
(2002) 04 RAJ CK 0070

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 1071 and 2636 of 1991

Dr. Zabar Singh Solanki and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 12-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 4 WLN 182

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—Both the writ petitions mentioned above are being decided by this common order as in both of them matter in dispute is the same.

2. S.B. Civil Writ Petition No. 1071/1991

This writ petition was initially filed by the Rajasthan Agriculture University Assistant Professors Association through its Secretary Zabar Singh Solanki, but later on, 54 petitioners were added as individual party and thus, this writ petition was treated to be filed by the petitioners against the respondents. It was stated in the writ petition that the petitioners are Assistant Professors in the respondent No. 2 Rajasthan Agriculture University, Bikaner (hereinafter referred to as "the Agriculture University") constituted under Rajasthan Agriculture University Ordinance later-on replaced by Rajasthan Agriculture University, Bikaner Act, 1987 (hereinafter referred to as "the Act of, 1987").

The petitioners were initially appointed as Research Assistants in the erstwhile University of Udaipur, later-on, renamed as Mohan Lal Sukhadia University and they were appointed after selection by a duly constituted statutory Selection Committee of the Mohan Lal Sukhadia University in the UGC Pay Scale of Rs. 300- 600 prevailing at that time. The University of Udaipur proceeded to designate Research Assistants as Lecturers and this was purported to have been

done on account of amendment made in statute 47(i) whereby the term "Junior Lecturer" was substituted by the term "Lecturer" and a copy of that Notification dated 7.9.1997 is marked as Annexure-1A to the writ petition. Thus, the petitioners were appointed as Assistant Professors and they are getting emoluments in the pay scale Rs. 2200-4000, which is again UGC pay scale.

Later-on, anomalies developed in the cadre structure of the University Teachers (between persons appointed as Research Assistants and Assistant Professors appointed directly); on the enforcement of University Grants Commission (UGC) Pay Scale and, therefore, the Board of Management considered the matter of resolving the anomalies in its meeting held on 24.11.1988 and the Board of Management resolved to give revised UGC pay scale of Rs. 2200-4000 to the Lecturers and Research Assistants and the Board of Management further resolved that such, of Junior Lecturers and Research Assistants, who were later on designated as Lecturers and then as Assistant Professors shall be placed in the seniority down below those who were appointed as Assistant Professors directly in the very first instant and that was done with a view to bring uniformity in the cadre structure so as to bring the same at par with other Universities. The Board of Management further resolved to designate Research Assistants and Lecturers as Assistant Professors. The photostat copy of the minutes of the meeting of the Board of Management held on 24.11.1988 is marked as Annex.3 to the writ petition.

Thereafter, in pursuance of the resolution of the Board of Management dated 24.11.1988 (Annex.3 to the writ petition), the respondent No. 2- Agriculture University passed an order dated 4/6.5.1989 (Annex.4 to the writ petition) notifying the designation of Lecturers and Research Assistants as Assistant Professors with effect from 1.1.1973 or from the date of their joining, whichever is later. However, it was made clear that the persons duly selected as Assistant Professors will rank senior to the Lecturers/Research Assistants.

Later on, a new set of pay scales was devised with a new set of policy for the purpose of teaching staff in the Universities and that resulted in a lot of conflict among the teachers of the Universities and Colleges and some teachers of the Universities and Colleges went on strike. Thereafter, the Government of India, in agreement with the agitating teachers of the Universities and Colleges, decided to make revision of pay scales of the teachers of the Universities and Colleges and other measures for maintenance of standards in Higher Education, which have been notified by the Government of India through letter dated 22nd July, 1988 (Annex.5 to the writ petition). Paras No. 12, 13 and 14 of the said letter dated 22nd July, 1988 (Annex.5 to the writ petition) are being quoted here:

12. In order to encourage research, in continuation of Post-graduate studies, candidates who, at the time of their recruitment as Lecturers, possess Ph.D. or M.Phil degree will be sanctioned three and one advance increments respectively in the pay scale of Rs. 2200-4000 alongwith the benefit of corresponding years of service for the purpose of promotion. The existing Lecturers without research

degrees, and those similarly situate, recruited in future will be eligible for a similar benefit in service for the purpose of promotion as and when they acquire research degrees, but will not be eligible for advance increments. Existing Lecturers with research degrees will also be eligible for a similar benefit.

Career Advancement

13. Every Lecturer will be placed in a senior scale of Rs. 3000- 5000 if he/she has:

(a) Completed 8 years of service after regular appointment, with relaxation as provided in para 12 above:

(b) Participated in two refresher course/summer institutes, each of approximately 4 weeks" duration or engaged in other appropriate continuing education programmes of comparable qualify as may be specified by the UGC:

(c) Consistently satisfactory performance appraisal reports.

Explanation:

All Lecturers in the existing scale of Rs. 700-1600, who have completed 8 years of service on 1.1.1986, will be placed through a process of screening/ selection as indicated in para 22 below, in the scale of Rs. 3000-5000. The benefit of service provided in para 12 will be available for the initial placement also.

14. Every Lecturer in the Senior scale will be eligible for promotion to the post of Reader in the scale of pay of Rs. 3700- 5700 if he/she has:

(a) completed 8 years of service in the senior scale, provided that the requirement of 8 years will be relaxed if the total service of the lecturer is not less than 16 years:

(b) Obtained a Ph.D. degree, or an equivalent published work:

(c) Made some mark in the areas of scholarship and research as evidenced by self-assessment, reports of referees, qualify of publications, contributions to educational Venovation, design of new courses and curricula, etc.:

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

(e) consistently good performance appraisal reports.

Thereafter, the Government of Rajasthan decided to implement the decision of the Government of India referred to above and further decided to give benefit of the same in the first instance to the University teachers. This led to the filing of the writ petition by one Deen Bandhu Vyas being D.B. Civil Writ Petition No. 2336/1988 Deen Bandhu Vyas v. The State of Rajasthan and that writ petition

was decided by the Division Bench of this Court vide order dated 4.1.1989 and this Court directed the respondents to create posts of Lecturer Senior Scale and Lecturer Selection Scale in Government Colleges within a period of four months from the date of the order of this Court and to give appointment on these posts in terms of the provisions made in the Career Advancement referred to in the press release Annex. 2 with all consequential benefits to those who may be found entitled on or before June, 1989. This Court further directed the respondents to issue directions for the creation of posts of Lecturer Senior and Lecturer Selection Scale in Colleges receiving grant-in-aid and to give appointment on these posts with all consequential benefits within a reasonable time. It was submitted by the petitioners that the directions given by this Court were complied with by the respondents vide order dated 24.3.1990, a copy of which is marked as Annex.6 to the writ petition.

It may be stated here that the Resolution passed by the Board of Management on 24.11.1988 (Annex.3) was again reviewed by the Board of Management in its meeting held on 28.1.1989 and for that Annex.R/1 may be referred to, which shows that the Resolution dated 24.11.1988 (Annex.3) was not confirmed by the Board of Management.

Later-on, the respondent No. 2 Agriculture University through letter dated 22.11.1990 (Annex. 10 to the writ petition) notified the Rules for implementing the Career Advancement Scheme for Assistant Professors in the University, which came into force w.e.f. 1.1.1986. The rules for implementation of Career Advance Scheme for Assistant Professors were approved by the Board of Management vide Resolution No. 245 dated 8th August, 1990 except Explanations (b) and (c) of Rule 2. The Rule 2 runs as under:

2. Every Assistant Professor will be placed in a Senior Scale of Rs. 3000-5000. If he/she has:

(a)(1) Completed 8 years of service after regular appointment. The Assistant Professor with research degrees, Ph.D. and M.Phil will be entitled for relaxation of three years and one year respectively in service for the purpose of promotion. The total benefit will not exceed 3 years. In case of Assistant Professors with Engineering qualifications with Ph.D. and M.E./M.Tech./M.Sc. (Tech.) also degrees will be entitled for relaxation of four and two years respectively in service for the purpose of placement in the senior scale. Possession of Degrees of both Ph.D. and M.E./M.Tech./M.Sc. (Tech.) would entitle service benefit not exceeding four years in all. This benefit will be allowed only to those Assistant Professors who avail any leave other than study leave; and

(b) Participated in two refresher course/summer institutes each of approximately four weeks duration or engaged in other appropriate continuing education programme of comparative quality as may be specified from time to time. Pending the organisation of such programmes of the quality and scale required, relaxation from the requirement of participation in such programme for specific

period may be granted by the University.

Note:

This condition is relaxed for three academic sessions i.e. 1989-1990, 1990-1991, 1991-1992.

(c) Consistently satisfactory performance appraisal reports.

Explanation

1. The regular appointment and the service rendered by a teacher accordingly are defined as under for the purpose of career advancement:

(a) Appointment as an Assistant Professor in the University through statutory selection committee. This shall include appointment as an Assistant Professor in the Mohan Lal Sukhadia University (MLSU) through its statutory selection committee in the faculties of Agriculture wing (A1) the faculties of this University).

(b) The appointment made in the University after regular selection in continuation of the permanent service rendered by a teacher in a University or Government and or non-Government affiliated colleges at the time of commencement of these rules.

(c) The appointment made in the University after regular selection in continuance of his/her adhoc or temporary appointment as Assistant Professor/Lecturer (Selected through a statutory selection committee for the post of Assistant Professor immediately before regular selection in the University.

On 18.8.1990, the respondent No. 2 Agriculture University addressed a letter (Annex. 13 to the writ petition) to the Agriculture Production Secretary, Government of Rajasthan, Jaipur for grant of approval of Board of Management Resolution dated 24.11.1988. For convenience, the said letter dated 18.8.1990 (Annex. 13) is being reproduced hereinbelow:

Supreme Court of India gave judgment in favour of Lecturer/Research Assistants of this University to give UGC pay scale 700-1600 from 1.1.1973. In response to Supreme Court Judgment, Govt. of Rajasthan issued orders to give UGC pay scale 700-1600 to Lecturers/Research Assistant with the condition that Lecturer will be treated as lower cadre the Assistant Professor. In compliance of this order University gave UGC pay scale but kept lecturers at lower cadre than Assistant Professors.

When lecturers were selected for the post of Assistant Professor, then as per rule of University they were given fixation benefit which was two increments to each person. Due to this a heavy financial burden came on University or Government.

Looking to this condition the BOM of this University in its meeting dated 24.11.1988 passed a resolution vide resolution No. 7, in which all duly selected lecturers/Research Assistants were designated as Assistant Professor w.e.f.

1.1.1973 or the date of their joining as Lecturer whichever is later. This resolution was sent to Government in Nov. 1988 for approval but no" reply has been received from Government so far.

In response to the above resolution University issued order (copy enclosed) in anticipation of approval of Govt. In this order Lecturer/Research Assistant has been designated as Assistant Professor w.e.f. 1.1.1973. Due to this order all Lecturers selected as

Assistant Professor, who were given fixation benefit were subject to withdrawal of fixation benefit of two increments given earlier and money was duly recovered. Now under career advancement scheme for teachers, the services of duly selected lecturers (who are now Assistant Professors) is to be counted. For this Government approval is required.

There is too much resentment among teachers for non-implementation of career advancement scheme. The hindrance in implementation of the Scheme is approval of above resolution of BOM. I submit you kindly to give approval of BOM resolution No. 7 dated 24.11.1988 and necessary directives in this regard.

On 27.3.1991, the Dy. Secretary (A.P.), Government of Rajasthan, Agriculture (Gr.2A) Department, Jaipur addressed a letter to the Vice-Chancellor of the Rajasthan Agriculture University, Bikaner stating that the Resolution of the Board of Management dated 24.11.1988 be rescinded. For convenience, the said letter dated 27.3.1991 (Annex.R/2) is being reproduced hereinbelow:

Subject :-- Implementation of Career Advancement Scheme for Assistant Professor.

I am directed to refer to your letter No.F.IV/Misc./I/RAU/Estt/3589 dated 7th February, 1991 on the subject mentioned above, In this connection the following issues need serious consideration:

1. This department letter No.F.12(17)Agri./Gr.2A/79 dated 19th April, 1986 made it explicitly clear that Assistant Professors and Lecturers in Rajasthan Agriculture University will continue to hold separate ranks and need not be equated in other matters also.

2. Despite above mentioned order the Board of Management of Rajasthan Agriculture University, on its own decided in the meeting on 24th November, 1988 that the Lecturers/Research Assistants will be designated as Assistant Professors with effect from 1st January, 1979 on the date of their joining, whichever is later and further that the persons duly selected as Assistant Professors will rank senior to the Lecturers/Research Assistants.

3. If the Lecturers/Research Assistants not duly selected as Assistant Professors are designated as Assistant Professors with effect from 1st January, 1979 or the date of their joining then despite the fact that Board of Management decision states that they will rank junior to the duly selected Assistant Professors, these

Lecturers/Research Assistants will get promotion early under career advancement scheme because of their seniority from 1st January, 1979. This will have legal implications as duly selected Lecturers will be put in disadvantageous position.

In view of the above mentioned anomalies, I am directed to say that the BOM resolution dated 24.11.1988 may kindly be rescinded and Rajasthan Agriculture University may consider a revised decision according to the following principles:

1. Non-selected Lecturers/Research Assistants could be made Assistant Professors from the date latter to the date of joining of duly selected Assistant Professors in their respective discinlines
2. The past services as Lecturers/Research Assistants cannot be given same weightage for ex-cadre promotion as the services rendered by a person in the capacity of Assistant Professors. The grade of Lecturers/Research Assistants is a separate grade, though the pay may be same, and therefore, the services rendered in that grade cannot be considered at par with the services of Assistant Professors.

Thereafter, the Board of Management in its meeting held on 29th July, 1991 again took up the matter for grant of benefit of Career Advancement Scheme to the Assistant Professors and the Board of Management clarified that if any Research Assistant or Lecturer had been selected as Assistant Professor by the Statutory Selection Committee, then his service period shall be counted from the date when he was duly selected by the Statutory Selection Committee. The copy of the minutes of the meeting of the Board of Management held on 29.7.1991 is marked as Annex.28 to the writ petition.

Since the benefits pursuant to the letter dated 18.8.1990 (Annex. 13 to the writ petition) were not given to the petitioners, therefore, they have preferred this writ petition and in this writ petition, the following reliefs were sought by them:

- (1) That the respondent No. 2 Agriculture University be directed to give petitioners promotion as Senior Scale Lecturer and Selection Scale Lecturer on and from the date it came to be given to other Assistant Professors with all consequential benefits.
- (2) That if it is considered that the approval of the State Government is required as sought by the respondent No. 2 Agriculture University, it may be declared that the Government's approval stands given; or alternatively, if it is considered that the approval is necessary and a declaration as sought here-in cannot be given, then State Government be directed to give its approval forthwith.
- (3) That the Resolution No. 21 /91 -2/306 (Annex.28) may be declared to be invalid and may be quashed.

A reply to the writ petition was filed by the respondent No. 2 Agriculture University stating that all the petitioners were initially appointed on the post of

Research Assistant in the erstwhile University of Udaipur and they were later on re-designated as Junior Lecturer and subsequently as Lecturer. It was further submitted that with effect from 21.7.1974, the State Legislature enacted Rajasthan Universities Teachers and Officers (Selection for Appointment) Act, 1974 (hereinafter referred to as the "the Act of 1974") and under the Act of 1974, the appointment of "Teachers" and "Officers" as defined in Section 2(ix) and 2(iv) respectively can be made only by the Selection Committee constituted u/s 5 of the Act of 1974. After the commencement of the Act of 1974, the recruitment on the post of Teacher other than the method contained in the Act of 1974 was prohibited. Sections 3 and 12 of the Act of 1974 are being quoted here:

3. Restrictions on appointments of Teachers and Officers:

(1) Notwithstanding anything contained in the relevant law, as from the commencement of this Act, no teacher and no officer in any University in Rajasthan shall be appointed except on the recommendations of the Selection Committee constituted u/s 5.

(2) Save as otherwise provided in Sub-section (3), every appointment of a teacher or of an officer in any University made in contravention of Sub-section (1) shall be null and void.

(3) Nothing herein contained shall apply to the appointment of a teacher or an officer as stop-gap arrangement for a period not exceeding one year or to the appointment of a part time teacher or of a teacher or officer in the pay scale lower than that of lecturer or Assistant Registrar respectively.

Explanation--The expression "appointed" in Sub-section (1) shall mean appointed initially and not appointed by way of promotion.

12. Act to have over-riding effect:

(1) The provisions of this Act shall have effect notwithstanding anything contained in relevant law.

(2) So much of the relevant law as provides for the matters covered by this Act shall, as from the commencement of this Act, cease to have effect as respects those matters.

It was further submitted that the Act of 1974 contains the only one method of recruitment to the post of Teachers (which includes Professors Associate Professors and Assistant Professors) and that is recruitment by open selection. The only exception to the said recruitment was contained in Section 11 of the Act of 1974 which provided for personal promotion.

It was further submitted that the State Government in response to the letter of the respondent No. 2 Agriculture University, wrote a letter dated 27.3.1991 (Annex.R/2) and in that letter Annex.R/2, it was specifically mentioned that Resolution of the Board of Management dated 24.11.1988 may be rescinded and the Agriculture University was asked to consider the revised decision according to

the principles stated in that letter and further, it was stated that the past services as Lecturer/Research Assistants cannot be given same weightage for ex-cadre promotion as the services rendered by a person in the capacity of Assistant Professor. The grade of Lecturers/Research Assistants is a separate grade from that of Assistant Professors, though the pay may be the same and, therefore, the services rendered in that grade cannot be considered at par with the services of Assistant Professors. It was further contended that since the appointment of the petitioners was made on adhoc basis as Assistant Professors, that period cannot be counted. The respondent No. 2 Agriculture University placed reliance on the judgment of the Hon'ble Supreme Court Annex.R/3, which was passed on review petition. It was further submitted by the respondent No. 2 Agriculture University that as per Career Advancement Scheme, Asstt. Professor will be placed in a senior scale if he has completed 8 years of service after regular appointment and thus, the petitioners can claim senior scale only after completion of 8 years of service as Assistant Professors after selection by Statutory Selection Committee and the respondent No. 2 Agriculture University granted senior scale to those petitioners who have completed 8 years of service after selection by Statutory Selection Committee and the petitioners, who have not completed 8 years of service as Assistant Professors, after selection by Statutory Selection Committee are not entitled to senior scale. Thus, the writ petition filed by the petitioners is misconceived and deserves to be dismissed.

3. I have heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents and perused the materials available on record.

4. Before proceeding further and dealing with the case of the petitioners as well as the case of the respondents, what the judgment of the Hon'ble Supreme Court Annex.R/3 speaks has to be seen because both the learned Counsel relied on that judgment and the letter (Annex. 13) was also issued by the respondent No. 2 Agriculture University in favour of the petitioners on the interpretation of the judgment of the Hon'ble Supreme Court Annex.R/3 and a question was specifically put to both the learned Counsel that reference of which judgment of the Hon'ble Supreme Court was made in the letter (Annex. 13) and the answer given by them was that this is the same judgment, which is Annex.R/3.

5. The judgment Annex.R/3 was passed by the Hon'ble Supreme Court in the review petition on 25th April, 1985, though the letter Annex. 13 was written by the respondent No. 2 Agriculture University on 18.8.1990 and the Hon'ble Supreme Court in that judgment made it clear that the earlier judgment had nothing to do with amalgamation of cadres, a common seniority list or a feeder source for further promotions. Research Assistants and Lecturers are separate and distinct cadres. The only thing common is the scale. However, in order to obviate any future difficulty in this behalf, the Hon'ble Supreme Court directed that the Research Assistants and the Lecturers will form separate cadres and they need not be brought on a cadres and they need not be brought on a

common seniority list only on the ground that both enjoy the same pay scale as recommended by the University Grants Commission. This would protect the University in respect of any of its apprehensions. The Hon'ble Supreme Court further observed that any other prayer is neither deemed to be accepted nor been rejected and they are kept open to be dealt with in any appropriate proceedings.

6. From the above observations of the Hon'ble Supreme Court, it is clear that the petitioners have distinct cadre and their cadre cannot be amalgamated with the cadre of Assistant Professors directly recruited, though pay may be the same and the seniority list of both cadres shall be prepared separately.

7. Thus, from the materials available on record, the following facts have emerged:

(1) That the petitioners were initially appointed as Research Assistants after selection by Statutory Selection Committee of the Mohan Lal Sukhadia University and they were getting the UGC Pay Scales prevailing at that time and, thereafter, the petitioners were redesignated as Lecturers vide Notification dated Sept. 7, 1977 (Annex. 1A). For convenience, the said Notification is quoted here:

Consequent upon amendment made in Statute 47(i) teachers appointed substituting Jr. Lecturers by Lecturers it is notified that holding the post of Jr. Lecturers or equivalent post in research and extension are designated as Lecturers in pursuance of this office Notification No. F.2(3) Act, & St./M/5518 5688 dated July 2, 1974." The said Notification dated Sept. 7, 1977 (Annex. 1A) is still in force and the same has not been rescinded or withdrawn so far.

(2) That the Government of India, Ministry of Human Resource Development (Department of Education) vide letter dated 22nd July, 1988 (Annex. 5 to the writ petition) decided to make revision of pay scales of teachers in Universities and Colleges w.e.f. 1.1.1986 and further decided to take other measures for maintenance of standards in Higher Education. In that letter, the Government of India notified Career Advancement Scheme and according to that Career Advancement Scheme, every Lecturer will be placed in a senior scale of Rs. 3000-5000. If he has completed 8 years of service after regular appointment.

(3) That the Government of Rajasthan decided to implement the Career Advancement Scheme notified by the Government of India vide letter dated 22.7.1988 (Annex. 5 to the writ petition).

(4) That the Board of Management of the respondent No. 2 Agriculture University in its meeting held on 24.11.1988 resolved to give revised UGC Pay Scales to the Lecturers and Research Assistant and the Board of Management further resolved to designate Research Assistants and Lecturers as Assistant Professors. However, the persons duly selected as Assistant Professors will rank senior to the Lecturers/ Research Assistants.

(5) That the Resolution of the Board of Management dated 24.11.1988 (Annex.3

to the writ petition) was again reviewed by the Board of Management in its meeting held on 28.1.1989 (Annex.R/1) and the same was not confirmed.

(6) That pursuant to the Resolution dated 24.11.1988 (Annex.3 to the writ petition) of the Board of Management, the respondent No. 2 Agriculture University through Notification dated 4/6.5.1989 (Annex. 4 to the writ petition) notified that all duly selected Lecturers/Research Assistants-will be designated as Assistant Professors w.e.f. 1.1.1973. However, in the Resolution dated 24.11.1988 (Annex.3), there is no mention of such dated.

(7) That the Board of Management vide Resolution No. 245 dated 8th August, 1990 approved the Rules for implementing the Career Advancement Scheme for Assistant Professors and the respondent No. 2 Agriculture University through letter dated 22.11.1990 (Annex. 10 to the writ petition) notified the Rules for implementing the Career Advancement Scheme for Assistant Professors in the University.

(8) That the respondent No. 2 Agriculture University through letter dated 18.8.1990 (Annex. 13 to the writ petition) made a request to the Government of Rajasthan to give approval of the Resolution of the Board of Management dated 24.11.1988 (Annex. 3 to the writ petition). It was further stated in that letter that in response to the Resolution dated 24.11.1988 (Annex. 3 to the writ petition), the respondent No. 2 Agriculture University issued orders in anticipation of approval of the Government.

(9) That, thereafter, the Dy. Secretary (AP), Government of Rajasthan, Agriculture (Gr.2A) Department, Jaipur through letter dated 27.3.1991 (Annex.R/2) requested the Vice-Chancellor that the Resolution of the Board of Management dated 24.11.1988 (Annex. 3 to the writ petition) may be rescinded and the respondent No. 2 Agriculture University may consider a revised decision according to the principles stated in that letter.

(10) That, thereafter, the Board of Management in its meeting held on 29th July, 1991 (Annex. 28) again took up the matter for grant of benefit of Career Advancement Scheme to the Research Assistants and Lecturers and in that meeting, the Board of Management clarified that if any Research Assistant or Lecturer had been selected as Assistant Professor by the Statutory Selection Committee, then his service period shall be counted from the date when he was duly selected by the Statutory Selection Committee as Assistant Professor.

(11) That later-on, the Dy. Secretary, Agriculture (Group-2) Department, Government of Rajasthan through letter dated 27th May, 1992 (Annex.R/5) requested the respondent No. 2 Agriculture University to amend the Resolution of the Board to Management dated 29.7.1991 (Annex. 28) It was further stated in that letter that it was requested by the Finance Department that the order by which Research Assistants Lecturers were designated as Assistant Professors be rescinded and it was further stated that since the benefit of Career Advancement Scheme can be given to only those Asstt. Professors, who were directly selected

after regular selection by the Statutory Selection Committee, therefore, the Resolution dated 29.7.1991 (Annex.28) be modified accordingly.

(12) That thus, the Resolutions dated 24.11.1988 (Annex.3 to the writ petition) and dated 29.7.1991 (Annex.28 to the writ petition) of the Board of Management were not approved by the Government of Rajasthan. Even the recommendations made by the respondent No. 2 Agriculture University through letter dated 18.8.1990 (Annex. 13) were not accepted by the Government of Rajasthan.

(13) That the respondent No. 2 Agriculture University has granted the benefit of Career Advancement Scheme to those petitioners, who have completed 8 years of service as Assistant Professors after selection by the Statutory Selection Committee as Assistant Professors.

(14) That from the observations made by the Hon''ble Supreme Court in the judgment dated 25.4.1985 (Annex.R/3), it is clear that the petitioners have distinct cadre and their cadre cannot be amalgamated with the cadre of Assistant Professors directly recruited, though pay may be the same and the seniority list of both cadres shall be prepared separately.

8. Thus, it is clear that the respondent No. 2 Agriculture University has granted the senior scale to only those petitioners, who have completed 8 years of service as Assistant Professors after regular selection by the Statutory Selection Committee as Assistant Professors. The period of 8 years was counted from the date when they were appointed as Assistant Professors after selection by the Statutory Selection Committee. But, the respondent No. 2 Agriculture University did not take into account the period of service rendered by the petitioners as Lecturers/Assistant Professors after redesignation.

9. However, the case of the learned senior counsel appearing for the petitioners is that the appointments of the petitioners on the post of Research Assistants were made after regular selection by the Statutory Selection Committee and thereafter, they were designated first as Lecturer and later-on, as Assistant Professors and, therefore, the period of 8 years for becoming eligible for grant of senior scale under the Career Advancement Scheme should be counted from the date when they were redesignated as Lecturers or Assistant Professors. It was further submitted that counting of period from the date when the petitioners were appointed as Assistant Professors after selection by the Statutory Selection Committee is wholly illegal and arbitrary so far as the case of the present petitioners is concerned. He has further submitted that the Act of 1974 has no application in the present case, as it is a case of redesignation and not a case of fresh appointment. In this respect, he has placed reliance on the decision of the Hon''ble Supreme Court in Dr. Rashmi Srivastava and Dr. B.D. Srivastava Vs. Vikram University and others,

10. On the contrary, it was submitted by the learned Counsel appearing for the respondent No. 2 Agriculture University that the action of the respondent No. 2 Agriculture University granting senior scale to the Research Assistants/Lecturers,

who were later on redesignated as Assistant Professors, from the date when they were appointed as Assistant Professors after selection by the Statutory Selection Committee is perfect in law. He has further submitted that the past services as Lecturers/Research Assistants cannot be given the same weightage for ex-cadre promotion as the services rendered in the capacity as Assistant Professors. The grade of Lecturers/Research Assistants is a separate grade, though the pay may be the same and, therefore, the services rendered in that grade cannot be considered at par with the services of Assistant Professors. As per the Career Advancement Scheme, those Lecturers/Assistant Professors are eligible for grant of senior scale, who have completed 8 years of service after regular appointment and that period of service has to be reckoned from the date of regular appointment and that regular appointment should be post on the post of Lecturer (Assistant Professor). Admittedly, the petitioners were not appointed on regular basis as Lecturers (Assistant Professors) and they were appointed initially as Research Assistants. He has further submitted that the Act of 1974 came into force w.e.f. 21.7.1974 and after commencement of the Act of 1974, recruitment on the post of Teacher other than the method contained in the Act of 1974 was prohibited. The petitioners have not been appointed as Assistant Professors after selection under the Act of 1974 on the date of their appointment as Research Assistants. Even some of the petitioners were appointed as Research Assistants after the coming into force of the Act of 1974. The appointment on the post of Research Assistant cannot be treated as appointment on the post of Assistant Professor.

11. Thus, the pertinent question that requires consideration in this petition is with regard to counting of period of 8 years for becoming eligible for grant of senior scale under the Career Advancement Scheme. The case of the petitioners is that the period of 8 years should be counted from the date when they were designated as Lecturers/Assistant Professors, while the case of the respondents is that the period of 8 years should not be counted from the date of their designation as Lecturers/Assistant Professors, but it should be counted from the date when they were regularly appointed as Assistant Professors by the Statutory Selection Committee and the learned Counsel appearing for the parties agree that this is the main controversy involved in this petition.

12. As already stated above, the Career Advancement Scheme provides that every Lecturer will be placed in a senior scale if he has completed 8 years of service after regular appointment.

13. It may be stated here that the University Grants Commission through letter Annex.8 notified the guidelines for the implementation of senior scale and selection grade for Lecturers and in the said letter, it was stated that the Commission in its meeting held on 18th December, 1989 agreed that the experience of a person before appointment as a Lecturer in the University or College, in equivalent grade in other Universities/Colleges and the National Laboratories or R&D Organizations (CSIF/ICAF, DPRO, UGC etc.) and UGC

research Scientists be counted as qualifying service for placement in the senior scale/selection grade.

14. Thereafter, the University Grants Commission through letter dated 27.11.1990 (Annex.9) again notified the revised guidelines for counting of previous service for purpose of senior scale/selection grade under the Career Advancement Scheme for Lecturers and the same are quoted below:

(1) Previous service without any break as a Lecturer or equivalent in a University, College, National Laboratory or other Scientific Organisations (CSIR, ICAR, DRDO, UGC etc.) and as UGC research Scientist should be counted for placement of Lecturers in Senior Scale/Selection Grade provided that:

(a) The post was in an equivalent grade/scale of pay as the post of Lecturer ;

(b) The qualifications for the post were not lower than the qualifications prescribed by UGC for the post of Lecturer ;

(c) The Lecturers concerned possessed the minimum qualification prescribed by UGC for appointment as Lecturers ;

(d) The post was filled in accordance with the prescribed selection procedure as laid down by the University/State Government.

(e) The appointment was not adhoc or in a leave vacancy of less than one year duration.

15. In the present case, admittedly, the petitioners were initially appointed as Research Assistants after regular selection by the Statutory Selection Committee prevailing at the time of their initial appointment and thereafter they were designated as Lecturers vide Notification dated 7th Sept. 1977 (Annex. 1A) and later-on, as Assistant Professors vide order dated 4/6.5.1989 (Annex.4). Thus, the petitioners were working as Lecturers or Assistant Professors from the date when they were designated as such. It may be stated here that no doubt order dated 4/6.5.1989 (Annex.4) has not been approved as the Resolution dated 24.11.1988 (Annex.3) on the basis of which Annex.4 dated 4/6.5.1989 was issued, was not confirmed by the Board of Management of the respondent No. 2 Agriculture University in its meeting held on 28.1.1989 (Annex.R/1), but so far as the Notification dated 7th Sept. 1977 (Annex. 1A) is concerned, the same is still in force and the same has not been rescinded so far. In these circumstances, the services of the petitioners after designation as Lecturers or Assistant Professors should have been taken into consideration while counting the period of 8 years for grant of senior scale under the Career Advancement Scheme by the respondents. Thus, the right of the petitioners to claim benefit of the services rendered after designation as Lecturers/Assistant Professors for becoming eligible for grant of senior scale under the Career Advancement Scheme has been infringed.

16. No doubt in the Career Advancement Scheme, there is a mention of the fact

that those Lecturers will be placed in a senior scale, who have completed 8 years of service after regular appointment. But, in my considered opinion, the period of service rendered by the petitioners as Lecturers/Assistant Professors after redesignation as such can also be counted while counting the period of 8 years, as they were initially appointed as Research Assistant after regular selection and later on they were designated as Lecturers/Asstt. Professors before coming into force of the said Scheme and they were discharging the duties as Lecturers/Asstt. Professors and they were possessing the requisite qualifications for the post of Lecturers and furthermore, the present petitioners have distinct cadre and their cadre cannot be amalgamated with the cadre of Assistant Professors directly recruited and the seniority list of both cadres are prepared separately. In these circumstances, if the period of 8 years is counted from redesignation, it would not affect the Career Advancement Scheme. After all, the benefit of Career Advancement Scheme should be given to all persons equally situated or placed. Apart from that, when the judgment of the Hon"ble Supreme Court Annex.R/3 was delivered on 25.4.1985, there was no such Scheme and, therefore, to say that the said judgment of the Hon"ble Supreme Court Annex.R/3 debars the present petitioners from claiming the benefit of the Career Advancement Scheme as stipulated above cannot be accepted. The benefit of the Career Advancement Scheme is granted to the present petitioners keeping in mind the principles of equity, which is being administered in India by Courts alongwith law, as law and equity have been merged into unified Courts in India.

17. Thus, the case of the respondents that 8 years should be counted from the date of regular selection as Assistant Professors and not from redesignation as Lecturers/Assistant Professors stands rejected.

18. It may be stated here that the power of the High Court to issue writ under Article 226 can be exercised for a two fold purposes; (1) for enforcement of fundamental rights; as well as (2) for enforcement of non-fundamental or ordinary legal rights and for any other purpose. Under the second part, writ can be issued only after a finding that the aggrieved party has a legal right which entitles him to any of the writs and that such right has been infringed. Not only this, the High Court under Article 226 has also the power to give consequential relief, such as ordering repayment of money realised without the authority of law or under an invalid law. The petitioner under Article 226 of the Constitution of India may ask for some specific reliefs and such other relief as the Court may deem fit and proper. Under such residuary prayer, the Court may grant an applicant the proper relief which he should get in view of the changed circumstances, even though that relief may be altogether different from the specific reliefs asked for.

19. So far as the applicability of the Act of 1974 is concerned, it has no application in the present case, as it is a case of redesignation and not a case of fresh appointment.

20. For the reasons stated above, the respondents should have taken into

consideration the services rendered by the petitioners as Lecturers or Assistant Professors after designation as such, while counting the period of 8 years for grant of senior scale under the Career Advancement Scheme. Non-consideration of services of the petitioners tendered as Lecturers or Assistant Professors after designation as such while counting the period of 8 years for grant of senior scale under the Career Advancement Scheme results in infringement of legal right available to the petitioners.

21. In the result, this writ petition is allowed with the following directions and observations:

The respondents are directed to grant senior scale under the Career Advancement Scheme to the petitioners from the date when they completed 8 years of service taking into account the services rendered by them as Lecturers or Assistant Professor after designation as such. The petitioners shall also be entitled for consequential benefits. However, it is made clear that the petitioners will not be assigned seniority over the Assistant Professors appointed directly. The petitioners will rank junior to the Assistant Professors appointed directly.

The Resolution of the Board of Management dated 29.7.1991 (Annex.28) is also quashed.

S.B. Civil Writ Petition No. 2636/1991

22. The controversy involved in this writ petition is the same as involved in the above writ petition No. 1071/1991.

Thus, this writ petition is also allowed in terms of the directions and observations made in the S.B. Civil Writ Petition No. 1071/1991.