
(1989) 01 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No's. 1783 and 1795 of 1982

Madhao Kaduskar

APPELLANT

Vs

Punjabrao Krishi Vidyapeeth and Another

RESPONDENT

Date of Decision : 17-01-1989

Acts Referred:

Citation : (1990) 1 BomCR 136

Hon'ble Judges : H.W. Dhabe, J;G.G. Loney, J

Bench : Division Bench

Advocate : S.G. Aney, for the Appellant; R.V. Patil and A.S. Giradkar, A.G.P. for respondents No. 2, for the Respondent

Judgement

H.W. Dhabe, J.—These two writ petitions can be conveniently disposed of by this common judgment. We shall first state the facts in Writ Petition No. 1795 of 1982.

2. The facts in W.P. No. 1795 of 1982 are that the petitioner therein was appointed as Veterinary Assistant Surgeon in the then State of Madhya Pradesh on 24-6-1954 under the Director of Veterinary Services. His services were transferred w.e.f. 23-7-1954 in the Anatomy Department of the Government Veterinary College, Jabalpur, where he was required to undertake teaching duties as an assistant to the Professor of Anatomy .On reorganisation of State on 1-11-1956, the petitioner was allocated to the then State of Bombay and was transferred to Nagpur on 22-3-1957 as Livestock Inspector under the Deputy Director of Veterinary Services, Nagpur.

3. In the State of Bombay, the petitioner was appointed as a Lecturer in Anatomy in the Nagpur Veterinary College on 1-7-1958. He was promoted as Assistant Professor in Anatomy on officiating basis on 24-8-1969 and when the bifurcation of the then State of Bombay took place on 1-5-1960, he was allocated to the State of Maharashtra. In 1963, the Maharashtra Public Service Commission (For short, the "M.P.S.C.") advertised the post of Assistant Professor in Anatomy pursuant to which advertisement the petitioner applied for the said post. He was

selected and appointed in the said post of Assistant Professor in Anatomy on probation for two years by the order dated 10-3-1964 and was confirmed in the said post w.e.f. 10-3-66 after completion of the probationary period of two years as per the order dated 30-3-1971.

4. On 17-7-1965, the petitioner went on deputation for acquiring the post graduate qualification in Veterinary Science (M.V. Sc.) which qualification he acquired in June 1967. He thereafter rejoined his duties as Assistant Professor from June 1967. On 1-1-1969 when the incumbent of the post of Professor in Anatomy Shri M.K. Hawaldar was transferred, the petitioner was asked to take charge of his post for which officiating allowance was paid to him.

5. At this stage, it may be seen that in 1968, the Punjabrao Agricultural University (Krishi Vidyapeeth) Act, 1968 was enacted and by the Government Resolution dated 20-10-1969 the petitioner was allocated to the Punjabrao Krishi Vidyapeeth (for short, "The P.K.V.") which services originally were treated as on deputation for a period of two years from 1st June 1968. It is however not in dispute that the petitioner is thereafter permanently absorbed in the services of P.K.V. by an order dated 18-8-1972 with effect from 20-10-1969. In his service in P.K.V., the petitioner was promoted as Professor in Anatomy temporarily until further orders as per the order dated 3-6-1970. The petitioner wanted to go abroad i.e. to Pennsylvania in U.S.A. for acquiring Ph.D. qualifications for which he was sponsored by the U.S. Agency for International Development (USAID) along with Indian Council of Agriculture Research (ICAR) under the Scheme of "Establishment of Agricultural Universities in India Programme". He was therefore relieved on 15-7-1970. After acquiring the Ph. D qualification he again rejoined his duties on 13-8-1973.

6. For the purpose of the material controversy in this writ petition, it is pertinent to see that by the Government Resolution No. AGU-1069/56881-V dated 23rd November 1970, the State Government had accepted the introduction of scales of pay prescribed by the ICAR for the "University teachers" working in the constituent Agricultural/Veterinary colleges/other institutions and schemes under the Mahatma Phule Krishi Vidyapeeth/Punjabrao Krishi Vidyapeeth with effect from 1st April, 1970. Unfortunately, none of the parties in the instant writ petition or the connected writ petition have produced on record the aforesaid Government Resolution dated 23rd November, 1970. However, the unreported judgment of this Court in the case of Ramchandra Rajeshwar Tijare v. The Punjabrao Agriculture University (Krishi Vidyapeeth) Akola and another, (Special Civil Application No. 720/1975 decided on 14-8-1981) which is brought to our notice by the learned Counsel for the P.K.V. has extracted in para 7 of the judgment the conditions upon which the pay scales prescribed by ICAR are made applicable with effect from 1-4-1970. We are therefore reproducing the said conditions from the said judgment. They are as follows :

"(a) The above scales of pay would be applicable to the posts of teachers which were existing as on 1st April, 1970 and to those sanctioned posts of teachers

lying vacant for more than 6 months on the said date.

(b) The term teachers would include a Professor, Reader, Lecturer or other person recognised by the University for the purpose of imparting instruction or conducting and guiding research of extension programmes and any person declared by the Statutes to be a "teacher".

(c) The Universities should first work out de-novo its requirements of staff in colleges or other constituent units based on the syllabus and credits assigned for each subject of studies included in the various courses offered by them :

(d) The Universities on the basis of (c) above should determine the strength of each institution sanction-wise and post-wise and suggest detailed qualifications which could be prescribed for these posts with Indian Council of Agricultural Research Scales, for approval of Government.

(e) Subject of (sic) approval of Government to the qualification and other terms and conditions to be prescribed for the various posts included in the set up assigned at by doing the exercise at (d) above the eligibility of existing incumbents to hold these posts should be assessed by a Selection Committee of the University composition of which will also be approved by Government.

(f) The persons who will be assessed as "suitable" by the Selection Committee will only be eligible for Indian Council of Agricultural Research University Grants Commission scale of pay. The person working at present but not held eligible by the Selection Committee will be absorbed in the lower post, if necessary, on their present emoluments as a special case. On no account such persons will be accepted back in State Service."

7. We may at this stage also reproduce the pay scales prescribed by ICAR which were made applicable by the aforesaid G.R. dated 23-11-1970.

Category of posts Revised scales of pay recommended 1. Professor (or its Rs. 1100-50. 1300-60 1600 equivalent rank) or 2. Reader (--do--) Rs. 700-50-1250/- Associate Professor 3. Lecturer or (-do-) Rs. 400-40-800-50-950/- Asst. Professor.

8. The State Government by its G.R. dated 30th May, 1972 reviewed the above conditions laid down in its G.R. dated 23-11-1970 and modified them as follows vide para 2 of the G.R. dated 3rd May, 1972. For the sake of convenience. We reproduce the said modifications which are as follows :

(i) The requirements mentioned at (a) and (b) should stand.

(ii) As regards requirement at (c) to (e) prior approval of Government is not now considered necessary. The Agricultural Universities should proceed with the implementation of these orders and communicate to Government for information the action taken indicating the broad criteria adopted.

(iii) With regard to requirement at (f), the basic concept since adopted is to treat

introduction of the Indian Council of Agricultural Research scales of pay by way of revision of pay scales and this concept should be borne in mind while implementing these orders.

(iv) The requirement at (g) if any even with relaxation of condition at (f) should stand.

9. The principal modification in the aforesaid G.R. dated 30th May, 1972 is that the requirement of prior approval of the Government in regard to the conditions laid down was dispensed with by the aforesaid G.R. dated 30 May, 1972. It is then stated in para 3 of the above G.R. dated 30th May, 1972 that the revised scales of pay as indicated in paragraph 1 of the said G.R. were sanctioned to the post of "University teachers" in existence as on 1st April, 1970, as well as for the posts to which appointments have been made after 1st April, 1970, after obtaining necessary financial clearance from the State Government Para 3 sub-para (1) of the said G.R. dated 30th May, 1972 also provided for options to the persons already in service as on 1st April, 1970 for opting out either for revised pay scale or for the existing pay scales. According to the petitioner, by the letter dated 4-6-1973 he was asked to give his option and accordingly he opted out for the revised pay scale.

10. It appears that the P.K.V. had issued an order on 31-1-1973 for giving revised pay scales to its teachers which order was stayed by its subsequent orders dated 8-2-1973 and 16-2-1973 upon representations, presumably of the teachers affected thereby. The University thereafter considered the representations received from the teachers in Class I and Class II service and after cancelling the order dated 31-1-1973. Issued fresh orders on 19-9-1973.

11. The said order dated 19-5-1973 shows the fixation of University teachers in Class I and Class II in the revised by scales. As there is a mistake in the copy of the order dated 19-5-1973 annexed by the petitioner in the instant writ petition, the learned Counsel for the respondent P.K.V. has placed on record the authentic copy of the said order dated 19-5-1973. There are separate schedules attached to the aforesaid order dated 19-5-1973 showing the fixation of the University teachers in the revised pay scale of the post of Professor, the fixation in the revised pay scale of the post of Associate Professor and the fixation in the revised pay scale of the post of Assistant Professor. It may be seen that in the copy of the aforesaid order dated 19-5-1973 incorporated as Annexure VIII in this petition, through mistake the name of the petitioner is shown in Schedule I relating to fixation of teachers in the revised scale of Professor although it is mentioned therein that it is an extract from page 2 of the Schedules. The name of the petitioner is shown as at Sr. No. 1 although above him the name of Shri R.N. Deb is shown as at Sr. No. 6. The date of joining of the petitioner in the post of the Professor in the unrevised scale of Rs. 410-1200/- is shown as 5-6-1970 and in column No. 4 the date from which he is entitled to the revised pay scale of the Professor i.e. Rs. 1100-1600/- is shown as 5-6-1970. In the remarks column No. 6, it is shown that the petitioner is entitled to Reader's scale of Rs.

700-1250/- from 1-4-1970 to 4-6-1970 obviously because although the revised pay scales were made applicable from 1-4-1970, the petitioner was actually appointed, although temporarily, in the post of Professor on 5-6-1970.

12. Turning now to the schedule which is a part of the order dated 19th May, 1973 placed on record by the respondent P.K.V. it may be seen that the name of petitioner is not contained in the schedule in which the application of the revised pay scale in the post of Professor is shown. It is however pertinent to see that the name of Shri R.N. Deb which is shown at Sr. No. 6 in the above schedule relating to giving of revised pay scales of Professors is also shown with the same serial number in Schedule I in the copy of the aforesaid order dated 19-5-1973 annexed to the petition and referred to above. Further, it may be seen that in the aforesaid order dated 19-5-1973 placed on record by the P.K.V., the second Schedule relates to the application of the revised pay scale in the post of Associate Professor and it is in the said Schedule that the name of the petitioner appears at Sr. No. 1. It is clear from the entries against the name of the petitioner that although the petitioner joined his service as Professor on 5-6-1970 which date is given in column No. 3, he is shown to be entitled to the revised scale for the post of Associate Professor which is Rs. 700-1250/- w.e.f. 5-6-1970 in column No. 4. We have referred to the above discrepancy in detail in view of the submission made before us on behalf of the petitioner that by the above order dated 19-5-1973 the petitioner was actually given the revised pay scale of the post of professor from the date of his joining the said post. It is also material to see from para 2 of the order dated 19-5-1973 that the above entitlement about revision of pay scales shown in the schedule was provisional and was likely to be revised upon the grounds (i) to (v) and was subject to other terms and conditions laid down in the said para.

13. It is however necessary to state that after the requirement of the prior approval of the State Government was dispensed with as per the G.R. dated 30th May, 1972, the P.K.V. by its order dated 29-1-1973 prescribed as per its Annexure I the qualifications, experience and other terms and conditions for eligibility to the revised and improved scales of ICAR. It is material to see that for the post of professor or its equivalent rank, having the revised pay scale of Rs. 1100-1600/-, it was made clear in column No. 3 of Annexure I of the aforesaid order dated 29-1-1973 that these were posts independent of the posts of Associate Professors and all posts designated as Professors, Associate Professors, and Specialists and the like existing prior to 1-4-1970. As regards the educational qualifications, as per column No. 4 of the said Annexure I, they were as prescribed in Regulation EC/6 for the posts of Professor -cum-Head of the Department relevant to the subject and faculty. In column No. 5 of Annexure I, the teaching or research or extension experience required for getting the revised pay scale of Professor was 10 years after Post-graduate degree, 5 years after Ph.D. degree relevant to the subject and faculty as prescribed in EC/6 for Professors-cum-Head of the Department. In column No. 5 of Annexure I relating to other terms and conditions, it is stated that the teachers appointed in P.K.V. as

Professors, Associate Professors or otherwise or its equivalent rank by any designation in the scale of Rs. 410-1200/- or Rs. 700-300/- or higher scale prior to 1-4-1970 would only be eligible for consideration in granting the improved scale subject to vacancy being available and preference being given in order of subject wise seniority. It may be seen that since the petitioner had acquired the Post graduate qualification in June 1967 only, he had no teaching experience after post graduation of 10 years as required by the aforesaid a condition in column No. 5, for entitlement to the revised pay scale for the post of Professor.

14. There was second pay revision as per the G.R. dated 17-11-1979 with effect from 1-1-1973 as per the recommendations of the University Grants Commission which were accepted by the State Government by the aforesaid G.R. dated 17-11-1979. It is not necessary to go in detail into the aforesaid revision of pay scales because if it is held that the petitioner is entitled to the revised pay scale of ICAR as Professor, according to him, he would get the benefit of the second revision of pay also.

15. It may be seen that after his return from abroad, the petitioner made representation on 24-8-1973 to the Vice-Chancellor of P.K.V. about injustice to him in not continuing him in the post of Professor and giving the appropriate revised pay scale of the said post. By an order dated 15-12-1973 after his return from abroad the petitioner was reposted as Associate Professor of Anatomy in the Veterinary College at Nagpur against the post of Professor of Anatomy on his own pay and scale of pay with effect from the date he resumed his duties in the said College.

16. It appears that the petitioner had also made a request for voluntary retirement. By the order dated 24-5-1979, the petitioner was informed that the issues, as regards his promotion in the higher post of Professor seniority etc. would be considered in accordance with the rules of finalisation of the seniority list by the University. Although it is not strictly relevant for the purpose of the petition, it may be mentioned that in 1977, the petitioner had again gone for post doctoral research abroad for one year and had asked for extension for a further period of one year which extension was refused by the P.K.V. It appears that it is for this reason that he had sought voluntary retirement by his application dated 24-8-1973 to which the above reply dated 24-5-1979 was given by the P.K.V. It further appears that the petitioner had stayed abroad and did not join the post in time after the expiry of his deputation of one year allowed to him for which reason a show cause notice was given to him, allowed to him for which reasons a show cause notice was given to him. However, by the order dated 12-12-1980, the notice was dropped and his services were regularised for all purposes with effect from 17-9-1979.

17. After rejoining, the petitioner again made representation dated 20th June, 1981 about fixation of his pay in the revised pay scale of professor and since no favourable reply was received by him, he has preferred the instant writ petition in this Court. During the pendency of this writ petition, some further

developments had taken place in this matter which are brought on record by the additional affidavit filed by the petitioner on 14-1-1988. The Executive Council of P.K.V. had constituted a sub Committee to go into the grievances of its teachers in regard to the pay fixation as per the recommendations of ICAR. The said Committee considered the question about pay fixation of Professors in its report which is filed as Annexure-A to the said additional affidavit of the petitioner. It appears from the said report of the sub committee that 5 posts of Heads of Department and 1 post of Associate Dean which were created in the pay scale of Rs. 1100-1600/- in 1970 were subsequently abolished and created as the posts of Associate Professors in regard to which the sub-Committee recommended that the said posts should be restored and thus the posts of Professors in the University should be 18. Although the resolution passed by the Executive Council on 18-7-1987 is not placed on record, it appears from the letter of the Assistant Registrar dated 7-9-87 addressed to the Associate Dean, Nagpur, Veterinary College, Nagpur that as per the decision of the Executive Council on 18-7-1987, 6 posts of Professors in the pay scale of Rs. 1500-2500/-. (because of further revision by the UGC) were made operative upon the establishment of the addressee w.e.f. 18-7-1987 i.e. the date of the resolution of the Executive Council. One of the 6 posts thus sanctioned was the post of Professors in Anatomy. It is after the above decision of the Executive Council taken on 18-7-1987 that the petitioner was promoted temporarily to the post of Professor by the order dated 7-9-1987.

18. The grievance of the petitioner in the instant writ petition is that he continued in the post of Professor since his promotion as per the order dated 5-6-1970. Further, according to him, the said promotion was in a substantive capacity and therefore, the petitioner held the said post in that capacity. The submission is based upon the fact that according to the petitioner the temporary appointment until further orders was the usual mode in which the appointments were made by the university of its employees in the clear and vacant posts also. The petitioner has therefore claimed the revised pay scale as per the recommendations of ICAR from the date of his joining in the said post i.e. 5-6-1970 because he was holding the said post. At any rate, it is submitted that if the P.K.V. could lawfully attach certain terms and conditions for giving the revised pay scales, the petitioner was at any rate entitled to the revised pay scale as per the recommendation to ICAR from 5-6-1977 on which dated he had completed 16 years teaching experience after acquiring the post-graduate qualifications.

19. We may now usefully refer to the educational qualifications and the service particulars of the petitioner in W.P. No. 1783 of 1982. The petitioner in this writ petition passed his B.V. Sc. examination in 1952 from Sagar University. He was appointed as Veterinary Assistant Surgeon in the then State of Madhya Pradesh on 11-7-1952. After reorganisation of States with effect from 11-1-1956, he was allocated to the then State of Bombay where on 22-10-1959, he was promoted as Assistant Artificial Insemination Officer, which post was borne on the

establishment of the Department of Animal Husbandry, Government of India. It appears that the said scheme was executed by the State Government and therefore, the appointment of the petitioner was made in the said post. In 1960, the then State of Bombay was bifurcated and the petitioner was allotted to the State of Maharashtra.

20. The petitioner thereafter went on deputation for acquiring post-graduate qualification. He prosecuted his post-graduate studies in the U.P. College of Veterinary Science at Mathura and obtained the post graduate qualification i.e. M.V. Sc in June 1963 from Agra University. He was thereafter posted as Lecturer in the subject of Animal Nutrition in June 1963. On 26-3-1964 he was promoted as Assistant Professor in the aforesaid subject. He received the regular appointment as per the G.R. dated 16-12-1966 in the said post after his selection by M.P.S.C. made pursuant to the advertisement issued in that regard by the order dated 7-1-70, he was declared to have satisfactorily completed his probationary period in that post from 15-12-1968 prior to which order he was already promoted temporarily to the post of Professor in the aforesaid subject in the Veterinary College at Nagpur on 29-4-1969.

21. It may at this stage be seen that as already pointed out the P.K.V. Act was enacted in 1968 and as per the G.R. dated 20-10-1969, the petitioner was allocated to the P.K.V. where he was subsequently absorbed. In April 1970 the post of Professor in Animal Nutrition was advertised by P.K.V. The petitioner applied for the said post of Professor. He was interviewed and was selected by the Selection Committee of the P.K.V. for appointment to the said post on 19-5-1970. By an order dated 17-6-1970 the petitioner was appointed in the post of Professor in Animal Nutrition pursuant to his selection by the Selection Committee on probation for a period of one year. It is made clear in Para 2 of the order dated 17-6-1970 that after the satisfactory completion of the probationary period, the petitioner would be continued in University service on long term basis. Accordingly by the order dated 12-2-1972, the petitioner was continued on long term basis w.e.f. 22-6-71 since he had satisfactorily completed his probation period of one year on 21-6-1971. However, at the time of giving new revised pay scales as per the recommendation of ICAR, the petitioner was treated as an Associate Professor w.e.f. 22-6-1970 from which date the revised pay scale of the post of Associate Professor viz. Rs. 700-1250/- was given to him as per the aforesaid order of the P.K.V. dated 19th May, 1973.

22. Although it is not very much material, it may be stated that the petitioner was on deputation for his doctoral studies to Jabalpur University from August 1973 and he obtained his Ph. D. in October 1976 where after he again resumed his duties in the P.K.V. The petitioner thereafter made a grievance to the University authorities about giving him the pay scale of the post of Associate Professor and not of the Professor. As already pointed out above in regard to the similar grievance of the petitioner in the other connected writ petition, the sub-committees appointed by the Executive Council went into the grievances of the

teachers including the petitioner in this writ petition. The recommendations of the sub-committee were placed before the Executive Council in its meeting held on 18-7-1987 and the Executive council in the said meeting directed that the post of Professor in Animal Nutrition in Nagpur Veterinary College which was kept in abeyance would now be operative in the said college as is clear from the letter dated 7-9-1987 sent to the Associate Dean, Nagpur Veterinary College by the Assistant Registrar of P.K.V. Accordingly, the petitioner was promoted to the post of Professor on temporary basis by order dated 7-9-1987 like the petitioner in the other writ petition. The report of the sub-committee and the said order of promotion are filed by the petitioner along with his additional affidavit filed on 15-1-1988. Since the pay revision was not given to the petitioner from 17-6-1970 on which date he was originally appointed in the P.K.V. as Professor, the petitioner has preferred the instant writ petition in the Court.

23. The main question which arises for consideration in these writ petitions on the basis of the above facts and circumstances is whether the petitioners were entitled to continue as professors as per their original orders of promotion to the posts of professors and thus entitled to the revised pay scales as per the recommendations of the ICAR from the dates of the said promotions or whether they could be treated as holding the lower post of Associates Professor for giving them the benefit of the revised ICAR pay scale of the said lower post only. In appreciating the above question, the basic Government resolution which needs consideration is the Government resolution dated 23rd November 1970 by which the Government had accepted in principle the introduction of the revised scales of pay recommended by the ICAR for the University teachers. We have already pointed out that although the said G.R. is not produced by the parties in these writ petitions, the said G.R. is considered and its relevant extract is reproduced in the unreported decision of this Court in Spl. C.A. No. 720 of 1975 cited supra. It is clear from reading para 7 of the said decision that the revised ICAR pay scales were made applicable w.e.f. 1-4-1970 as per the aforesaid G.R. dated 23-11-1970 upon certain conditions given in the said G.R. The said conditions which are also reproduced in para 7 of the above decision are also reproduced by us above.

24. It is clear from condition No (b) under the G.R. dated 23-11-70 that for the application of the ICAR pay scales, the term "Teacher" would include a Professor, Reader, Lecturer or other person recognised by the University for the purpose of imparting instruction or conducting and guiding research of extension programmes and any person declared by the Statutes to be a "teacher". Clause (d) provides that the University should determine the strength of each institution sanction-wise and post-wise and suggest detailed qualifications which could be prescribed for these posts with ICAR pay scales. Clause (e) then provides for constitution of a Selection Committee by the University for determining the eligibility of the existing incumbents to hold posts in question with the revised pay scale of ICAR and Clause (f) makes it quite clear that the persons who are assessed as "suitable" by the Selection Committee are only eligible for ICAR pay

scales. Clause (f) further provides that the persons working at present in the posts in question but not held eligible by the Selection Committee to hold the said posts with ICAR pay scales should be absorbed in the lower posts if necessary on their present emoluments as a special case. Clause (f) also states that on no account such person would be accepted back in the State Government service.

25. The procedure thus envisaged for grant of ICAR revised pay scale is that the incumbent must hold the qualifications of the post which may be prescribed by the University for the said post with the revised ICAR pay scale. Further, his suitability to hold the said post has to be assessed by the Selection Committee constituted by the University and it is only if he is found suitable that the incumbent is allowed to hold the post in question with the ICAR revised pay scale. If any person is not found suitable to hold the post with ICAR pay scale, then under Clause (f) he has to be absorbed in the lower post.

26. As regards the above requirements in Clauses (a) to (f) of the G.R. dated 23rd November, 1970, the said requirements are to a certain extent modified in para 2 of the subsequent G.R. of the Government dated 30th May, 1972. As regards the question of prior approval of the Government, for laying down qualifications to hold the post in question with ICAR revised pay scale and also in regard to the appointment of the Selection Committee by the University for determining the question of suitability of the incumbents to hold their own posts with ICAR revised pay scale, the requirement of prior approval of the State Government is dispensed with in sub para (ii) of para 2 of the above G.R. dated 30th May, 1972. As regards the requirement in Clause (f) of the G.R. dated 23rd November, 1970, it is stated in sub-para (iii) of para 2 of the G.R. dated 30th May, 1972 that since the basic concept adopted by the Government under the G.R. dated 23-11-1970 is to treat introduction of the ICAR revised pay scales by way of revision of the existing pay scales, the said concept should be borne in mind while implementing the orders in this regard.

27. It may also be seen that as per the order dated 29-1-1973, since the prior approval of the Government was not necessary, the P.K.V. itself has laid down the qualification for various posts of teachers with revised ICAR pay scales. It is not in dispute that the only qualification which the petitioners did not have, to hold these posts with revised pay scales, was in regard to their teaching experience after their post graduation. Although the petitioner in Writ Petition No. 179 of 1982 was appointed as Lecturer on 1-7-1958, he acquired the post graduate qualification in June 1967 and as such on 1-4-1970 from which date ICAR pay scales were made applicable, he did not have 10 years teaching experience as prescribed for holding the post with the revised pay scales under the order dated 29-1-1973. It is not in dispute that he would have teaching experience of 10 years on 5-6-1977 only. As regards the petitioner in Writ Petition No. 1783 of 1982, it is also not in dispute that the only qualification to hold the post of Professor with revised pay scale which, according to the K.V., the petitioner

lacked was the teaching experience of 10 years as prescribed under the aforesaid order dated 29-1-1973. It may be seen that the petitioner in this writ petition passed his post graduate examination in June 1963 and thus he could have 10 years teaching experience after his post graduation only in June 1973.

28. It is the case of the P.K.V. that as per the G.R. dated 23-11-1970 a Selection Committee was constituted by the University and after going into the representations made by the teachers in Class I and Class II service pursuant to its earlier order dated 31-1-1973 and 16-2-1973, the pay fixation of various teachers was made by the University in the various posts of teachers with the revised ICAR pay scale as per the aforesaid order dated 19-5-1973. The learned Counsel for the petitioners has urged in the case of the petitioner in W.P. No. 1795 of 1982 that as per the aforesaid order dated 19-5-1973, the petitioner in the said writ petition was fixed in the post of Professor in Anatomy with the revised ICAR pay scale of the said post with effect from 5-6-1970. In support of his submission, he has relied upon schedule I incorporated with the order dated 19-5-1973 which he has filed alongwith his petition and which according to him was sent to the petitioner when he was abroad in U.S.A.

29. The learned Counsel for the university has however urged before us that the above Schedule I filed by the petitioner with the order dated 19-5-1973. Is not a correct schedule. He has placed before us the authentic copy of the order dated 19-5-1973 with various schedules and he has brought to our notice that the name of the petitioner Dr. R.V. Pandit is included in the list of persons who were given the revised pay scale of the post of Associate Professor and that his name is not included in the list of persons who were given the revised pay scale of the post of Professor. The above submission made on behalf of the University finds support from the order dated 19-5-1973 produced on its behalf by its learned Counsel.

30. A bare perusal of Schedule I which is incorporated by the petitioner Dr. R.V. Pandit in his writ petition would itself show that it could not be a correct schedule. As we have already pointed out, the said schedule shows at Sr. No. 6 the name of Shri. R.N. Deb and thereafter it shows the name of the petitioner Dr. R.V. Pandit at Sr. No. 1 and then at Sr. No. 9 gives the name of Shri S.S. Bhagwat. If this schedule was a correct schedule relating to the post of Professor, then the name of Shri R.V. Pandit would have been listed first as he was shown to be at Sr. No. 1 and it is thereafter that the names of Shri R.N. Deb and Shri S.S. Bhagwat would have appeared. If we now peruse the relevant schedule incorporated in the order dated 19-5-1973 placed on record by the P.K.V. it shows that there are different schedules for the posts of Professor, Associate Professor and Assistant Professor and according to their entitlement the names of teachers in the University are shown in the said Schedules with the revised ICAR pay scale by the University.

31. The First schedule relates to the persons who are entitled to hold the post of Professor with ICAR revised pay scale. It is in this schedule that the name of Shri

R.N. Deb appears at Sr. No. 6. The name of the petitioner Dr. R.V. Pandit or the name of Shri S.S. Bhagwat whose names are shown in the schedule about the Professor filed by the petitioner does not find place in this schedule. On the contrary at Sr. No. 1 the name shown in the schedule of the University is that of Shri J.D. Honmode. However, in the second schedule incorporated with the order dated 19th May, 1973 filed by the University, the name of the petitioner Shri R.V. Pandit is shown at Sr. No. and his entitlement to the revised pay scale of the post of Associate Professor is shown from 5-6-1970 in column 4. Similarly, in this schedule the name of Shri S.S. Bhagwat who also gets the revised pay scale of the post of Associate Professor is shown at Sr. No. 9. It is pertinent to see that in the Schedule I filed by the petitioner alongwith the order dated 19-5-1973 in column 4 relating to the petitioner Shri R.V. Pandit, page No. 2 is mentioned and in relation to Shri S.S. Bhagwat, page No. 3 is mentioned which pages as is clear from the order dated 19-5-1973 produced by the University relate to the persons who are absorbed as associate Professors with the revised ICAR pay scales.

32. It is therefore, clear that the schedule I filed by the petitioner Shri R.V. Pandit with the order dated 19-5-1973 is incorrect and on the basis of the said schedule, it is not open to him to claim that he was given the revised pay scale and was continued as Professor by the University itself as per its order dated 19-5-1973. It is not in dispute that the petitioner is actually given the revised pay scale of the post of Associate Professor w.e.f. 5-6-1970 by the PKV which would also show that his fixation was in the post of Associate Professor with the revised pay scale.

33. The fact that the petitioner was fixed in the post of Associate Professor with the revised pay scale stands supported by the order of the P.K.V. dated 15-12-1973 issued in relation to the petitioner Shri R.V. Pandit. The said order dated 15-12-1973 states that after return of the petitioner Shri R.V. Pandit from his higher training leading to Ph.D. Degree abroad, he is reposted as Associate Professor of Anatomy, Nagpur Veterinary College against the post of Professor of Anatomy on his own pay and scale of pay with effect from the date he would resume his duties in the said college. It is however urged on behalf of the petitioner Shri R.V. Pandit that since his appointment was against the post of Professor on Anatomy, he should be treated to have been appointed as the Professor of Anatomy and not as Associate Professor and on that footing he should have been given the revised pay scale attached to the post of Professor of Anatomy. In our view, merely because the appointment is against the post of Professor of Anatomy, it would not by itself mean that the petitioner was appointed as Professor of Anatomy. It is clear from the language of the order dated 15-12-1973 read particularly with the aforesaid order dated 19-5-1973 by which the petitioner was absorbed in the post of Associate Professor with the revised ICAR pay scale that the appointment of the petitioner as per the order dated 15-12-1973 was as an Associate Professor.

34. It appears from the report of the Sub-Committee constituted by the

University for removing injustice to the teachers in this faculty that by abolition of 5 posts of Heads of Department and 1 post of Associate Dean which posts are equivalent to the post of the Professor, the posts of Associate Professors in the revised ICAR pay scale were created by the University under the order dated 19-5-1973 with a view to accommodate the existing personnel, in the post of Associate Professor with the revised ICAR pay scale. It is for this reason that although the petitioner was absorbed as an Associate Professor of Anatomy, his posting is shown against the post of Professor of Anatomy under the order dated 15-12-1973. We do not therefore think that the above order dated 15-12-1973 can create any right in the petitioner Dr. R.V. Pandit to claim the post of Professor of Anatomy in the revised ICAR pay scale as is urged on his behalf.

35. We may now turn to another contention urged in these writ petitions. It is urged on behalf of the petitioners that the main purpose of giving the ICAR pay scales is of revision or improvement of the existing pay scales of the various posts of University teachers and therefore without attaching any pay revision to such the revised ICAR pay scales should have been given to all the teachers who held the respective posts on 1-4-1970. In support of the above submission, the learned Counsel for the petitioners has relied upon the extract of the last para of the judgment of the Supreme Court in Civil Appeal No. 1281 of 1971 decided on 11-4-1974 which judgment it appears is not reported. We have however perused the full text of the said judgment. It may be seen from the last para relied upon by the petitioners that what the Supreme Court found. In regard to the scheme of revision of pay scales of the lecturers in the said case as per recommendations of the University Grants Commission was that as per the letter of the Government of India dated April 7, 1966 addressed to the State Government, the idea was of improvement of salary scales of College and University teachers involving no promotion and therefore, the requirement imposed by the Government of consultation with the Public Service Commission for the selection of the teachers for the revised pay scale which according to the Supreme Court was based upon the misunderstanding of the scheme of revision of pay scale proposed by the University Grants Commission was illegal as rightly held by this Court in the said case.

36. It is clear that the above judgment is based upon the facts in the said case in the sense that the relevant documents placed on record in the said case showed that the purpose of revision of pay scales was only of improvement of salary of College and University teachers as per the recommendations of the University Grants Commission for which, reliance was placed in the said case upon the letter of the Government of India dated April 7, 1966 by which it accepted the U.G.C. recommendations and on the basis of which, the pay revision was made by the State Government. After examining the full text of the decision of the Supreme Court, it also appears that the Lecturers concerned therein were fully qualified and possessed requisite qualifications and experience for being placed in the higher revised pay scale. The requirement however which was insisted upon on behalf of the State Government was that since the persons concerned

were going from Class II to Class I post, their selection by the MPSC was necessary, which requirement insisted upon by the State Government was held by the Supreme Court to be illegal and arbitrary, since the object was of improvement of pay scales of law paid to teachers whose revision of pay scale was also necessary for improvement of the educational standards.

37. The above facts in the judgment of the Supreme Court cited *supra* would show that the qualifications and experience were laid down in the U.G.C. scheme for improvement of salary of teachers under consideration in the said judgment. In the instant case, before considering the question whether the scrutiny by the Selection Committee under Clauses (e) and (f) of the G.R. dated 23-11-1970 is illegal or arbitrary, it may be seen that the petitioners in the instant case did not possess as on 1-4-1970 the qualification about the experience laid down for entitlement to the revised pay scales under the University order dated 29-1-1973 issued by virtue of the power given to the University under para 2 of the G.R. dated 23-11-1970, read with its modifications under the G.R. dated 30-5-1972. The ratio of the above decision of the Supreme Court therefore cannot be invoked by the petitioners in the instant case.

38. In examining the question whether the scrutiny by the Selection Committee constituted by the University as per the G.R. dated 23-11-1970 is arbitrary or illegal or in other words in examining the question whether the pay revision as per the recommendations of ICAR should be given as a matter of course to all those who were holding the posts of Professor on 1-4-1970 because the object is only of improvement of pay scale of teachers as alleged by the petitioners, it is first necessary to see that the proposals of ICAR about revision of pay scale are not placed on record in the instant case. Similarly, even the Government resolution dated 23rd November, 1970 which had accepted the said pay scales for making them applicable to the teachers in the agricultural universities of the State w.e.f. 1-4-1970 is also not placed on record. However, it would appear from the subsequent Government resolution dated 30th May, 1972 by which some of the requirements and in particular the requirement of the approval by the State Government under the G.R. dated 23-11-1970 are dispensed with, that the introduction of revised ICAR pay scale is accepted in principle by the State Government under its Government resolution dated 23-11-1970 which would indicate that the Government has intended to propose or to lay down certain terms and conditions for granting ICAR revised pay scales.

39. It may be seen that in fact under the aforesaid G.R. dated 23-11-1970 by which the introduction of the revised ICAR pay scales is accepted by the State Government the terms and condition upon which the said revised pay scale are to be made applicable are laid down by the State Government itself as is clear from the judgment of this Court in S.C.A. No. 720 of 1975 *Ramchandra v. P.K. V*, cited *supra* from which we have extracted the said terms and conditions in this judgment. It cannot therefore be held in the instant case that as a matter of course the ICAR pay scales were made applicable to the incumbents of the posts

in question as on 1-4-1970 and that the said pay scales were accepted by the State Government without any conditions or without putting any higher requirements for applying the said pay scales, although it is true that the main purpose under the aforesaid G.R. dated 23-11-1970 is also revision of the existing pay scale of the University teachers as is clear from clause (f) of para 2 of the aforesaid G.R. dated 23-11-1970.

40. It is pertinent to see that the prescription of high experience for giving the revised pay scale in column No. 5 and of having been appointed in the post of Professor or its equivalent in the particular scale of Rs. 410-1200/- or Rs. 700-1300/- or higher in column No. 6 of Annexure I to the University order dated 29-1-1973 shows that the higher or at any rate certain qualifications are prescribed for entitlement to ICAR revised pay scale of the post of Professor. Moreover, perusal of the unreported judgment of this Court in Spl. C. A. No. 720 of 1975 cited supra would show that the post of Professor is now treated as on par with the higher post of the Head of the Department which had an existing pay scale of Rs. 1100-1600/- i.e. the same as the revised pay scale of the post of Professor and thus after the revision of the pay scale of the post of Professor, both the posts which is described in the said judgment as the post of Professor-cum-Head of the Department carry the same pay scale. There is thus an ungradation of the existing post of Professor. It is therefore, clear in the above facts in the instant case that the revised ICAR pay scale of the post of Professor cannot be claimed as a matter of course by reason of merely holding the said post on 1-4-1970 and it was, therefore, necessary to judge in the light of the requirements of the G.R. dated 23-11-1970 the suitability of the candidates as provided in clause (e) thereof keeping in mind the basic concept that introduction of ICAR pay scale is by way of revision of existing pay scales as envisaged by the modification made by the G.R. dated 30-5-1972 in clause (f) of the above G.R. dated 23-11-1970.

41. Be that as it may, in our view, in the absence of any challenge in these petitions to the conditions prescribed under the G.R. dated 23-11-1970 on the ground that they are either illegal or arbitrary or violative of Article 14, the question of revision of pay scales has to be examined as per the conditions laid down in the G.R. dated 23-11-1970 read with the subsequent G.R. dated 30-5-1972. We have already pointed out that the requirement of the approval by the State Government in the conditions (c) to (e) of the G.R. dated 23-11-1970 was dispensed with by the State Government in para 2 (ii) of its subsequent G.R. dated 30th May, 1972. It was therefore open to the University to lay down without the approval of the State Government the qualifications for entitlements to the revised pay scale and also to appoint the Selection Committee for scrutinising the suitability of its teachers for entitlement to the revised scales as provided in condition (e) of the G.R. dated 23-11-1970 which it had done as per its order dated 29-1-1973. It was therefore necessary for the petitioners to satisfy the said criteria for getting the revised pay scale. The contention raised on behalf of the petitioners that without laying down any terms and conditions

they should be given the revised ICAR pay scale of the post of Professor as a matter of course since they held the said post on 1-4-1970 is rejected.

42. The crucial question which however arises for consideration is that if the petitioners did not have the requisite qualification as laid down under the order of the University dated 29-1-1973 for holding the post of Professor with the revised ICAR pay scale whether they could be sent back or reverted to the lower post of Associate Professor and could be given absorption in the said post, particularly when they were already promoted and were working in the post of Professor from 1-4-1970 onwards. As regards the above question, condition (f) in para 2 of the G.R. dated 23-11-1970 provides that if the teacher is not found suitable by the Selection Committee for holding his post with the ICAR pay scale, he can be absorbed in the lower post if necessary, on his own present emoluments with of course the revised ICAR pay scale attached to such lower post.

43. The learned Counsel for the petitioners has seriously contended before us that in the light of the subsequent G.R. dated 30th May, 1972, para 2(iii) of which requires the authority concerned to bear in mind that the introduction of ICAR pay scale is intended to be way of revision of pay scale, the requirement in clause (f) should be interpreted to mean that no person can be sent to the lower, post in our view, if it was intended in para 2(iii) of the G.R. dated 30th May, 1972 that the person who is not found suitable by the Selection Committee cannot still be sent back in the lower post and has to be continued in his own post, if necessary with the unrevised pay scale, it would have been clearly so stated in para 2(iii) of the G.R. dated 30th May, 1972. The fact that it is not so clearly stated in para 2(iii) of the G.R. dated 30th May, 1972 would show that in appropriate cases, it may be open to the University to absorb the persons concerned in the lower post.

44. The next important question thus is what such appropriate cases are in which the incumbents can be sent back or reverted to the lower post. It may be seen that at the time the revised ICAR pay scale were introduced, there may be some persons who were occupying the posts of Professor on purely temporary basis and there may be some other persons who were occupying the said posts as permanent incumbents or in a substantive capacity. There may still be certain persons who although appointed temporarily, may be fulfilling the requisite qualifications laid down for entitlement to the revised pay scale and may be holding the posts of long terms basis. Another consideration which may enter may be that the total strength of the posts in question in the revised pay scale fixed by the University or which may be approved by the State Government may be less than the strength of the existing posts with unrevised pay scale. There may be other considerations which cannot all be exhaustively catalogued. It is by taking into consideration all such relevant factors that the Selection Committee or as the case may be, the University has to exercise its discretion in determining the question whether the person concerned should be absorbed in his post or

should be absorbed in the lower post.

45. It is pertinent to see that a person who is appointed in permanent capacity or in a substantive capacity to a post, cannot be reverted to the lower post ipso facto because he did not fulfil the requisite qualifications for entitlement to the revised pay of that post. At any rate some time may be required to be given to him for acquiring the necessary qualifications till which time he can be continued in the unrevised pay of that post. The case of a temporary appointee is however, on a different footing because by the nature of his appointment itself, he could always be sent back to his own original lower post. If, therefore, a discretion is exercised in his case by the Selection Committee or the University to absorb him in the lower post, the exercise of such discretion cannot be said to affect the purpose behind the requirement in clause (f) as laid down in para 2(iii) of the G.R. dated 30th May, 1972 viz. that the Selection Committee should bear in mind that the basic concept is to treat the introduction of ICAR pay scale by way of revision of pay scales. It is in the light of the aforesaid concept underlying clause (f) of the G.R. dated 23-11-1970 read with para 2(iii) of the G.R. dated 30th May, 1972 that we have to consider the cases of the petitioners in these writ petitions.

46. As regards the petitioner Dr. R.V. Pandit in Writ Petition No. 1795 of 1982 it may be seen that by the order dated 3-6-1970, he was promoted temporarily until further orders in the post of Professor of Anatomy. It is further clear from the order dated 3-6-1970 as well as from para 6 of the return filed on behalf of P.K.V. that the above order of promotion was issued by the Vice Chancellor in exercise of his emergency powers contained in the proviso in para 1 of Statute 51 of the P.K.V. Statutes, 1969 framed under the P.K.V. Act, 1968. The said promotion was made on a purely temporary basis until further orders subject to its further processing as per the University rules and regulations in this behalf. The learned Counsel for the petitioner Dr. R.V. Pandit has urged before us that the promotion of Dr. R.V. Pandit under the order dated 3-6-1970 should be treated as promotion in a substantive capacity in the post of Professor because according to him in P.K.V. all the orders of promotion are made on temporary basis only in regard to all the teachers. Although the learned Counsel for Dr. R.V. Pandit has urged that the above averment in the petition is not denied in the return filed by P.K.V. the same is not true because the above averment is clearly denied by P.K.V. in para 6 of its return. The principal submission that no orders making appointments in permanent or substantive capacity are passed in the University is partly negatived by the order dated 17-2-1972 passed by the P.K.V. in the case of the petitioner. Shri M.R. Kaduskar in Writ Petition No. 1783 of 1982 to which we shall presently refer and by which after completion of his probationary period he has been appointed on long term basis. At any rate in the absence of sufficient material on record, it is not possible for us to accept the above submission made on behalf of the petitioner. Dr. R.V. Pandit that in P.K.V. all appointments are made only on temporary basis.

47. At this stage, we may refer to the relevant provisions of the P.K.V. Act and the relevant statutes framed thereunder for noticing the procedure of appointment of the University teachers. Section 55 of the P.K.V. Act states that no person shall be appointed by the University as a member of the academic staff, except on the recommendation of a Selection Committee constituted for the purpose in accordance with the provisions of the statutes made in that behalf. It may then be seen that Statute 51(1) also reiterates that no person shall be appointed by the Vice, Chancellor as a member of the academic staff except on the recommendation of the Selection Committee. It is clear from the language of the above provisions that they are mandatory and no regular appointment of the University teachers can be made except upon the recommendation of the Selection Committee constituted for the said purpose. Statute 52 provides for constitution of the Selection Committee for appointment of the academic staff and Statute 53 lays down the procedure of selection of the academic staff for appointments to be made by the Vice-Chancellor it is material to see that para (2) of Statute 53 empowers the Vice Chancellor to determine the number of posts which can be filled in by promotion. Para 4 of Statute 53 applies the same procedure of selection by the Selection Committee to the appointments to be made by promotion as is laid down in para (1) thereof for appointment by direct recruitment.

48. It is thus clear from the above provisions that even for promotion, the selection by the Selection Committee is necessary under the P.K.V. Statutes. It is this processing i.e. the selection by the Selection Committee in accordance with the procedure laid down in the above statute which, according to the P.K.V. as states by it in para 6 of its return, is not done in the case of the petitioner Dr. R.V. Pandit. It is material to see that there is no specific averment in the petition that Dr. R.V. Pandit was at any time selected by the Selection Committee at the time of or even after his temporary promotion to the post of Professor in Anatomy. As already pointed out above, the promotion of Dr. R.V. Pandit is made by the Vice-Chancellor under his emergency powers under the proviso in para 1 of Statute 51 as per his order dated 3-6-1970 without the aid of the Selection Committee which is necessary for making regular appointments of the University teachers. It has therefore to be held that the requirement for regular appointment viz. the selection by the Selection Committee was not followed in the case of Dr. R.V. Pandit.

49. It is well settled that if an employee satisfies all the requirements of a regular appointment and is appointed in a clear and vacant post which continues for a sufficiently long time his appointment can be treated as in a substantive capacity in the said post even though creation of such post may be temporary. The University has framed the Service Rules known as "Punjabrao Agricultural University (Krishi Vidyapeeth Service Rules, 1971" (for short "the Service Rules") in which in Chapter II relating to definitions, the permanent post is defined in rule 2,36 as the post carrying definite rate of pay sanctioned without limit of time. Chapter XVII of the said Service Rules provides for recruitment, seniority,

conduct discipline and appeal. In rule 17.1 relating to recruitment, it is provided that all appointments whether permanent or temporary or work charged or on contract basis, shall be governed by the relevant provisions of the Act or the Statutes. It is therefore clear that the provisions of section 55 of the P.K.V. Act and the statutes referred to above govern the appointment of the teachers in P.K.V.. Rule 17.2 then provides that all initial appointments should be made on purely temporary basis and/or on probation in an officiating capacity against the permanent or temporary posts and further continuance of the incumbents in the University shall be subject to the satisfactory completion probationary period besides fulfilment of other conditions of service which rule also shows that a regular appointment cannot be made unless all the conditions for such appointment are fulfilled.

50. It is thus clear that in the absence of the recommendations of a selection Committee constituted for the purpose of appointment of the P.K.V. teachers, their appointments made by the Vice-Chancellor cannot be treated as regular appointment. Thus, the appointment of the petitioner in the absence of his selection by the Selection Committee cannot therefore be treated as a regular appointment. It may be seen that for claiming the substantive capacity in the post, it is necessary for the incumbent of the post that he must fulfil the requisite qualifications and should have been selected as per the procedure laid down for his selection. This concept of holding a post in substantive capacity is clear from the decision of the Supreme Court in the case of Baleshwar Dass and Others Vs. State of Uttar Pradesh and Others, followed in the case of G.K. Dudani and Others Vs. S.D. Sharma and Others, . It cannot therefore be held that the petitioner Dr. R.V. Pandit was holding the post of Professor in a substantive capacity. If he was holding the post on purely temporary basis, he could be reverted to his original post of Associate Professor by the University. If, therefore, the discretion is exercised by the University in absorbing him in the lower post of Associate Professor, as per its order dated 19-5-1973 communicated to him on 15-12-1973, the exercise of such discretion as per clause (f) of para 2 of the Government resolution dated 23-11-1970 read with para 2(iii) of the G.R. dated 30-5-1972 cannot be said to affect the basic concept of introduction of ICAR pay scales. His fixation therefore in the post of Associate Professor with the revised pay scale of the said post under the order dated 19-5-1973 cannot be said to be illegal or arbitrary.

51. The learned Counsel for the petitioner Dr. R.V. Pandit has then urged that the report of the Sub-Committee constituted by the University to go into the representations of the University teachers also shows according to him that the petitioner should have been given the revised pay scale of the post of Professor by continuing him in the said post. Perusal of the report of the said Sub-Committee would show that the Sub-Committee has not dealt with grievances of the individual teachers as such, but has concentrated on the question of the availability and allotment of the sanctioned posts in the cadre of Professors as per its terms of reference. It recommended that the administration should

correct the short fall in the posts of professors keeping in mind that there were 58 sanctioned posts of Professors as on 31-3-1978 besides which there were 3 posts in ICAR scheme and 8 posts of other officers in the cadre of Professors As regards 5 posts of the heads of Department and 1 post of Associate Dean in the cadre of Professors which the University had abolished for creating equal number of posts in the lower cadre of Associate Professors, there was difference of view in the Sub-Committee on the question whether the administrative approval of the State Government was necessary for restoring the said posts in the cadre of Professors

52. It is however contended that since the posts referred to above which were in the cadre of Professors were illegally abolished the petitioner should have been continued in the post of Professor and granted the revised ICAR scale of the said post. In our view, mere existence of the post of Professor would not entitle the petitioner to claim that although he did not fulfil the requisite qualifications of the post of Professor with the revised pay scale he should have been continued in the said post and at any rate have been granted the said pay scale, A similar situation it dealt with in the unreported judgment of this Court in Spl. C.A. No. 720 of 1985 cited (supra). It would appear from the said judgment that there were 3 posts of professors out of which only 2 were filled in by the incumbents of the said posts who were found suitable by the Selection Committee and the 3rd post of professor was kept vacant in which the petitioner claimed that he should have been continued in the said post. After referring to the above procedure of giving the revised pay scales is contemplated under the G.R. dated 23-11-1970, this Court negatived the said contention. In fact in the said case, although the post was vacant, the said post was advertised and was sought to be filled in by direct recruitment. Therefore, mere existence of the post would not mean that the petitioner whose appointment was purely temporary had a right to continue in that post eventhough he did not possess the requisite qualifications as prescribed as per Annexure I of the order of the University dated 29-1-1973. Therefore, taking into consideration the fact that the appointment of the petitioner shown above, if the discretion is exercised by the University to absorb him in his lower substantive post of Associate Professor with its revised ICAR pay scale, it cannot be said that the discretion exercised by the University is illegal or arbitrary. On the contrary, his continuance in the post of professor with the unrevised scale till he completed 10 years experience was likely to affect the rights of the legitimate claimants to the post of Professor with its revised ICAR pay scale. The above report of the sub Committee in thus of no assistance to the petitioner Dr. R.V. Pandit.

53. It may be seen that after taking into consideration the recommendation of the Sub-Committee, the posts of Professors which were kept in abeyance by the University were made operative and by the order dated 7-9-1987 the petitioner Dr. R.V. Pandit who had by then completed the requirement of 10 years teaching experience after post graduation was promoted temporarily to the post of Professor.

For all these reasons, we do not think that the respondent University can be said to have exercised its discretion in any unlawful or arbitrary manner in placing the petitioner Dr. R.V. Pandit in the revised pay scale of Associate Professor as per the order dated 19-5-1973. On that date, much less on 3-6-1970 on which date he was temporarily promoted to the post of Professor, he had no requisite experience prescribed for getting the revised ICAR pay scales and therefore he could be sent back to his lower substantive post of Associate Professor as he was occupying the post of Professor in a purely temporary capacity.

54. Turning now to the case of the petitioner in Writ Petition No. 1783 of 1982 Dr. M.R. Kaduskar, it is necessary to see that he was appointed in the post of Professor in the subject of Animal Nutrition by the order dated 17-6-1970 after his due selection by the Selection Committee. By the said order dated 17-6-1970 after his due selection by the Selection Committee. By the said order dated 17-6-1970, he was put on probation for a period of one year and thereafter, by the order dated 17-2-1972 he was continued on long term basis w.e.f. 22-6-1971 since he had satisfactorily completed the probationary period of one year on 21-6-1971. It is clear from the above facts in the case of the petitioner Dr. M.R. Kaduskar that although technically there is not order of confirmation, his appointment is clearly in a substantive capacity. He had therefore a right to hold the post of Professor and he could not be reverted to the post of Associate Professor without proper enquiry and proper reasons therefore. It was therefore necessary for the University to continue him in the said post of Professor in the unrevised scale of the said post till he was entitled to the revised ICAR pay scale of the said post i.e. till he completed 10 years experience after acquiring post graduate qualification. It may be seen in this regard that the petitioner Dr. M.R. Kaduskar obtained the Post Graduate degree in June 1963 and therefore, was eligible for the ICAR revised pay scale as per the qualifications laid down in Annexure 1 of the order the University dated 29-1-1973 from June 1973. The order dated 19-5-1973 therefore, putting him in the revised pay scale of the Associate Professor from 22-6-1970 is illegal, arbitrary and violate of Articles 14 and 16 of the Constitution of India. The order dated 19-8-1973 in the case of Dr. M.R. Kaduskar therefore needs to be set aside and it has to be directed that he should have been continued as a Professor of Animal Nutrition in its unrevised pay scale without being reverted as Associate Professor.

55. It may be seen that although from June 1973 Dr. M.R. Kaduskar was entitled to get the revised ICAR pay scale the pay scale of the post of Professor was further revised to Rs. 1500-2500/- as per the U.G.C. recommendations w.e.f. 1-1-1973 and therefore Dr. M.R. Kaduskar would be entitled to get the above revised pay scale from June 1973. Dr. M.R. Kaduskar was in fact promoted to the post of professor on 17-9-1987 with the above revised pay scale of Rs. 1500-2500/-. We are informed that Dr. M.R. Kaduskar has retired w.e.f. 31-3-1988. He would therefore be entitled to all the pecuniary benefits flowing from his re-fixation in the revised U.G.C. pay scale of the post of Professor from June 1973 including all the retirement benefits.

56. In the result, Writ Petition No. 1795 of 1982 is dismissed. Writ Petition No. 1783 of 1982 is allowed. The impugned order dated 19-5-1973 putting the petitioner in the revised ICAR pay scale of the lower of Associate professor is set aside and the respondent University is directed to treat the petitioner as in the post of Professor in Animal Nutrition all through from date of his regular appointment in the post as per the order dated 17-6-1970 but in the unrevised pay scale of the said post till June 1973. From June 1973, the respondent University is directed to give the petitioner the revised U.G.C. pay scale of Rs. 1500-2500/- and pay him the arrears, If any, upto date on account of his refixation of pay till the date of his retirement on 31-3-1988 and further refix his terminal or retirement benefits including his pension, gratuity etc. on the basis of his refixation of pay as directed above. Rule made absolute in the above terms in Writ Petition No. 1783 of 1982. The respondent University is directed to comply with the above order within a period of six months from the date of this order.

No order as to costs in both these petitions.