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DR. RASHMI SRIVASTAVA AND
DR. B.D. SRIVASTAVA AND ORS.

v.

VIKRAM UNIVERSITY AND ORS.

APRIL 30, 1995

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[P.B. SAWANT AND S.B. MAJMUDAR, JJ.]

Service Law :

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Constitution of India, 1950—Articles 14 and 16 (1) Seniority—Merit promoted Readers and professors—Ex cadre employees-form a distinct class as compared to direct recruits—Cannot be treated equally with direct recruits—Competition can only be amongst direct recruits—Fixation of inter se seniority between them on the yardstick of continuous officiation was illegal.

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Madhya Pradesh Vishwavidyalaya Adhinyam, 1973 :

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Sections 6(30), 49 and Statute 16(2)—Merit promotion scheme—Readers and Professors—Not contemplated by the Act—No power to create additional posts for being reserved for merit promotees—However, the same can be created by suitable amendment of the Act.

Section 19—Merit promoted Readers and Professors—Cannot claim any inter se seniority and promotion with direct recruits—However, their pay, work and status would remain at par with direct recruits.

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The appellants were promoted professors and Readers under a merit promotion scheme formulated by the University Grants Commission. The respondents were appointed to the posts of professors and Readers on subsequent dates as direct recruits. The University published a seniority list in which the appellants were shown as senior to the respondents. The respondents filed a writ petition before the High Court challenging the said placement in the seniority list which was allowed. Aggrieved by the judgment of the High Court the appellants preferred the present appeals.

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On behalf of the appellants it was contended that Section 49 of the Madhya Pradesh Vishwavidyalaya Adhinyam, 1973 took in its sweep even departmental candidates; that some universities had issued Ordinances

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creating new source of recruitment by departmental promotion of university teachers; that merit promotion scheme was formulated to avoid stagnation and heart burning; that the merit promotion scheme was a temporary extension of the cadre of Professor or Reader; that as per statute 16(2) of the Act the seniority of merit promotee Professor or Reader should be determined on the basis of length of continuous service in the concerned cadre; that the merit promotees, having been selected by the same selection committee for direct recruits, could not be discriminated against in the matter of fixation of *inter se* seniority; that under Section 6 read with Section 34 of the Act the university had power to create posts of Readers and Professors through promotion; that the University Grants Commission had left the question of fixation of *inter se* seniority of merit promotees and direct recruits to the University; that on doctrine of promissory estoppel merit promotees should be treated at par with direct recruits; and that once the concerned incumbents were promoted as Readers or Professors they were entitled to work as such and draw the same pay as directly recruited Readers and Professors.

On behalf of the respondents it was contended that Section 49 of the act did not contemplate any promotion; that the merit promotion scheme which was formulated later on could not be encompassed by Section 49 of the Act; that there could not be a combined seniority list of merit promotees and direct recruits as the former stood outside the cadre; that merit promotees formed a separate distinct class as compared to direct recruits; that there was a difference in the pay scales of merit promotees and direct recruits; that the merit promotion was a personal promotion to the promotee which ceased with his employment; that the merit promotees were ex-cadre employees and could not be treated equally with direct recruits for seniority; that unless the Act is amended there would be no question of merit promotees entering the cadre of direct recruits; that compensation be awarded to the respondent for harassment by the University; and that the pay scales of merit promotees be reduced.

Dismissing the appeal, this Court

HELD : 1. The promotee Readers and Professors do not fall in the same class as directly recruited Readers and Professors. The following distinct characteristics between merit promotees and direct recruits Readers and Professors become at once visible :

A (i) The directly recruited Readers and Professors fill up the vacancies in the cadres of Readers and Professors for which direct recruitment is resorted to. While the promotees under the merit promotion scheme stand outside the cadre and fill no posts as such, since no posts are created. The promotions given to them are purely personal and the posts to which they are upgraded do not survive their service career. The posts
B vanish with the incumbent person like the shadow vanishing with the substance. Such a promotee fills up no vacancy in the promotional avenue since no post is available by promotion. [613-B, C]

C (ii) The directly recruited Readers and Professors recruited pursuant to the only source of appointment contemplated by Section 49, that is by way of direct recruitment. The promotee Readers and Professors are appointed not in the cadre posts but under an entirely different scheme, namely merit promotion scheme. Even under this scheme, no posts as such are created. Those selected under the scheme are given personal posts which cease with their employment. In fact, the posts from which they are
D promoted do not become vacant and none can be appointed to the said posts while they hold the higher posts. [613-D, E]

E (iii) Pay scales of promotee Professors and Readers are different from the pay scales of directly recruited Readers and Professors at least after coming into operation of the career advancement scheme. This difference in the pay scales itself is a distinct feature so far as promotees under the merit promotion scheme on the one hand and the directly recruited Readers and Professors on the other hand are concerned. [613-F, 614-A]

F (iv) The promotee Readers and Professors are not holding any officiating of even temporary post of Reader or Professor nor is there any temporary addition to the cadre strength of Readers and Professors.
[614-B]

G (v) The work load of directly recruited Reader and Professor is different from the work load of promotee Reader or Professor for whom the work load of a Reader or Lecturer as the case may be would still have to be shared as no vacancies are created for being filled in the cadres from which such promotions are effected. [615-C]

H (vi) There is a qualitative difference in the process of selection of direct recruits under the scheme of Section 49, as compared to the promotion of the merit promotees. Although for the latter the infrastruc-

ture of Selection Committee under Section 49 may be made available, the criteria for their promotion are entirely distinct and different as envisaged by the guidelines governing the merit promotion scheme. [614-D] A

(vii) There is no question of promotee Reader or Professor being put on probation. There is further no question of confirming them in the concerned posts as they do not occupy any post as such in the promotional avenue. This is unlike the direct recruits. [614-E] B

2.1. The relevant provisions of the merit promotion scheme and the relevant provisions of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 clearly show that when the Act was enacted in 1973 the State Legislature had not contemplated any promotion of a Lecturer as Reader or Readers as Professor as the case may be. All the relevant ordinances and statutes will therefore have to be read in that light. Section 49 of the Act as enacted cannot take in its sweep even departmental promotees. A mere look at Section 49 of the Act shows that the Members of the Committee of Selection as contemplated by sub-section (4) of Section 49 have to investigate the merits of the various candidates and to recommend to the Executive Council the names if any, of persons whom they consider suitable for the posts, arranged in order of merit. Sub-section (5) mentions that out of the names so recommended under sub-section (4) the Executive Council shall appoint persons in order of merit. This clearly contemplates an open market recruitment procedure by way of direct recruitment and candidates selected will have to be pointed in order of merit. It is obvious that there would be no occasion to consider the question of *inter se* merit of a departmental promotee and a direct recruit. It is also pertinent to note that in the year 1973 the subsequent merit promotion scheme of 1982 would never have been under contemplation of the Legislature. It must therefore be held on a conjoint reading of the relevant provisions of the Act that only one source of recruitment of university teachers namely, Professors and Readers and even of Lecturers is contemplated and that source is by way of direct recruitment. If that is so and if under merit promotion scheme as recommended by the Commission which was adopted by the respondent university, any departmental candidate is to be promoted, he would be so promoted *de hors* Section 49 of the Act and would obviously be an ex cadre Reader or Professor as the case may be. Once that happens it would be obvious that there would be no occasion to fix the *inter se* seniority of directly recruited Readers and Professors who are C D E F G H

A holding cadre posts and ex cadre merit promoted Readers and Professors who would stand outside the cadre. [607-F to H, 608-A to D]

2.2. The respondent tried to fuse the *inter se* seniority of both these classes of employees. And that itself amounted to treating unequals as equals. It clearly offended the provisions of Articles 14 and 16(1) of the Constitution of India. Unless Section 49 of the Act is suitably amended and a separate source of recruitment by way of internal promotion is contemplated by the Act there would remain no occasion of undertaking any exercise of fixing *inter se* seniority between ex cadre employees and cadre employees. The Act nor any ordinances or statutes of respondent university even remotely whisper about creation of a separate recognised source of recruitment of Professors and Readers by way of departmental promotions. It is true that in some of the universities even ordinances have been issued accepting such new source of promotion scheme. But even if it is so that would make difference as it is the parent Act, namely, University Act concerned which should contemplate creation of new source of recruitment by way of departmental promotions of university teachers. Unless that is done mere issuance of ordinances or statutes to that effect which to that extent would conflict with the parent Act would be of no avail and would be an exercise in futility. They would also be *ultra vires* the Act. [608-E to H, 609-A]

E 2.3. It is true that for avoiding stagnation and heart burning promotional avenues should be made available in any service. It is to be seen whether the University Act has made such a Provision. If a provision is made then there would be no difficulty but in the absence of such a provision mere availability of merit promotion scheme cannot elevate the merit promoted Reader or Professor to the cadre of such Readers or Professors as the case may be. They would remain ex cadre employees who cannot claim any *inter se* seniority with direct recruits forming the concerned cadre. [609-E to F]

G *Dr. Ms. O. Z. Hussain v. Union of India*, [1990] Supp. SCC 688, referred to.

H 2.4. It is not correct that under the merit promotion scheme though the promotions were personal, to that extent there was a temporary extension of the cadre of Reader or Professor as the case may be or that they were special promotions. The very guidelines of the scheme suggest that a merit promoted Reader or Professor will be treated to have a

personal promotion. It will not create any addition to the cadre not it will create any vacancy in the lower cadre from which he or she was promoted. The work load has to be so distributed as not to require any additional staff. But ultimately the effect thereof would be that once a merit promoted Reader or Professor goes out of service there will be no post which will fall vacant in the promotional avenue. Consequently, it cannot be said that there was any temporary addition to the cadre strength of Reader or Professor as the case may be. [609-F to H, 610-A]

S.B. Patwardhan and Anr. v. State of Maharashtra & Ors. and K.V. Ramkrishna and Ors. v. State of Gujarat and Ors. and M.G. Raichur and Anr. v. State of Gujarat and Ors., [1977] 3 SCC 399, held inapplicable.

2.5. Statute 16 of the Act is also of no avail for the simple reason that statute 16 deals with seniority of teachers of the university. The statute is promulgated under Section 35(o) of the Act. Section 35(o) of the Act deals with the mode of determining seniority for the purpose of the Act. Consequently it will have to be read with Section 49 of the Act meaning thereby when a Professor, Reader or Lecturer is recruited under Section 49 how his seniority is to be determined can be decided in the light of the relevant statute framed under Section 35(o). As per clause (2) of Statute 16 the seniority of Professors, College Professors, Readers, Associate professors or Lecturers shall be determined in accordance with the length of continuous service of such person in the cadre concerned taken together with length of continuous service which is equivalent to or superior to the cadre concerned. The word cadre as employed by Statute 16(2) is not used in a loose sense. Statute 16(2) read with Section 35(o) and Section 49 leaves no room for doubt, that all those Readers and Professors who were recruited under Section 49 as direct recruits and who enter the cadres of Professors and Readers as the case may be shall have their seniority determined in accordance with length of service in their concerned cadres. As merit promotee Reader or Professor is outside the cadre there is no question of statute 16(2) operating in his case. It is also pertinent to note that merit promotee Professors or Readers form a separate distinct class as compared to directly recruited Professors or Readers. [610-C to G]

2.6. It is true that the same Selection Committee which directly recruits Professors and Readers under Section 49(2) of the Act deals with the question of granting merit promotions to the concerned Lecturers as

- A Readers and Readers as Professors. But to that extent the machinery or infrastructure available under Section 49(2) for directly recruiting teachers was made available for deciding the eligibility of departmental candidates for merit promotion but that would not by itself create a new source of recruitment for promotee Readers and Professors unless Section 49 was suitably amended. That has not been done till now. Till appropriate amendments are effected in the concerned University Act, there would be no occasion for considering the merit promotees to have entered the cadre of Reader or Professor as the case may be and consequently there would arise no occasion for consideration of the further question of fixation of *inter se* seniority of such an ex cadre promotees and the directly recruited Readers as Professors who form the cadre concerned. [610-G, H, 611-A, 612-F, G]

Dr. Bal Krishna Agarwal v. State Uttar Pradesh and Ors., JT (1995) 1 SC 471, referred to.

- D 3.1. The aforesaid distinguishing features clearly indicate that merit promotee Professors and Readers form a distinct class of ex cadre or supernumerary appointees as compared to cadre employee, namely, directly recruited Readers and Professors. They cannot be treated equally for all purposes and particularly for seniority and promotion if any. The competition for seniority can only be amongst those who are in the cadre posts. Otherwise, the mandate of Articles 14 and 16(1) would get violated. [614-F, G]

The Direct Recruit Class II Engineering Officers' Association and Others v. State of Maharashtra and Others, JT (1990) 2 SC 264, followed, M.P., No. 2064/89 M.P. High Court and C.W.P. No. 2558/88 Rajasthan High Court, held inapplicable.

- F 3.2. It must be held that the action of the respondent university in fixing *inter se* seniority of directly recruited Professors and Readers and merit promoted Readers and Professors on the yardstick of continuous officiation was illegal and unconstitutional. [615-C]

- G 4.1. Section 6 (30) of the Act lays down that university has power to create administrative, ministerial and other necessary posts to make appointments thereto. Similarly Section 34 lays down that the Coordination Committee has power amongst others to consider matters of common interest to all or some of the universities. However, these provisions do not confer the power to create additional posts of Readers and Professors

for being reserved for promotee Readers and Professors nor is the power exercised by the university in the present case to create such posts. A

[615-E, F]

4.2. No promise was held out either by the University Grants Commission or by respondent university to these merit promotees that their *inter se* seniority with direct recruits in the upper cadres will be reckoned on the principle of continuous officiation nor is there anything to suggest that but such a promise a merit promotee would not have accepted his promotion or that he had changed his position in any manner relying on such an alleged promise. Such a promise if any also would have been unconstitutional being violative of Articles 14(1) and 16 of the Constitution. It is impossible to discern any promise about fixation of *inter se* seniority from the fact that the University Grants Commission had left the question of *inter se* seniority of promotees and direct recruits to be decided by the concerned universities. [617-H, 618-A, B] B C

Paradise Printers and Others v. Union Territory of Chandigarh and Others, [1988] 1 SCC 440, referred to. D

4.3. It must be clarified that even though the merit promotees may not be included in the seniority list of cadre employees, namely, Professors or Readers it cannot be held that their merit promotions were of no legal effect at all. With a view to avoiding stagnation amongst university teachers the Commission recommended a scheme of merit promotion. Once a Lecturer is promoted on merit as Reader or a Reader as Professor even though the promotion may be personal to him he can certainly continue to work as promotee Reader or Professor till he retires or otherwise ceases to be an employee of the university or till he is reverted for some valid reasons. There is no question of such a merit promotee being reverted otherwise to the lower cadre from which he came. He has to work as a Reader or Professor as the case may be and share the work load with the cadre employees. In fact as there is no vacancy created in the lower cadre from which he came on account of his promotion, he has also to share the burden of work load of the lower post. Consequently it cannot be said that such a merit promotee is not the Reader or Professor so far as his work as Reader or Professor is concerned. He cannot claim to be fitted in the *inter se* seniority list and may remain outside the cadre of Reader or Professor as the case may be. However, for all other purposes like pay, work and status he is a Reader or Professor as the case may be. [619-A to E] E F G H

A 4.4. Amongst person forming the same class to which he belongs,
 namely, merit promotee Readers or Professors their *inter se* seniority has
 to be fixed on the basis of continuous officiation as such merit has to be
 fixed on the basis of continuous officiation as such merit promotees. Such
 a separate seniority list of merit promotee Readers and Professors has to
 be prepared and acted upon for purposes other than seniority and promo-
 B tion in, and to the posts available to those in the cadre. It is not as if they
 are still to be treated as only Lecturers or Readers as the case may be from
 which posts they got merit promotion. In short there have to be two
 seniority lists, one of the cadre Readers and Professors who are direct
 recruits and the other of merit promotee Readers and Professors. The
 C names of the appellants in the combined seniority list will have to be
 deleted. [619-G, H, 620-A, B]

D 5. The respondent had not claimed in this writ petition before the
 High Court any compensation nor had he filed any cross petition in this
 Court claiming such relief. Hence no further relief can be given to him.
 That apart, there is no factual basis by way of any material on record for
 awarding any compensation to him for the alleged harassment suffered by
 him. [620-D, E]

E 6. The State Government had clearly directed that those merit
 promotee Readers and Professors who got promoted under merit promo-
 tion scheme had to be given pay protection and would be entitled to draw
 revised salary of Reader and Professor at par with directly recruited Reader
 and Professor. The respondent had not filed any cross petition in this Court
 claiming that the pay scales of merit promoted Professors should be
 F reduced. There is no justification for finding any fault with the directions
 contained in the State Government Order which tried to protect the pay
 scales of merit promotees who had already taken advantage of and who had
 got benefitted by the merit promotion scheme much prior to the coming into
 operation of the career advancement scheme. To say the least, it was a
 discretionary order which was justified on the facts of the present case. The
 G pay scales of merit promoted Professors shall not be reduced. [621-B to E]

H *D.P. Singla and Anr. v. Union of India and Ors. and Sadhu Ram and
 Others v. Union of India and Others*, [1984] 4 SCC 450, *Vinay Kumar Verma
 and Ors. v. State of Bihar and Ors.*, [1990] 2 SCC 647, *University of Delhi v.
 Raj Singh and Ors.*, [1994] Supp. 3 SCC 516, *Col. A.S. Iyer and Ors. Etc. v.*

V. Balasubramanyam and Ors., [1980] SCR 1036, *Bhey Ram Sharma and Ors. v. Haryana State Electricity Board and Ors.*, and *Balbir Singh and Ors. v. Haryana State Electricity Board and Ors.*, and *Sohan Lal Verma and Anr. v. Haryana State Electricity Board and Ors.*, [1994] Supp. 1 SCC 276, cited. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6001 of the 1994 Etc. B

From the Judgment and Order dated 23.2.94 of the Madhya Pradesh High Court in M.P. No. 208 of 1989.

V.A. Bobde, Jitendra Sharma, Mr. D.A. Dave, K. J. John, H.M. Singh, G. Dara, P. Gaur, S.K. Gambhir, Vivek Gambhir, Gaurab Banarjee, Naveen Prakash and Surendra Narayana Gupta for the appearing parties. C

The Judgment of the Court was delivered by

MAJMUDAR, J. These two civil appeals arise out of a common judgment rendered by the High Court of Madhya Pradesh, Indore Bench on 23rd February, 1994. The High Court allowed two writ petitions against Vikram University and other contesting respondents. The contesting respondents after obtaining special leave to appeal from this court have challenged the said common judgment of the High Court in these civil appeals. D E

A common question is involved in these appeals, namely, whether the University teachers who have been given merit promotion as Readers or Professors, as the case may be, can claim seniority over directly recruited Readers and Professors on the ground of continuous officiation in service as Readers or Professors. The High Court has taken the view that they are not entitled to claim such seniority and has accordingly allowed the writ petitions moved by the directly appointed Readers and Professors. The appellants before us are the promotee Readers and Professors under the merit promotion scheme. F G

Factual backdrop :

In order to appreciate the grievance voiced by the appellants, it is necessary to have a look at the relevant introductory facts leading to these proceedings. H

A *1. Civil Appeal No. 6001/94 :*

This appeal is moved by the appellant who was earlier working as Lecturer in the Department of Political Science in Vikram University, Ujjain. The said university, its Registrar and the Kulpati are respondents 1 to 3 in the appeal. A merit promotion scheme was formulated by the University Grants Commission (hereinafter referred to as 'Commission') which has been joined as respondent no. 5 in this appeal pursuant to notice issued by this court. The said scheme was promulgated in the year 1982. We will refer to the details of the said scheme in the latter part of this judgment. It is sufficient to say at this stage that the scheme was to provide opportunities for professional advancement of teachers working in the University and who merit academic recognition. Such teachers were to be given promotion on merit or and not on the basis of seniority.

Under the said scheme the appellant was promoted to the post of Reader on 29th June, 1985. Respondent no.4 in this appeal who was the writ petitioner before the High Court in M.P. No. 208/89 was appointed as Reader in the Department of Political Science as direct recruit. He was so appointed on 13th March, 1986. He was confirmed after a period of two years' probation. The respondent No.1 university published seniority lists in the year November, 1986; November, 1987 and the latest list in November, 1988 whereunder the appellant was shown as senior to respondent no. 4. The appellant was placed at serial no.14 while respondent no. 4 was placed at serial no.33. That was presumably because the appellant worked as a promotee reader from 29.6.1985 while respondent no. 4 became reader by direct recruitment later on 13th March, 1986. Respondent No. 4 being aggrieved by the said placement in the seniority list filed the aforesaid writ petition in the High Court of Madhya Pradesh at Indore on 17th January, 1989. The respondent no. 4 prayed that the name of the appellant be deleted from the seniority list of Readers and also from the Board of Studies in Political Science and respondent no. 1 be directed to determine the seniority of Readers in accordance with Statute No. 16 and to give due seniority to the 4th respondent in the cadre of Readers. This petition was contested by the university as well as the appellant. As noted earlier the High Court accepted the case of respondent no. 4 writ petitioner and allowed the writ petition.

II *Facts leading to Civil Appeal No. 6002/94 :*

H The respondent no.4 in this appeal was the original writ petitioner

before the High Court. He was appointed as Professor in Physics Department as direct recruit by respondent no. 1 Vikram University, Ujjain. His appointment was confirmed after a period of 2 years' probation on 28th March, 1988. The present appellants who were respondents no. 4, 5, 8 & 9 in the said writ petition before the High Court and also original respondents 6 & 7 before the High Court who are respondents 5 & 6 in this appeal were all promoted under the merit promotion scheme formulated by the Commission as Professors in the School of Studies, Vikram University in various subjects. They were promoted on 12th March, 1986. As they were promoted a day earlier than the date on which respondent no. 4 original writ petitioner respondent no. 4 was appointed as direct recruit Professor in physics Department, the appellants and respondents 5 & 6 were shown as senior to original writ petitioner. The seniority lists published by respondent no. 1 university in the years 1987 & 1988 reflected this position. Even in the later seniority list of 1989 the appellants were shown at serial no. 16, 18 & 20 in the seniority list while the original writ petitioner was shown at serial no. 22.

That brought respondent no. 4 to the High Court by way of writ petition no. 1180/89. He challenged the seniority list on diverse grounds and prayed for the reliefs as under :—

1. That the names of the present appellants and respondents 5 & 6 be deleted from the seniority list of Professors and also appointment of appellant no. 1 be quashed.
2. That the respondent no. 1 be directed to determine the seniority of Professors in accordance with the Statute no. 16 and to give due seniority to respondent no. 4 (original writ petitioner) in the cadre of Professors.

This petition was opposed by respondent no. 1 university and the contesting respondents. Respondent nos. 2 and 3, the Commission and the State of Madhya Pradesh were also joined in the writ petition. They also contested these proceedings.

As noted earlier the aforesaid writ petitions raised a common question. They were heard together by the Division Bench of Madhya Pradesh High Court. By its common judgment this writ petition was also allowed and that is how the appellants who were promotee Professors under the

A merit promotion scheme have filed this appeal. As both these appeals raised common questions of law and facts, they were heard together and are being disposed of by this common judgment. In civil appeal no. 6001/94 Professors working in various departments of University of Delhi have been joined as respondents 6 to 44 and 53 to 61 in the light of an interlocutory application which was granted. Similarly the Professors working in the different departments in the University College of Medical Science, Delhi have also been joined as respondents 45 to 52 at their request. While respondent nos. 62 to 90 are also permitted to be joined at their request in this appeal. They are professors working in different schools of studies and sciences in this city.

C In civil appeal no. 6002/94 are joined additional respondents 1 to 19 out of whom additional respondents 1 to 3 are professors working in Devi Ahilaya University, Indore while additional respondents 4 to 19 are working as Readers in Dr. H.S. Gaur University, Sagar and one additional respondent Dr. S. Sivaraman is a Professor in Dr. H.S. Gaur University, Sagar. All these additional respondents are permitted to be joined as respondents at their request pursuant to interlocutory application number 2, 3 & 4 moved by them and granted by the order dated 9.9.94. In addition to that there is I.A. no. 5/95 in civil appeal no. 6002/94 by which ten applicants, working as Professors in various departments of Jamia Millia Islamia University, new Delhi have also sought to be joined as respondents. The said application is treated to have been allowed and they will also be treated as additional respondents in this appeal.

III. Statutory Provisions :

F Before we deal with the main question posed for our consideration, it will be profitable to have a look at the relevant statutory provisions governing the proceedings and the impact of the merit promotion scheme promulgated by the Commission which has brought the appellants in the arena of contest.

G Respondent no. 1 university is governed by the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973. English translation thereof was furnished by learned counsel for the appellants. It is not in dispute that the various universities functioning in the State of Madhya Pradesh are governed by the said Adhiniyam. Respondent no.1 university is functioning at Ujjain, while Shivaji University is located at Gwalior. Sagar university to

which some of the newly added respondents belong is situated at Sagar A
town of Madhya Pradesh.

We may at this stage usefully refer to the relevant provisions of the Adhiniyam which have a bearing on the controversy before us. Clause (iv) of Section 4 defines an employee to mean any person appointed by the university and includes teachers and other staff of the university. Clause (v) defines Executive Council to mean Executive Council of the university. Clause (ix) deals with statutes, ordinances and regulations of the university, as the case may be, enforced for the time being. Clause (xviii) defines University Grants Commission to mean the Commission established under the University Grants Commission Act, 1956. Clause (xx) defines teachers of the university to mean professors, Readers, Lecturers and such other persons as have been appointed for imparting education and conducting research with the approval of the Academic Council in the University or any College or any institution maintained by the University. Section 6 deals with powers of the university. Clause (15) of Section 6 empowers the university to institute Professorships, Readerships, Lecturerships and any other academic or teaching posts required by the University and to appoint persons to such posts in accordance with the provisions of the Act. Clause (31) of Section 6 deals with the power of the university to exercise control over the salaried officers, teachers and other employees of the University in accordance with the Statutes and the Ordinances. Section 19 deals with the authorities of the University which include amongst others Executive Council. Board of Studies. Academic Planning and Evaluation Board. Section 23 deals with the Executive Council. Its powers and duties are prescribed by Section 24. Clause (xx) of Section 24 deals with the power of the Executive Council to institute such Professorships, Readerships, Lecturerships or other teaching posts as may be proposed by the Academic Planning and Evaluation Board. It is subject to the proviso that no teaching post shall be instituted without the prior approval of the Madhya Pradesh Uchcha Shiksha Anudan Ayog. Clause (xxxii) of Section 24 deals with the power of the Executive Council, save as otherwise provided by this Act, or the Statutes, to appoint the officers other than the Kulapati, teachers and other employees of the University, to define their duties and the conditions of their service, and to provide for the filling of temporary vacancies in their posts. Clause (xlii), (xliii) and (xliv) of Section 24 refer to the powers of the Executive Council to entertain, adjudicate upon and if deemed fit to redress grievances of the employees and the students, to exercise such H

- A other powers and perform such other duties as may be conferred or imposed on it by or under this Act and to exercise all powers of the University not otherwise provided for in this Act or the Statutes and all other powers which are requisite to give effect to the provisions of this Act or the Statutes. Section 27 deals with various faculties of the University in which teaching can be imparted to the students. Section 28 deals with
- B Board of Studies. Section 34 deals with Coordination Committee. Sub-section (iv) of Section 34 deals with powers and discharging of the functions by the Coordination Committee. Amongst others is found clause (v) which deals with consideration of matters of common interest to all or some of the Universities. Section 35 deals with Statutes. Clause (1) provides for
- C framing statutes regarding qualifications of Professors, Readers, Lecturers and other teachers in affiliated colleges and recognised institutions. Clause (o) deals with the mode of determining seniority for the purpose of the Act. Section 37 deals with Ordinances and states that subject to the provisions of the Act the Ordinances may provide for all or any of the matters listed in the section. At item 15 is found the topic of the duties, qualifications and conditions of appointment including pay scales of the teachers paid by the university.
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E Chapter IX of the Act deals with appointment of teaching post in the university. Section 49 is relevant for our present purpose. It is useful to extract it in extensio.

"CHAPTER IX - APPOINTMENT TO TEACHING POSTS IN THE UNIVERSITY

- F 49. (1) No person shall be appointed :
- (i) as a Professor, Reader, Lecturer; or
- (ii) to any other teaching post of the University paid by the University except on the recommendation of a committee of selection constituted in accordance with sub-section (2):
- G

H Provided that if appointment to any of the teaching posts aforesaid is not expected to continue for more than six months and cannot be delayed without detriment to the interest of the department or institution maintained by the University, the Executive Council may make such appointment without obtaining the recom-

mentation of the committee of selection constituted under sub-section (2) but the person so appointed, shall not be retained on the same post for a period exceeding six months or appointed to another post in the service of the University except on the recommendation of the said committee of selection.

Provided further that any such appointment purported to have been made under the preceding proviso prior to the 13th day of February 1974 and continuing on such date shall continue till the 30th day of June, 1974 or the filling up of the post in accordance with sub-section (5), whichever is earlier.

(2) The members of the committee of selection shall be :

(i) the Kulapati - Chairman.

(ia) omitted.

(ii) omitted.

(iii) one expert in the subject, not connected with the University in any manner whatsoever to be nominated by the Academic Council.

(iv) Three experts, not connected with the University in any manner whatsoever nominated by the Kuladhipati.

(v) the Chairman of the Ayog or a member of the Ayog nominated by him"

(3) Omitted.

(4) The Committee shall investigate the merits of the various candidates, and shall recommend to the Executive Council the names, if any, of persons whom it considers suitable for the posts, arranged in order of merit :

Provided that no recommendation shall be made unless atleast three out of the experts nominated under clause (iii) and (iv) of sub-section (2) are present in the meeting in which such recommendation is to be decided upon.

- A (5) Out of the names so recommended under sub-section (4) the Executive Council shall appoint persons in order of merit".

B Section 63 deals with classification of teachers. Sub-section (i) of Section 63 provides for Professors and Readers who are said to be teachers appointed by the Executive Council on the scales of pay not lower than that approved for Professors and Readers by the Commission and accepted by the State Government and when the scale of pay approved by the Commission is higher than that approved by the State Government in this behalf then on the scale of pay as approved by the State Government.

C Section 64 deals with terms of office of members of authority of the university. Sub-section (1) of Section 64 lays down that wherever in accordance with this Act, any person is to hold an office or to be a member of any authority by rotation according to seniority such seniority in the absence of any provisions to the contrary in the Act, shall be determined in accordance with the Statutes :

D Provided that till the Statutes are made the seniority in a particular cadre shall be determined by the length of continuous service in such a cadre and where the length of continuous service of two or more persons in the same cadre is the same, then 'Seniority' shall be determined by seniority in age.

E Apart from the aforesaid relevant act-provisions, Statute 16 and Ordinance no.4 have a direct bearing on the questions posed for our consideration. It is therefore necessary to note them at this stage, Ordinance no. 4 issued as Madhya Pradesh Vishwavidyalaya First Ordinance 1973 is framed under Section 37 of the Act. It deals with qualifications and conditions of appointment of the teachers in the university teaching department and schools of studies. It is in dispute that the appellants and contesting respondents have the requisite qualifications for being appointed as Readers or Professors as the case may be.

F

G Statute 16 deals with seniority of teachers of the university. It is framed under Section 35 (o) of the Act. Clause (ii) of Statute 16 lays down that the seniority of Professors and Readers in college, Assistant Professors or Lecturers shall be in accordance with the length of continuous service of such person *in the cadre concerned (emphasis applied)* taken together with length of continuous service in the cadre which is equivalent or superior to the cadre concerned. Our attention was also invited to Or-

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dinance no. 4 as applicable to Jiwaji University, Gwalior. Clause 12 of the said ordinance provides that teachers shall be eligible for merit promotion scheme recommended by the Commission, New Delhi. The said clause with its sub-clauses deserves to be noted in extenso. It reads as under :—

"12. The teachers of the University shall be eligible for the merit promotion scheme recommended by the University Grants Commission, New Delhi.

(i) Under this scheme, Lecturers and Readers who have completed 8 years of continuous services in their respective cadres as on 31st December or any date stipulated by the University of the Calendar year in which the applications are invited of which atleast four years are in the institution, can be considered.

Provided that not more than one third of the total permanent position of lecturers and readers within a University teaching Department may hold such merit promotions at higher level at any given time. While calculating the number of positions for the purpose of this Scheme, wherever more than point five (0.5) fraction arises it may be rounded up as one (0.1). The readers holding such promotion posts would not count for determining the total posts in the cadre of readers for purpose of merit promotion to the post of Professors.

(ii) The promotion given to lecturers and readers under this scheme would be personal to each individual and in the event of his/her retirement on leaving the University, the post vacated would be the one from which he/she was promoted.

(iii) The excess work load of the teacher given merit promotion will be suitably adjusted.

(iv) No advance increment shall be admissible to a teacher on promotion under this scheme. The pay of the teachers promoted shall, however, be fixed in accordance with the M.P. Govt. Rules.

(v) The following procedure shall be adopted for the merit promotion of Lecturers and Readers under this scheme.

(a) The Registrar will issue a notice ordinarily in the month of

A November every year.

B (b) The teachers desirous to be considered for merit promotion should present their application in hexapulate on prescribed form along with three sets of their Research Papers, Publications, Books, Reviews, Curriculum Development, Teaching Aids, Innovation of teaching methods, equipments developed, etc. through their Heads of the Department to the office of the Registrar latest by 31st December of the year the applications are called for.

C (c) The Kulpati shall refer the applications together with the enclosures to the two experts and obtain evaluation reports, which shall be kept confidential and placed before the committee of selection constituted U/S 49 of Adhinyam.

D (d) The Committee of selection constituted under section 49 of the Adhinyam shall make the recommendations after taking into consideration the evaluation reports, of the experts obtained by the Kulapati. The final appointment shall be made by the Executive Council as per provisions of section 49 of the Adhinyam.

E (e) The teachers who have been considered and not selected for merit promotion in the initial presentation, shall be allowed to submit his/her work only after a lapse of two years."

F Our attention was also invited to the principles for determining seniority of teachers as laid down by Jawaharlal Nehru University, New Delhi. Principle No.1 as laid down in the resolution of the said university reads as under :—

G "Subject to the provisions contained in the following clauses, the seniority of teachers appointed under Statute 27 or 28 or promoted under the merit promotion scheme shall be determined from the date of their appointment (joining) or promotion to the post :

(i) Provided that if the date of appointment, promotion of two or more teachers is the same, their seniority shall be determined:

H (a) in the case of Assistant Professors, on the basis of the order of merit recommended by the selection committee; and

(b) in the case of Professors and Associate Professors, on the basis of their length of continuous service in the University in the lower post of Associate Professors or Assistant Professors; as the case may be;

(ii) provided further that if both the date of appointment/promotion and the length of service in the lower post happen to be the same, the seniority in age shall be given priority."

Now is time for us to refer to the relevant provisions of the University Grants Commission Act, 1956 under which the Commission respondent in both these appeals is constituted. The Commission Act is enacted to make provisions for the coordination and determination of standards in universities. The Commission is established under Section 4 of the Act. As per Section 12 it is the general duty of the Commission to take in consultation with the universities or other bodies concerned, all such steps as it may think fit for the promotion and coordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions under the Act. The Commission may inquire into the financial needs of Universities and allocate and disburse out of the Fund of the Commission, grants to Universities established or incorporated by or under a Central Act for the maintenance and development of such Universities or for any other general or specified purpose.

In exercise of its powers under the Act the Commission by its communication dated 23rd November, 1982 recommended implementation of merit promotion scheme for University appointed teachers in the Universities and by a later communication dated 31st December, 1982 recommended a similar scheme for College appointed teachers. The Commission agree to grant Rs. 600 per annum for each person promoted in accordance with the guidelines circulated with the said communication. This contribution was to be made by the Commission for the remaining period of the Sixth Five Year Plan after which the expenditure involved under the scheme was to be undertaken as committed expenditure by the University or the College concerned from its own resource or with the assistance of grants-in-aid from the State as the case may be. The guidelines accompanying said communications referred in their preamble to the role of teachers as being very crucial in the maintenance of academic

A standards and discipline in educational institutions. That great responsibility lies on the teacher to ensure that appropriate academic atmosphere is maintained in the institution and all academic work is carried out efficiently and with devotion as a full employee of the institution. With a view to providing reasonable opportunities to teacher for career advancement and recognition the merit promotion scheme was suggested. The basic objective of the merit promotion scheme were to be as under :

1. The basic objectives of the scheme should be

(1) to recognize outstanding work done by the university teachers in the areas of teaching and research;

(2) subject such work to objective evaluation by experts in the subject areas concerned and

(3) to provide for reasonable opportunities for professional advancement to such teachers, who merit academic recognition, on a competitive basis. The scheme therefore may be appropriately named as "Merit Promotion Scheme for University Teachers." This would be in the nature of a "flexible complementing scheme" wherein no additional posts are created, and the existing persons on the basis of critical assessment are promoted to the next higher level and the position is held by such incumbents as personal to them, and no resultant vacancy is required to be filled. Such a Scheme would considerably encourage the teachers to engage in advanced teaching and research and make distinct contributions which would merit recognition and promotion.

For implementing the said scheme a method was suggested to the effect that the teachers in the University Departments engaged in advanced teaching and research and whose contribution and achievements are such as to merit recognition were to be considered for merit promotion in the first instance after completing 8 years of service in the respective cadre of which atleast four years should be in the institution where he or she is being considered for such assessment and merit promotion. Any teacher who was considered and not selected for merit promotion in any initial presentation could submit his work after the lapse of two years. The work of the concerned teacher including research publication, book review, curriculum development, teaching aids, etc. was to be presented by individual to two

referees in the subject discipline concerned. Referees were to be selected by a panel of names set up according to the procedure prescribed by the university for Selection Committee. Merit promotion be given by the appointing authority to a teacher only on recommendation of the Selection Committee duly constituted after it has given due consideration to the opinion of the referees. There should be at least two outside experts on the Selection Committee in the case of promotion to readers and outside experts for promotion to professors in these cases. As per clause (f) of the method of implementation the post of reader given to a Lecturer or the position of a professor given to Reader through merit promotion would be personal to the incumbent concerned and the main criteria for promotion under the scheme would be the merit of the work and not the seniority of the teachers. As per guideline no. (3) not more than 1/3rd of the number of total permanent position of lecturers or readers within a department may hold such merit promotions at next higher level at any given time. The persons holding such merit promotion would not count for determining the total posts in the cadre of readers for the purpose of merit promotion to professors. As per guideline no. 6 while making selections for such promotions it is not expected that the Selection Committee would recommend any advance increment not it is expected that any rules for pay fixation on promotion/selection to higher posts are applied to provide for increment. Only marginal adjustment would be required to be made within the new scale, nearest to the salary already drawn by the promotee.

The said merit promotion scheme as recommended by the Commission is said to have been accepted by all the statutory universities functioning in the country. So far as respondent no.1 university is concerned Govt. of Madhya Pradesh, Deptt. of Higher Education by order dated 13th March, 1984 sanctioned implementation of the merit promotion scheme for university teachers referred to in the letter of 23rd November, 1982 of the Commission, New Delhi from academic session 1983-84. It was mentioned therein that expenditure incurred on this scheme will be borne by the university upto 31st March, 1985. Commitment was given by the State that the State Govt. will incur the expenditure on the scheme afterwards from 1st April, 1985. The expenditure on the scheme from 1st April, 1985 would be treated as maintenance grant. It was further directed that in order to implement the scheme from academic session 1983-84 the university should take appropriate steps according to the provisions of Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973. University should see to it that the rules

A should be framed and ensure uniformity in all the universities of Madhya Pradesh according to the scheme. First respondent accordingly adopted the said merit promotion scheme for its teachers. Thereafter it appears that the concerned universities entertained doubts regarding the fixation of *inter se* seniority between promotee readers and professors under the scheme

B and directly recruited professors and readers under the statutory provisions of the Act constituting such universities. In that connection that Secretary to the Commission by its letter dated 27th April, 1984 addressed to all Vice Chancellors of Universities conveyed the decision of the Commission at its meeting held on 29th March, 1984 to the effect that the Commission felt that the question of seniority of teachers promoted under the merit promotion scheme vis a vis teachers appointed against regular recruitment be decided by the University/institution concerned. It appears that thereafter this question was sought to be resolved at the level of the concerned universities. So far as Universities situated in Madhya Pradesh are concerned, by communication of the Chancellor, i.e., Governor of Madhya

D Pradesh dated 29th June, 1987 addressed to the Vice Chancellor, Avtosh Pratap Singh University, Riwa it was informed that seniority of one Dr. Agrawal who was a merit promotee should be fixed above the seniority of Dr. R.L. Singh who was later recruited as Professor. So far as respondent no. 1 university is concerned it treated promotee readers and professors

E on par with directly recruited professors and readers and fixed their *inter se* seniority on the basis of continuous officiation of the concerned incumbent in the post. Even the Coordination Committee for the University endorsed that view. Our attention was also invited to Ordinance No. 4 promulgated by Jiwaji University, Gwalior. In that ordinance as noted earlier it is clearly provided that the teachers of the university should be

F eligible for merit promotion scheme recommended by the Commission, New Delhi. The resolution dated 26th June, 1988 passed by the Jawaharlal Nehru University was also pressed into service. The said resolution stated that subject to the provisions containing the seniority of teachers appointed under statute 27 or 28 are promulgated shall be determined from the date

G of their appointment of joining or promotion to the post. Statute 27 referred to the direct recruitment. While statute 28 referred to special mode of appointment by Executive Council which may invite a person of high academic excellence to accept the post of a Professor or Reader in the university. So far as Delhi University is concerned learned counsel

H appearing for the Professors working in the Delhi University who have

been joined as respondents on their impleading applications submitted that
 the statute 6(2) framed under the Delhi University Act, 1922 authorised
 the Executive Council to appoint from time to time such professors,
 Readers, Lecturers and other members of the teaching staff as may be
 necessary on the recommendation of the Selection Committee constituted
 for the purpose. That as per Ordinance 11, clause 8(i) all posts of teachers
 have to be filled up after advertisement by open recruitment subject to the
 proviso that University may appoint Professors, Readers under the merit
 promotion scheme of 1983 as accepted by the Executive Council in accordance
 with the eligibility conditions and in the manner prescribed in this
 scheme. As per clause (ii) of ordinance 11 seniority of teacher in a
 particular discipline etc. etc. shall be determined in accordance with the
 principles laid down therein. We were also taken to the minutes of the
 Executive Council of Delhi University dated 24th April, 1983 wherein a
 decision was rendered regarding selection of university teachers under the
 merit promotion scheme to the effect that the composition of the Screening/
 Evaluation Committee for promotion of Lecturers to the post of
 Readers and for promotion of Readers to the post of Professors in the
 University department shall be the same as that of the statutory Selection
 Committee for recruitment of teachers to such posts. Our attention was
 also invited to the minutes of the meeting of the Executive Council of the
 Delhi University dated 29th December, 1990 wherein at item no. 141 was
 the resolution to the effect that the recommendation of the Committee
 constituted by Vice Chancellor regarding determination of seniority of
 teachers permitted merit promotion scheme *vis a vis* direct recruit be
 accepted as set out in Appendix-I. Appendix-I states that the committee
 decided that persons appointed as Professors or Readers have to be
 treated alike in the matter of seniority and cannot be placed in two
 different compartments merely because two different pay scales were
 applicable to these cadres. The committee concluded that seniority in all
 these cases should be determined by the date of appointment of promotion.

It therefore appears that after the merit promotion scheme of 1982
 was adopted by all the statutory universities in the country and when the
 Commission left the question of *inter se* seniority between promotees and
 direct recruits Professors and Readers to be determined by the concerned
 university, respondent No. 1 university and other universities seem to have
 taken the view that all these incumbents be treated at par and their *inter
 se* seniority should be determined on the basis of continuous officiation in

A the concerned post.

B The scheme of merit promotion scheme of 1982 underwent a sea change by the year 1987. The Central Govt. Ministry of Human Resource Development, Deptt. of Education by its communication dated 17th June, 1987 to the Secretary, of the Commission informed that the Govt. of India had after taking into consideration the recommendation of the Commission decided to revise the scales of pay of the teachers in Central Universities. The revision of pay of teachers was to be effective from 1st January, 1986. A similar communication was addressed to the Education Secretaries of all States regarding revision of pay scales of teachers in universities for maintenance of standards in higher education. It was informed that the Central Govt. had revised the pay scales of teachers in universities and colleges in order to attract talented teachers. A career advancement scheme was introduced and made applicable to the teachers in the universities and affiliated colleges with effect from 1st January, 1986. As per the annexure-I attached to the aforesaid communication dated 17th June, 1987 the revised scale of pay available to a Reader was Rs. 3700-125-4700-160-5300 while the pay scale of Professor was to be Rs. 4500-150-5700-200-7300. It was also provided therein that the existing teachers in Universities and colleges where the merit promotion schemes formulated by the Commission, or nay other similar scheme were in operation would have an option to continue to be governed by the provisions of these schemes provided that they exercise that option in writing prior to their pay fixation under this scheme, they would also be entitled to the designations envisaged for various categories of teachers in these schemes, but the scales of pay would be as follow :

F	Readers/Lecturers (Selection Grade)	Rs. 3000 - 5000
	Professor	Rs. 4500 - 5700

G It thus became clear that with effect from 1.1.1986 because of the career advancement scheme introduced by the Central Govt. the erstwhile merit promotion scheme providing for uniform pay scale then available to directly recruited Readers and Professors as well as the merit promoted professors and Teachers was given a go-by and under the career advancement scheme uniform revised pay scales were provided for Readers and Professors with a rider that those existing teachers in Universities and Colleges who gave in writing to be governed by the merit promotion scheme even

thereafter would get the benefit of that scheme for being promoted to the post of professors and Readers as the case may be but their pay scales would be lower as compared to the pay scales of directly recruited Professors and Readers. In other words, if after 17.6.1987 when the career advancement scheme replaced the earlier merit promotion scheme, any existing Lecturer or Reader wanted to take the benefit of merit promotion scheme thereafter and if he got promoted accordingly to the post of Reader or Professor as the case may be his pay scale on the promotional post of reader would be Rs. 3000 - 5000 as compared to the pay scale of Rs. 3700 - 5300 available to a directly recruited Reader and so far as merit promoted Professor was concerned his pay scale would be lower, namely, Rs. 4500 - 5700 as compared to the higher pay scale available to a directly recruited Professor, i.e. Rs. 4500 - 7300. By a communication dated 6th January, 1989 addressed by the Under secretary, Ministry of Human Resource Development, Deptt. of Education addressed to all Registrars of State Universities a clarification was issued regarding the merit promotion scheme. it was informed that the Govt. of India had decided that existing teachers in universities and colleges where the merit promotion scheme formulated by the Commission in 1983 or any other similar scheme are in operation will have an option to continue to be governed by the provision of these schemes provided that they exercise the option in writing prior to their pay fixation under this scheme. They will also be entitled to the designations envisaged for various categories of teachers in these schemes, but the scales of pay will be as follows :

- | | | |
|-----------------|---|-----------------|
| (i) Lecturer | - | Rs. 2200 - 4000 |
| (ii) Reader | - | Rs. 3000 - 5000 |
| (iii) Professor | - | Rs. 4500 - 5700 |

In the light of the aforesaid relevant statutory provisions and factual data we may now turn to the consideration of rival contentions canvassed by the learned Advocates representing the contesting parties.

IV. *Rival contentions* :

Mr. Bobde, learned counsel appearing for the appellants in civil appeal no. 6001/94 submitted that as per statute 16 of the first respondent university, the seniority of college Professor, Reader, etc. shall be deter-

A mined in accordance with the length of continuous service of such person in the cadre concerned. That cadre is not defined by the Act or the rules. That in law even a temporary addition to the cadre during the time a promotee Lecturer works as a Reader has to be considered to be an addition to the cadre of Readers. That such merit promotion of a Lecturer to the post of a Reader on pure merits and competition and through a Selection Committee which is the same as the Selection Committee for directly recruited Readers under Section 49 of the Act cannot be said to be an *ad hoc* or stop-gap promotion. It is a regular promotion on pure merits and therefore the cadre of Reader can be said to have been enlarged for taking in its fold such promotee Readers. Once that conclusion is reached it becomes obvious that for deciding *inter se* seniority of such promotee Readers and directly recruited Readers there cannot be any discrimination. They all do the same work, they are selected on merits by the same committee though the sources of recruitment may be different. But their birth marks would vanish the moment they formed part and parcel of the same cadre of Readers. Hence, continuous officiation of the concerned incumbents in the Readers posts would be the only relevant yardstick for deciding the *inter se* seniority of promotee *vis a vis* directly recruited Readers. Mr. Bobde submitted that the High Court in the impugned judgment had patently erred in holding that the said promotee Readers were not part of the cadre of Readers. That even though the promotion may be personal to the incumbent, so long as he is in service he remains entitled to occupy the promotional post and to that extent there is a net addition to the cadre of Readers.

Reliance was also placed on the decision of the Division Bench of Rajasthan High Court in Civil Writ No. 2558/88 decided on 9th December, 1988 by the Bench of Mr. Justice S.N. Bhargava and Mr. Justice P.C. Jain. The Division Bench of Rajasthan High Court had taken the view that once Associate Professors or Professors formed one category of teachers and once their work was identical there cannot be any discrimination in connection with pay scales made available to them. Whether a person is promotee Professor or directly recruited Professor, he has to be paid the same time scale and a promoted Professor cannot be given lessor time scale. Mr. Bobde also placed reliance on the decision of this court in the case of *S.B. Patwardhan & Anr. v. State of Maharashtra & Ors.* and *K.V. Ramkrishna & Ors. v. State of Gujarat & Ors.* and *M.G. Raichur & Anr. v. State of Gujarat & Ors.*, [1977] 3 SCC 399 to support his contention that

temporary addition to the cadre can be made by having temporary post included therein. In this connection, reliance was also placed on the decisions of this Court in the case of *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & Ors.*, [1990] 2 SCC 715 and in the case of *A. Janardhana v. Union of India & Ors.*, [1983] 3 SCC 601. It was contended that the appellant was entitled to be treated as senior to respondent no.4 as she became Reader under merit promotion scheme prior to the date on which respondent no. 4 entered the cadre of Reader by direct recruitment. It was also contended that once the appellant was promoted as a Reader even though it may be a personal promotion and there may not be any vacancy of a lecturer because of such promotion, even then she cannot be treated as merely a Lecturer for the purpose of fixation of seniority as has been ordered by the High Court.

Mr. Dave appearing for the appellants in Civil Appeal No. 6002/94 adopted the submissions of Sh. Bobde and further submitted that the appellants were promoted on 12th March, 1986 as Professors under merit promotion scheme, while respondent no. 4, original writ petitioner who was a Professor in a private college was directly recruited as Professor under Section 49 of the Act on 13th March 1986 and therefore the appellants were senior to respondent no.4. That the merit promotion scheme was adopted by respondent no. 1 university. The Coordination Committee of first respondent by its meeting dated 11th January, 1984 had adopted the said scheme. That the commission had left the question of *inter se* seniority of direct recruits and promotee professors to the University. Its Coordination Committee by its meetings dated 27th and 28th October, 1988 had decided that there should be no discrimination between teachers promoted under merit promotion scheme and direct recruits and that such a decision could be taken by the Coordination Committee in exercise of its power under Section 24 of the Act. That the Executive Council of the university exercising powers under Sections 23 and 24 of the Act adopted this decision of the Coordination Committee on 27th May, 1989. The State Govt. had issued a letter on 23.9.89 wherein it was clearly stated that Professors promoted under the merit promotion scheme before 17th June, 1987 shall also be paid Rs. 4500 - 150 - 5700 - 200 - 7300 with effect from 1.1.1986 and this clarification was also adopted by Executive Council of respondent no. 1 university in its meeting held on 27.5.1989 by resolution no. 179. The net result of the resolution was that a Professor under the merit promotion scheme before 17.6.87 is entitled to pay scale of Rs. 4500 - 7300 with effect from 1.1.86 and the Professor promoted under the merit

A scheme after 17.6.87 is to be paid the scale of Rs. 4500 - 5700. Mr. Dave invited our attention to relevant provisions of the Act and submitted that once a promotee is given promotion on pure merit by the very same committee which also selects direct recruits, and once the promotees prior to 17.6.87 are entitled to the same pay scale as directly recruited Professors there is no reason why in the matter of *inter se* seniority there should be any distinction or difference between them. Placing reliance on the decision of this court *O.P. Singla & Anr. v. Union of India & Ors.* and *Sadhu Ram & Others v. Union of India & Others*, [1984] 4 SCC 450 it was submitted that temporary appointees to cadre posts can also be considered to be incumbents in the cadre as Executive Council has power under Section 24 of the Act to create posts as laid down by clause 20 thereof.

C That cadres can be amalgamated. Placing reliance on the decision of this Court in the case of *Vinay Kumar Verma & Ors. v. State of Bihar & Ors.*, [1990] 2 SCC 647 it was submitted that once cadres are amalgamated the incumbent of the cadre is brought in with the post.

D Learned Advocate, Sh. Sharma appearing for promotee Professors respondents 6 to 61 in Civil Appeal No. 6001/94 submitted that the basis of the scheme was to provide promotional advancement to avoid stagnation, that though University Act did not envisage internal promotion, the sanctioned strength of Readers and Professors can be increased by bringing in promotees. Reliance was also placed on statute 37 of the Delhi University and minutes of Ex Council meetings. Our attention was also invited to the fact that one Mr. Krishna Kumar was selected as direct recruit but he opted out for being promoted under merit promotion scheme. Therefore it could not be said that those who are unfit to be selected as direct recruits got a back-door entry through merit promotion scheme.

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Learned senior counsel, Dr. Dhavan appearing for 56 Professors of Jawaharlal Nehru University adopted these arguments. The learned Advocate for promotees teachers further submitted that in the present proceedings only 1983 scheme is on the anvil and we are not concerned with the career advancement scheme of 1987. All those who were promoted between 1983 to 1987 as Professors submit that their seniority *vis a vis* directly recruited Professors cannot but be decided on the yardstick of continuous officiation of Professors. That the scheme of 1982 is to be read with letter

G H of the Commission issued in 1984 which stated that the question of *inter*

se seniority was left to the concerned universities. That once the concerned university decided to accord seniority to promotees *vis a vis* direct recruits on the basis of continuous officiation the matter was at an end. That on the doctrine of promissory estoppel neither the university nor the direct recruits can take a contrary stand. That the Scheme of merit promotion can be divided into two parts. The first part dealt with promotion on pure merits, while the second part wherein new additional staff was not to be created and the vacancies created on account of the promotion of the incumbents were not to be filled was based on consideration of financial crunch but it had nothing to do with the *inter se* seniority of promotees and direct recruit Professors. That this amounted to only tightening of the belt and in that sense the promotion can be considered to be personal. Our attention was invited to the decisions of this court in the cases of *University of Delhi v. Raj Singh & Ors.*, [1994] Supp. 3 SCC 516 and *Col. A.S. Iyer & Ors. Etc. v. V. Balasubramanyam & Ors.*, [1980] SCR 1036 for submitting that overdoing of classification should be avoided and merely on the basis of classification the guarantee of equality under Article 14 does not get exhausted. Placing reliance on the decision of this court in the case of *Paradise Printers and Others v. Union Territory of Chandigarh and Others*, [1988] 1 SCC 440 it was submitted that this was a case of promissory estoppel, that while getting merit promotions the incumbents were promised by the Commission that their seniority will be decided by the university concerned and once the university had decided to give them seniority on the basis of continuous officiation a clear case of promissory estoppel had arisen in their favour. That decision of Jawaharlal Nehru University dated 28th June, 1988 in this connection was that the university had decided that *inter se* seniority of directly recruited professors and promotees should be decided on the basis of continuous officiation. That for seniority, entry in service was relevant as decided in the case of *Bhey Ram Sharma & Ors. v. Haryana State Electricity Board & Ors.* and *Balbir Singh & Ors. v. Haryana State Electricity Board & Ors.* and *Sohan Lal Verma & Anr. v. Haryana State Electricity Board & Ors.*, [1994] Supp. 1 SCC 276. It was therefore submitted that the High Court was patently wrong in taking the view that merit promoted Professors and Readers could not stake their claim of seniority *vis a vis* direct recruit Professors and Readers who formed a distinct class or cadre within which the promotees could not be encompassed.

Mr. Gambhir, learned Advocate appearing for respondents 1 to 3 H

A being Vikram University, its Registrar and Vice Chancellor broadly supported the arguments of learned counsel for the promotees. He contended that once a merit promotee is promoted from the post of Lecturer to that of Reader or from the post of Reader to that of Professor there is no question of any reversion of such a promotee only on the ground that there is no vacancy of a Reader or professor. That Section 49 of the University Act only prescribes the procedure for selection of a Reader or Professor but is not confined to only direct recruitment of such university teachers. That promotions given to the concerned teachers under the merit promotion scheme are in accordance with Section 49 of the Act. Once the Lecturers so promoted enter the cadre of Reader they would be entitled to further promotion on merits. Our attention was invited to the reply filed by the university before the High Court for submitting that as original respondent no. 4 was officiating as Reader prior to the original writ petitioners, he was rightly shown as senior to him. He further submitted that Coordination Committee had adopted the scheme and that resolution of the Coordination Committee was further adopted by the Executive Council of the university. Mr. Gambhir further contended that statutes and ordinances of the university are part of the Act and they can create new source of recruitment. In this connection reliance was also placed on Section 34 of the Act which defines powers of Coordination Committee which can approve or reject statutes or ordinances. In this connection, Mr. Gambhir invited our attention to paragraph 10(d) of the return on behalf of respondent no. 1 & 2 filed in the High Court. In the said paragraph it was stated that the merit promotion scheme was formulated by the Commission in the year 1982 and it was approved in the meeting of the Coordination Committee by resolution no. 23 dated 29.6.1983 and it was decided to implement this scheme in all the Universities of the State from the academic session 1983-84. It was also resolved by the Coordination Committee that the scheme can be implemented without framing any separate ordinance or statute for the purpose and that the same decision was confirmed in a subsequent meeting of the Coordination Committee held on 11.1.1984. Mr. Gambhir also referred to the averments made in paragraph 10(f) of the said counter. It has been pointed out therein that the Coordination Committee appointed under section 34 of the Vishwa Vidyalaya Adhiniyam has resolved in its meeting held on 27th and 28th October, 1988 as under :

H "12.02 The Coordination Committee decided that no discrimination may be made between teachers promoted under the

Merit Promotion Scheme and those recruited under section 49 of the Madhya Pradesh Vishva Vidyalaya Adhiniyam, 1972 in the Universities." A

On the basis of the said resolution it was submitted that this amounted to creation of an additional source of recruitment of teachers in the university. In this connection Mr. Gambhir relied on the decision of this court in the case of *Dr. Ms. O.Z. Hussain v. Union of India*, [1990] Supp. SCC 688. At page 691 in para 7 it has been laid down that there is desirability of having source of promotion for any service to avoid stagnation and heart burning and that accordingly the university had recognised this additional source of recruitment of teachers by way of promotion under the merit promotion scheme. And once that is accepted on the principle of continuous officiation original writ petitioner would be junior to original respondent no.4 who is appellatant before us. B C

Learned counsel for the Commission Shri Banerjee submitted that as per the Commission Act the function of the Commission was to suggest merit promotion scheme to teachers in the universities to avoid heart burning and frustration but the Commission was not concerned with the inter se seniority of university teachers. That question was left to be considered by the concerned universities. That the Commission in exercise of its powers under Section 12 of the Act had recommended to the concerned universities to adopt merit promotion scheme and that is how the scheme was adopted by the concerned universities. That it was not open to the Commission to direct creation of more posts in the cadre. That the merit promotion scheme did not contemplate fixing of inter se seniority of merit promoted teachers and directly recruited teachers. Mr. Banerjee further submitted that after the Central Government's direction to revise the pay scales of university teachers with effect from 1.1.1986, the then existing merit promotion scheme remained available to the concerned teachers to exercise their option. But in that they were to receive lessor pay scales as promoted Readers or Professors as the case may be if their promotions were subsequent to 17th June, 1987 when the Govt. decided to revise the pay scales. That for new incumbents who are directly recruited as Readers or Lecturers after 17.6.1987 there was no merit promotion scheme available but only career advancement scheme was available. That only promotee Readers or Professors who were promoted under the then existing promotion scheme prior to 17th June, 1987 got their pay protected D E F G H

A as per the decision of the M.P. Govt. Placing reliance on the decision of this court in the case of *Dr. Ms. O.Z. Hussain v. Union of India*, (supra), it was submitted that provision for promotional opportunities to university teachers was essential for removing stagnation of the concerned merit oriented teachers and that was the basis of the scheme.

B Mr. Singh, Advocate for respondent no. 4 in Civil Appeal No. 6001/94 in reply submitted that Section 49 of the Act which was enacted years back in 1973 did not contemplate any promotions. That the merit promotion scheme which came years afterwards in 1982 could not therefore be treated to have been encompassed by Section 49. That the respondent no. 4 was appointed as a direct recruit Reader pursuant to the advertisement issued by the university. From the date of appointment on 15th March, 1986 he was to be on probation for two years. Therefore, he was confirmed as Reader on 12th April, 1988. That merit promotion scheme sought to grant an opportunity for promotion to Lecturers only by way of personal promotions. No vacancy was thereby created in the cadre of lecturers nor any post was created in the cadre of Readers to accommodate such promotees, that the scheme should be read independently of the Act. The merit promotees were occupying ex-cadre posts and consequently there cannot be a combined seniority list of directly recruited Readers who were part of the cadre of Readers and merit promotee ex cadre Readers who were having personal promotions as Readers. That ordinance 4 of Vikram University promulgated under Section 37 (xv) did not say anything about promotion. In this connection our attention was invited to a decision of his court in the case of *Dr. Bal Krishna Agarwal v. State of Uttar Pradesh & Anr.*, JT (1995) 1 SC 471 wherein it was clearly laid down that in case of merit promotion scheme unless university act is amended and such a new source of promotion is contemplated therein there would be no increase in cadre of the concerned teachers. Our attention was also invited to Appendix I of Ordinance 4 wherein clause 6 provided for recruitment of Lecturers, Readers and professors to be made through all India advertisement. In this connection, Mr. Singh also invited our attention to the reply filed by Vikram University before the High Court. In the return in paragraph 10(a) it has been stated that respondent no. 4 was appointed Reader by promotion in accordance with the scheme which was accepted by the university. The appointment of respondent no.4 was not on probation and therefore there was no question of her confirmation on the said post. Mr. Singh submitted if that was so a promotee Reader

cannot have any confirmed post but would remain on personal assignment by way of promotion. Our attention was also invited to paragraph 15 of the petition before the High Court in which it has been stated that under the 7th Five Year Plan the establishment of the teaching staff of the university, as per the record of the university, annexed at P/10 is as follows :

Professor	-	18
Reader	-	33 and
Lecturer	-	57

Thus there only 33 posts of Readers in the university. It was contended in the light of the above said averments which were not denied by the university, that the 33 posts of Readers were meant for direct recruitment and the merit promotee Readers would therefore be outside the cadre or the sanctioned strength of Readers. In connection with resolution 12.02 of the Coordination Committee it was submitted that under section 34 of sub-section (4) such a resolution cannot be passed by the Coordination Committee and therefore it had no force of law. It was next contended that as per Section 24(xx) no post was recommended by Academic Planning and Evaluation Board nor prior approval of Madhya Pradesh Uchcha Shiksha Anudan Ayog was shown to have been obtained before creation of such posts to be filled up by departmental promotees under the merit promotion scheme and therefore it would not be correct to contend that there was a temporary addition to the cadre strength of Readers or Professors as the case may be. It was further contended that the work load of promotee Readers is different from work load of directly recruited Readers. Even their pay scale are different from 1986. That Section 35(O) which dealt with seniority provision had to be read with Section 49 which contemplated direct recruitment only. Placing reliance on the Constitution Bench decision of this Court in the case of *The Direct Recruit Class II Engineering Officers' Association and Others v. State of Maharashtra and Others*, JT (1990) 8 SC 264 at page 271 (para 13) it was submitted that unequals cannot be treated as equals. An ex cadre employee cannot be treated, to be a cadre employee for determining their inter se seniority and therefore the High Court was right in accepting the writ petition of the direct recruit reader.

Respondent no. 4 in Civil Appeal No.6002/94 who appeared in

A person, adopted the line of reasoning as submitted by Shri Singh and further contended that he was appointed as Professor of Physics pursuant to all India competition. The post was advertised by inviting applications and in the open competition as contemplated by Section 49 of the Act, the appellant - candidates were rejected while respondent no. 4 were selected.

B That though the appellants were merit promoted as Professors, they were wrongly shown as senior to him and that is why he had to file the petition in the High Court which was rightly allowed. That there were two posts of Professors of Physics in 1986 and for filling up one vacancy advertisement was issued and interviews were held. That though the Selection Committee had considered the cases of appellants for merit promotion on 13.3.86 after

C direct recruits were interviewed and recruitment was over, university had wrongly and *mala fide* issued promotion orders to the appellants by way of backdating them on 12.3.1986. That merit promotion was purely personal to the incumbent. The moment the incumbent retired or resigned or otherwise ceased to be a merit promotee, there will be no question of promoting somebody else vice him. It was further contended that merit

D promotion scheme cannot be implemented without ordinances or provisions and in the absence of such a provision merit promotions granted to the appellants were required to be quashed. That they could not be given the same pay scale as directly recruited Professors. Placing reliance on the decision of this court in Civil Appeal no. 1549/94 it was submitted that the

E abstract doctrine of equal pay for equal work was illogical and consequently the judgment of Rajasthan High Court which had taken the view that merit promoted Professors should be given the same pay scale as direct recruits could not be sustained. He submitted that the university had harassed him by showing him to be junior to promotee Professors and therefore he prayed for following reliefs :

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(1) Respondent no. 4 be awarded compensation amounting to Rs. 17.00 Lakhs.

G (2) Merit promoted Professors should be treated as additional Professors but not as a full-fledged Professor.

(3) Pay scales of merit promoted Professors should be reduced.

H Mr. Bobde, Mr. Dave and Dr. Dhavan in rejoinder refuted the contentions of Shri Singh and respondent no. 4 in C.A. No. 6002/94 and reiterated their submissions in support of the appeals.

V. Points for consideration :

A

In the light of the aforesaid rival contentions the following points arise for our consideration :

(1) Whether a merit promotee Reader or Professor as the case may be in the service of respondent no. 1 university can be treated at par with directly recruited Reader or Professor for the purpose of fixing their inter se seniority?

B

(2) If the answer to the first point is in the negative whether such merit promotee Readers and Professors cannot be considered as Professors and Readers for fixing inter se seniority of such promotee Readers and Professors and their seniority should be shown only in the cadre of Lecturer or Reader from which they are promoted?

C

(3) Whether respondent no. 1 university is liable to pay any compensation to respondent no. 4 in Civil Appeal No. 6002/94?

D

(4) Whether the pay scales of professors available to the appellants in C.A. No. 6002/94 should be reduced?

(5) What is final order?

E

We shall now deal with the aforesaid points seriatim.

Point No.1

A resume of relevant provisions of the merit promotion scheme and the relevant provisions of the Vikram University Act to which we have made reference earlier clearly shows that when the act was enacted in 1973 the State Legislature had not contemplated any promotion of a Lecturer as Reader or Reader as Professor as the case may be. All the relevant ordinances and statutes will therefore, have to be read in that light. It is not possible to agree with the contention of the learned counsel for appellants that Section 49 as enacted can take it its sweep even departmental promotees. A mere look at Section 49 shows that the Members of the Committee of Selection as contemplated by sub-section (4) of Section 49 have to investigate the merits of the various candidates and to recommend to the Executive Council the names if any, of persons whom they consider

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- A suitable for the posts, arranged in order of merit. Sub-section (5) mentions that out of the names so recommended under sub-section (4) the Executive Council shall appoint persons in order of merit. This clearly contemplates an open market recruitment procedure by way of direct recruitment and candidates selected will have to be appointed in order of merits. It is obvious that there would be no occasion to consider the question of inter se merit of a departmental promotee and a direct recruit. It is also pertinent to note that in the year 1973 the subsequent merit promotion scheme of 1982 would never have been under contemplation of the Legislature. It must therefore, be held on a conjoint reading of the relevant provisions of the Act that only one source of recruitment of university teachers namely, Professors and Readers and even of Lecturers is contemplated and that source is by way of direct recruitment. If that is so and if under merit promotion scheme as recommended by the Commission which was adopted by the respondent no. 1 university, any departmental candidate is to be promoted, he would be so promoted *dehors* Section 49 and would obviously be an *ex cadre* Reader or Professor as the case may be. Once that happens it would be obvious that there would be no occasion to fix the inter se seniority of directly recruited Readers and Professors who are holding *cadre* posts and *ex cadre* merit promoted Readers and Professors who would stand outside the *cadre*. The first respondent by its impugned decision which was quashed by the High Court in the judgment under appeal tried to fuse the *inter se* seniority of both these classes of employees. And that itself amounted to treating unequals as equals. It clearly offended the provisions of Articles 14 and 16(1) of the Constitution of India. Unless Section 49 is suitably amended and a separate source of recruitment by way of internal promotion is contemplated by the Act there would remain no occasion of undertaking any exercise of fixing inter se seniority between *ex cadre* employees and *cadre* employees. It is not in dispute between the parties that neither Act nor any ordinances or statutes of respondent no. 1 university even remotely whisper about creation of a separate recognised source of recruitment of Professors and Readers by way of departmental promotions. It is of course true as indicated by Dr. Dhavan appearing for the intervenors that in some of the universities even ordinances have been issued accepting such new source of promotion of university teachers under the merit promotion scheme. But even if it is so that would make no difference as it is the parent Act, namely, University Act concerned which should contemplate creation of new source of recruit-

ment by way of departmental promotions of university teachers. Unless that is done mere issuance of ordinances or statutes to that effect which to that extent would conflict with the parent Act would be of no avail and would be an exercise in futility. They would also be *ultra vires* the Act. It must therefore be held that unless the concerned university Acts under which the universities are functioning, by suitable amendments provided for an additional source of recruitment of Readers and Professors by way of departmental promotions, mere adoption of merit promotion scheme recommended by the Commission or mere decision of the Coordination Committee or Executive Committee not to discriminate between merit promotees and direct recruit university teachers and even issuance of ordinances or statutes to the effect would be of no avail and will not have any legal effect nor would they permit the concerned universities to fuse the cadre employees with ex cadre employees and to prepare a combined seniority list on that basis.

It is true as submitted by learned counsel for appellants that for avoiding stagnation and heart burning promotional avenues should be made available in any service as laid down by this court in number of decisions to which our attention was invited by them. However the short question for our consideration is whether the concerned university Act has made such a provision. If a provision is made then there would be no difficulty in the way of the appellants but in the absence of such a provision mere availability of merit promotion scheme cannot elevate the merit promoted Reader or Professor to the cadre of such Readers or Professors as the case may be. They would remain ex cadre employees who cannot claim any inter se seniority with direct recruits forming the concerned cadre. It is not possible to agree with the contention of Shri Bobde and Dr. Dhavan that under the merit promotion scheme though the promotions were personal, to that extent there was a temporary extension of the cadre of Reader or Professor as the case may be or that they were special promotions as Dr. Dhavan would like to have it. The very guidelines of the scheme suggest that a merit promoted Reader or Professor will be treated to have a personal promotion. It will not create any additional to the cadre nor it will create any vacancy in the lower cadre from which he or she was promoted. The work load has to be so distributed as not require any additional staff. Dr. Dhavan said that this was only because of the financial crunch. That may be so. But ultimately the effect thereof would be that once a merit promoted Reader or Professor goes out of service there will

A be no post which will fall vacant in the promotional avenue. Consequently, it cannot be said that there was any temporary addition to the cadre strength of Reader or Professor as the case may be. We entirely concur with the reasoning adopted by the High Court while considering the relevant clauses of the merit promotion scheme when it took the view that

B Readers and Professors promoted under the scheme were not entitled to be included in the seniority list of directly recruited Readers and Professors. Reliance placed by learned counsel for appellants on statute 16 is also of no avail to the appellants for the simple reason that statute 16 deals with seniority of teachers of the university. This statute is promulgated under

C Section 35(o) of the Act. Section 35(o) of the Vikram University Act deals with the mode of determining seniority for the purpose of the Act. Consequently it will have to be read with Section 49 meaning thereby when a Professor, Reader or Lecturer is recruited under Section 49 how his seniority is to be determined can be decided in the light of the relevant statute framed under Section 35(o). When we turn to Statute 16 we find

D that as per clause (2) thereof the seniority of Professors, College Professors, Readers, Associate Professors or Lecturers shall be determined in accordance with the length of continuous service of such person in the cadre concerned taken together with length of continuous service which is equivalent to or superior to the cadre concerned. It was submitted by

E learned counsel for appellants that the word cadre as employed by statute 16(2) is used in a loose sense. It is difficult to agree. Statute 16(2) read with Section 35(o) and Section 49 leaves no room for doubt, that all those Readers and Professors who were recruited under Section 49 as direct recruits and who enter the cadres of Professors and Readers as the case

F may be shall have their seniority determined in accordance with length of service in their concerned cadres. As merit promotee Reader or Professor is outside the cadre there is no question of statute 16(2) operating in his case. It is also pertinent to note that merit promotee Professors or Readers form a separate distinct class as compared to directly recruited professors or Readers. It is true that as decided by respondent no. 1 university, the

G same Selection Committee which directly recruits professors and Readers under Section 49(2) deals with the question of granting merit promotions to the concerned Lecturers as Readers and Readers as Professors. But to that extent the machinery or infrastructure available under Section 49(2) for directly recruiting teachers was made available for deciding the

H eligibility of departmental candidates for merit promotion but that would

not by itself create a new source of recruitment for promotee Readers and Professors unless Section 49 was suitably amended. That has not been done till now. In this connection, we can profitably refer to the decision of this court in the case of *Dr. Bal Krishna Agrawal v. State of Uttar Pradesh & Ors.*, JT 1995 (1) SC 471. In that case a Division Bench of this court was concerned with the question whether Professors promoted by Allahabad University governed under Uttar Pradesh State University Act, 1973 could claim seniority *vis a vis* directly recruited Professor. Under Section 31 a merit promotion scheme adopted by Allahabad University was promulgated by State of Uttar Pradesh. By inserting Section 31(A) in the University Act with effect from 10.10.1984 a distinct source of recruitment by way of merit promotion for Lecturers and Readers in university was created by State Legislature. But that Section which created a distinct source of recruitment by promotion was effectively brought into force from 10.10.94. The appellant before this court was directly appointed as Professor on 9th November, 1984 while the contesting respondents no. 4 & 5 were promoted as Professors under the scheme by Govt. Orders dated 12th December, 1983 and 25th February, 1984. These respondents were treated as senior to the appellant before this court. He unsuccessfully challenged the said fixation of inter se seniority before the High Court, as the High Court took the view that the appellant had to be relegated to the alternative remedy available under Section 68 of the Act. In appeal pursuant to leave granted by this court, S.C. Agrawal, J. speaking for the Divisions Bench took the view that appellant was entitled to be treated as senior to the promotee Professor as Section 31(A) was not on the statute book when the respondents 4 & 5 were promoted and therefore their promotions could be treated as valid only from 21st February, 1985 when Section 31(A) was enforced. Before that date the appellant had already entered the cadre of Professors on 11th November, 1984 and therefore he had to be treated as senior to respondents 4 & 5. In para 13 of the report the following observations were made in this connection :

"..... We are of the opinion that in view of the provisions contained in Section 31-A and Section 2(14) of The Act there is no escape from the conclusion that respondents nos. 4 and 5 could not be given promotion under the Personal Promotion Scheme till the necessary provisions prescribing the length of service and the qualifications for such promotion were made in the statutes and since this was done by Notification dated February 21, 1985,

- A promotion under the Personal Promotion Scheme could not be made prior to February 21, 1985. The Executive Council in its Resolution No. 198 dated November 8, 1984 had accepted the recommendations of the Selection Committee for promotion of respondents Nos. 4 and 5 on the basis of Government Orders dated December 12, 1983 and February 25, 1984. At that time Section 31 of the Act provided for appointment of teachers by direct recruitment and did not envisage promotion from a lower teaching post to a higher teaching post. The orders of the Government aforementioned could not be given effect till necessary amendment was made in the Act making provision for personal promotion.
- B This was done by introducing Section 31-A by U.P. Act No. 9 of 1985 with effect from 10th October, 1984. But Section 31(A) could be given effect only after the necessary provision was made in the Statutes prescribing the length of service and the qualifications for personal promotion. This was done by the notification dated February 21, 1985. The promotion of respondents Nos. 4 and 5 to the grade of Professor under the Personal Promotion Scheme could, therefore, not be made prior to February 21, 1985. The inter se seniority of the appellant and respondents Nos. 4 and 5 has to be determined on that basis."
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- E In our view the aforesaid decision of this Court is squarely applicable to the facts of the present case. As seen above in the Uttar Pradesh Act there is already an amendment by insertion of Section 31(A) which provided for a distinct source of promotion. In the Vikram University Act with which we are concerned, there is no such provision. It is therefore to be held that till appropriate amendments are effected in the concerned universities Act
- F on the same lines as Section 31(A) of the Uttar Pradesh Act there would be no occasion for considering the merit promotees to have entered the cadre or Reader or Professor as the case may be and consequently there would arise no occasion for consideration of the further question of fixation of *inter se* seniority of such an ex cadre promotees and the directly
- G recruited Readers or Professors who from the cadre concerned.

At this stage it would also be appropriate to consider whether the promotee Readers and Professors under the merit promotion scheme as recommended by the Commission and adopted by the university concerned, in the absence of any statutory creation of a distinct and fresh

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source of recruitment by way of promotion, can be said to fall in the same class as directly recruited Readers or Professor. The answer becomes obvious. They cannot be said to be forming the same class. The following distinct characteristics between these two classes of employees become at once visible. A

(i) The directly recruited Readers and Professors fill up the vacancies in the cadres of Readers and Professors for which direct recruitment is resorted to. While the promotees under the merit promotion scheme stand outside the cadre and fill no posts as such, since no posts are created. The promotions given to them are purely personal and the posts to which they are upgraded do not survive their career. The posts vanish with the incumbent person like the shadow vanishing with the substance. Such a promotee fills up no vacancy in the promotional avenue since no post is available by promotion. B C

(ii) The directly recruited Readers and Professors are recruited pursuant to the only source of appointment contemplated by Section 49, that is by way of direct recruitment. The promotee Readers and Professors are appointed not in the cadre posts but under an entirely different scheme, namely merit promotion scheme. Even under this scheme, no posts as such are created. Those selected under the scheme are given personal posts which cease with their employment. Infact the posts from which they are promoted do not become vacant and none can be appointed to the said posts while they hold the higher posts. D E

(iii) Pay scales of promotee Professors and Readers are different from the pay scales of directly recruited Readers and Professors atleast after coming into operation of the career advancement scheme as seen earlier. To recapitulate for direct recruit Readers revised pay scale with effect from 1.1.86 is Rs. 3700 - 5300 while the pay scale for promoted Reader is Rs. 3000 - 5000. Pay scale of a direct recruit Professor is Rs. 4500 - 7300 while the pay scale of a promotee Professor is Rs. 4500 - 5700. It is also to be noted that as per the letter of Under Secretary, Department of Education dated 1st January, 1989 the aforesaid difference in pay scales of merit promoted teachers is clearly brought out. It is of course true that as per the order of the Madhya Pradesh Govt. the pay scales of promotee Readers and Professors who were promoted prior to the enforcement of career advancement scheme were protected. But for such protection they F G H

A would not have been entitled to pay scales of directly recruited Professors and Readers as revised under the scheme. This difference in the pay scales itself is a distinct feature so far as promotees under the merit promotion scheme on the one hand and the directly recruited Readers and Professors on the other hand are concerned.

B (iv) The promotee Readers and Professors are not holding any officiating or even temporary post of Reader or Professor nor is there any temporary addition to the cadre strength of Readers and Professors.

C (v) The work load of directly recruited Reader and Professor is different from the work load of promotee Reader or Professor for whom the work load of a Reader or Lecturer as the case may be would still have to be shared as no vacancies are created for being filled in the cadres from which such promotions are effected.

D (vi) There is a qualitative difference in the process of selection of direct recruits under the scheme of Section 49, as compared to the promotion of the merit promotees. Although for the latter the infrastructure of Selection Committee under Section 49 may be made available, the criteria for their promotion are entirely distinct and different as envisaged by the guidelines governing the merit promotion scheme.

E (vii) There is no question of promotee Reader or Professor being put on probation. There is further no question of confirming them in the concerned posts as they do not occupy any post as such in the promotional avenue. This is unlike the direct recruits.

F The aforesaid distinguishing features clearly indicate that merit promotee Professors and Readers form a distinct class of ex cadre or supernumerary appointees as compared to cadre employee, namely, directly recruited Readers and Professors. They are unequals not only because of the source of their appointment but also because of the nature and character of their appointment and of the nature of the posts which they hold. They cannot be treated equally for all purposes and particularly for seniority and promotion if any. For this purpose the nature of work they do is irrelevant. The competition for seniority can only be amongst those who are in the cadre posts. Otherwise, the mandate of Articles 14 and 16(1) would get violated. For these reasons, there would be no occasion to fix H *inter se* seniority of merit promotee Readers and Professors and directly

recruited Readers and Professors by treating them as forming one class. Any decision rendered by the university concerned not to discriminate between them in the matter of *inter se* seniority would be invalid in the absence of any statutory creation of a district source of recruitment by promotion by way of amending the present Act. As the first respondent is governed by the Act which does not contemplate any statutory source of recruitment by way of promotion, whatever sentiments might have been expressed by the Executive Committee of the university for not distinguishing between directly recruited Professors and Readers on the one hand and promotee Readers and Professors on the other hand in the matter of seniority, have no legal efficacy. On the contrary, treating them at par for seniority and promotion is violative of Articles 14 and 16(1) as we have seen above. It must therefore be held that the High Court was justified in taking the view that the action of the first respondent university in fixing *inter se* seniority of directly recruited Professors and Readers and merit promoted Readers and Professors on the yardstick of continuous officiation was illegal and unconstitutional.

Before parting with discussion on this point we may refer to certain additional submissions placed for our consideration by Mr. Bobde and Mr. Dave learned counsel for appellants. Placing reliance on Section 6 of the Adhinyam read with Section 34 it was submitted by Mr. Bobde that university had full powers to create posts. When we turn to Section 6 we find that sub-section 30 thereof lays down that university has power to create administrative, ministerial and other necessary posts to make appointments thereto. There cannot be any dispute on this aspect. Similarly when we turn to Section 34 we find that the Coordination Committee has power amongst others to consider matters of common interest to all or some of the universities. However, we do not read in these provisions the power to create additional posts of Readers and Professors for being reserved for promotee Readers and Professors nor is the power exercised by the university in the present case to create such posts as indeed it could not in the absence of any statutory provision in the Act permitting it to do so. A conjoint reading of Section 49 and sub-section 30 of Section 6 would only indicate that the university can create additional posts of Readers or Professors for filling them up by the only statutorily permitted source of recruitment, namely, by direct recruitment under Section 49. As already discussed earlier in the absence of similar provision like Section 31(A) of Uttar Pradesh Act which was considered by this court in the case of *Dr.*

- A *Bal Krishna Agrawal v. State of Uttar Pradesh & Ors.* (supra) no posts could have been created for promotees by way of extension of cadre of Readers or Professors as the case may be. As there is no such statutory provision in the Act governing first respondent university, Section 6 by itself cannot be of any assistance to learned counsel for appellants. Mr. Dave invited our attention to Section 50 which deals with payment of salaries to teachers of university. The said provisions is not relevant for deciding the question whether the merit promotees were ex cadre employees or not. Similarly Section 64(1) to which our attention was invited by the learned counsel is also of no avail to the appellants as all that section provides is that wherever in accordance with the Act, any person is to hold an office or to be a member of any authority by rotation according to seniority such seniority in the absence of any provisions to the contrary in the Act, shall be determined in accordance with the statutes. Until the statutes are made the seniority in a particular cadre shall be determined by the length of continuous service in such cadre. As we have already discussed earlier the said statutes would govern seniority of cadre employees only and cannot be projected to take in their sweep *inter se* seniority of cadre employee on the one hand and ex cadre employees like the promottee Readers and Professors on the other hand. The University cannot make statutes contrary to or inconsistent with the provisions of the Act.
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- E Reliance was then placed by the learned counsel for appellants on a decision of the very same High Court from which the present appeal arise. The said decision was rendered by the Jabalpur Bench in M.P. No. 2064/89. The Bench by its order dated 19.7.94 has taken the view that *inter se* seniority of directly recruited Readers in Hindi Department of Rani Durgawati Vishwa Vidyalaya and a promotee Reader under the merit promotion scheme shall be decided on the basis of continuous officiation. It is difficult to appreciate the reasoning of the Court, in view of the fact that a directly recruited Reader was a cadre employee while merit promotee Reader was only an ex cadre employee. This vital aspect of the matter has been totally missed by the Court in that decision. Hence, it has to be held that the said decision does not lay down correct legal position. Our attention was also invited to a decision of Rajasthan High Court, Jaipur Bench in D.B Civil Writ petition No. 2558/88 decided by S.N. Bhargava and P.C. Jain, JJ on 9.12.88. In that case the Division Bench had taken the view that merit promoted Professors must be given the same time scale as directly recruited Professors under the Rajasthan University Teachers and
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Officers Special Condition of Service Act, 1974. That has been directed on the basis of equal pay for equal work. We are informed that special leave petition against the said decision was dismissed by this court on 9.12.88 by a non speaking order. The said decision is of no avail to the appellants as we are concerned with the relevant provisions of the Vikram University Act. The aforesaid decision was rendered in the light of an entirely different scheme of statutory provisions governing the controversy between the parties in that case. But that apart, the Rajasthan High Court was not concerned with the question with which we are concerned, namely, whether there can be *inter se* seniority of ex cadre employees and cadre employees even if they are drawing the same salary. We may note at this stage that so far as the present appeals are concerned it is not in dispute between the parties that the promotee Professors and Readers who have actually got promoted under the 1982 merit promotion scheme are being paid the same revised time scale even after the implementation of the career advancement scheme, in view of the decision of Madhya Pradesh Government dated 21st March, 1989 wherein it has been clearly directed that those teachers who have been given promotion under the merit promotion scheme prior to 19.6.87 will be entitled to draw from 1.1.86 or from the date of their actual promotion (that is between 1.1.86 and 17.6.87) the reversed time scale for Reader i.e. Rs. 3000- 5700 and for the Professor Rs. 4700 - 7300. In the present proceeding, we are not concerned with the pay scales of any merit promotees who might have opted out for being governed by the merit promotion scheme even after the implementation of career advancement scheme and who might have been promoted only after 17.6.87. As we have seen earlier, for them the pay scales would be lower than the revised pay scale available to a directly recruited Reader or Professor as the case may be. It must therefore be held that there would be no justification for the respondent authorities to treat directly recruited Professors and Readers at par with merit promotee Readers and Professors for deciding their *inter se* seniority which as we have already discussed earlier cannot be countenanced at all.

It was next submitted that on doctrine of promissory estoppel the respondent authorities must treat promotee Readers and Professors at par with directly recruited Readers and Professors. This contention has to be stated to be rejected. No promise was held out either by the Commission or by respondent no. 1 university to these merit promotees that their *inter se* seniority with direct recruits in the upper cadres will be reckoned on the

- A principle of continuous officiation nor is there anything to suggest that but for such a promise a merit promotee would not have accepted his promotion or that he had changed his position in any manner relying on such an alleged promise. Such a promise if any also would have been unconstitutional being violative of Articles 14(1) and 16 of the Constitution. Dr. Dhavan submitted that such a promise is culled out from a letter of Commission issued in 1984. In that letter the Commission informed all concerned that the question of *inter se* seniority of promotees and direct recruits will be left to be decided by the concerned universities. It is impossible to discern any promise about fixation of *inter se* seniority from this letter. For all these reasons, the first point under consideration is answered in the negative.

Point No. 2

- So far as point is concerned we may note that the High Court by the impugned judgment has taken the view in the last para of the judgment that the respondent university shall delete the names of respondents nos. 4 to 9 in M.P. 1180/89 and respondent no. 4 in M.P. 208/89, from seniority list. A grave exception was taken by learned counsel for appellants to the aforesaid direction. It was submitted that once the merit promotion scheme recommended by the Commission was adopted by the respondent university and once the concerned incumbents were promoted on merit as Reader or Professor as the case may be they were entitled to work as Readers or Professors even assuming that they were ex cadre employees. Hence it cannot be said that they should not be treated as Readers or Professors at all and their seniority should be shown only in the lower cadre of Reader or Lecturer as the case may be from which they were promoted on merit as Readers or Professors. In this connection they invited our attention to para 12 of the judgment to the effect that it is clear from the scheme annexure P/4 that by virtue of promotion under the said scheme, it is only the designation of the incumbent which is changed but in reality he remains in the same lower cadre of either Reader or Lecturer as the case may be. Consequently respondents 4 to 9 cannot be held to have been appointed by the University on clear vacant posts of professors and their name cannot be included in the seniority list or professors nor can they be considered senior to the petitioners. According to us no exception can be taken to the last part of para no. 12, where it is observed that respondents 4 to 9 cannot be held to have been appointed on clear vacant posts of

Professors nor can they be included in the seniority list of Professor nor can be considered senior to the petitioner. But it must be clarified at this stage that even though they may not be included in the seniority list of cadre employees, namely, Professors or Readers it also cannot be held as assumed by the High Court that their merit promotions were of no legal effect at all. In this connection, we must keep in view the salient features of the merit promotion scheme. It cannot be disputed that with a view to avoid stagnation amongst university teachers the Commission recommended a scheme of merit promotion. The very preamble of the scheme shows that it is necessary to give reasonable opportunity for career advancement and recognition of merits and it is on the basis of competitive test for recognising outstanding work and merit that such merit promotions were given. Once a Lecturer is promoted on merit as Reader or a Reader as Professor even though the promotion may be personal to him he can certainly continue to work as promotee Reader or Professor till he retires or otherwise ceases to be an employee of the university or till he is reverted for some valid reasons. There is no question of such a merit promotee being reverted otherwise to the lower cadre from which he came. He has to work as a Reader or Professor as the case may be and share the work load with the cadre employees. In fact as there is no vacancy created in the lower cadre from which he came on account of his promotion, he has also to share the burden of work load of the lower post. Consequently it cannot be said that such a merit promotee is not the Reader or Professor so far as his work as Reader or Professor is concerned. He cannot claim to be fitted in the *inter se* seniority list and may remain outside the cadre of Reader or Professor as the case may be. However, for all other purposes like pay, work and status he is a Reader or Professor as the case may be.

The question then remains as to how his seniority has to be reckoned as a merit promotee even though he is an ex cadre Reader or Professor. The answer is obvious. Amongst person forming the same class to which he belongs, namely merit promotee Readers or Professors their *inter se* seniority has to be fixed on the basis of continuous officiation as such merit promotees. Such a separate seniority list of merit promotee Readers and professors has to be prepared and acted upon for purposes other than seniority and promotion in, and to the posts available to those in the cadre. It is not as if they are still to be treated as only Lecturers of Readers as the case may be from which posts they got merit promotion, as wrongly assumed by the High Court. In short there have to be two seniority lists,

A one of the cadre Readers and Professors who are direct recruits and the other of merit promotee Readers and Professors. The directions issued by the High Court in the impugned judgment in paragraph 16 read with the observations in paragraph 12 will have to stand modified as aforesaid. It is however, clarified that the direction of the High Court that names of respondents 4 to 9 in M.P. 1180/89 and respondent no. 4 in M.P. 209/89 in the combined seniority list will have to be deleted has to be sustained. The other directions contained in the later part of paragraphs 16 also have to be sustained. Point no. 2 is answered in the negative but as indicated herein above.

C *Point No. 3*

So far as this point is concerned, it must be noted that even though the respondent no. 4 in his writ petition before the High Court had prayed for several reliefs in the prayer clause 53, no such relief was claimed against respondent no. 1 university. Not only that, even in the judgment under

D appeal no such claim has been considered and no such relief is given to him. He has also not filed any cross petition in this court claiming such relief. Hence, no further relief cannot be given to him in the present appeal moved by the appellants. That apart, there is no factual basis by way of any material on record for awarding any compensation to him for the alleged harassment suffered by him. Point No. 3 is therefore, answered in the negative.

Point No. 4.

F So far as this point is concerned, respondent no. 4 who filed the writ petition before the High Court had prayed as per prayer (e) of clause 53 that the order Annexure P/25 revising pay scales of the teachers being discriminatory, be quashed in the light of the clarification given by the Commission. But such an argument does not seem to have been pressed into service by him before the High Court while arguing the writ petition. At least no discussion is found in the judgment under appeal on this aspect.

G However, respondent no. 4 drew our attention to paragraph 16 of the judgment which contains a direction that any other ancillary relief such as appointment as Dean or Head of Department, and their respective pay scales, are matters of details which the university is directed to work out and give effect to. It was submitted that this direction would necessarily mean that the pay scales available to the appellants should be reduced. It

is not possible to agree with the contention. The said direction is only a consequential direction which flows from the reshuffling of the seniority list which was found fault with by the High Court and it was a logical corollary of the deletion of the names of respondents 4 to 9 from the combined seniority list. This ancillary relief has nothing to do with the setting aside of exhibit P/25. It has to be kept in view that the State of Madhya Pradesh by clarificatory order dated 21.3.81 had clearly directed that those merit promotee Readers and Professors who got promoted under merit promotion scheme prior to 17.6.87 had to be given pay protection and would be entitled to draw revised salary of Reader and professor at par with directly recruited Reader and Professor. That order of the State of Madhya Pradesh does not appear to have been challenged by the party in person before the High Court as there is no discussion on this aspect in the judgment. Not only that but there is no decision rendered by the High Court in this connection. The respondent no. 4 had not filed any cross petition claiming this additional relief from this court. Consequently it is not open to respondent no. 4 to contend in the appeal filed by the appellants that a more adverse order be passed against the appellants by depriving them of the enhanced revised time scale made available to them by the State of Madhya Pradesh. Even otherwise, we do not find any justification for finding any fault with the directions contained in the State Govt. Order which tried to protect the pay scales of merit promotees who had already taken advantage of and who had got benefitted by the merit promotion scheme much prior to the coming into operation of the career advancement scheme. To say the least, it was a discretionary order which was justified on the facts of the present case. The fourth point is accordingly answered in the negative.

Point No. 5

In view of the aforesaid discussion and our decision on the concerned points for determination, the result is that these appeals fail and are dismissed subject to the modification of the impugned order of the High Court as indicated while answering point no. 2. In the facts and circumstances of the case there will be no order as to costs.

V.S.S.

Appeals dismissed.