the University Grants Commission 2000 notified on 4th April, 2000, as amended from time to time. (VII) The petitioner has moved a reference under Section 68 of the Universities Act for consideration for promotion under CAS Scheme and the Chancellor vide order dated 4.5.2011 has directed the respondents to consider the promotion of the petitioner in the light of the recommendation of Selection Committee. (VIII) The Executive Council or the authorities concerned have to follow the recommendation of the Selection Committee. There are eight publications as mentioned above, which has been duly considered by the three experts committee and later on Registrar of the University has submitted his report in compliance of the letter issued from the U.G.C. in which it was found that three publications were prior to the post of Reader while the publications which was required under the guidelines issued by the University are of the period of teacher, which does not contains any limitation during the post of Reader. 35. Further even if, it is considered that three publications were prior to the post of Reader, remaining five would have been considered for promotion under the CAS Scheme and were duly considered by the Selection Committee and the Selection Committee after examining and evaluating, recommended the candidature of the petitioner, which was arbitrarily rejected by the Executive Council and by keeping more than four months without taking any decision which goes to reveal that the matter of promotion of petitioner was not duly considered with ulterior motives and was kept pending for more than four months and later on was sent to the Chancellor for consideration. It was the duty of the respondents to consider the candidature of the petitioner on the basis of the recommendation by the Selection Committee within time as stipulated in the provisions i.e. within four months and the decisions was kept pending deliberately adversely effecting rights of the petitioner. Learned Counsel for the petitioner has submitted that the action or in action of the authorities concerned was mala-fide on the following grounds:- (i) The authorities concerned took matter of the petitioner pending for about four months and after that without taking any decision referred the matter to the Chancellor. While they have to follow the recommendation of the Expert Committee or to decide the matter within a reasonable time by passing a speaking order. (ii) The order of the Chancellor dated 4.5.2011 was not complied with. (iii) In compliance of order

dated 2.7.2012 which was passed by the Chancellor at Lucknow , an urgent meeting was called on 3.7.2012, just on the next day and the candidature of the petitioner was declined, which shows that firstly case of the petitioner was kept pending for four months in spite of favourable recommendation and secondly a meeting was called on the next day, so hurriedly to reject the candidature of the petitioner with mala-fide intention. 36. Learned Counsel for the petitioner has submitted that keeping the matter of petitioner for more than four months comes within the category of abuse of power. Unreasonable delay in disposing the matter of promotion of petitioner implies a wilfully abuse or intentionally wrong. An honest thought erroneous exercise of power or in decision thought is not an abuse of power. A decision , action or inspection may be inconvenient or unpalatable but it would not be an abuse of power. It becomes duty of the authority holding any matter to apply its mind and also consider the matter pending for the authority and to decide expeditiously and if it is kept pending for a long time, through which a right which has been accrued in favour of the person, it denied or adversely affected , it can be said to be abuse of power. 37. It is settled law that when the action of the State or its instrumentalities is not as per the rules or regulations and supported by a statute, the Court must exercise its jurisdiction to declare such an act to be illegal and invalid. 38. In *Sirsi Municipality v. Cecelia Kom Francis Tellis*, AIR 1973 SC 855, the Supreme Court observed that "the ratio is that the rules or the regulations are binding on the authorities." Similarly, a Constitution Bench of the Hon"ble Supreme Court in *Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr.*, AIR 1975 SC 1331, has observed as under:- "The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by Courts to invalidate actions in violation of rules and regulations. The existence of rules and regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. The statutory regulations in the cases under consideration give the employees a statutory status and impose restrictions on the employer and the employee with no option to vary the conditions.....In cases of statutory bodies there is no personal element whatsoever because of the impersonal character of statutory bodies.....the element of public employment or service and the support of statute require observance of rules and regulations. Failure to observe requirements by statutory bodies is enforced by courts by declaring (action) in violation of rules and regulations to be void. This Court has repeatedly observed that whenever a man"s rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute." 39. Similar view has been taken by the Supreme Court in *Ambica Quarry Works etc. v. State of Gujarat & Ors.*, AIR 1987 SC 1073; and *Commissioner of Police, Bombay v. Gordhandas Bhanji*, AIR 1952 SC 16. In both the cases, the Apex Court relied upon the judgment of the House of Lord in *Julius v. Lord Bishop of Oxford*, (1880) 5 AC 214, wherein it was observed as under:- "There may be something in the nature of thing empowered to be done, something in the object

for which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so." 40. In *Commissioner of Police (supra)*, the Apex Court observed as under:- "Public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order.....An enabling power of this kind conferred for public reasons and for the public benefit is, in our opinion, coupled with a duty to exercise it when the circumstances so demand. It is a duty which cannot be shirked or shelved nor it be evaded, performance of it can be compelled." 41. In *Dr. Meera Massey v. Dr. S.R. Mehrotra & Ors.*, AIR 1998 SC 1153, the Apex Court observed as under:- "If the laws and principles are eroded by such institutions, it not only pollutes its functioning deteriorating its standard but also exhibits.....wrong channel adopted.....If there is any erosion or descending by those who control the activities all expectations and hopes are destroyed. If the institutions perform dedicated and sincere service with the highest morality it would not only up-lift many but bring back even a limping society to its normalcy." 42. The Supreme Court has taken the same view in *Ram Chand & Ors. v. Union of India & Ors.*, (1994) 1 SCC 44, and held that "the exercise of power should not be made against the spirit of the provisions of the statute, otherwise it would tend towards arbitrariness." 43. In *Purushottam v. Chairman, Maharashtra State Electricity Board & Anr.*, (1999) 6 SCC 49, the Hon'ble Supreme Court has held that appointment should be made strictly in accordance with the statutory provisions and a candidate who is entitled for appointment, should not be denied the same on any pretext whatsoever as usurpation of the post by somebody else in any circumstances is not possible. 44. A Constitution Bench of the Hon'ble Supreme Court in *Ajit Singh (II) v. State of Punjab & Ors.*, (1999) 7 SCC 209 held that any action being violative of Article 14 of the Constitution is arbitrary and if it is found to be de hors the statutory rules, the same cannot be enforced. 45. In *Indra Sawhney II v. Union of India & Ors.*, AIR 2000 SC 498, the Hon'ble Supreme Court reiterated the law laid down by it time and again that Articles 14 and 16 (1) of the Constitution of India provide for rule of equality which is the basic feature of the Constitution and, therefore, there can be no deviation from the principles enshrined therein while making the appointments. Rule of equality is an antithesis of any kind of arbitrariness or private gain, whim or caprice of any individual. Even if the State has the discretionary power to issue executive instructions, such discretion is coupled with the duty to act in a manner which will promote the object for which the power is conferred and also "satisfy the mandatory requirement of the Statute." (Vide *A.P. Aggarwal v. Government (of N.C.T.) of Delhi & Ors.*, AIR 2000 SC 205. In *Kumari Shrilekha Vidyarthi etc. etc. v. State of U.P. & Ors.*, AIR 1991 SC 537, the Apex Court held that every State act, in order to survive, must not be susceptible to vice of arbitrariness which is a crux of Article 14 of the Constitution and basis to the rule of law. 46. Therefore,

it is evident from the aforesaid judgments of the Hon"ble Apex Court that whenever any action of the authority is in violation of the provisions of the statute or the action is constitutionally illegal, it cannot claim any sanctity in law, and there is no obligation on the part of the Court to sanctify such an illegal act. Wherever the statutory provision is ignored, the Court cannot become a silent spectator to such an illegal act, and it becomes the solemn duty of the Court to deal with the persons violating the law with heavy hands. (Vide R.N. Nanjundappa v. T. Thimmaiah & Anr., AIR 1972 SC 1767; B.N. Nagarajan & Ors. v. State of Karnataka & Ors., AIR 1979 SC 1676; Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi & Ors., AIR 1992 SC 789; State of Orissa & Ors. v. Sukanti Mohapatra & Ors., AIR 1993 SC 1650; Jawahar Lal Nehru Krishi Vishwa Vidyalaya, Jabalpur, M.P. v. Bal Kishan Soni & Ors. (1997) 5 SCC 86; State of Himachal Pradesh v. Nodha Ram & Ors., AIR 1997 SC 1445; Ashwani Kumar & Ors. v. State of Bihar & Ors., AIR 1997 SC 1628; State of M.P. & Anr. v. Dharam Bir, (1998) 6 SCC 165; Municipal Corporation, Bilaspur & Anr. v. Veer Singh Rajput & Ors., (1998) 9 SCC 258; Nazira Begum Lashkar & Ors. v. State of Assam & Ors., AIR 2001 SC 102; Mrs. Dr. Chanchal Goyal v. State of Rajasthan, AIR 2003 SC 1713; M.D., U.P. Land Development Corporation & Anr. v. Amar Singh & Ors., AIR 2003 SC 2357; State of Haryana & Anr. v. Tilak Raj & Ors., AIR 2003 SC 2658; Haryana Tourism Corporation Ltd. v. Fakir Chand & Ors., AIR 2003 SC 4465; Sultan Sadik v. Sanjay Raj Subba & Ors., AIR 2004 SC 1377; and A. Umarani v. registrar, Co-operative Societies & Ors., 2004 AIR SCW 4462). 47. In Ramniklal N. Bhutta & anr. v. State of Maharashtra & ors., AIR 1997 SC 1236, the Hon"ble Apex Court observed as under:- "The power under Article 226 is discretionary. It will be exercised only in furtherance of justice and not merely on the making out of a legal point. the interest of justice and public interest coalesce. They are very often one and the same. The Courts have to weight the public interest vis-a-vis the private interest while exercising the power under Article 226.... indeed any of their discretionary powers." 48. In view of the above, we are of the considered opinion that every statutory provision requires strict adherence, for the reason that the statute creates rights in favour of the citizens, and if any order is passed de hors the same, it cannot be held to be a valid order and cannot be enforced. As the statutory provision creates legal rights and obligations for individuals, the statutory authorities are under a legal obligation to give strict adherence to the same and cannot pass an order in contravention thereof, treating the same to be merely decoration pieces in his office. 49. The averments made in the counter affidavit regarding letter of the Deputy Registrar, U.G.C. is misconceived and misinterpreted on the ground of three publications, which are said to be prior to the post of Reader. Firstly, that was without jurisdiction and without amending the provisions in the University statute, letter of the Deputy Registrar had no role to play in the process of selection for the post of Professor and factually though the objection raised by the Deputy Registrar is incorrect as the Selection Committee itself had found that the relevant publications were worthwhile, to be considered for promotion and after considering the publications and other records the Selection Committee had

recommended the petitioner's case for promotion. 50. Learned Counsel for the petitioner has submitted that the petitioner had three publications to her credit and the same was considered by the Selection Committee and in the light of the guidelines of the statutes and Executive Council without finding any fault in the selection process has turned down the selection process without giving any reason, which seems arbitrary and illegal. The petitioner has moved a reference under Section 68 State Universities Act for consideration of promotion under the CAS Scheme and after considering the fact the Chancellor vide order dated 4.5.2011 admitted the prayer of the applicant/petitioner and directed the respondents to consider the promotions of the petitioner, in the light of this recommendation of the Selection Committee. The respondents had no option, except to consider the candidature of the petitioner in light of the recommendation of the Selection Committee, but the same was turned down without any reason in an arbitrary manner. The matter whether the work of publications constitutes a research publication or not is for the experts to decide. It was not for the Executive Council or even for us to examine the research publications because the Court is not expert in the field and the Selection Committee which was duly constituted by the respondents for this purpose, has considered the publications and found the candidature of the petitioner up to the mark and recommended to be considered under the scheme. Further, the communication from the U.G.C. does not create an absolute bar against the publications in books being considered for evaluation under the said scheme. Whether in given case, such a publication as narrated in the application of the petitioner or submitted by the petitioner, are to be considered or not, is for the experts to decide and not for others or any other Committee to say otherwise against the report of Selection Committee. 51. Learned Counsel for the petitioner has also taken reference of the letter dated 20.10.2011 issued by the U.G.C. whereby in the last column it has been recommended that the "The experts members and the Vice Chancellors were of the common opinion/consent and agreed to recommend Dr. Sushmita Bhattacharya, Reader, Deptt. Of English as Professor under Career Advancement Scheme, the UGC may like to take necessary opinion and action at their end to fulfil the Regulations laid by the UGC under CAS including promotion of candidate from the date of eligibility." 52. The Hon'ble Apex Court while hearing the S.L.P. No.- 8227 of 2014 vide order dated 6.5.2015 has directed that one post meant for the English Professor under CAS Scheme, shall not be filled up. After hearing the SLP No.-8277 of 2014 which was converted into Civil Appeal No.-3362 of 2017, Hon'ble the Apex Court vide its order dated 27.2.2017 decided the case and directed as follows:- "1. Leave granted. 2. The short Judgment impugned herein reads as follows :- "Heard learned counsel for the parties. By means of this writ petition the petitioner has prayed for quashing the order dated 02.07.2012 passed by the Chancellor, Deen Dayal Upadhyay Gorakhpur University - opposite party No. 1. Submission of learned counsel for the petitioner is that case of the petitioner for promotion under Career Advancement Scheme was considered in pursuance of order dated 02.07.2012 passed by the Chancellor but the promotion has been denied to the petitioner on certain

grounds. He further submits that once direction was there by the Chancellor the matter ought to have been considered by the opposite parties in the light of the decision of the UGC and they could not have rejected the claim of the petitioner for promotion..... Therefore, we set aside the order passed by the High Court and remand the writ petition to the High Court to dispose of the same on merits, expeditiously and preferably before the Court closes for summer vacation. 4. In view of the above, the appeal is disposed of. No costs." 53. Having considered the rival contentions of the parties and in the light of the order passed by the Hon"ble Apex Court , recommendation of the Selection Committee with regard to the fact that on the same very ground the juniors to the petitioner were promoted under the CAS Scheme, the petitioner is also entitled for promotion from the post of Reader to the post of Professor w.e.f. her eligibility under the CAS Scheme, in the result the writ petition is allowed, with cost in the following terms:- 1. We hereby quash the last line of the letter dated 2.7.2012 contained as Annexure No.-1 which contains " "VERNACULAR MATTER OMITTED" and Executive Council resolution dated 3.7.2012 bearing Agenda No.- 36-A contained as Annexure No.-2 to the writ petition. 2. In light of the recommendations of Selection Committee the petitioner is entitled to be considered for promotion to the post of Professor under the CAS Scheme from the date of her eligibility under CAS Scheme with all consequential benefits. Petition Allowed.