
(2015) 04 AHC CK 0039

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 52989 and 55117 of 2014

R.N. Mall and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 15-04-2015

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10(i), 23, 23(1), 3, 5(10)
(i)

Citation : (2015) 3 ADJ 707 : (2015) 3 AWC 2717 : (2015) 2 ESC 973 : (2015) LabIC 3850 : (2015) 2 UPLBEC 1364

Hon'ble Judges : Vimlesh Kumar Shukla, J;Ranjana Pandya, J

Bench : Division Bench

Advocate : Satyendra C. Tripathi, S.M.A. Tanveer, Arun Kumar and Radha Kant Ojha, for the Appellant; I.N. Singh and Niraj Tiwari, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Civil Misc. Writ Petition No. 52989 of 2014 has been filed by R.N. Mali and six others for following relief:

"(a) A writ order of direction in the nature of certiorari quashing the impugned order dated 1.9.2014 (Annexure-12 to the Writ petition) and order dated 22.07.2014 (Annexure-11 to the writ petition) passed by respondent No. 3 as well as Government Order dated 11.11.2013 having its letter No. 2164(1)/Solah-1-2013 (14)/2012 (An-nexure-8 to the writ petition) issued by the respondent No. 1.

(b) A writ order or direction in the nature of mandamus commanding the respondent No. 2 to reconsider case of the petitioners and pass appropriate order for granting next higher AGP under the Career Advancement Scheme as per Regulations 2010 and grant benefits as admissible under law and also as per recommendation made by a duly constituted "Section Committee" dated 12/13th July, 2012 to the petitioners.

(c) Any other writ order or direction which this Hon''ble Court may deem, fit and proper in view of the facts and circumstance of the case."

Civil Misc. Writ Petition No. 55117 of 2014 has been filed by Dr. Sri Ram and two others for following relief:

(1) Issue a writ, order or direction in the nature of certiorari calling for the record and quashing the Decision dated 23/24.8.2014 of the Board of Management of the Madan Mohan Malaviya University of Technology, Gorakhpur rejecting recommendations dated 13.07.2012 of the Selection Committee recommending names of petitioners for promotion as Professor in Pay-scale of Rs. 37400-67000 with AGP of Rs. 10000/- under Career Advancement Scheme w.e.f. 1.1.2009 [Annexure 10 to the writ petition].

(2) Issue a writ order or direction in the nature of certiorari calling for the record and quashing the Circular dated 1.9.2014 issued by the Registrar of the Madan Mohan Malaviya University of Technology, Gorakhpur [Annexure 12 to the Writ Petition.]

(3) Issue a writ, order or direction in the nature of mandamus directing the respondent No. 3 to consider forthwith the recommendations dated 13.07.2012 of the Selection Committee recommending names of petitioners for promotion as Professor in Pay-scale of Rs. 37400-67000 with AGP of Rs. 10000/- under Career Advancement Scheme w.e.f. 1.1.2009 strictly in accordance with Regulations of All India Council for Technical Education and Government Orders application at the relevant time and pass appropriate order of promotion.

(4) Issue any other writ, order or direction as this Hon''ble Court may deem fit and proper in the facts and circumstances of the case."

Both the writ petitions, vide order dated 15.10.2014 have been directed to be taken up together and as such both the writ petitions as they raise common issues have been taken up together.

2. Brief background of the case, as common to both writ petitions, are that the Madan Mohan Malviya Engineering College, Gorakhpur has been autonomous Institution established in the year 1962 and the said Engineering College was being run by registered societies fully financed by Government strictly in consonance with model bye laws that has been provided for Engineering college/ institutes of Uttar Pradesh. An act known as the All India Council for Technical Education Act, 1987, in short (Act No. 52 of 1987) to provide for the establishment of an All India Council for Technical Education with a view of proper planning and coordinated Development of the Technical Education system throughout the Country, the promotion of qualitative Improvements of such education in relation to planned quantitative growth and the Regulation and proper maintenance of norms and standards in Technical Education System and for the matters connected therewith, was enacted by the Parliament, which received the assent of the President on December, 23rd 1987 and published in

Gazette on 28th December, 1987. All India Council for Technical Education, hereinafter referred as the (council) as established under Section 3 of the said Act, has been given power to make a Regulation and Rules, in the matter of Technical Education under the provisions of Section 23(1) read with Section 5(10) (i) and (v) of the Act. The institution in question was affiliated with Gautam Buddh Technical University Lucknow and as far as petitioners of Civil Misc. Writ Petition No. 52989 of 2014 are concerned, their details are as follows:

Petitioners of Civil Misc. Writ Petition No. 55117 of 2014 have claimed that they are Phd. Holders and have been given designation of Associate Professors and all the petitioners have been performing and discharging duties as Associate Professors (Civil Engineering).

3. During continuance of petitioners in service, Revised Career Advancement Schemes for Teachers of Degree Level Technical Institution have been framed in the year 2003 and therein following terms and conditions have been mentioned.

"Revised Career Advancement Schemes for Teachers of Degree Level Technical Institutions.

1.1 General

1.1.0 Minimum length of service for eligibility to move into the grade of Lecturer (Senior Scale) would be four years for those with Ph.D., five years for those with M. Phil., M. Tech., and six years for others at the level of Lecturer, and for eligibility to move into the grade of Lecturer (Selection Grade)/Assistant Professor, the minimum length of service as Lecturer (Senior Scale) shall be uniformly five years.

1.1.1 For movement into grades of Professor, the minimum eligibility criterion would be Ph.D. Those without Ph.D. can go up to the level of Lecturer (Selection Grade)/Assistant Professor.

1.1.2 An Assistant Professor with a minimum of eight years of service in that grade will be eligible to be considered for appointment as a Professor.

1.1.3 The Selection Committees for Career Advancement shall be the same as those for Direct Recruitment for each category."

1.2 Lecturer (Senior Scale):

A Lecturer will be eligible for placement in a senior scale through a procedure of selection if she/he has:

(i) Completed 6 years of service after regular appointment with relaxation of one year and two years respectively, for those with M. Phil., M.E./M.Tech. and Ph.D.

(ii) Participated in summer/winter schools of total duration of 4 weeks, or engaged in other appropriate continuing education programme of comparable quality as may be specified or approved by the All India Council for Technical Education (AICTE).

(iii) Consistently satisfactory performance appraisal reports.

1.3 Lecturer (Selection Grade):

Lecturers in the Senior Scale who do not have Master's degree or equivalent published work, and who do not meet the scholarship and research standards, but fulfil the other criteria given below for the post of Assistant Professor, and have a good record in teaching and, preferably, have contributed in various ways such as to the corporate life of the institution, examination work, or through Research and extension activities, will be placed in the Selection Grade, subject to the recommendations of the Selection Committee which is the same as for promotion to the post of Assistant Professor. They will be designated as Lecturers in the Selection Grade. They could offer themselves for fresh assessment after obtaining Master's degree and/or fulfilling other requirements for promotion as Assistant Professor and if found suitable, could be given the designation of Assistant Professor.

1.4 Assistant Professor:

1.4.1. A Lecturer in the senior scale will be eligible for promotion to the post of Assistant Professor if he/she has :

(i) Lecturers in the Senior Scale having Ph.D. degree with 3 years of experience in teaching/industry/research at the level of Lecturer (including the period passed in the grade of Lecturer Senior Scale) or equivalent.

OR

Lecturer in the Senior Scale having Master's degree with 5 years of experience in teaching/industry/research at the level of lecturer (including the period passed in the grade of Lecturer Senior Scale) or equivalent. Such candidates will be required to obtain Ph.D. degree within a period of 7 years from the date of his/her promotion to the post of Assistant Professor.

AND

(ii) Made some mark in the areas of Scholarship and Research; as evidenced e.g. self assessment, report of referees, quality of publication, contribution to education/innovation, development of new courses and curricula and extension activities.

(iii) After placement in the senior scale participated in winter/summer schools (short term courses) of total duration of 4 weeks, or engaged in other appropriate continuing education programmes of comparable quality as may be specified/approved by the AICTE.

(iv) Possesses consistently good performance appraisal reports.

1.4.2 Promotion to the post of Assistant Professor will be through a process of selection by a selection committee to be set up under the statutes/ordinances of the concerned institute/university or other similar committees set up by the

appointing authorities.

1.5 Professor:

1.5.1 In addition to the sanctioned position of Professors which must be filled up through direct recruitment through all India advertisement promotion may be made from the post of Assistant Professor after 8 years of service as Assistant Professor.

1.5.2 The selection committee for promotion to the post of Professors should be the same as that for direct recruitment for the promotion from Assistant Professor to Professor the following methods of promotion may be followed.

The candidate should present her/himself before the selection committee with some of the following:

(a) Self-appraisal report (required)

(b) Research Contribution - books, articles, etc published (at least 4 papers in Journals required). The best three written contribution of the teacher (as defined by her/him) may be sent in advance to the experts for reviewed before coming for the selection committee interview. The candidate should submit in three sets with the applications.

(c) Seminars/conferences/workshops attended which should be at least 4 seminars/conferences/workshops at the national/international level or must have attended summer/winter schools (short term course) of total duration of 4 weeks.

(d) Significant contribution towards teaching/academic environment/institutional corporate life.

(e) Adequate extension and field research activity.

(f) Development of course/lecturer material/monographs, CDs/modern teaching tools including E-learning tools.

(g) Participation in continuing education programme.

(h) Any other academic contribution.

1.6 The requirement of consistent satisfactory performance appraisal report shall be the mandatory requirement for Career Advancement from Lecturer to Lecturer (Senior Scale) and from Lecturer (Senior Scale) to Lecturer (Selection Grade)/ Assistant Professor."

4. Perusal of the provisions quoted above would reflect that under Career Advancement Scheme for different position different eligibility criteria has been provided for and for each advancement, one will have to face the Selection Committee, that would be the same as that for Direct Recruitment for each category and requirement of consistent satisfactory appraisal report has been made mandatory.

5. All India Council for Technical Education in exercise of its authority vested under Sub (1) of Section 23 read with Section 10(i) to (v) of the AICTE Act 1987 proceeded to frame Regulation known as Pay-scales, Service Conditions and qualifications for the Teachers and other Academic Staff in Technical Institutions (Degree) Regulations, 2010 and these Regulations are known as All India Council For Technical Education (Pay-Scales, Service conditions and qualifications for the Teachers and other Academic Staff in Technical Institution (Degree) Regulations 2010 with the observations that these Regulations shall apply to technical institutions and Universities including deemed Universities imparting technical education and such other courses/programs and areas as notified by the Council from time to time and it was also provided that they shall come into force with effect from the date of their publication in the Official Gazette. Said Regulation has been published in the Official Gazette on 5.3.2010 and have also been accepted by the State Government on 25.3.2010.

6. For the purpose of present case, relevant extract of the Regulations 2010 bearing heading of General; Assistant Professor/Associate professors/Professors in Technical Institution and the provision as contained in reference of applicability of the Scheme are being extracted below:

"General

(i) There shall be only three designations in respect of teachers in universities and colleges, namely, Assistant Professors, Associate Professors and Professors. However, there shall be no change in the present designation in respect of Library Personnel at various levels.

(ii) No one shall be eligible to be appointed, promoted or designated as Professor, unless he or she possesses a Ph.D. and satisfies other academic conditions, as laid down by the AICTE from time to time. This shall, however, not affect those who are already designated as "Professor".

(iii) The pay of teachers and equivalent positions in Technical institutions shall be fixed according to their designations in two pay bands of Rs. 15600-39100 and Rs. 37400-67000 with appropriate "Academic Grade Pay" (AGP in short). Each Pay Band shall have different stages of Academic Grade Pay which shall ensure that teachers and other equivalent cadres covered under this Scheme, subject to other conditions of eligibility being satisfied have multiple opportunities for upward movement during their career.

(iv) Posts of Professors shall be created in under-graduate (UG) institutions as well as in post-graduate (PG) institutions. The ratio of Professors to Associate Professors to Assistant Professors in a UG College shall be in the ratio, ordinarily of 1:2:6. The ratio of Professors to Associate Professors and or Assistant Professor in a PG College shall be in the ratio ordinarily of 1:2

(v) Up to 10% of the posts of Professors in Technical Institutions shall be in the higher Academic Grade Pay of Rs. 12000 with eligibility conditions to be

prescribed by the AICTE as applicable.

Revised Pay-scales, Service conditions and Career Advancement Scheme for teachers and equivalent positions:

The pay structure for different categories of teachers and equivalent positions shall be as indicated below:

(a) Assistant Professor/Associate Professors/Professors in Technical Institutions

(i) Persons entering the teaching profession in Technical Institutions shall be designated as Assistant Professors and shall be placed in the Pay Band of Rs. 15600-39100 with AGP of Rs. 6000. Lecturers already in service in the pre-revised scale of Rs. 8000-13500, shall be re-designated as Assistant Professors with the said AGP of Rs. 6000.

(ii) An Assistant Professor with completed service of 4 years, possessing Ph.D. Degree in the relevant branch/discipline shall be eligible, for moving up to AGP of Rs. 7000.

(iii) Assistant Professors possessing Master's degree in the relevant branch/discipline as defined for technical education shall be eligible for the AGP of Rs. 7,000 after completion of 5 years service as Assistant Professor.

(iv) Assistant Professors who do not have Ph.D. or a Master's degree in the relevant branch/discipline of a program shall be eligible for the AGP of Rs. 7,000 only after completion of 6 years' service as Assistant Professor.

(v) The upward movement from AGP of Rs. 6000 to AGP of Rs. 7000 for all Assistant Professors shall be subject to their satisfying other conditions as laid down by AICTE.

(vi) The pay of the incumbents to the posts of Lecturer (senior scale) (i.e. the pre-revised scale of Rs. 10,000-15200) shall be re-designated as Assistant Professor, and shall be fixed at the appropriate stage in Pay Band of Rs. 15600-39100 based on their present pay, with AGP of Rs. 7000.

(vii) Assistant Professors with completed service of 5 years at the AGP of Rs. 7000 shall be eligible, subject to other requirements laid down by the AICTE, to move up to the AGP of Rs. 8000.

(viii) Posts of Associate Professor shall be in the Pay Band of Rs. 37400-67000, with AGP of Rs. 9000. Directly recruited Associate Professors shall be placed in the Pay Band " of Rs. 37400-67000 with an AGP of Rs. 9000, at the appropriate stage in the Pay Band in terms of the conditions of appointment.

(ix) Incumbent Assistant Professor and Incumbent Lecturers (Selection Grade) who have completed 3 years in the pre-revised pay-scale of Rs. 12000-18300 on 1.1.2006 shall be placed in Pay Band of Rs. 37400-67000 with AGP Pay of Rs. 9000 and shall be re-designated as Associate Professor.

(x) Incumbent Assistant Professor and Incumbent Lecturers (Selection Grade) who had not completed three years in the pay-scale of Rs. 12000-18300 on 1.1.2006 shall be placed at the appropriate stage in the Pay Band of Rs. 15600-39100 with AGP of Rs. 8000 till they complete 3 years of service in the grade of Lecturer (Selection Grade), and thereafter shall be placed in the higher Pay Band of Rs. 37400-67000 and accordingly re-designated as Associate Professor.

(xi) Lecturers (Selection Grade) in service at present shall continue to be designated as Lecturer (Selection Grade), as the case may be, until they are placed in the Pay Band of Rs. 37,400-67000 and re-designated as Associate Professor in the manner described in (x) above.

(xii) Assistant Professors completing 3 years of teaching in the AGP of Rs. 8000 shall be eligible, subject to other conditions, that may be prescribed by AICTE as applicable, to move to the Pay Band of Rs. 37400-67000 with AGP of Rs. 9000 and to be designated as Associate Professor.

(xiii) Associate Professor completing 3 years of service in the AGP of Rs. 9000 and possessing a Ph.D. degree in the relevant discipline shall be eligible to be appointed and designated as Professor, subject to other conditions of academic performance as laid down by the AICTE. No teacher other than those with a Ph.D. shall be promoted, appointed or designated as Professor. The Pay Band for the post of Professors shall be Rs. 37400-67000 with AGP of Rs. 10000.

(xiv) The pay of a directly recruited Professor shall be fixed at a stage not below Rs. 43000 in the Pay Band of Rs. 37400-67000, with the applicable AGP of Rs. 10000.

(xv) Ten percent of the posts of Professors in a AICTE approved Institution shall be in the higher AGP of Rs. 12000, however, teachers appointed to the posts shall continue to be designated as Professor. Eligibility for appointment as a Professor in the higher Academic Grade Pay shall be as may be laid down by the AICTE, and such eligibility conditions shall, inter alia, include publications in peer reviewed/refereed Research Journals, and the requirement of at least 10 years of teaching as Professor and post-doctoral work of a high standard. No person appointed directly as Professor in the AGP of Rs. 12000 shall be fixed at a stage less than Rs. 48000 alongwith the AGP.

(xvi) For initial direct recruitment at the level of Associate Professors and Professors, the eligibility conditions in respect of academic and research requirements shall be as may be or have been prescribed by the AICTE, through Regulations and as may be laid down by the AICTE.

(xvii) Discretionary award of advance increments for those who enter the profession as Associate Professors or Professors with higher merit, high number of research publications and experience at the appropriate level, shall be within the competence of the appropriate authority of the concerned University or

recruiting institution while negotiating with individual candidates in the context of the merits of each case, taking into account the pay structure of other teachers in the faculty and other specific factors.

(xviii) All advancements to higher grade pays in various cadres will be effected subject to completion of two AICTE approved refresher programs of not less than two weeks duration each and two one week each TEQIP sponsored programs.

Applicability of the Scheme:

(i) This Scheme shall be applicable to teachers in Technical Institutions and other equivalent cadres of Library in all the AICTE approved institutions. The implementation of the revised scales shall be subject to the acceptance of all the conditions mentioned in this letter as well as Regulations to be framed by the AICTE in this behalf.

(ii) This Scheme does not extend to the posts of professionals like System Analysts, Senior Analysts, Research Officers etc. who shall be treated at par with similarly qualified personnel in research/scientific organizations of the Central Government.

(iii) This Scheme may be extended to all technical Institutions coming under the purview of State legislatures, provided State Governments wish to adopt and implement the Scheme subject to the following terms and conditions:

Financial assistance from the Central Government to State Governments opting to revise pay-scales of teachers and other equivalent cadre covered under the Scheme shall be limited to the extent of 80% (eighty percent) of the additional expenditure involved in the implementation of the revision.

The State Government opting for revision of pay shall meet the remaining 20% (twenty percent) of the additional expenditure from its own sources.

Financial assistance referred to in sub-clause (a) above shall be provided for the period from 1.1.2006 to 31.3.2010.

The entire liability on account of revision of pay-scales etc. of teachers of AICTE approved Institutions shall be taken over by the State Government opting for revision of pay-scales with effect from 1.4.2010.

Financial assistance from the Central Government shall be restricted to revision of pay-scales in respect of only those posts which were in existence and had been filled up as on 1.1.2006.

State Governments, taking into consideration other local conditions, may also decide in their discretion, to introduce scales of pay higher than those mentioned in this Scheme, and may give effect to the revised bands/scales of pay from a date on or after 1.1.2006; however, in such cases, the details of modifications proposed shall be furnished to the Central Government and Central assistance shall be restricted to the Pay Bands as approved by the Central Government and

not to any higher scale of pay fixed by the State Government(s).

Payment of Central assistance for implementing this Scheme is also subject to the condition that the entire Scheme of revision of pay-scales, together with all the conditions to be laid down by the AICTE by way of Regulations and other guidelines shall be implemented by State Governments and technical institutions coming under their jurisdiction as a composite scheme without any modification except in regard to the date of implementation and scales of pay mentioned herein above."

7. A perusal of the provisions quoted above would go to show that All India Council for the Technical Education has come out with policy decision providing for three designations only in respect of teachers in universities and colleges, namely, Assistant Professors, Associate Professors and Professors. It was made clear that there shall be no change in the present designation in respect of Library Personnel at various levels. It was also provided that the pay of teachers and equivalent positions in Technical institutions shall be fixed according to their designations in two pay bands of Rs. 15600-39100 and Rs. 37400-67000 with appropriate "Academic Grade Pay" (AGP in short). Each Pay Band shall have different stages of Academic Grade Pay which shall ensure that teachers and other equivalent cadres covered under this Scheme, subject to other conditions of eligibility being satisfied have multiple opportunities for upward movement during their career. Details have also been set out in respect of placement pay band and in respect of Academic Grade Pay alongwith pay band details have also been mentioned upward movement from AGP of Rs. 6000 to AGP of Rs. 7000. Further provision in question clearly mentioned therein while describing this scheme, that this scheme shall be applicable to teachers in Technical Institution another equivalent cadres of Library in all the AICTE approved institutions and the implementation of the revised scales shall be subject to the acceptance of all the conditions mentioned in this letter as well as Regulations to be framed by the AICTE in this behalf. Thus, scheme in question namely All India Council For Technical Education (Pay-Scales, Service conditions and qualifications for the Teachers and other Academic Staff in Technical Institution (Degree) Regulations 2010 clearly proceeds that it shall be applicable to all the teachers in Technical Institution another equivalent cadres of Library in all the AICTE approved institutions and the implementation of the revised scales shall be subject to the acceptance of all the conditions mentioned in this letter as well as Regulations to be framed by the AICTE in this behalf.

8. Petitioners of Civil Misc. Writ Petition No. 52989 of 2014 have submitted that w.e.f. 25th March 2010, and thereafter the said Regulations for providing benefits under Career Advancement Scheme are applicable and as per Regulations, 2010, petitioners have applied for getting the benefits provided therein. Petitioners have stated that under the scheme of things provided for, some of the petitioners were entitled for two benefits, and accordingly requisite exercise was undertaken by Selection Committee so constituted on 12th and

13th July, 2012. Petitioners have stated that on the basis of said interview, first benefit, as admissible to them has been given by the order dated 27th November, 2013 and the petitioner No. 5 namely Dr. Devendra Kandu and the petitioner No. 6 namely Dr. Brijesh Kumar Pandey, they were given AGP of Rs. 8000/- on the basis of same recommendation of the Selection Committee and the aforesaid order was passed in pursuance of the Government Order dated 11th November, 2013. On the said recommendation, aforesaid two petitioners alongwith other petitioners who have faced the interview for next higher AGP and promotion under Career Advancement Scheme are also entitled to be given said benefits but result was not declared and silence has been maintained, consequently a writ petition was filed before this Court as writ petition No. 58370 of 2013 with prayer that a writ of mandamus be issued directing the opposite parties to declare the result of the petitioners with respect to the next AGP under the Career Advancement Scheme for which interview was held on 12th and 13th July, 2012. While aforesaid writ petition was entertained, an instruction was sought for on 31.3.2014 and thereafter, counter-affidavit was called and respondents had filed counter-affidavit on 18.4.2014. Claim of the petitioners was returned to be decided on the parameters of Notification dated 8.11.2012 issued by the All India Council for Technical Education. This Court on 11.07.2014 asked the Board of Management to take decision by declaring the result. Thereafter a general letter was issued by the Registrar of the University itself dated 22nd July, 2014 requiring from all eligible Assistant Professor/Associate Professors to apply for promotion under Career Advancement Scheme as per notification of All India Council for Technical Education dated 8th November, 2012 and thereafter the Registrar of the University by the order dated 1st September, 2014 has issued a general direction to all the Head of the Departments for information to concerned Teacher that none of recommendation of the "Selection Committee" held on 12/13 July, 2012 constituted by formerly Madan Mohan Malviya Engineering College, Gorakhpur are pending for approval at present for promotion and higher grade payment under Career Advancement Scheme. Petitioners are complaining that once Selection Committee has already interviewed the result of the same should be declared in consonance with the Regulations 2010.

9. Petitioners of Civil Misc. Writ Petition No. 55117 of 2014 also claim that in consonance with the Regulation 2010, they were also interviewed by the selection committee, recommendation has been made for promotion as Professor in Pay-scale of Rs. 37400-67000 with AGP w.e.f. 1.1.2009. Petitioners claim that since petitioners are eligible and entitled to promotion, as Professor under "Career Advancement Scheme" w.e.f. 1.1.2009 their case continued to be governed and treated under Regulations 2010, and Vice Chairman of Board of Governors of erstwhile Engineering College on 29.11.2013 approved the same and transmitted the same for approval to Board of Governors, and M.M. Engineering College as it become University vide Act No. 22 of 2013 on 1.12.2013, and Board of Management replaced Board of Governors and on

23.8.2014, Board of Management rejected recommendations on totally incorrect and unsustainable grounds.

At this place, as claim of petitioners has been resisted based on Regulation 2012, the said Regulations are being looked into.

10. The All India Council for Technical Education enacted and notified on 8.11.2012 "The All India Council for Technical Education (Career Advancement Scheme for the Teachers and other Academic Staff in Technical Institutions) (Degree) Regulations 2012. Relevant Extract of said Regulations is being extracted below:

11. After the enforcement of Regulations known as All India Council for Technical Education (Career Advancement Scheme for the Teachers and other Academic Staff in Technical Institutions) (Degree) Regulations, 2012, as it has proceeded to mention that in the event, any candidate becomes eligible for promotion under Career Advancement Scheme (CAS), in terms of Regulation on or 5th March 2010, promotion of such candidate shall be governed by this Regulation and this very condition that has been so mentioned has created complication and has been made foundation and basis for non-considering the claim of the petitioners of Civil Misc. Writ Petition No. 52989 of 2014, and refusal to accord relief to the petitioners of Civil Misc. Writ Petition No. 55117 of 2014.

12. This much is also clear that for declaring the college in question as University steps have been undertaken and ultimately the College in question has been declared as University by U.P. Act No. 22 of 2013 known as the Uttar Pradesh Madan Mohan Malaviya University of Technology (U.P. Act No. 22 of 2013) and said Act has been passed by U.P. Legislature and has been assented to by the Governor with following recommendation:

"to provide for the reconstitution of the Madan Mohan Malviya Engineering College, Gorakhpur as Madan Mohan Malaviya University of Technology and to incorporate it as a non-affiliating teaching and research University at Gorakhpur to facilitate and promote studies, research, technology incubation, product innovation and extension work in Science, Technology and Management Education, and also to achieve excellence in higher technical education and other matters connected therewith or incidental thereto.

Whereas the Madan Mohan Malaviya Engineering College is an institution of the Government of Uttar Pradesh affiliated to the Gautam Buddh Technical University, Lucknow.

And whereas it is expedient to confer on the said institution the status of a University to enable it to function more efficiently as a teaching and research centre to meet the requirement of higher education and research in the field of engineering and technology, applied sciences and management sciences, foster industry relevant research and innovation and to avail better scopes and opportunities to serve the society and the nation;"

13. Prior to formation of University concerned the Vice Chairman of Board of Governors of erstwhile Engineering College has approved the recommendations of Selection Committee dated 13.07.2012 and sent them for approval of Chairman of Board of Governors and as M.M.M. Engineering college became University w.e.f. 1.12.2013, Board of Governors has been replaced by Board of Management and Board of Management on 23.8.2014 had rejected the recommendations dated 13.07.2012 for promotion of petitioners of Civil Misc. Writ Petition No. 55117 of 2014, as same were not at all in consonance with the provision as contained under AICTE, Regulation 2012 and further as petitioner No. 1 and 3 have failed in the earlier Selection dated 25.2.2009 and petitioner No. 2 has not participated in earlier selection in 2009 they were entitled to be considered after June 2012 only and as far as petitioners of Civil Misc. Writ Petition No. 52989 of 2014 are considered their grievances has been that their claim has not been considered in its correct perspective and unnecessarily enactment of Regulation 2012 is being pressed and made applicable whereas selection is to be governed by Regulations 2010 and accordingly complaining such treatment both the writ petitions have been filed.

14. From the side of University concerned stand has been taken that Regulations 2012 is conjunctive in nature and supplementary criteria has been laid down as was mentioned in Regulations 2010 itself and much emphasis has been placed that entire exercise that has been taken on the earlier occasion is of no consequence as the conditions for getting benefit of Career Advancement Scheme have been laid down by the University by Regulations 2012 w.e.f. 5.3.2010 on which date Regulation 2010 was notified. Table-1 of Appendix-1 of Regulations 2012 indicates that the academic performance (API) in recruitments and career advancement scheme (CAS) for the teaching staff of Engineering college/Teachers. API scores are proposed for (a) teaching related activities (b) domain knowledge (c) participation in examination and evaluation (d) contribution to innovative teaching, new course etc and various other activities have been mentioned in Appendix-A of Regulation 2012 and in view of this, claim of petitioners have been resisted.

15. Rejoinder-affidavit has been filed in the present case alongwith supplementary-affidavit to rebut the allegations mentioned in the counter-affidavit and thereafter with the consent of the parties both the writ petitions have been taken up for final hearing and disposal.

16. Sri V.K. Singh, Senior Advocate assisted by Sri Arun Kumar Advocate, representing petitioners of Civil Misc. Writ Petition No. 55117 of 2014, has submitted with vehemence that Regulations 2010 and Regulations 2012 are complete by themselves and are independently workable and petitioners having been duly recommended by selection committee on 13.07.2012 their claim should be accepted and based on Regulations 2010, by no stretch of imagination claim of petitioners could have been non-suited as has been done in the present case. It has also been contended that in principle the State Government has

accepted such a situation vis-a-vis other candidates and petitioners have been discriminated and objection that have been raised that in the year 2009, claim of petitioners have been rejected, as such it cannot be considered is totally unjustifiable plea, in view of this writ petition in question deserves to be allowed.

17. Sri R.K. Ojha, Senior Advocate assisted by Sri S.C. Tripathi, Advocate, representing petitioners of Civil Misc. Writ Petition No. 52989 of 2014 has contended that once proceedings have been undertaken prior to amendment made in the Regulations, then promotional exercise will be governed by old Regulations and not by newly amended Regulations as amended provision as well as new provision would not affect the pending proceeding that has been undertaken prior to 08/XI/2012 and in view of this once stand taken is unreasonable, illegal and arbitrary in nature then the authorities concerned are duty bound to take all possible steps on the recommendation so transmitted based on the terms and condition of Regulations 2010, as such writ petition in question deserves to be allowed.

18. Claim in question has been countered by the University represented by Sri Gajendra Pratap, Senior Advocate, assisted by Sri I.N. Singh, Advocate by contending that petitioners are labouring under a misconception, inasmuch as Regulations 2010 and Regulations 2012 are complementing each other and one cannot go without other and once both the Regulations are read together then it would be reflected that they would not have been complete without each other and both can easily be harmonized as in the earlier part, eligibility of promotion was not there and procedure of promotion was not there and methodology of promotion was not there, in view of this once fair and transparent procedure has been adopted then plea as has been raised has no substance and unnecessarily issue of arbitrariness has been raised. Once Regulations 2010 and Regulations 2012 are integral part of integrated scheme and are conjunctive, to each other, the petitioners then legitimately can have no grievance. It has also been contended that other incumbents who have been extended the said benefit, are the incumbents whose entitlement were prior to 5.3.2010, as such no benefits can be derived out of the same and the incumbents whose entitlement has been there on or after 5.3.2010 alongwith AGP will have to go through rigors of Regulations 2012 and this is why the University is insisting for the same, in view of this Court should refuse to interfere as petitioners should first deserve and then desire.

19. Sri Neeraj Tiwari, Advocate, representing All India Council for Technical Education, in plain and simple term has contended that Regulations are speaking for themselves and both are complementing each other and once both Regulations are read together then there is no conflict worth name inter se them and both of them are in complete harmony with each other.

20. Issue is that once Regulations 2010 have come into force w.e.f. 5.3.2010 and pursuant to the same petitioners claim that exercise has been undertaken for according them Academic Grade Pay (AGP) and personal promotion on the post

of Assistant Professor, Associate Professor and Professors respectively under the CAS scheme on the basis of interview held on 12.07.2012/13.07.2012 at Madan Mohan Malviya University of Technology, Gorakhpur an upgraded University w.e.f. 1.12.2013, can on the strength of Regulations 2012 known as All India Council for Technical Education (Career Advancement Scheme for the Teachers and other Academic Staff in Technical Institution) (Degree) Regulations 2012, claim of the petitioners can be non-suited and the petitioners will have to go through the rigors of Regulations 2012.

21. We find that in view of the provisions of Regulations 2010, there would be only three designations namely Assistant Professor/Associate Professor/Professor who would be entitled to upward movement. Relevant provisions of Regulations 2010 would go to show that no one shall be eligible to be appointed, promoted or designated as Professor, unless he or she possesses a Ph.D. and satisfies other academic conditions, as laid down by the AICTE from time to time. This shall, however, not affect those who are already designated as "Professor". The pay structure for different categories of teachers and equivalent position has been indicated as follows: (a) Assistant Professor/Associate Professors/Professors in Technical Institutions : (i) Persons entering the teaching profession in Technical Institutions shall be designated as Assistant Professors and shall be placed in the Pay Band of Rs. 15600-39100 with AGP of Rs. 6000. Lecturers already in service in the pre-revised scale of Rs. 8000-13500, shall be re-designated as Assistant Professors with the said AGP of Rs. 6000. (ii) An Assistant Professor with completed service of 4 years, possessing Ph.D. Degree in the relevant branch/discipline shall be eligible, for moving up to AGP of Rs. 7000. (iii) Assistant Professors possessing Master's degree in the relevant branch/discipline as defined for technical education shall be eligible for the AGP of Rs. 7,000 after completion of 5 years service as Assistant Professor, (iv) Assistant Professors who do not have Ph.D. or a Master's degree in the relevant branch/discipline of a program shall be eligible for the AGP of Rs. 7,000 only after completion of 6 years" service as Assistant Professor, (v) The upward movement from AGP of Rs. 6000 to AGP of Rs. 7000 for all Assistant Professors shall be subject to their satisfying other conditions as laid down by ATCTE. (vi) The pay of the incumbents to the posts of Lecturer (senior scale) (i.e. the pre-revised scale of Rs. 10,000-15200) shall be re-designated as Assistant Professor, and shall be fixed at the appropriate stage in Pay Band of Rs. 15600-39100 based on their present pay, with AGP of Rs. 7000. (vii) Assistant Professors with completed service of 5 years at the AGP of Rs. 7000 shall be eligible, subject to other requirements laid down by the AICTE, to move up to the AGP of Rs. 8000. (viii) Posts of Associate Professor shall be in the Pay Band of Rs. 37400-67000, with AGP of Rs. 9000. Directly recruited Associate Professors shall be placed in the Pay Band" of Rs. 37400-67000 with an AGP of Rs. 9000, at the appropriate stage in the Pay Band in terms of the conditions of appointment, (ix) Incumbent Assistant Professor and Incumbent Lecturers (Selection Grade) who have completed 3 years in the pre-revised pay-scale of Rs. 12000-18300 on 1.1.2006

shall be placed in Pay Band of Rs. 37400-67000 with AGP Pay of Rs. 9000 and shall be re-designated as Associate Professor, (x) Incumbent Assistant Professor and Incumbent Lecturers (Selection Grade) who had not completed three years in the pay-scale of Rs. 12000-18300 on 1.1.2006 shall be placed at the appropriate stage in the Pay Band of Rs. 15600-39100 with AGP of Rs. 8000 till they complete 3 years of service in the grade of Lecturer (Selection Grade), and thereafter shall be placed in the higher Pay Band of Rs. 37400-67000 and accordingly re-designated as Associate Professor, (xi) Lecturers (Selection Grade) in service at present shall continue to be designated as Lecturer (Selection Grade), as the case may be, until they are placed in the Pay Band of Rs. 37,400-67000 and re-designated as Associate Professor in the manner described in (x) above, (xii) Assistant Professors completing 3 years of teaching in the AGP of Rs. 8000 shall be eligible, subject to other conditions, that may be prescribed by AICTE as applicable, to move to the Pay Band of Rs. 37400-67000 with AGP of Rs. 9000 and to be designated as Associate Professor, (xiii) Associate Professor completing 3 years of service in the AGP of Rs. 9000 and possessing a Ph.D. degree in the relevant discipline shall be eligible to be appointed and designated as Professor, subject to other conditions of academic performance as laid down by the AICTE. No teacher other than those with a Ph.D. shall be promoted, appointed or designated as Professor. The Pay Band for the post of Professors shall be Rs. 37400-67000 with AGP of Rs. 10000. (xiv) The pay of a directly recruited Professor shall be fixed at a stage not below Rs. 43000 in the Pay Band of Rs. 37400-67000, with the applicable AGP of Rs. 10000 (xv) Ten percent of the posts of Professor in a AICTE approved Institution shall be in the higher AGP of Rs. 12000, however, teachers appointed to the posts shall continue to be designated as Professor. Eligibility for appointment as a Professor in the higher Academic Grade Pay shall be as may be laid down by the AICTE, and such eligibility conditions shall, inter alia, include publications in peer reviewed/ refereed Research Journals, and the requirement of at least 10 years of teaching as Professor and post-doctoral work of a high standard. No person appointed directly as Professor in the AGP of Rs. 12000 shall be fixed at a stage less than Rs. 48000 alongwith the AGP. (xvi) For initial direct recruitment at the level of Associate Professors and Professors, the eligibility conditions in respect of academic and research requirements shall be as may be or have been prescribed by the AICTE, through Regulations and as may be laid down by the AICTE. (xvii) Discretionary award of advance increments for those who enter the profession as Associate Professors or Professors with higher merit, high number of research publications and experience at the appropriate level, shall be within the competence of the appropriate authority of the concerned University or recruiting institution while negotiating with individual candidates in the context of the merits of each case, taking into account the pay structure of other teachers in the faculty and other specific factors, (xviii) All advancements to higher grade pays in various cadres will be effected subject to completion of two AICTE approved refresher programs of not less than two weeks duration each and two one week each TEQIP sponsored programs.

22. All these details have been indicated reflecting the pay structure for different categories of teachers and equivalent posts under the heading of "Revised Pay-scales, Service Conditions and Career Advancement Scheme for teachers and other equivalent positions", but the fact of the matter is, that though Regulations 2010 has come into force w.e.f. 5.3.2010 but the scheme in itself, at the point of time when it proceeds to provide for applicability of the scheme, clearly proceeds to provide that same shall be subject to the acceptance of all conditions mentioned in the letter as well as Regulations to be framed by AICTE in this behalf.

23. On the face of it Regulation 2010 has not at all been containing details as to in what way and manner "Career Advancement Scheme" is to be implemented and given effect to whereas under the earlier scheme that has already been quoted above, and has been holding the field at earlier point of time would go to show that same contains details of eligibility, details of Selection Committee, requirement of satisfactory performance appraisal report etc. Reason is obvious as in Regulations 2010, it has been clearly mentioned that implementation of scheme shall be subject to acceptance of all the conditions mentioned in the letter as well as Regulations to be framed by AICTE in this behalf.

24. This particular condition, "Applicability of the Scheme" mentioned in Regulations 2010 clearly gives an impression that scheme is not to be made applicable independently rather it is conjunctive scheme in question i.e. (i) implementation of Revised Career Advancement Schemes for Teachers of Degree Level Technical Institution shall be subject to the acceptance of conditions mentioned in this letter (ii) as well as Regulations to be framed by the AICTE in this behalf.

25. Once applicability of scheme in question is not an independent exercise rather it is subject to the acceptance of conditions mentioned and Regulations to be framed by the AICTE the words "subject to" used therein is of much significance and such words in the context, it has been used has to be given full effect to as per the judgment of Apex Court in the case of S.N. Chandrashekar and Another Vs. State of Karnataka and Others, AIR 2006 SC 1204 : (2006) 2 JT 202 : (2006) 2 SCALE 248 : (2006) 3 SCC 208 : (2006) 1 SCR 1039 : (2006) AIRSCW 800 : (2006) 2 Supreme 48 , and meaning of said words have been noticed in the case of Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another, (2004) 1 SCALE 224 : (2004) 3 SCC 1 : (2004) 1 SCR 306 : (2004) 134 STC 473 : (2004) AIRSCW 5361 : (2004) 6 Supreme 407 and as per Blacks Law Dictionary, 5th Edn, page 1278, the expression subject to has been defined as under:

"Liable, subordinate, subservient, inferior, obedient to, governed or affected by provided that, provided; answerable for".

Apex Court in the case of Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others, AIR 2007 SC 1984 : (2007) 2 CTC

273 : (2007) ELR 1166 : (2007) 7 JT 613 : (2007) 7 SCALE 392 : (2007) 5 SCC 447 : (2007) 6 SCR 955 : (2007) AIRSCW 3752 , has reiterated that expression "subject to" conveys the idea of provision yielding to other provision or provisions subject to which it is made. Consequently in the facts of the case the expression "subject to" used in Regulations 2010 has to be given full meaning and contextually it has to be accepted that Regulations 2010 in itself has not been having its independent existing status rather it was subservient to the provision "to be made" by AICTE and here AICTE has framed Regulations 2012.

Language mentioned therein clearly talks of Regulations to be framed by the AICTE in this behalf and same is clearly indicative of the fact that subsequent Regulations in this behalf has been under pipe line and ultimately it has come in the format of Regulations 2012.

26. Once such is the factual situation that scheme of 2010 would not operate independently rather same is subject to the acceptance of all the conditions mentioned and subject to Regulations to be framed by AICTE in this behalf and Regulations 2012 have been framed and full fledged mechanism has been provided for then it has to be adhered to as Regulations 2012 covers even minutest requirement for according "Career Advancement" and once specifications are there in the Regulations 2012 and therein it has been clearly provided that it is applicable to the candidates who acquired eligibility on or after 05th March, 2010 and onwards, then to say that Regulations 2012 has been pressed arbitrarily cannot be accepted rather same takes within its fold all the incumbents, who have acquired eligibility on or after 5.3.2010.

27. Framing of Regulations 2012 is a part of the scheme that has been floated on the earlier occasion i.e. Regulations 2010 and Regulations 2012 and both are complementing each other and there is no conflict in between the two, rather same gives impression that now it is complete scheme for extending the benefit of "Career Advancement for Candidates, who has acquired eligibility on or after 5.3.2010.

28. Fact of the matter is that as far as the institution is concerned, at the relevant point of time it ought to have awaited in the said direction instead of proceeding ahead by undertaking proceeding dated 12/13/07.2012. Regulations 2010 is not an independent scheme and had the authority taken into consideration, the fact of applicability of the scheme in question then such a situation would not have emerged as it has emerged in the present case. In view of this, rights claimed on the basis of Regulations 2010 and proceedings of Selection Committee dated 12/13/07/2012 are of no consequence and in order to get benefit of AGP and CAS under the Regulations 2010 one will have to go through the route and rigors provided in Regulations 2012 as such claim of petitioners has no merit and same has rightly not been approved of by the authority concerned on the spot.

29. Much emphasis has been made on the fact that in the present case vacancies

in question have occurred prior to the amended rules and same would be governed by old rules and not by amended rules and right of an eligible employee to be considered for promotion is virtually a part of the fundamental right and it cannot be altered by altering the conditions of recruitment by prescribing separate qualification and standards. For this purpose, various judgments have been cited by Sri R.K. Jha, Senior Advocate namely Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, AIR 1983 SC 852 : (1983) 2 LLJ 23 : (1983) 1 SCALE 296 : (1983) 3 SCC 284 ; H.C. Kulwant Singh and others v. H.C. Daya Ram and others (arising out of S.L.P. (C) No. 798 of 2008); Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, AIR 1997 SC 3828 : (1997) 7 JT 180 : (1997) 5 SCALE 209 : (1997) 6 SCC 623 : (1997) SCC(L&S) 1527 : (1997) 3 SCR 63 Supp : (1997) 2 UJ 610 : (1997) AIRSCW 3747 : (1997) 7 Supreme 408 ; Prabhuji and Another Vs. State of U.P. and 40 Others, (2011) 2 ADJ 371 ; Maharashtra State Road Transport Corporation and Others Vs. Rajendra Bhimrao Mandve and Others, AIR 2002 SC 224 : (2002) 93 FLR 310 : (2001) 10 JT 191 : (2002) LabIC 128 : (2002) 1 LLJ 819 : (2001) 8 SCALE 212 : (2001) 10 SCC 51 : (2001) AIRSCW 4885 : (2001) 8 Supreme 271 ; State of Bihar and Others Vs. Mithilesh Kumar, (2010) 9 JT 11 : (2010) 13 SCC 467 : (2011) 1 SCC(L&S) 403 : (2010) 10 SCR 161 : (2011) 1 SLJ 180 : (2010) 8 UJ 3947 ; Vindhyaivasini Tiwari and Others Vs. State of U.P. and Others, (2014) 1 ADJ 437 : (2014) 1 ALJ 607 : (2014) 3 AWC 2221 : (2014) 2 ESC 613 : (2014) 1 UPLBEC 716 ; State of U.P. and others v. Vindhyaachal Tiwari, 2014 (5) ADJ 749 (DB) and Sant Ram Sharma Vs. State of Rajasthan and Another, AIR 1967 SC 1910 : (1968) 2 LLJ 830 : (1968) 1 SCR 111 .

30. In the present case petitioners are labouring under a misconception that Regulations 2012 has changed the criteria whereas Regulations 2010 on various scores has not been self sufficient and that is why it was specifically mentioned therein that it would be subject to term and condition and subject to Regulations to be framed by AICTE. In view of this none of the judgments cited above will come to the rescue and relieve of the petitioners. As has already been discussed in detail, in the absence of Regulations that were to come up and that has actually come up in the shape of Regulations 2012, no independent exercise for "Career Advancement" was permissible and entire exercise so undertaken by the Selection Committee is not at all subscribed by law, as such all these proposition that vacancies that occurred prior to amended provision would be governed by old rules and not by amended rules is neither here nor there and in no way would improve the case of petitioners. Once we have taken the view that entire proceedings of Selection Committee dated 12.07.2012 and 13.07.2012 are of no consequence in reference of candidates, who have acquired eligibility on or after 5.3.2010, then other issues raised are totally insignificant, and few candidates, who have been extended benefit of "Career Advancement" there date of eligibility is prior to 2010 Regulation and as far petitioners of Civil Misc. Writ Petition No. 55117 of 2014 are concerned petitioner Nos. 1 and 3 faced Selection dated 25.2.2009 and failed to succeed and petitioner No. 2 did not face selection,

then there date of eligibility could not have been anterior to the said date, as has been claimed by the petitioners of Writ Petition Ro. 55117 of 2014 for the post of Professor by way of "Career Advancement".

Under Regulations 2010 read with Regulations 2012 claim of the petitioners can be considered as per the parameters provided therein, provided they come forward.

Consequently, for the reasons stated above, the arguments raised are devoid of substance and accordingly both the writ petitions are dismissed.