

A DR. (MRS.) MEERA MASSEY
DR. ABHA MALHOTRA
DR. S.C. BHADWAL AND ORS.

v
DR. S.R. MEHROTRA AND ORS.

B FEBRUARY 3, 1998

[K. VENKATASWAMI AND A.P. MISRA, JJ.]

C *Research Associates or Evaluators—Working since long period—Regularisation of services—Adoption of special stipulations conditions—Contrary to statutory provisions—Validity of—Held, appointments on the principle of equity, justice and fair play by adhering to special stipulations conditions deprecated—Posts to be filled up in accordance with law strictly on merit—However, since the appointments had been approved by Executive Council long back and appellants being fully qualified, their appointments are left undisturbed with the observation that the same should not be treated as precedent—First Ordinance of Himachal Pradesh University Act, 1973: Ordinances 35.8, 35.11 and 35.53—Himachal Pradesh University Statutes—Statute 11.*

D

E *Ad hoc appointments—Propriety of—Adhocism in all classes of service especially in case of appointment of teachers, Readers and Professors deprecated.*

Constitution of India, 1950 : Articles 226 and 32-PIL—Maintainability of.

F

G **Appellants were working as Research Associates or Evaluators. The Executive Council by its resolution declared the said cadres to be wasting/vanishing cadres. Since the appellants were working for a long time on the said post, the Executive Council decided to regularise their services as Lecturers after they underwent the selection by Statutory Selection Committee. Appellants appeared before the Selection Committee and on its recommendations were appointed to the post of Lecturers. Respondent No.1, a Professor challenged their appointments on the ground that it was contrary to the Resolution of the Executive Council and also against the First Ordinance of Himachal Pradesh University Act, 1973. The University filed a counter**

H **affidavit stating that since the appellants were working as Research**

Associates or Evaluators for a long time, on the principle of equity, justice and fair play, the Executive Council took the decision to regularise their appointments as Lecturers on special stipulations conditions. High Court quashed the appointment of appellants holding that it was in violation of ordinance 35.11. The review petition filed by the University and the appellants were dismissed. Hence, the present appeals.

The contention of the appellants was that the respondent has no locus standi to file the said writ petition. It was also contended that since they possessed the requisite qualifications under Ordinance for such appointments and the appointments by way of promotion the same was within the powers of Executive Council.

Allowing the appeals, this Court

HELD : 1.1. The action of the University in appointing the appellants on the posts of Lecturers on the principle of equity, justice and fair play by adhering to *special stipulations conditions* is deprecated. [486-G]

1.2. There is no resolution of Executive Council which specifically spells out appellants' promotion. The University felt that since these appellants continued to teach as Research Associates/ Evaluators for a long time, hence on the principle of equity, justice and fair play, their real status of teachers be recognised. Hence the Executive Council took the decision to regularise their appointments as teacher. The stand of the University is that they have appointed these teachers on *special stipulations conditions* which is a part from the normal mode of appointment. This is how the University has tried to justify these appointments, i.e. on special circumstances and on the principle of equity, justice and fair play, not under any specific provision of Statute, Ordinance etc. If this be so how could these be appointments by way of promotion. If University resolved to promote, there was no difficulty to say so instead to take shelter of equity, justice and fair play and justify it under *special stipulation condition*. There is no reason why the special stipulation was resorted to by the University when they could have filled up the posts of Lecturers on a regular basis in accordance with the existing ordinance. It is not pleasant to think that as high an institution as University has to regularise something under cover of its own fault. [486-F-H; 487-E]

1.3. Ordinance 35.8 of the First Ordinance of Himachal Pradesh University Act, 1973 empowers the Executive Council to lay down whether the post or class of posts are to be filled up by direct recruitment or

A promotion. In the instant case, the Executive Council has not resolved to fill up the post of Lecturers by way of promotion, but to treat the incumbent already working therein to be regularised. Even if it has power, it never resolved as such. There is distinction between regularisation and promotion. Regularisation means, one which is already working, doing or has done something which law did not permit but the same is being regularised, treated to be done in accordance with law, treat one as such. Hence in such cases regularisation cannot be said to be a promotion as contemplated under Ordinance 35.8. In para four of the Executive Council Resolution the Research Associates and Evaluators were resolved to be treated as Lecturer. Here University did it by itself without even following the procedure of promotion and in the same breath directed for regularisation. Even for regularisation there has to be prescribed law. [486-E; 488-C-D]

2. Selection of teacher has not to be on minimum eligibility but best available from a larger sphere. Not from the limited sphere of adhoc or stop gap appointees. This affects teaching standard of University and output of student-at-large. In fact adhocism in any class of service may be class IV, is deprecated but it should never be a principle in the cases of appointment of teachers, Readers and Professor. [487-H; 488-A]

3. University imparts education which lays foundation of wisdom. Future hopes and aspirations of the country depend on this education, hence proper and disciplined functioning of the educational institutions should be the hallmark. If the laws and principles are eroded by such institutions it not only pollutes its functioning deteriorating its standard but also exhibits to its own students the wrong channel adopted. The situation created by the University to resort to special stipulation circumstances deviating from the normal mode of appointment is deprecated and in future such situation should not be brought in for taking such a decision at the cost of regular selection of teachers. [488-G-H; 489-A-B]

Radhakrishnan Commission, Vol. 1 (1949) p. 79, Report of the Committee on some Problems of University Administration, 1964 (1967), referred to.

4. The appellants have been regularised as teachers and appointed as Lecturers approved by the Executive Council more than 11 years back. They are all competent teachers fully qualified to be appointed as such. Setting aside and disturbing their appointments now would create great turmoil and would affect the teaching in the University and, in turn, the students at large

even to the appellants also, who in the hope continued for long. Thus it would not be appropriate on the facts and circumstances of this case to set aside their appointments as teacher. However, this approval of their continuing on the posts of Lecturers, in view of their working for such a long period should not be treated as a precedent. This had been done on the facts and circumstances of this case. It is made clear that every institution especially the University while making appointment of Lecturers should not create a situation so that they have to condone their own illegality by regularisation. They should act promptly by filling up such vacancies in accordance with law. Their appointments should be strictly on merit as they are fibre and strength of the University on which future generation depends. [490-C-G]

Shainda Hasan v. State of Uttar Pradesh & Ors., [1990] 3 SCC 48, relied on.

5. Respondent No. 1 has filed the writ petition being concerned with the anomalies and illegalities in the procedure adopted by the University in making selection and regularising the various posts in contradiction to the Acts, Statutes and Ordinances. He was aware fully of all that was happening with full grip of all the materials. Facts reveal he was genuinely concerned to rectify the wrongs without any personal animosity against anyone. His feelings were *bona fide*, being Professor of History in the same University. He had all the details, fully equipped with facts and the law pertaining to the University. It was not for any personal gain. It was neither politically motivated nor for publicity. PIL was devised for increasing citizens participation in the judicial process for making access to the judicial delivery system to such who could not otherwise reach Court for various reasons. Therefore, there is no merit to the challenge of the *locus standi* of the respondent.

[478-G-H; 479-A-B]

S.P. Gupta v. Union of India, [1981] Supp. SCC 87, relied on.

Janata Dal v. H.S. Chowdhary and Ors., [1992] 4 SCC 305; *Jasbhai Desai v. Roshan Kumar*, [1976] 1 SCC 671 and *Subhas Kumar v. State of Bihar*, [1991] 1 SCC 598, held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 13707-09 of 1996

From the Judgment and Order dated 21.12.94 and 31.5.96 of the Himachal Pradesh High Court in C.W.P. No. 222/87 and R.P. No. 43 of 1995.

A A.K. Sikri, Dr. Balram Gupta, Ashok K. Mahajan, Mrs. Madhu Sikri, V.K. Rao, Sunil gupta, Dr. K.S. Chauhan, Anil Nag and Naresh K. Sharma for the appearing parties.

In-person for the Respondent No. 1.

B The Judgment of the Court was delivered by

MISRA, J. The aforesaid three appeals raise a common question whether the appointment of the 'Evaluators' and 'Research Associates' as Lecturers in the Himachal Pradesh University, Shimla was valid or not? These appeals, accordingly, are being disposed of by means of this common judgment. All the appellants in Civil Appeal No. 13709/96 were initially appointed as Research Associates. Some of them have already been appointed as Readers whose case is not in issue in these appeals. They have been working as such for the last about nine years. Since they were working for a long period the Executive Council of the aforesaid University by their Resolution dated 16th January, 1986, declared the cadre of Research Associate as wasting cadre. Hence on 30th May, 1986, by another Resolution stipulated that they may be designated as Lecturers. Their suitability for the post of Lecturers was to be ascertained through the Statutory Selection Committee confining the selection among the incumbent working on the post of Research Associates. Admittedly, all the appellants were working as Research Associate when the said Resolutions were passed. Later, they appeared before such Selection Committee and, on its recommendation, were appointed as Lecturers in the year 1986. Since then they are working as such.

The appellant in C.A. No. 13708/96, namely, Dr. Abha Malhotra was initially appointed as Research Associate on 22nd May, 1983, and her selection was through a Selection Committee consisting of Dean of Art Faculty with two outsiders and two internal experts. She did her Ph.D in the year 1981 in History. She was appointed as Research Associate in the department of History as the said post was lying vacant and her appointment was approved by the Executive Council in the meeting held on 22nd May, 1983. The case of the appellant is that Research Associate in various other departments were approved by the Executive Council in its meeting held on 29th July, 1982, and 25/26 November, 1983, which is evident from the Notification dated 7th January, 1984. The Executive Council approved the creation of one post in each of the teaching department including History with effect from the date of filling up the post. Thereafter to decide the status and future of the Evaluators and Research Associates, the Vice Chancellor of the University appointed a

Committee which gave its report which was considered by the Council on 18th January, 1986. Thereafter, on 30th May, 1986, vide Resolution on the same day it was decided to regularise the Evaluators and Research Associates in the existing designation and scale with immediate effect and it was also decided that they were to be designated as lecturers. The appellant appeared before the Selection Committee on 24th November, 1986, and on its recommendation, was appointed to the post of Lecturer. On 27th December, 1986, the Executive Council approved her selection and on 1st January, 1987, the appointment letter was received and finally on 4th February, 1987, the appellant joined as Lecturer in History.

The appellant in C.A. No. 13707/96 [Dr. (Mrs.) Meera Massey] did her M.A. in Sociology in the year 1973. Thereafter, she passed M.Ed. in July 1975 from the aforesaid University. On 29th September, 1975, she was appointed as Evaluator in Sociology in the Directorate of Correspondence Courses in the aforesaid University. In 1976 she did her M. Phil. in Education and stood first in the University and thus was awarded gold medal for the same. In 1981 she got the degree of Ph.D. in Education. In fact, she did both M. Phil. and Ph.D. in the field of Education while being Evaluator as aforesaid. The Executive Council as aforesaid on the 30th May, 1986, decided to regularise all the Evaluators with immediate effect for their appointment on regular basis as lecturers selecting them through the Statutory Selection Committee. The Statutory Selection in Committee met on 30th October, 1986, found the appellant competent to be a Lecturer. The Executive Council thereafter in December 1986, on the basis of the observations of the Selection Committee, appointed her as lecturer in Education in the Directorate of Correspondence Courses. On 20th February, 1987 she joined as lecturer. On 29th May, 1987 she was confirmed as such.

Dr. S.R. Mehrotra, Professor in History Department, respondent No.1 in all these appeals, filed a writ petition assailing the appointments of the aforesaid two appellants and Dr. Shivraj Singh who is respondent No. 5 in Civil Appeal No. 13709/96, as Lecturer both on the ground that it is contrary to the Resolution of the Executive Council and also against the Ordinance of the aforesaid University. In the counter affidavit filed by the university it was revealed that there are 12 other Research Associates similarly situated who had been appointed as lecturers, whose appointments had not been challenged. Consequently, the appellants in Civil Appeal No. 13709/96 were also impleaded as respondents and their appointments were also challenged on the ground of violation of ordinance No. 35.11 of the University as they were also not

- A appointed after due advertisement. The High Court by means of impugned judgment quashed the appointment of the aforesaid two appellants and Respondent No. 5 both on the ground of violation of Ordinance 35.11 and favouritism and other illegalities and appointment of remaining appellants were quashed as it was in violation of Ordinance 35.11. Thereafter, Review
- B Petition was filed by the aforesaid University, Dr. Abha Malhotra, the appellant, and Shivraj Singh (Respondent No. 5) who was respondent No. 16 in the writ petition and all the remaining appellants in Civil Appeal No. 13709/96. Dr. Meera Massey one of the other appellants did not file review as she already preferred Special Leave Petition No. 5235/95 (C.A. 13707/96). Respondent
- C Nos. 4 and 15, namely, Shri S.C. Bhadwal and Shri Ram Sharma in the writ petition, had neither filed Review Petition nor Special Leave Petition before this Court. In review the High Court deleted the observation, that Respondent No. 2 (Dr. Abha Malhotra) is admittedly the close relation of the Vice Chancellor of the University as it was found to be factually incorrect. Neither in the writ
- D petition such allegations were made nor there was any material on record from which such fact could be inferred. The said observation came on the basis of the submission made by counsel only. However, the Court refused to review other part of the judgment which held her (Dr. Abha Malhotra) appointment as illegal and violative of Ordinance 35. The High Court held, her
- E appointment as a Research Associate in the department of History was temporary/stop gap arrangement on the basis of order dated 25th May, 1983, while post of Research Associate was created in the said department and notified on 7th January, 1984. It was further held in the absence of filling up the post created vide Notification dated 7th January, 1984, in accordance with the ordinance 35 of the First Ordinances of the Himachal Pradesh University, 1973, her appointment was void and hence could not be given benefit of
- F Resolution of the Executive Council dated 16th January, 1986. So far as taking benefit of para 4 of the Resolution dated 30th May, 1986 being violative of the aforesaid order, cannot be availed of by her as her appointment as lecturer on the recommendations of the Selection Committee, is illegal. So far as the review by the University pertaining to the case of one of the aforesaid appellants, Dr. Meera Massey, it was held:
- G “It is rightly observed that the University failed to place before the Division Bench the original proceedings of the Selection Committee which would have put an end to the controversy whether she was interviewed for appointment as Lecturer in Education but from the totality of material on record, especially the resolution dated 27th
- H December, 1986, the only conclusion possible is that she was not

considered and recommended by the Selection Committee for appointment as lecturer in Education irrespective of her possessing the qualification and experience for the said post may be because she was working as Evaluator in Sociology at the relevant time.” A

While considering the case of Shivraj Singh, Respondent No. 5, in the aforesaid appeal, in review it was held that since he was appointed as Reader by way of direct recruitment in the department of Public Administration of the University in March, 1989, the decision of this Court will have no effect. So far as the appellants in the aforesaid Civil Appeal No. 13709/96 are concerned, it is not in dispute that for the first time their appointment was alleged to be by way of promotion under Ordinance 35.8, however, their review was also rejected. B C

Mr. Sunil Gupta, learned counsel for the appellants in C.A. No. 13709/96, challenged the *locus standi* of Dr. S.R. Mehrotra who filed the writ petition in the High Court. The arguments raised before the High Court were reiterated before us. In addition, reliance was placed in the case of *Janata Dal v. H.S. Chowdhary and Ors.*, [1992] 4 SCC 305: D

“In Gupta Case Bhagwati, J. emphatically pointed out that the relaxation of the rule of *locus standi* in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the court under the guise of a public interest litigant. He has also left the following note of caution: (SCC.p. 219, para 24). E

But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting *bona fide* and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others to relay legitimate administrative action or to gain a political objective.” (para 99) F

“Sarkaria, J. In *Jasbhai Motibhai Desai v. Roshan Kumar* expressed his view that the application of the busybody should be rejected at the threshold in the following terms: (SCC p. 683, para 37) G

“It will be seen that in the context of *locus standi* to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories (i) ‘person aggrieved’; (ii) ‘stranger’; “(iii) busy body or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in the things which do not concern them. They H

A masquerade as crusaders for justice. They pretend to act in the name
of *pro bono publico*, though they have no interest of the public or
even of their own to protect. They indulge in the pastime of meddling
with the judicial process either by force of habit or from improper
motives. Often, they are actuated by a desire to win notoriety or
cheap popularity; while the ulterior intent of some applicants in this
B category may be no more than spoking the wheels of administration.
The High Court should do well to reject the applications of such
busybodies at the threshold.” (para 104)

C “K. N. Singh, J. speaking for the Bench in *Subhash Kumar v.*
State of Bihar, has expressed his opinion in the following words:
(SCC pp. 604-05, para 7)

D “Public interest litigation cannot be invoked by a person or body
of persons to satisfy his or its personal grudge and enmity, if such
petitions under Article 32 are entertained it would amount to abuse
of process of the Court, preventing speedy remedy to other genuine
petitioners from this Court. Personal interest cannot be enforced
through the process of this Court under Article 32 of the Constitution
in the garb of a public interest litigation. Public interest litigation
contemplates legal proceeding for vindication or enforcement of
fundamental rights of a group of persons or community which are not
E able to enforce their fundamental rights on account of their incapacity,
poverty or ignorance of law. A person invoking the jurisdiction of this
Court under Article 32 must approach this Court for the vindication
of the fundamental rights of affected persons and not for the purpose
of vindication of his personal grudge or enmity. It is the duty of this
Court to discourage such petitions and to ensure that the course of
F justice is not obstructed or polluted by unscrupulous litigants by
invoking the extraordinary jurisdiction of this Court for personal matters
under the garb of the public interest litigation.” (para 108)

G Having considered the submissions, we do not find any of the
observations made hereinbefore is applicable in the present case. We find Dr.
Mehrotra has filed the writ petition being concerned with the anomalies and
illegalities in the procedure adopted by the University in making selection and
regularising the various posts in contradiction to the Acts, Statute and
Ordinances. He was aware fully of all what was happening with full grip of
all the materials. Facts reveal he was genuinely concerned to rectify the
H wrongs without any personal animosity against anyone. His feelings were

bona fide, being professor of History in the same University. He had all the details, fully equipped with facts and the law pertaining to the University. It was not for any personal gain. It was neither politically motivated nor for publicity. The golden key for public interest litigation was delivered in the land mark decision of this Court in *S.P. Gupta's* case (1981 Suppl SCC 87). This was devised for increasing citizens participation in the judicial process for making access to the judicial delivery system to such who could not otherwise reach court for various reasons. But it is also true, since then this Court repeatedly has been cautioning its misuse laying down restrictions to scuttle out undesirable persons or body. It is in this context the above observations were made by this court as relied by the appellants but that very authority accords approval for filing such public interest litigation.

After having elaborately explained the concept of PIL, the learned Judge held that: (SCC p. 218, para 23)

"... any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objectives." (para 92)

Of course, even this is also in a given case restricted, laid down in various decisions not necessary to refer here.

In view of the said legal principle on the facts of this case, we do not find any merit to the challenge of the *locus standi* of Dr. Mehrotra.

The High Court held that the appointment of the Evaluators and the Research Associates on the post of teachers could only be done through direct recruitment by virtue of Ordinance 35.11. It can only be by advertisement which, admittedly, was not done hence their appointment as such is illegal. Further abolition or creation of the post also could not be done without the recommendation of the Faculty concerned and, in turn, the Academic Council and that not having been done is violative of Ordinance 24.3(b).

In order to appreciate the contention it is necessary to refer to the relevant provision of the Himachal Pradesh University Statutes (hereinafter

A referred to as "Statute") and the First Ordinance of Himachal Pradesh University Act 1973. (hereinafter referred to as the "Ordinances"). Section 2(15) defines teachers:-

B "Teachers means teachers of the University who have been appointed or recognised by the Academic Council as Professors, Readers and Lecturers and shall include Professors, Readers and Lecturers and Officers appointed to man research and extension education"

Relevant portion of Statute 11 as quoted here under which defines the powers of the Executive Council : -

C "*Powers of the Executive Council* : Subject to the provisions of the Act, these Statutes and Ordinances, the Executive Council shall in addition to any other powers vested in it, have the following powers:

D (i) to create and to appoint such Professors, Readers, Lecturers, and other members of the teaching and research staff as may be necessary, on the recommendation of the Selection Committee, constituted for the purpose and to provide for the filling of temporary vacancies therein;

E (ii) to fix the emoluments and define the duties and conditions of service of Professors, Readers, Lecturers and other members of the teaching and research staff:

Provided that no action shall be taken by the Executive Council in respect of the number, the qualifications and the emoluments of teachers otherwise than after consideration of the recommendations of the Academic Council:

F Learned counsel referring to the definition of 'teachers' contends that Research Associates and the Evaluators will fall within the words:

"Officers appointed to man research and extension education", hence a teacher.

G The Executive Council have power under Statute 11 (i) both to create and appoint members of teaching and such research staff. Further the duties and qualifications of Research Associates and Evaluators are Similar to that of Lecturer, which is evident from the advertisement for appointment of such Research Associates. Ordinance 35.53 prescribes the pay scale of teachers which refers to different pay scales of Professors, Readers, Principals, Lecturers

etc., but does not include the pay scale of either Evaluators or Research Associates. Repelling this reliance of the High Court to exclude the Research Associates to be teacher, the submission is this categorisation of pay scale in that Ordinance is not exhaustive and this cannot restrict the categories of teachers as envisaged under the Act and the Statutes. The Research Associates and Evaluators being at the lowest category has a lower pay scale than the Lecturers. The Executive Council, in the circumstances of this case, resolved to regularise their appointments and then to appoint them as lecturers after each incumbent passing the scrutiny of the Statutory Selection Committee. It is said that the appointment to the posts of lecturer is not only by direct recruitment as provided under Ordinance 35.11(b) but could also be by way of promotion under Ordinance 35.8. Both Ordinances 35.8 and 35.11 (a) (b) are quoted hereunder :-

35.8 - "Save as otherwise specifically provided in the Act, Statutes or Ordinances, the Executive Council shall fix the minimum qualifications required for each post or class of post and also lay down whether the post or class are to be filled by direct recruitment or promotion or by both and if so in what proportion."

"35.11 (a) Save as otherwise provided in the Statutes the appointment of all categories of employees shall be made by the competent authority referred to in 35.7 on the recommendation of Selection Committees, appointed by the competent authority.

(b) Whenever there is a vacancy to be filled by direct recruitment, the post in Category 'A' or 'B' or Asstt. Registrar/Asstt. Engineer/Asst. Architect or above shall be advertised not less than three weeks in advance, in at least one leading daily newspaper, while others in category 'B' and 'C' shall be advertised through Employment Exchanges and affiliated colleges in Himachal Pradesh and applications invited there for. The advertisement shall clearly mention the eligibility qualifications and pay-scale of the post."

It is argued that though the Executive Council has not used the word promotion but through its Resolution it directed the Research Associate/Evaluators to be appointed as lecturer in the higher grade which would constitute to be a case of promotion. Hence, for such internal candidates when the Executive Council desired, their absorption by way of promotion was within the powers of the Executive Council. Hence, their appointment would be valid under Statute 35.8. Further submitted the only pre-requisite for

A promotion to the post of teachers is that they fulfil the qualification of Lecturers prescribed under Ordinance 35.54 which is the minimum qualification for appointment as teachers and to face the Selection Committee as provided under Ordinance 35.11(a) read with Section 34 of the Act. The contention is that expression 'absorption', 'regularisation', adjustment' etc. have all been used loosely in the Resolutions of the Executive Council dated 16th January, 1986 and 30th May, 1986, but, in fact, it is in the context of promotion. In support that it is a case of promotion reliance is placed in *State of Rajasthan v. Fateh Chand Soni*, [1996] 1 SCC 562 :-

C "In the literal sense the word 'promote' means to advance to a higher position, grade, or honour. So also 'promotion' means 'advancement or preferment in honour, dignity, rank, or grade. 'Promotion' thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law also the expression 'promotion' has been understood in the wider sense and it has been held that 'promotion' can be either to a higher pay scale or to a higher post."

D *Tarsem Singh & Anr. v. State of Punjab & Ors.*, [1994] 5 SCC 392 :-

E "Promotion as understood under the service law jurisprudence means advancement in rank, grade or both. Promotion is always a step towards advancement to a higher position, grade or honour."

Director, Central Rice Research Institution Cuttack and Anr. v. Khetra Mohan Das, [1994] Supp. 3 SCC 595.

F "Promotion as understood in ordinary parlance and also as a term frequently used in cases involving service laws means that a person already holding a position would have a promotion if he is appointed to another post which satisfies either of the two conditions namely that the new post is in a higher category of the same service or that the new post carries higher grade in the same service or class."

G On the other hand, Dr. Mehrotra submitted, under Section 22(4) of the Act read with proviso to Section 11(i) - (ii) of the Statutes and 24.3(b) (ii) and 24.5 of the Ordinances, require that no teaching or research post can be created in the University unless and until a proposal to that effect has been made to the Executive Council by the Faculty concerned through the Academic Council. By virtue of 11 (i) and 17 of the Statutes read with 35.11 (a) of the H Ordinances, no appointment to a teaching post in the University can be made

by the Executive Council save and except on the recommendation of a Selection Committee constituted by the competent authority. He submitted that Hon'ble High Court rightly held selection for a teacher should only be under Section 35.11(b) of the Ordinances which requires prior advertisement at least in one leading daily newspaper. So far as appellants Dr. Abha Malhotra and Dr. Meera Massey are concerned, he reiterated his submission as before High Court, that their appointments were also illegal and is nullity as they were appointed in violation of Section 35.11 (b) of the University Ordinances and on the posts which did not exist. A B

It is relevant at this stage to refer to the stand of the University, the relevant portion of the counter affidavit filed by it to the amended writ petition in the High court is reproduced below :- C

“Para 1 : In reply to this para, it is submitted that simply because the petitioner is working as Professor in the Department of History, in the Himachal Pradesh University that does not give him any right or cause to maintain the present petition as submitted in the preliminary objections above and as such the petition is not maintainable and deserves to be dismissed.” D

“Para 2. The action of the University is absolutely in the interest of the institution, students and the teachers working against certain assignments/posts which were not considered fit to be continued by the University and these teachers had been working against these assignments for a pretty long time, it was not only reasonable but also in consequence with the principle of *equity, Justice and fair play* that their real status in the University was recognised and they no longer remained under suspense as to their future. These appointments, therefore, are absolutely legal, valid, equitable as well as in the interest of justice and cannot be quashed on any principle.” E F

“ Para 5 & 6 The Executive Council took a decision that the category of Evaluators/Research Associates will be a *vanishing cadre* and the incumbents of these assignments be considered for regularisation of the posts of Lecturers and their cases routed through the Statutory Selection Committee for the purpose. The same was done and *these appointments are by way of regularisation* The University can appoint a teacher on special stipulations - conditions which may not be in accordance with the normal mode of appointment as alleged by the petitioner”. G H

A This shows regularisation, appointment as teacher to these Research Associates/Evaluators was because they were working as such for a long time and hence for equity, justice and fair play it was reasonable to do this.

The relevant Executive Council Resolutions No. 20 dated 16th January, 1986 and No. 33 dated 30th May, 1986 as referred and incorporated in this counted affidavit are also reproduced below :-

B “Resolution No. 20 dated 16th January, 1986. The Council considered the report of the committee constituted by the Vice Chancellor and decided as under:-

C 1. That the Research Associateship should be a wasting/vanishing cadre and that no future appointment of Research Associates be made in any Department/Wing of the University.

D 2. That the existing Research Associates who have been appointed in various Departments/Wings against regular/vacant available positions of lecturers, may be allowed to continue as such till the vacancies are filled on regular basis after due advertisement etc.

E 3. For those Research Associates who have been appointed against the positions created by the Executive Council for individual departments/wing, they be allowed to continue till their permanent absorption through a regular selection committee against regular positions of lecturer in the different departments/wings. As and when any of them secures regular appointments in any position or leaves the university the said position of the said Research Associate shall stand abolished with immediate effect. No further recruitment in this cadre will be made henceforth.

F 4. The Council further decided that the following facilities be provided to the existing Research Associates working in the Directorate of Correspondence Courses.

G (a) They shall be allowed to contribute towards the contributory provident fund with usual share of University contribution as per rules.

(b) They shall be allowed to participate in different symposia/seminars/summer institutes connected with that particular subject.

H (c) They shall be provided the medical facilities as provided to other

employees of the University.

A

The council also, decided that the same committee as has been constituted by the Vice Chancellor in respect of Research Associates, will consider and examine the issue of evaluators alongwith the question whether, the evaluators are teachers or not, and submit its report to the Executive Council.”

B

“Executive Council *Resolution No. 33 dated 30th May, 1986:*

“The Executive Council after a detailed discussion on the issue of evaluators and Research Associates (as per item No. 34), in the context of their academic qualifications, nature of duties, academic and administrative implications, vis-a-vis service put in the University by most of them, and the recommendations of the committee constituted by the Executive Council earlier to go into the matter, decided as under:-

C

1. That all Evaluators and Research Associates be regularised in their existing designation/post and scale with immediate effect.

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2. Their suitability towards their appointment as Lecturers be ascertained by the Statutory Selection Committee before which only the present incumbents would appear and compete, if necessary amongst themselves. Those who do not get selected will continue as such till their appointment against regular posts of Lecturers.

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3. All service benefits will accrue to them as in the case of regular employees of the University.

4. Research Associates and Evaluators be designated as lecturers. Their services will be regularised after undergoing the formality of selection through the Statutory Selection Committee. In case any vacancy of lecturer is vacant in any department/Evening College/ Directorate of Correspondence Courses, they will be adjusted against such posts.

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5. No future appointment, *ad hoc* or otherwise will be made as Research Associates in any department or Evaluators in the Directorate of Correspondence Courses.”

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In view of the aforesaid stand of the University, the Evaluators and Research Associates were required only to face the Statutory Selection

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A Committee for their regularisation as lecturers.

Learned counsel for Dr. Abha Malhotra adopted the arguments of learned counsel for the appellant in Civil Appeal No. 13709/96. He clarified only difference of her case was the wrong allegation against her that she was related to the Vice Chancellor which in review, the High Court deleted. Similarly, the other appellant Dr. Meera Massey also adopted the submission of the aforesaid learned counsel in her appeal.

Having heard learned counsel for the parties and perused the affidavits, we find there is no Resolution of the Executive Council which specifically spells out appellants promotion. It is also not in dispute that the appellants, either as Research Associates or Evaluators were withdrawing pay much below that of Lecturer. It is also admitted that they were performing the duties of teachers and taking classes. It is also not in dispute that their appointments initially were temporary and was so till the regular appointment to the post of Lecturers is made. It is also not in dispute that the post of Research Associates and Evaluators are not referred to in the Act, Statutes or Ordinances. Ordinance 35.8 empowers the Executive Council to fix the minimum qualifications for each post or class of post and also to lay down whether the post or class of posts are to be filled up by direct recruitment or promotion or by both. Ordinance 35.11(b) refers that whenever a vacancy is to be filled up by direct recruitment, the post in category 'A' and 'B' shall be through advertisement specifying the minimum eligible qualification. It is also not in dispute that these posts since long time are only being filled by direct recruitment under the said provision and till the present disputed case no case to the contrary was brought to our notice. From the stand of the University it is clear that the University felt that since these appellants continued to teach as Research Associates/Evaluators for a long time, hence on the principle of equity, justice and fair play, their real status of teachers be recognized. Hence, the Executive Council took the decision to regularise their appointments as teacher. From the counter affidavit, as reproduced above, the stand of the University is that they have appointed these teachers on special *stipulations conditions* which is apart from the normal mode of appointment. This is how the University has tried to justify these appointments, i.e., on special circumstances and on the principle of equity, justice and fair play, not under any specific provision of Statute, Ordinance etc. If this be so how could this be the appointments by way of promotion. If University resolved to promote, there was no difficulty to say so instead to take shelter of 'equity' justice and fair play and justify it under special stipulated condition.

The Resolution of the Executive Council clearly depicts that initially when the First Resolution dated 16th January, 1986 was passed the thinking of the University was different. They resolved, Research Associates were wasting and vanishing cadre, no such future appointment be made but those already appointed to the various departments be permitted to continue on the regular/vacant available post of Lecturers till the vacancies are filled on *regular basis* after due advertisement, it further resolved even those Research Associates, who were appointed against the post created by the Executive Council, be also continued till be permanent absorption through a regular selection committee. The Executive Committee till this time was not thinking of any special stipulation/conditions but to let them continue till regular selection takes place nor it thought to promote them. It seems on 30th May, 1986 the Council resolved that all such persons be regularised in their existing designation with immediate effect and their suitability for appointment as Lecturer be through the Statutory Selection Committee. In fact even those who were not to be selected through Statutory Selection Committee their continuance was also secured as the Resolution further stated "those who do not get selected will continue as such till their appointment against regular posts of Lecturers". The Resolution also records that "their services will be regularised after undergoing the formality of selection through the Statutory Selection Committee."

The question arises why this special stipulation was resorted to by the University when they could have filled up the post of lecturers on a regular basis in accordance with the existing Ordinance. Is it not, the university sat for number of years to fill the vacancies of Lecturers at the cost of students and permitted adhocism and stop gap arrangement for a long time to bring in articulated sympathy to justify special stipulated condition. Even if one has all the minimum qualification for a higher grade post and is on a much lower grade of scale of pay, it is never desirable to regularise such persons as standard of selection criteria for both is bound to be different even scrutiny of selection and sphere of competition is bound to be different. Regularisation excludes large number of very competent persons who if given opportunity was available would have applied. It is a slackness inertness may be in some cases, to which we are not adjudicating, for favouring particular person. This leads to a situation as the present case *viz.* the sympathy and in—drawing principle of equity, justice and fair play to regularise adhocism, justifying merely on eligibility criteria. Selection of teacher has not to be on minimum eligibility but best available from a larger sphere. Nor from the limited sphere of adhoc or stop gap appointees. This affects teaching standard of university

- A and output of student-at-large. In fact adhocism in any class of service may be class IV, is deprecated but in our opinion it should never be a principle in the cases of appointment of Teachers, Readers and Professors. Ordinance 35.8 as aforesaid empowers the Executive Council to lay down whether the post or class of posts are to be filled up by direct recruitment or promotion.
- B In the present case, the Executive Council has not resolved to fill up the post of Lecturers by way of promotion but to treat the incumbents already working therein to be regularised. Even if it has power, it never resolved as such. There is distinction between regularisation and promotion. Regularisation means, one which is already working, doing or has done something which law did not permit but the same is being regularised, treated to be done in accordance with law, treat one as such. Hence in such cases regularisation cannot be said to be a promotion as contemplated under the Ordinance 35.8. In para four of the Executive Council Resolution dated 30th May, 1986 the Research Associates and Evaluators were resolved to be treated as Lecturer. Here University did it by itself without even following the procedure of promotion as noticed and in the same breath directed for regularisation. Could this be said to be desirable?
- D

- E It is not pleasant to think that as high an institution as University has to regularise something under cover of his own fault. The post of Research Associates/Evaluators is not provided as aforesaid under Act, Statute or Ordinances. It is vanishing cadre, it was only created in 1984 and resolved to end in 1986. Hence it is not necessary to record the finding that they are teachers within the meaning of Section 2 (15) of the Act. Even if it is accepted as such they will also be held to be covered by category 'A' which includes teachers as per Ordinance 35.53 and then to such the selection and appointment could only have been by advertisement by virtue of Ordinance 35.11 (b).
- F However, their appointment as Research Associate/Evaluator is not a matter of Challenge.

- G University imparts education which lays foundation of wisdom. Future hopes and aspiration of the country depends on this education, hence proper and disciplined functioning of the educational institutions should be the hallmark. If the laws and principles are eroded by such institutions it not only pollutes its functioning deteriorating its standard but also exhibits to its own students the wrong channel adopted. If that be so, how such institutions, could produce good citizens. It is the educational institutions which are the future hopes of this country. It lays the seed for the foundation of morality, ethics and discipline. If there is any erosion or descending by those who
- H

control the activities all expectations and hopes are destroyed. If the institutions perform dedicated and sincere service with the highest morality it would not only uplift many but bring back even limping society to its normalcy. As we have already recorded above from the stand of University itself that this was done as a special stipulation circumstances not in accordance with the normal mode of appointment, we depreciate this and record that in future such situation should not be brought in for taking such decisions at the cost of recognised regular selection of teachers.

It is pertinent to refer to the Report of the *University Education Commission* (December 1948 - August 1949) popularly known as the Report of the *Radhakrishnan Commission*, Vol, I. (1949), p. 79.

“We must reiterate our warning against the growth of certain tendencies which are unhealthy. One is inbreeding. Universities are more and more inclined to recruit their staff from among their own students and teachers. Secondly, there is negligence in applying criteria of merit in the selection of their lecturers. The first breeds narrow parochialism and leads to stagnation. The second is dangerous because it encourages favouritism, depreciates the value of the work of the lecturers and gradually vitiates the whole atmosphere of the University, for the Lecturer of today is Reader and Professor of tomorrow. For University appointments there should be no criteria other than that of merit”

Similarly another *Report of the Committee on some problems of University Administration, 1964 (1967)* is reproduced below :

The most important factor in the field of higher education is the type of person entrusted with teaching. Teaching cannot be improved without competent teachers..... The most critical problem facing the universities is the dwindling *supply of good teachers*. The Supply of the right type of teachers assumes, therefore, a vital role in the educational advancement of the Country. *We, therefore, recommend that teachers should be selected purely on the basis of their merit through regularly constituted selection committees on which there should be outside experts.*

These reports have been given few decades back but in spite of long passage of time the suggestions and guidance still holds good. But we find this still not been applied dissolving all the efforts of these commissions. It

A needs no direction when laws of the universities are framed it is to be adhered to viz. Act, Statutes and Ordinances. Even for regularisation there has to be if any the law to be prescribed certainly not on parity with the general principle of law of Industrial workmen or class IVth employees, casual or daily worker. It is an appointment of teacher. Whenever vacancies of teachers arise they should be promptly filled up by following the procedure as laid down under the University Laws, lest students suffer.

However, we find that all the appellants have been regularised as teacher and appointed as Lecturers approved by the Executive Council since 1986 more than 11 years back. Respondent No. 1 Dr. Mehrotra very fairly states he has nothing against these appellants. They are all competent teachers fully qualified to be appointed as such. We feel setting aside and disturbing their appointments now would create great turmoil and would affect the teaching in the University and, in turn, the students at large even to the appellants also, who in the hope continued for long. We feel it would not be appropriate on the facts and circumstances of this case to set aside their appointments as teacher. In *Shainda Hasan v. State of Uttar Pradesh and Others*, [1990] 3 SCC 48) it was a case where appointment of the Principal was held to be illegal but since she was working in the college for 16 years it was felt to be unjust to make her leave the post, hence in spite of that she was permitted to continue.

However, we want to make it clear this approval of their continuing on the posts of lecturer, in view of their working for such a long period should not be treated as a precedent. This had been done on the facts and circumstances of this case. Through this judgment we want to make it clear that every institution especially the universities while making appointment of lecturers should not create a situation so that they have to condone their own illegality by regularisation. They should act promptly by filling up such vacancies in accordance with law. Their appointments should be strictly on merit as they are fibre and strength of the University on which future generation depends.

So far as the case of appellant Dr. Meera Massey is concerned, the contention by Dr. Mehrotra is that she was not even approved by the Statutory Selection Committee, as it did not select her as a Lecturer in Education as she was only Evaluator in Sociology. Since the University failed to place the original proceeding of the Selection Committee which would have put an end to the controversy whether she was interviewed for her appointment

as Lecturer in Education, inference was drawn by the High Court in the absence of original records produced that she was not considered and recommended by the Selection Committee for appointment as Lecturer in Education. Though there was observation of her competence as Lecturer. However, since the qualification of the appellant Dr. Meera Massey to be appointed as Lecturer in Education is not disputed as she passed M.Ed. examination in July, 1975, M.Phil in Education from this very University and stood first and awarded gold medal and later did even Ph. D. in Education while being Evaluator. The dispute, if any is whether the Selection Committee approved her for Sociology or Education notwithstanding the findings of the High Court in the situation as aforesaid, we feel for the same reason as she has also been working for a very long period approved by the Executive Council we are not disturbing her appointment as Lecturer on the facts and circumstances of this Case.

For the aforesaid reasons though we deprecate the situation which was brought in by the University which created a situation for special stipulation, deviating from the normal mode, but in view of what we have said above we uphold appellants appointments as Lecturers. Accordingly all the three appeals are allowed with the aforesaid observations. Cost on the parties.

S.V.K.I.

Appeals allowed.