
(2001) 03 AHC CK 0107

In the Allahabad High Court

Case No : Writ Petition No's. 748 (S/B) and 874 (S/B) of 1996, 927 (S/B) of 1998 and 523 (S/B) and 619 (S/B) of 1999

K.C. Srivastava and Others

APPELLANT

Vs

Chancellor, Lucknow University and Others

RESPONDENT

Date of Decision : 23-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh State Universities Act, 1973 — Section 31, 31A, 68

Citation : (2001) 2 UPLBEC 1191

Hon'ble Judges : Khem Karan, J;D.K. Trivedi, J

Bench : Division Bench

Advocate : S.K. Kalia, R.S. Pandey and A.K. Tiwari, for the Appellant; P.C. Agarwal, for the Respondent

Final Decision : Disposed Of

Judgement

Khem Karan, J.—Issues raised in all these five writ petitions, under Article 226 of the Constitution of India, are closely connected with each other and so, are being disposed of by this common order.

2. The genesis of this spate of litigation can primarily be traced, to order dated September 7, 1987 by which, direct appointment dated Feb. 4, 1987 of Dr. V.G. Goswami on the post of Reader in commercial Law, in the Faculty of Law, in the University of Lucknow, was given retrospective effect from May 18, 1985, the date on which reference regarding his selection and appointment was made u/s 31(8)(c) of the Uttar Pradesh State University of Act, 1973 (for short Act of 1973) and also to seniority list dated June 9, 1994 issued by the University determining the inter-se seniority of the Reader/Lecturers of Law Faculty, wherein V. G. Goswami (then a Reader) was shown at Sl. No. 16, with date of appointment as August 27, 1986 on the post of Reader and Sri R. C. Jaiswal (also a Reader) at Sl. No. 5, with date of appointment as February 25, 1984. Sri K.C. Srivastava a Reader in the Faculty of Law unsuccessfully challenged the

order dated September 7, 1987 before the Chancellor, u/s 68 of the Act of 1973. The Writ Petition No. 412 of (S/B) of 1996, filed against order dated September 7, 1987 and against the rejection of reference u/s 68 was also dismissed as infructuous.

3. Against seniority list dated June 9, 1994 Dr. V.G. Goswami made a reference to the Chancellor, u/s 68 of the Act of 1973, which he allowed vide order dated November 9, 1995, declaring him the senior most Reader in that Faculty. Against this order dated November 9, 1995 of the Chancellor, Sri K.C. Srivastava filed a writ petition No. 983 of 1995, which this Court disposed of vide order dated 14.11.1995, giving directions to the Chancellor, to decide the matter afresh, after giving opportunity to all concerned. It appears that some of the affected persons put their versions before the Chancellor. Dr. V.G. Goswami also gave a supplementary representation saying that since he had already been promoted to the post of Professor, on July 19, 1995 under Personal Promotion Scheme and since the promotion of 7 Readers, namely Sri K.C. Srivastava, Sri R.C. Jaiswal, Sri R.P. Singh, Sri A.K. Srivastava, Sri M.L. Chandani and Dr. R.C. Nagpal and Dr. Pandey was bad in law, in view of the embargo, in the shape of clause (6) in Statute No. 11.12-B of the university Statutes, so he was the senior most Professor in the Faculty of Law.

4. Relying on the law laid down in *Bal Krishan Agarwal v. State of U.P.*, Judgment today 1995 (1) SC 471 the Chancellor vide his order dated May 20, 1996 upheld the contention of Dr. V.G. Goswami, and overruled the following contentions of Sri K.C. Srivastava and others :

(1) that seniority on the post of Professor cannot be determined or looked into, u/s 68 in absence of determination of such seniority by the Seniority Committee or the Executive Council as envisaged under Statute No. 18.09.

(2) that the decision of University, giving retrospective effect to the direct appointment of Dr. Goswami on the post of Reader in Commercial Law w.e.f. May 18, 1985 was without jurisdiction and bad in law, therefore, Dr. Goswami was not eligible for promotion to the post of Professor under Personal Promotion Scheme, as he had not put in minimum 10 years service as a Reader.

(3) that since they were senior to Dr. Goswami, in the cadre of Readers and since they had also been promoted and appointed as Professor on the same date i.e. 19.7.1995 so they retained their seniority of the feeding cadre.

(4) that after deletion of the word "substantively" from Section 31-A by Uttar Pradesh State Universities (Second) Amendment Ordinance, 1995 (Ordinance No. 18 of 1995) and after introduction of Double Personal Promotion Scheme, vide Govt. Order dated September 27, 1994, there was no legal hurdle, in their way to get promotion on the post of Professors, under the Double Personal Promotion Scheme.

5. The Chancellor, found no fault, in the order dated September 7, 1987, giving

retrospective effect to the direct appointment of Dr. Goswami on the post of Reader. According to him, since the embargo (in the shape of clause (6) of Statute No. 11.12-B) on the second personal promotion was there upto August 14,1995, so the second personal promotion of those seven Reader to the post of Professor would take effect from August 14, 1995 and not from July 19 1995 when they were actually promoted.

6. Writ Petition No. 470 (S/B) of 1996, filed by Sri K.C. Srivastava against order dated May 20,1996 of the Chancellor has already been dismissed as infructuous on April 30,1998. The Writ Petition No. 874 (S/B) of 1997, filed by Sri R.C. Jaiswal is also directed against the same order dated May 20,1996. The main grounds taken in this writ petition are:

1. that in view of the subsequent Amendment in Section 31-A by Uttar Pradesh State Universities (Second Amendment) (Second) Ordinance 1995 (U.P. Ordinance No. 33 of 1995)dated August 25,1995 effected from July 11,1995 embargo in the shape of clause (6) in Statute No. 11.12-B, lost its legal force and there was nothing wrong in his promotion on the post of Professor under Double Promotion Scheme;

2. that there was nothing to be prescribed afresh or further, regarding the length of service or qualification so as to implement the Double Personal Promotion Scheme provided in Government Order dated September 27,1994 and in amended Section 31-A and so Bal Krishna Agarwal's Case (supra) was not applicable to this case, so as to relegate the appointment of July, 1995 to August 14,1995, the date on which clause (6) was deleted from Statute No. 11.12-B;

3. that in law, no retrospective effect to the direct appointment of Dr. Goswami on the post of Reader could have been given and so he was not eligible, for personal promotion to the post of Professor before February 4,1997 and his promotion of July 1995 was bad in law.

7. Dr. V.G. Goswami (Opp. Party No. 4) has opposed this writ petition No. 874 of 1996 by filing the counter-affidavit. According to him, the Executive Council of the University had taken a policy decision as back as on July 31,1987 for giving effect to the appointment from the date reference u/s 31(8)(a) of the Act was made to the Chancellor and it was in the same resolution dated July 31,1987 that such treatment was given to the appointment of Dr. R.N. Pandey. He has also side that though the retrospective effect to his direct appointment on the post of Reader was given as back as on 7.9.1987 yet none of the teachers of the Faculty of Law raised grievances against the same till 1996. It is also said by Dr. Goswami that he had not give option for personal from the post of Lecturer to the post of Reader and so his seniority on the post of Reader was to be reckoned from 18.8.1985 and not from 27.8.1986, as shown in the list of June 9,1994. As regards the view taken by the Chancellor, in respect of the validity of the personal of Sri K.C. Srivastava and 6 others, the contention of Dr. Goswami is that Chancellor's view is absolutely correct in view of the law laid down in Bal

Krishna Agarwal's case (supra).

8. The writ petition No. 748 (S/B) of 1996, filed by Sri K.C. Srivastava, Sri R.C. Jaiswal, Sri R.P. Singh, Sri A.K. Srivastava, Sri M.L. Chandani and Dr. R.C. Nagpal, is directed against order dated 5.8.1996 of the Chancellor, by which he, on reference from Sri Surya Kumar (who was not promoted in July, 1995 to the post of Professor under Double Personal Scheme), quashed the recommendation of Selection Committee, for giving them such promotion and their appointments dated July 19,1995, on the post of Professor. They say that in view of subsequent Amendment in Section 31-A by Uttar Pradesh State Universities (Second Amendment) (Second) Ordinance, 1995, promulgated on August 26, 1995, effected from July 11,1995, and the Government Order dated September 27, 1994, paving the way for Second Personal Promotion on the post of Professor, the embargo in the shape of clause (6) in Statute No. 11.12-B, lost the legal force and was, therefore, not in the way of their promotion to the post of Professor, under Double Personal Promotion Scheme as contemplated in Section 31-A of the Act of 1973 and the Government Order dated 27.9.1994. They have also said that Bal Krishna Agarwal's case (supra) did not apply to their case as necessary "prescriptions" as regards the minimum length of service and qualification etc., for personal promotion from the post of Reader to the post of Professor, were already given in the Statute No. 11.12-B. According to them, the Chancellor was not justified in annulling their promotion dated 19.7.1995, to the post of Professor.

9. By an interim order dated August 7,1996, passed in this writ petition No. 748 (S/B) of 1996, this Court directed not to disturb the working of the petitioners as Professors, pursuant to the impugned order dated 5.8.1996 of the Chancellor, and left the University free to hold fresh selection, if it so thought proper but with a ride that the result of such selection, if any, will not be given effect, till further orders of the Court.

10. Sri Surya Kumar (Opp. Party No. 4) has filed counter-affidavit, contending inter alia that his suppression on July 19,1995, was totally unjustified and that so long as the embargo, in the shape of clause (6) in Statute No. 11.12-B, on Double Personal Promotion was there, the promotion of the petitioners and Sri K.C. Srivastava to the post of Professor, in July, 1995, was not legally permissible and the Chancellor was perfectly right in quashing such promotions. It was also said that even after Second Amendment in Section 31-A, by Ordinance of August, 1995, no Section Personal Promotion to the post of Professor, was legally possible, in absence to fresh "prescriptions" in the Statutes, as contemplated in Section 31-A.

11. Writ Petition No. 927 (S/B) of 1998, was filed by Sri R.C. Jaiswal against the order of the University, constituting the Selection Committee, for considering the promotion to the post of Professor, under the Personal Promotion Scheme, perhaps in terms of the aforesaid interim order dated August 7,1996, passed in writ petition No. 748 (S/B) of 1996. It has been prayed that the opposite parties

be commanded not place the recommendation of the Selection Committee, before the Executive Council, for approval. The main ground of Sri R.C. Jaiswal, for challenging the holding of selection dated 22.6.1998 was that constitution of Selection Committee was bad in law, for non-inclusion of the Head of the Department. On this petition, this Court passed an interim order on June 30,1998, directing the Executive Council to consider the grievance of the petitioner, before finalizing the recommendation of the Selection Committee. None of the opposite parties has filed counter-affidavit.

12. When the Executive Council passed a resolution dated 30.6.1998, giving effect to the Personal Promotion of Dr. V.G. Goswami, on the post of Professor, from 19.5.1995, the date on which he become eligible for such promotion, on completing 10 years as a Reader, reckoning the same from 18.5.1985, he filed writ petition No. 523(S/B) of 1999, for commanding the opposite-parties to appoint him as Head of the Department and the Dean Faculty of law and for detemining the seniority of the Professors, notwithstanding the pendency of writ petition Nos. 860 of 1996 and 874 of 1996. The grounds, in substance, were that after retrospective effect to his promotion on the post of Professor, w.e.f. 19.5.1995 and after the order dated 5.8.1996 of the Chancellor, setting aside the promotion of Sri R.C. Jaiswal and others on the post of Professors, he was the senior most Professor in the Faculty of Law. It appears that Sri R.C. Jaiswal, (not party in this writ petition) filed counter-affidavit, praying for giving him an opportunity of being heard. In counter-affidavit, filed on behalf of opposite party Nos. 1 to 3, it has been said that seniority of the Lectures of the Faculty of Law has already been determined as back as on September 23,1978, under Statute No. 18.04. It has also been said that direct appointment of Dr. Goswami, on the post of Reader, was given effect from 18.5.1985, pursuant to the resolution dated 31.7.1987 of the Executive Council. It has been further stated in this counter-affidavit, that personal promotion of Dr. Goswami, on the post of Professor was given effect from 19.5.1995, vide resolution of the Executive Council, but it was specifically provided that interest seniority of the Professors, shall be subject to the final decision in writ petition Nos. 860 of 1996 and 874 of 1996. It was also said that determination of the seniority of the Professors, was possible only after the result of the aforesaid writ petition.

13. The writ petition No. 619 (S/B) of 1999, filed by Sri R.C. Jaiswal, is directed against resolution dated June 30,1998 of the Executive Council, by which the personal promotion of Dr. Goswami, on the post of Professor, was given effect from May 19, 1995. It is said that the personal promotion of Dr. Goswami, on the post of Professor, made on July 19,1995, itself was not possible, for he had not completed 10 years, from the dare he joined as Reader on February 4, 1987 and so the resolution dated June 30,1998, was also bad in law. It was also said that when the matter was pending in the Court, the Executive Council was not justified in passing such resolution.

14. Dr. V. Goswami has filed counter-affidavit, reiterating the same stand, to

which reference has already been made and further adding that in the seniority list of the Lecturers of the University, published in March, 1990, he was shown at Sl. No. 131, whereas Sri R.C. Jaiswal at Sl. No. 132. He wants to say that in this seniority list of March, 1990, the date of appointment on the post of Reader was shown as 18.5.1985, and he was shown senior to Sri R.C. Jaiswal, even then Sri R.C. Jaiswal or others raised no objection. Relevant extract of this seniority list of March, 1990 is Annexure No. 11 to his counter-affidavit. The Registrar of the University also filed counter-affidavit, reiterating the previous stand taken in other writ petitions.

15. Before we proceed further, we would like to make a reference to another writ petition No. 860 (S/B) of 1996, filed by Sri Surya Kumar. His prayer was to promote him on the post of Professor, under Personal Promotion Scheme, from 25.2.1994, the date when become eligible for promotion on the post of Professor. In the alternative he prayed that he should be given such promotion, at least from the date his juniors were promoted i.e. from 19.7.1995. This writ petition was dismissed as infructuous on 20.5.1999, on the statement of Dr. L.P. Misra, the learned Counsel for the petitioner, that the relief prayed for, had already been granted by the University. It transpires Sri Surya Kumar was given the pay scale of the Professor w.e.f. 1.7.1998. An application for recalling the order dated 20.5.1999 and for restoring the writ petition is pending. Application seeking certain amendments in the writ petition is also pending. Since this writ petition has already been disposed of vide order dated 20.5.1999 and the application for recall of that order and for amendment are pending, so there is no occasion for disposing of that matter, by this order.

16. We have heard quite at length Sri S.K. Kalia, the learned Senior Advocate, appearing for Sri R.C. Jaiswal and others, Sri A.K. Tewari, appearing for Dr. V.G. Goswami, Dr. L.P. Misra, appearing for Sri Surya Kumar and the learned Counsel for the University Vice-Chancellor etc. We do propose to be brief and precise in dealing with the respective arguments of the learned Counsel for the parties. The arguments of the respective Counsels are almost on same lines, on which they have put their pleadings, to which reference has already been made. With a view to appreciate the controversy involved in these five writ petitions, a reference to certain events and relevant law, on the subject appears to be useful.

17. Before the insertion of Section 31-A, in the Act of 1973, Lecturers and Readers had no chances of promotion from the post of Lecturers to the post of Readers and from the post of Readers to the post of Professor. It was Section 31-A which came into force w.e.f. October 10, 1984 that introduced a Scheme of Personal Promotion. It was provided in Section 31-A that length of service and qualifications etc. for promotion to the post of Reader or Professor will be such as may be prescribed. According to Sub-section (14) of Section 2 of the Act of 1973, "prescribed" means prescriptions by the Statutes. By Statute No. 11.12-B length of service, qualifications and the manner of selection etc. were prescribed. The Reader having put in at least 10 years of full time continuous

service as such, was eligible to get personal promotion to the post of Professor. Clause (6) of this Statute No. 11.12-B put an embargo on the second personal promotion in the following way:

"This benefit of Personal Promotion shall be admissible to Lecturers for promotion to the post of Reader only and Reader so appointed by Promotion shall not be entitle to Personal Promotion on the post of Professor."

18. It is admitted between the parties that certain Amendments were made w.e.f. 14.8.1995, in these Statute No. 11.12-B and the aforesaid embargo in the shape of clause (6) on the double personal promotion was omitted w.e.f. the same date i.e. August 14,1995 Amongst other important Amendments made in Statute No. 11.12-B included a provision in clause (4) to the effect that the Selection Committee shall also interview the teacher concerned and a new clause (6) to the following effect was inserted in place of the old clause (6):

"This benefit of Personal promotion shall be admissible only to those teachers of the University, who have exercised options for Personal Promotion within the time stipulated in Government Order No. 5714/10-11-87-14(5)/87, dated September 10,1987."

Order dated August 5,1996 of Chancellor :

19. Annexure No. 1 to the writ petition No. 748(S/B) of 1996 is the copy of the order dated 5.8.1996 by which the promotion of the petitioners, namely, Sri K.C. Srivastava, Sri R.C. Jaiswal, Sri R.P. Singh, Sri A.K. Srivastava, Sri M.L. Chandani and Dr. R.C. Nagpal and one Sri G.S. Pandey from the post of Reader to the post of Professor made on 19.7.1995 under Double Personal Promotion Scheme was set aside. The view taken by the chancellor is that inspite of deletion of the word " substantively" from Section 31-A of the Act 1973 by Uttar Pradesh Ordinance No. 28 of 1995 such double personal promotion from the post of Reader to the post of Professor was not legally permissible in the face of the then existing clause (6), putting embargo on the double personal promotion and also in absence of necessary prescriptions as regards the minimum length of service and qualification etc. Bal Krishan Agarwal's case (supra) was heavily relied on. It was observed in this order dated 5.8.1996 that necessary prescriptions, as contemplated in Section 31-A of the Act of 1973, for giving effect to the Double Personal Promotion Scheme were approved by the Chancellor on 14.8.1995 only and so promotions of the 7 Readers, to the post of Professor mad on 19.7.1995 under Double Personal Promotion Scheme, was illegal.

20. Sri S.K. Kalia, the learned Senior Advocate has argued that this order of the Chancellor is not sustainable in law because if was passed without taking into consideration the effect of the amendment brought in Section 31-A by Uttar Pradesh Ordinance No. 33 of 1995, namely, "Uttar Pradesh State Universities (Second Amendment) (Second) Ordinance, 1995 dated August 25,1995, according to which even the reader appointed u/s 31-A, became entitled to get personal promotion, on the post of Professor and also because the necessary

"prescription" as contemplated u/s 31-A, as regards the length of service and qualification etc. had already been prescribed in the form of Statute No. 11.12-B. He says that the law laid down in Bal Krishna Agarwal's case (supra) was wrongly applied to the facts of this case, it has also been argued that the order dated August 5, 1996, and earlier order dated May 20, 1996 passed by the Chancellor differ in substance. He points out that in order dated May 20, 1996 those 7 Readers, promoted under Double Personal Promotion Scheme, were allowed to reckon their seniority from 14.8.1995, the date on which the Statutes were amended, but in order dated 5.8.1996 the same promotions have been declared illegal and have been set aside. Sri Kalia submits that the Chancellor was not clear on the point, whether "prescriptions" as regards the length of service and qualification were or were not to be prescribed again, for giving effect to the Scheme of Double Personal Promotion. He goes on to argue that after the following amendments in Section 31-A of the Act of 1973 by U.P. Ordinance No. 33 of 1995, clause (6) of Statute No. 11.12-B lost its legal force, being inconsistent with amended Section 31-A, w.e.f. July 11, 1995 and so the Chancellor was not legally justified in quashing the promotions of the petitioners made on 19.7.1995.

21. Clause (8) of Uttar Pradesh Ordinance No. 33 of 1995 provided: "In Section 31-A of the Principal Act, for the words, "a Lecturer or Reader in the Universities substantively appointed u/s 31" the word "a Lecturer in the University appointed u/s 31, or a reader in the University appointed Uttar Section 31 or promoted under this Section" shall be substituted",

22. Clause 1(2) of this Ordinance No. 33 of 1995, . July 11, 1995. gave effect to the aforesaid amendment with effect from July 11, 1995.

23. The argument of Sri Kalia is that the facts in Bal Krishna Agarwal's case (supra) were different as there were no necessary prescriptions as regards the length of service, qualification etc. as envisaged u/s 31-A on the date the personal promotion was given, and therefore, the Apex Court effected such promotions, only from the date the necessary "prescriptions" were prescribed in the relevant Statute on February 22, 1985. He argues that in the present case the necessary "prescriptions" were already there, on the basis of which Dr. Goswami was promoted to the post of Professor. He says that simply because certain amendments were made in Statute No. 11.12-B, in August, 1995, it cannot be argued that those were in the context of double personal promotion and not otherwise.

24. On the other hand Sri A.K. Tiwari and Dr. L.P. Misra appearing for Dr. V.G. Goswami and Surya Kumar respectively have argued that since second personal promotion from the post of Reader to the post of Professor was not contemplated in original Section 31-A of the Act of 1973, so there was no question of prescribing length of service of a Reader or his qualification for getting Double Personal Promotion at least before amendments brought by the two Ordinances, namely, Uttar Pradesh Ordinance No. 28 of 1995 and Uttar Pradesh Ordinance

No. 33 of 1995. They have contended that it is true that length of service and qualification required for a Reader for getting personal promotion on the post of Professor, had been prescribed in the Statute No. 11.12-B after introduction of Section 31-A in the Act of 1973, but those prescriptions were in the context of only one personal promotion and did not prevent the authorities to prescribe different length of service or different qualifications in respect of Reader, desiring to have the benefit of double personal promotion. They submit that it is not the question as to what was prescribed or not prescribed as regards the length of service or qualification of a Reader for personal promotion to the post of Professor, but the question whether some different prescriptions could have been provided for giving effect to the scheme of Double Personal Promotion. They have taken us through the necessary changes brought in Statute No. 11.13-B on 14th of August, 1995 and we do not want to repeat the relevant changes again. One of the contentions of Sri A.K. Tewari is that new clause (6) of Statute No. 11.12-B says that the benefit of Personal Promotion will be admissible only to those teachers of the Universities who have exercised options for personal promotion within the time stipulated in Government Order No. 5741/10-11-87-14 (5)/87 dated September 10, 1987 and it is not known whether those 7 Readers, given the benefit of double personal promotion on July 19, 1995, had exercised such options. He also argues that Govt. Order No. 3260/15 (15)/94-46(52)/82 dated September 27, 1994 (Annexure No. 2) to the writ petition No. 748 of 1996, which introduced the scheme of Double Personal Promotion inter alia provides that those Teachers who were covered by career advancement scheme will not be entitled to the benefit of double personal promotion. In other words, his contention is that no such condition was there in the case of Personal Promotion contemplated under original Section 31-A and Statute No. 11.12-B. He had tried to say that those 7 Teachers given the benefit of Double Personal Promotion on July 1995 have not shown that they were not covered by the career advancement scheme and so their promotions have rightly been quashed by the Chancellor. According to them the ratio of Bal Krishna Agarwal's case apply in full force, to the facts of the case in hand and since the promotions made in that case, in absence of the necessary "prescriptions" were not challenged by any body, so the Apex Court gave effect to those promotions from the date the necessary "prescriptions" were made in the Statute. They want to say that here the promotion of the petitioners on the post of Professor has been challenged before the Chancellor and the Chancellor has accepted that challenge, so the petitioners cannot argue that in any case their promotions will be effective from 14.8.1995, the date on which the necessary prescriptions were approved by the Chancellor. Relying on *Sanjai Dhar v. Jammu Kashmir Public Services and Ors.* 2000 S C C 1090. Sri Tewari has argued that amended Section 31-A should receive a purposive interpretation and should not be interpreted so as to create anomalies. The Apex Court ruled in the said case of *Sanjai Dhar* that a literal compliance of Rule-9 of Jammu and Kashmir Civil Services (Judicial) Recruitment Rules, 1969 might defeat the object, sought to be achieved and so should be interpreted in such a way as to avoid mischief sought to be taken care

of or prevented.

25. We find much Substance in the arguments of Sri S.K. Kalia, on the point that after clear cut intendment regarding Double Personal Promotion, expressed in Section 31-A of Act of 1973, by clause 8 of U.P. Ordinance No. 33 of 1995, dated August 25,1995 which came into effect on July 11,1995, clause (6) of Statute No. 11,12-B of the First Statute of the Lucknow University, which worked as an embargo on Double Personal Promotion from the post of Reader to the post of Professor, being repugnant to the amended Section 31-A, lost its legal force and became void or redundant. When by this amendment a Reader in the University appointed u/s 31 or promoted under this Section became eligible for personal promotion to the post of Professor, anything to the contrary prescribed in the existing Statute No. 11.12-B became redundant and void. It is never the argument of Sri A. K. Tewari or Dr. L.P. Misra or the learned Counsel for the University that the then existing clause (6) of Statute No. 11.12-B was not inconsistent with amended Section 31-A. So we have no mariner or doubt in accepting argument of Sri S. K. Kalia that the Chancellor could not have invalidated the promotion of those 7 Readers to the post of Professor made on 19.7.1995, with the aid of embargo in the shape of clause (6) of Statute No. 11.12-B.

26. For the reasons, to follow, we are inclined to accept the contention of Sri A. K. Tiwari and Dr. L. P. Misra, that after introduction of Double Personal Promotion Scheme through Govt. Order dated September 27,1994 followed by amendments in Section 31-A, it was open to the University to prescribe fresh or further length of service or qualifications or other conditions, for getting double personal promotion on the post of Professor. The intendment, for providing fresh or additional prescriptions/ conditions, in the wake of double personal promotion, was clear from the terms of Govt. Order of September 27, 1994, most of which find place in amended Statute No. 11.12-B.

27. By restricting the benefit of personal promotion, to the appointees u/s 31, the original Section 31-A, made it clear that only one personal promotion was admissible and the same was also evident from condition No. 12, of the preceding Government Order of Feb. 25, 1984, which paved the way for introduction of the benefit of personal promotion, to the teachers, appointed u/s 31 of the Act of 1973. So it is difficult to accept that original Section 31-A, did not rule out double personal promotion. Therefore, the inescapable conclusion will be that, before the introduction of Double Personal Promotion Scheme, in the year 1994-95, there was no occasion for the University, to make the necessary "prescriptions" as contemplated in Section 31-A, as regards the length of service or qualification of a promoted Reader, so as to become eligible for further personal promotion on the post of Professor.

28. A close perusal of Govt. Order of September 27,1994 and the amendments made in Statute No. 11.12-B in August, 1995, reveals that amongst other things, the following was further prescribed, in the wake of double personal promotion :

(a) the benefit of personal promotion u/s 31-A will be available to those teacher only, who had given option in terms of Govt. Order of September, 1987 and who were not covered by the scheme of career advancement.

(b) the Selection Committee, will also interview the teachers.

29. There can be no manner of doubt, that the Government Order of September 27,1994 contemplated, in so many words vide condition No. 15, that the relevant Statutes, dealing with the subject of Personal Promotions, were to be amended, in terms of this Government Order dated September 27,1994. If we have look the changes brought on August 14,1995, in Statute No. 11.12-B, it becomes crystal clear that many of the conditions of this Govt. Order of September 27,1994 were inserted therein. Sri A.K. Tewari has rightly argued that prescriptions as contemplated in Sub-section (1) and the manner and conditions of selection as contemplated in Sub-section (2) of Section 31-A, were to be prescribed, in the Statutes, in terms of this Govt. Order of September 27,1994.

30. We find it difficult to accept the argument of Sri S.K. Kalia, that nothing more was to be prescribed, with a view to give effect to the scheme of Double Personal Promotion. It is immaterial as to what was prescribed on August 14,1995. What material is that something more was to be prescribed, so as to give legal effect to the benefit of Double Personal Promotion. So that way, the ratio in Dr. Bal Krishna Agrawal's case (supra) was rightly applied by the Chancellor, so as to say that giving of the personal promotion to those seven Readers on the post of Professors, was not possible before August 14,1995.

31. Then the submission of Sri S.K. Kalia the learned Senior Advocate, is that in no case, the Personal Promotion of the petitioners K.C. Srivastava and 5 others, from the post of Reader to the post of Professor, made on July 19,1995 could have been quashed on the ground of absence of necessary prescriptions, in the relevant Statute. Says that it is nowhere stated in the order of August 5,1996, that the selection of the seven Readers for promotion to the post of Professor was not in terms of Government Order of September 27,1994 and so the same could have been given effect, at least from August 14, 1995, when the Statutes were amended in terms of Government Order of September 27, 1994 and there was no occasion to quash the same. He contends that even in Dr. Bal Krishna Agarwal's case such appointment, made in absence of necessary prescriptions in the Statutes, were given effect, from the date such prescriptions were made in the University Statutes. But Sri A.K. Tiwari and Dr. L.P. Misra have tried to say that in Dr. Bal Krishna Agarwal's case the promotion made in absence of necessary prescriptions in the Statutes, were not under challenge, whereas in this case these were not only under challenge, but have been quashed u/s 68 of the Act of 1973 and more so there is no proof that those seven Readers, had given option in terms" of Government Order of September 10, 1987 and were not covered by the scheme of career advancement.

32. We find much substance in the aforesaid arguments of Sri S.K. Kalia, and

find ourselves unable to accept the arguments of Sri A.K. Tewari and Dr. L.P. Misra. The order dated August 5, 1996, never says that promotion of the seven Readers, to the post of Professor, made on July 19, 1995 was bad for want of option in terms of Govt. Order of September 10, 1987 or they were already covered by the Scheme of Career Advancement. A close perusal of order dated 5.8.1996, reveals, that even Sri Surya Kumar, on whose reference this order was passed by the Chancellor, had not taken such pleas for setting aside the second personal promotion of his seven colleagues on the post of Professor, nor the order dated August 5, 1996, proceeded on those grounds. None has come to this Court for challenging the promotion of those seven Readers to the post of Professors, on the grounds stated by Sri A. K. Tiwari and Dr. L.P. Misra. Contrary to it, the case of Dr. V. G. Goswami, in para 13 of his representation dated August 8, 1995 (Annexure -15 to writ petition No. 874 of 1996) was :

"In case of opposite parties this ruling shall apply and their appointments would be effective only with effect from August 14, 1995 on which Statutes regarding Double Promotion Scheme have been approved by the Chancellor."

33. The Chancellor agreed with this contention of Dr. Goswami, when he said in his order dated May 20, 1996:

^ ^ijUrq ekuuh; loksZPp U;k;ky; }kjk MkW- cky ?".k vxzoky izfr mRrj izns" k jkT; esa ikfjr fu.kZ; ds vuqlkj fii{khx.k dh vkpkj;Z laoxZ esa ofj"Brk fnukad 19&7&1995 ls vkadfyr ugha dh tk ldrh D;ksafd ml fnukad rd nksgjh izksUufr gsrq fo"ofo|ky; ifjfu;ekoyh esa la"kks/ku ugha fd;k x;k Fkk A dqykf/kifr }kjk fo"ofo|ky; ifjfu;ekoyh esa nksgjh izksUufr gsrq izLrkfor la"kks/ku fnukad 14-8-1995 dks vuqeksfnr fd;k x;k] vr% ekuuh; loksZPp U;k;ky; ds mDr fu.kZ; ds ifjizs{; esa foi{khx.k dh vkpkj laoxZ esa ofj"Brk fnukad 14-8-1995 ls gh vkadfyr dh tk ldrh gS tSlk fd dqykf/kifr }kjk iwoZ esa ikfjr fu.kZ; esa vo/kkfjr fd;k x;k Fkk A**

34. So, we are of the view, that Dr. V. G. Goswami or anybody else, cannot be permitted to say that the second promotion of seven Readers, to the post of Professors, was bad also on the grounds, not stated in order dated August 5, 1996.

35. After having considered the respective submissions of the learned Counsel for the parties and the material on record we hold that the case of those seven Readers, promoted to the post of Professors, on July 19, 1995, under Double Personal Promotion Scheme, is fully covered by the ratio in Dr. Bal Krishna Agarwal's case, therefore, the Chancellor could not have quashed the resolution of the Executive Council dated July 17, 1995 or their appointment dated July 19, 1995 and he should have given effect to the same from August 14, 1995, the date when Statutes were amended, so as to implement the scheme of Double Personal Promotion. Therefore, the order dated August 5, 1996, of the Chancellor whereby he set aside the personal promotion of those seven Readers to the post of Professors, is liable to be quashed.

36. Order dated September 7, 1987 giving effect to the direct appointment of Dr.

Goswami, on the post of Reader, from May 18, 1995.

37. Annexure-3, (writ petition No. 523 of 1999), is the copy this order dated September 7, 1987, by which the direct appointment dated Feb. 4, 1987, of Sri Goswami on the post of Reader in Commercial Law was given retrospective effect from May 18, 1995 pursuant to the earlier resolution dated July 31, 1987 of the Executive Council of the Lucknow University, before we pass on to the respective submissions of the learned Counsel of the parties, it would be useful to have a look at the resolution dated July 31, 1987.

38. Annexure-2 (writ petition No. 523 of 1999) is the copy of the resolution dated July 31, 1987. It appears, the Executive Council resolved to give effect to the direct appointment of Dr. R. N. Pandey, Reader in Political Science from Feb. 23, 1985, the date on which the reference was made by the Executive Council to the Chancellor u/s 31 (8) (a) of the Act of 1973, and further resolved :

"It was further resolved that this benefit may be extended to all other such cases and when the teachers concerned apply for the same."

39. It appears similar treatment was given to the direct appointment of Dr. L. N. Mathur, in the Faculty of Law. The contention of Sri S. K. Kalia, is that there is no provision in the Act of 1973 or in the Statutes, were under direct appointment u/s 31 of the said Act, can be given effect from a back date, and moreover, there is no proof that the matter of Dr. Goswami, for giving effect from the back date was ever placed for consideration of the Executive Council (see para 9 (d) of Rejoinder-Affidavit dated 30.1.2001, filed in writ Petition No. 619 (S/B) of 1999). He places reliance on the cases in Dr. B. R. K. Shukla v. Chancellor, Lucknow University, in writ petition No. 1110 (S/B) of 1993 and Banbir Singh v. Chancellor, Lucknow University, Writ Petition No. 132 (S/B) of 1995, decided on September. 16, 1996, in support of this argument that appointment made u/s 31 of the Act of 1973, cannot be given retrospective effect. He has also contended that the facts in Dr. A. R. Sircar v. State of U.P. 1993 SCC 896 relied on by Sri A. K. Tewari, were totally different, and so back dating of the appointment of Dr. Goswami, from May 18, 1985 cannot be saved, on the strength of that law. As regards the plea of Dr. Goswami, that Sri R. C. Agarwal did not challenge that order of September 7, 1987, for a number of years thereafter, in spite of the full knowledge of the same, and he cannot be permitted to do so now, the contention of Sri Kalia is that this order dated September 7, 1987 was never circulated amongst the teachers concerned and the seniority list of March, 1990 was also not published so Sri R. C. Jaiswal had no occasion to challenge the same earlier.

40. On the other hand, the contention of Sri A. K. Tewari is that since the general decision dated July 31, 1987 of the Executive Council was never challenged and since the order dated September 7, 1987, has been passed in terms of that resolution and has not been questioned by Sri R. C. Jaiswal, directly or indirectly, before writ petition No. 619 of 1999, so he cannot be permitted to challenge the same now. He argues that the writ petition No. 412 of 1996, filed by Sri K. C.

Srivastava, challenging the order dated 24.4.1976 of the Chancellor by which he rejected the reference u/s 68, against the order dated September 7, 1987 has already been dismissed as infructuous, on April 29, 1998. He has cited *Union of India v. Kishori Lal Bablani* 1999 SCC 381 B. S. Bajwa v. State of Punjab 1998 SCC 611 *State Bank of Indore Vs. Govindrao*, so as to enforce his argument that any challenge to the order dated September 7, 1987 after a gap of more than 10 years, should not be accepted. The second contention is that since the giving of retrospective effect to the appointment made u/s 31 of the Act of 1973, from the date of reference u/s 31 (8) (c) of the said Act, pursuant to the resolution dated July 31, 1987 of the Executive Council has had been in vogue, for more than a decade, so in absence of any provision to the contrary contained in the Act of 1973 or in the relevant Statutes, it has acquired the force of law, in view of the law laid down by the Apex Court in *Surendra Narain Singh and Others Vs. State of Bihar and Others*, His third contention is that since the selection of Dr. Goswami, for appointment on the post of Reader in Commercial Law, was against the vacancy of the year 1979, and since his appointment after due selection, was delayed due to untenable objections of Sri K. C. Srivastava and others, which were ultimately rejected by the Chancellor, so in view of the law laid down in *Dr. A. K. Sircar v. State of U.P.* 1993 SCC 896 and in view of the policy decision dated July 31, 1987 of the Executive Council there was nothing wrong in order dated September 7, 1987, by which his appointment dated Feb. 2, 1987 on the post of Reader, was given effect from May 18, 1985. His fourth contention is that any delay, not attributable to Dr. Goswami, in appointment on the post of Reader, should not make him to suffer and to support his argument, Sri A. K. Tewari places reliance on *Dalla Singh v. State of Kerala and Ors.* 1998 SCC 442 and *Pilla Sitaram Patrudu and others Vs. Union of India and others*, also on *Dr. A. K. Sircar* case (supra).

41. We are of the view that Sri Kalia gets no help from the decision dated September 16, 1996, given by Division Bench of this Court in writ petition No. 1110 (S/B) of 1995, for that case turned on its own facts. In that case Dr. Banbir Singh, though selected for direct appointment on the post of Reader, but the Executive Council referred the matter to the Chancellor u/s 31(8)(a) of the Act of 1973. After the Chancellor cleared the matter, he joined on October 4, 1982. Later on, on the representation of Dr. Singh, the Executive Council resolved on December 19 1992 to the effect that he would be deemed to have been appointed on April 16, 1982. But it appears, that later on, the Chancellor decided that Seniority of Dr. Singh on the post of Reader will be reckoned only from October 4, 1982, when he joined that post and would become entitled to Personal Promotion to the post of Professor, on October 4, 1992. It was in these facts and circumstances that the matter came to this Court and this said:

"It is really surprising that although the petitioner was appointed to the post of Reader in the year 1982, he did not raise any grievance till October 8, 1992. After the expiry of about ten years, he submitted his representation to the Vice-Chancellor of the University, to have found on the post of Reader on April

16,1982, the date on which the Executive Council made a reference to the Chancellor of the University Committee and manifest error of law by changing the date of appointment of the petitioner on the post of Reader. Facts of the case of Professor L.N. Mathur and S.P. Singh as well as Dr. R.D. Misra, had no application to the case of petitioner in as much as the petitioner was never appointed by the Executive Council on April 16, 1982 but his case was referred to the Chancellor by the Executive Council."

42. Here in the instant case of Dr. Goswami, a claim for appointment w.e.f. May 18,1985 was made within few months and was also backed by general resolution dated July 31,1987 of the Executive Council with precedent of Dr. Pandey, a Reader in Political Science. Here the Chancellor found nothing wrong in the resolution dated July 31,1987 or the order dated September 7,1987. Moreover here Sri R.C. Agarwal has come to challenge the same after about 12 years. We are unable to agree with Sri R.C. Agarwal that he had no nothing of the seniority list or March, 1990, wherein the date of appointment of Dr. Goswami on the post of Reader was shown as May 18,1985. We cannot permit him to come after a decade or so, to challenge the order dated September 7,1987. We are of the considered view that Sri R.C. Agarwal or others have forfeited their right to assail the order dated September 7,1987 by keeping mum for a number of years or by acquiring in the same. Otherwise also, no fault can be found with that order dated September 7,1987, when Dr. Pandey of the Political Science had already been given the same benefit. To distinguish the case of Dr. R.N. Pandey, an attempt has been made to say that while the case of Dr. Pandey had gone before the Executive Council, the case of Dr. Goswami was never considered by this Council, for giving the effect to his appointment on the post of Reader, from May 18, 1985. We find no merit in this attempt, for it is too late to do so, after lapse of a number of years, and moreover, in view of the general resolution dated July 31,1987, as reproduced earlier, there was hardly any need to take the matter again to that Council.

43. Thus, we conclude that the challenge to the order dated September 7,1987, by which the University gave retrospective effect from May 18,1985 to the direct appointment dated February 4, 1987 of Dr. V.G. Goswami, on the post of Reader in Commercial Law, cannot be accepted, for the reasons stated above and the challenge must fail. Order dated May 20,1996 of the Chancellor by which he declared Dr. V. G. Goswami as Senior most Professor in the Faculty of Law.

44. After we have concluded above, there remains no debate or dispute that Dr. Goswami, who was given Personal Promotion on the post of Professor, on July 19,1995 and who joined as such on the same date, was fully eligible to get that promotion as he had already completed ten years (to be reckoned from May 18,1985) as a Reader. So, in the cadre of Professors, Dr. Goswami will count his service from July 19,1995, whereas those seven Readers, will not be able to count the service as such, from the same date, for reasons stated earlier. As concluded earlier, the Chancellor was well justified in law, in relegating the

personal promotion of those seven Readers, to the post of Professors, to August 14, 1995, the date when prescriptions, contemplated in Section 31-A of the Act of 1973, were approved to be provided in Statute No. 11.12-B. In this view of the matter it becomes quit clear that Dr. V.G. Goswami would rank senior to those seven Professors, as declared by the Chancellor.

The Statute No. 18.05 reads :

18-05. The following rules shall be followed in determining the seniority of teachers of the University :

(a) A Professor shall be deemed senior to every Reader, and a Reader shall be deemed senior to every Lecturer;

(b) In the same cadre, inter-se seniority of teachers, appointed by personal promotion or by direct recruitment, shall be determined according to length of continuous service in such cadre :

Provided that where more than one appointments have been made by direct recruitment at the same time and an order of preference or merit was indicated by the selection committee or by the Executive Council, as the case may be, the inter-se seniority of persons so appointed shall be governed by the order so indicated :

Provided further that where more than one appointments have been made by promotion at the same time, the inter-se seniority of the teachers so appointed shall be the same as it was in the post held by them at the time of Promotion.

(c) When any teacher holding substantive post in any University (other than the University of Lucknow) or in any constituent college or in any Institute whether in the State of Uttar Pradesh or out side Uttar Pradesh, is appointed whether before or after August 1, 1981 to a post of corresponding rank or grade in the University the period of service rendered by such teacher in that grade or rank in such University be added to his length of service;

(d) When any teacher holding substantive post in any college affiliated to or associated with any University is appointed whether before or after the commencement of these statute as a Lecturer in the University, then one half of the period of substantive service rendered by such teacher in such college shall be added to his length of service;

(e) Service against and administrative appointment in any University or institution shall not count for the purpose of seniority.

Explanation.-In this Chapter, the expression administrative appointment" means an appointment made under Sub-section (6) of Section 13.

(f) Continuous service in a temporary post to which a teacher is appointed after reference to a Section Committee, if followed by his appointment in a substantive capacity to that post u/s 31 (3) (b) shall count towards seniority."

45. Thus, the view taken by the Chancellor as regards the inter-se seniority of the Professors in the Faculty of Law, is fully in consonance with the above quoted Rule on the subject and it is difficult to say that the Chancellor was wrong in declaring Dr. Goswami as the senior most Professor in that Faculty.

46. But Sri S. K. Kalia has argued, with certain amount of vehemence, that in absence of determination of seniority in the cadre of Professors, under and in accordance with Statute No. 18 and unless some one was aggrieved, of the decision of the Executive Council in appeal under clause (3) of Statute No. 18.09, the Chancellor had no power or jurisdiction u/s 68 of the Act of 1973, to determine the same. He says that the matter before the Chancellor, had reached on the objection of Dr. Goswami, against seniority list of June 9, 1994 and so the Chancellor should have confined himself, to the seniority on the post of Readers only. He submits that in the cadre of Readers since the Personal Promotion of Sri R. C. Jaiswal and others, on the post of Readers, was made effective from different dates in 1984, so, they would rank senior to Dr. Goswami, even if he is permitted to count his length of service from May 18, 1985. He has referred to Dr. Ashok Kumar v. Chancellor, Lucknow University and Ors. 1995 AWC 832 in support of his argument that personal promotion u/s 31-A, can be or should be given from the date the teacher, became eligible for getting such promotion.

47. On the other hand submission of Sri A. K. Tewari is that since Dr. Goswami had, in his supplementary representation, claimed seniority over others, in the cadre of Professors, so the Chancellor had full powers u/s 68 to determine such seniority. He says that the decision of the Chancellor, cannot be interfered with merely on the ground that the matter should have first been looked into by the Seniority Committee or if the need be, by the Executive Council, especially when no different result is possible even if the Seniority Committee or the Executive Council undertake that exercise now.

48. There can be no debate, on the point that according to the scheme envisaged in Statute No. 18, of the first Statutes of the Lucknow University, the dispute with regard to seniority in a particular cadre, has first to be referred to the Seniority Committee, under clause (2) of Statute No. 18.09 and if some one is aggrieved of the decision of such Committee may prefer an appeal to the Executive Council under clause (3) of the same Statute. Though we find considerable substance in the argument of Sri S. K. Kalia that unless the matter relating to the seniority has first been dealt with and decided, under Statute No. 18.09, the Chancellor, normally gets no occasion to exercise his powers u/s 68 of the Act of 1973. But for the reasons to be given very shortly, we would have quashed that portion of the order dated May 20, 1996, by which seniority in the cadre of Professor, was determined or declared and would have asked the Registrar to place the matter before the Seniority committee etc.

49. After the conclusion that Dr. Goswami will count length of service on the post of Professor, from July 19, 1995 and those seven teachers (who were given double personal promotion on the post of Professors), will be able to count their

length of service only from August 14, 1995, no different result would be produced, even if we direct the Seniority Committee to decide the same at its own level. So, no useful purpose will be served by setting aside the order of the Chancellor and then directing the authorities, mentioned under Statute No. 18.09 to undertake a futile exercise.

It would be appropriate to recall the following observations of the Apex Court in *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*,

"Such writs as one referred to in Article 226, are obviously intended to enable the High Court, where the subordinate tribunals or bodies or officials, act wholly without jurisdiction or in excess of it or in violation of the principles of natural justice or refuse to exercise a jurisdiction rested in them, or there is an error apparent on the face of record, and act, omission, error or excess has resulted in manifest injustice"

50. To the same effect is the view of this Court in the recent Judgment in *Sita Ram Alias Baba v. Dy Director Consolidation, Varanasi 2000 (18) LCD 527* where a learned Single Judge, after referring to *Shankar Singh v. VIIIth Addl. District Judge 1991 RD 10 Om Prakash v. U.P. Secondary Education Service Commission, Allahabad 1990 UPLBEC 983 A.M. Allison Vs. B.L. Sen, and Bux Singh v. Joint Director Consolidation AIR 1966 All 1576* has said that the High Court should not interfere if the substantial justice has been done, even if the order of the authority is without jurisdiction or against the law.

51. Moreover, the dispute regarding inter-se seniority amongst the contesting Professors, has already created a peculiar situation, in the sense that a Professor of another Department/Faculty is working as a Head of the Department of Law Faculty. The contesting parties, must now be tired or exhausted and some of them, may be due to superannuate in near future. If at this juncture, this Court keeps alive the dispute, by annulling the order of the Chancellor and by directing that the matter be first dealt with under Statue No. 18.09, all concerned may get frustrated and disappointed. The situation, therefore, demands that this Court should decline to interfere with the order dated May 20, 1996 of the Chancellor, as in our view the same meets the requirements of justice.

52. The controversy on the point, whether a personal promotion u/s 31-A, can be given effect, from the date of eligibility or from any date anterior to one indicated in clauses (7) of Statute No. 11.12-B does not appear to be relevant in the context of order dated May 20, 1996, of the Chancellor. Retrospective effect to the first personal promotion of Sri R. C. Jaiswal and others w.e.f. different dates 1984, even if it holds the field, does not in view of our conclusions in the preceding paras, influence or affect the inter-se seniority in the cadre of Professors, as declared by the Chancellor, vide his order of May 20, 1996.

53. Thus, the order of the Chancellor, by which he declared Dr. V. G. Goswami as the senior most Professor in the cadre of Professors in the Law Department, is to hold the field and the challenge, by Sri R.C. Agarwal and others must fail.

"Constitution of the selection Committee, for considering the promotion of Readers to the post of Professor and its proceeding dated June 22, 1998."

54. Sri R. C. Jaiswal has filed writ petition No. 927 of 1998, for quashing the order by which the Selection Committee for considering the promotion of Reader to the post of Professor was constituted and for quashing the proceedings dated 22.6.1998 of this Committee and for directing the opposite parties, not to place the recommendation of the Selection Committee for approval, before the Executive Council, on the grounds inter alia (1) that he being the seniormost Professor in the Department of Law was not in the Selection Committee (2) that since he was already working as a Professor on the basis of Court's interim order dated August 7, 1996, he cannot be asked to appear for interview (3) that in absence of there being Head of Department in the Selection Committee, the proceedings of the committee were without any legal force. A perusal of Annexures 7, 8, 8-A, 9 to the writ petition No. 927 of 1998, reveal Sri R. C. Jaiswal had challenged the constitution of this Selection Committee, also on the ground that Smt. Roop Rekha Verma was not competent to Head the Committee because she was not a regular, Vice-Chancellor, but was only an officiating one.

55. The record of the writ petition No. 927 of 1998. reveals that this Court passed an interim order dated June 30, 1998 directing the Executive Council/ Lucknow University to consider the grievances of Sri R.C. Jaiswal, before finalising the recommendations of the Selection Committee. In view of another interim order dated August 7, 1986 of this Court, passed in writ petition No. 748 (S/B) of 1996, also no final orders were to be issued even if the recommendations of the Selection Committee were accepted by the Executive Council. Since no counter-affidavit has been filed from the side of opposite parties in writ petition No. 927 of 1998, so we may presume that the Executive Council did not consider the recommendation dated June 22, 1998.

56. As we have already concluded above, that the second personal promotion of Sri K. C. Srivastava and six others, made on July 19, 1995 was effective from August 14, 1995, so their consideration for the same on June 22, 1998 or any recommendation of the Selection Committee, in favour or against any of those seven persons, are redundant and are of no legal consequence, and have to be declared and dealt with as such.

57. It is, however, made clear, that we express no opinion regarding the legality or illegality of the recommendations dated June 22, 1998 if made in respect of persons, other than seven Readers of the Law Faculty, who were given second personal promotion u/s 31-A, on the post of Professors, on July 19, 1995 :

"Resolution dated 30.6.1998 of the Executive Council and consequential order dated July 25, 1998, by which the Personal Promotion of Dr. Goswami, on the post of Professors, was made effective from May 19, 1995."

58. Armed with this Dr. V. G. Goswami, filed writ petition No. 523 of 1999 for commanding the opposite parties to appoint him as Head of the Department and

Dean, and aggrieved of the same, Sri R. C. Jaiswal filed writ petition No. 619 of 1999, for not giving effect to the same and also for quashing the same.

59. A close reading of the grounds taken in writ petition No. 619 of 1999, filed by Sri R. C. Jaiswal, reveals that Resolution dated June 30, 1998 and consequential order dated July 25, 1998, were attacked not on the ground that the same was in the breach of clause (7) of Statute No. 11.12-B but on the ground that in view of the law laid down in decision dated September 16, 1996, delivered in writ petition No. 1110 (S/B) of 1993 (Dr. B. R. K. Shukla's case) and writ petition No. 132 (S/B) of 1995 (Dr. Banveer Singh's case), direct appointment of Dr. Goswami, on the cadre post of Reader, could not have been given effect from May 18, 1995. In writ petition No. 523 of 1999, Sri R. C. Jaiswal is not party. But it was during the course of arguments, that it was pointed out that there was no unanimity in the different decision of this Court on the point whether, effect to the personal promotion u/s 31-A, could be given from the date of eligibility or from any other date, anterior to the date of the taking over the charge. While the two Division Benches, one in the writ petition No. 1110 of 1993 and writ petition No. 132 of 1995, and the other in Dr. M. P. Joshi and Ors. v. University of Kumaou, Nainital and Ors.. (2000) 3 UPLBEC 2459 took the view that in view of clause (7) of Statute No. 11.12-B, no such retrospective effect was permissible, another Division Bench took a contrary view in Dr. Ashok Kumar Kalia v. Chancellor, Lucknow University 1995 AWC 832.

60. For the reasons to be given very shortly, we do not propose to enter into the controversy as to which of the views is correct. We are of the view that when the entire matter relating to the personal promotion of Sri V.G. Goswami and those seven persons; their inter-sc seniority in the cadre of Professor, was already sub-judice before this Court, it was quite improper on the part of Executive Council, to precipitate the controversy, by passing such type of resolution, for giving effect to the personal promotion of Dr. Goswami, from May 19, 1995. So, we propose to quash that resolution dated June 30, 1998 and consequential order dated July 25, 1998 on the ground of the impropriety.

61. Therefore we conclude.

(1) That the order dated August 5, 1996 of the Chancellor, by which he quashed the selection dated July 19, 1995 of Sri K. C. Srivastava and 6 others, and the resolution dated July 19, 1995 of the Executive Council, promoting them to the post of Professors, is quashed.

(2) The personal promotion of Sri K. C. Srivastava and 6 others, on the post of Professor, shall be treated to have been made w.e.f. August 14, 1995, the date on which the necessary prescriptions were made, for giving effect to the scheme of Double Personal Promotion u/s 31-A of the Act of 1973.

(3) The challenge to the order dated September 7, 1987, giving effect to the direct appointment of Dr. Goswami on the post of Reader in Commercial Law, w.e.f. May 18, 1985, is not accepted.

(4) The challenge to the order dated May 20, 1996 by which the Chancellor declared Dr. V. G. Goswami as the senior most Professor, in the Faculty of Law, is rejected and this order dated May 20, 1996, will hold the field and all concerned will act accordingly.

(5) The proceedings dated June 22, 1998 of the selection committee and its recommendation, if any, in respect of those seven teachers, who were given Double Personal Promotion u/s 31-A, on the post of Professors, on July 19, 1995, are declared redundant, unnecessary and of no legal consequence and the Executive Council, will treat the same was such.

(6) The resolution dated June 30, 1998 and the consequential order dated July 25, 1998, giving effect to the Personal Promotion dated July 19, 1995 of Dr. Goswami on the post of Professor, from May 19, 1995, is quashed as improper.

(7) The Chancellor, Vice-Chancellor and the Executive Council, shall take steps for appointment/designation of the Head of the Department and also the Dean Faculty of Law, as per the seniority declared in order dated May 20, 1996 of the Chancellor.

62. All the five writ petition are finally disposed of accordingly as indicated in the preceding para.