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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.135 OF 2002

Dr. U. A. Vinay Kumar,
Major, married, Indian National,
Resident of B-11,
Goa University Campus,
Taleigao Plateau, Goa
403 206, Lecturer- Senior
Scale, in Philosophy,
Department of Philosophy,
Goa University, Taleigao Plateau,
Goa 403 206. ... Petitioner

Vs.

1. His Excellency,
The Chancellor, Goa University,
Cabo Raj Bhavan, Dona Paula,
Goa.
2. Goa University,
Established under The Goa
University Act, 1984,
Taleigao Plateau, Goa
403 206, Through its Vice
Chancellor.
3. Dean, Faculty of Social Sciences,
Goa University, Taleigao Plateau,
Goa 403 206.
4. Prof. Dr. Agnelo Vital Afonso,
Major, married, Indian National,
Professor & Head of the
Department of Philosophy,
Goa University, Taleigao
Plateau, Goa 403 206. .. Respondents.

Mr. S. G. Dessai, Senior Advocate with Mr. D. B. Ambekar,
Advocate for the petitioner.

Ms. S. Linhares, Additional Government Advocate for
respondent no.1.

Mrs. A. Agni, Advocate for respondents no.2 and 3.

Respondent no.4 absent, though served.

CORAM : A. P. LAVANDE &

U. V. BAKRE,JI

Reserved on : 9th April, 2012

Pronounced on : 18th July, 2012

JUDGMENT : (Per A. P. LAVANDE, J.)

Heard the learned Counsel for the parties.

2. Briefly, the case of the petitioner is as under :

The Government of Goa issued notification dated 01/12/1984 in which The Goa University Act, 1984 ('The Act' for short) was published. Pursuant to the said Act, the Goa University- respondent no.2 was established in June 1985. The petitioner was appointed as a Lecturer in Philosophy at respondent no.2 University on 25/09/1987. In the year 1988, respondent no.2 published several Statutes made by it from time to time. On 05/02/1992, the University published 1991 Regulations. Regulation 3B read with note 2 provides for further promotion from the post of Lecturer to Lecturer (Senior Scale) and relaxation for three years for Ph.D. According to the petitioner, he became eligible for the promotion to post of Lecturer (Senior Scale) with effect from

06/07/1992. On 27/06/1994, the petitioner was promoted as Lecturer (Senior Scale) with retrospective effect. On 19/06/1996, the petitioner was informed about Departmental Council (DC) meeting which was to be held on 24/06/1996 for preparing time-table of Philosophy Department. In the meeting, it was held that Indian Philosophy was distributed to two Lecturers which according to the petitioner, was contrary to University Ordinance 0.21.10. In terms of the decision taken in the meeting, time-table was displayed on 01/07/1996. Time-table was recast on 15/07/1996. Since the petitioner was aggrieved by the time-table, he made representation to Dean against the time-table on 31/07/1996. Thereafter, he sent two reminders to Dean in August and September 1996. The petitioner made representation dated 21/09/1996 to the Vice Chancellor. On 30/09/1996, new time-table was notified excluding the petitioner altogether. The petitioner again made representation to the Vice Chancellor in January, 1997 and to the Dean in June, 1997. On 14/10/1997, the petitioner was appointed as Honourary Director Extramural Studies which post was directly under the Vice Chancellor. Thereafter, the petitioner made several representations to the Dean and also to the Chairman of Faculty Board and also to Vice Chancellor. The appointment of the petitioner as Director was extended on 30/04/1998 and 19/05/1999. It is

further the case of the petitioner that amended Statutes of 2000 for CAS were issued with retrospective eligibilities in the year 2000 and 5th Pay Regulations 2001 were issued for CAS related to 01/01/1996 onwards. According to the petitioner, the Statute SA-19(xi)(4)(d) is contrary to the regulations made by the University Grants Commission constituted under the University Grants Commission Act, 1956 in exercise of the power conferred under Section 26(1)(g) of the said Act. Thereafter, the petitioner made various representations to Vice Chancellor, the Assistant Registrar and also to the Head of Department. Thereafter, the Goa University appointed One Man Fact Finding Committee in November, 2000. The petitioner demanded teaching allocation and Career Advancement Scheme by making representation dated 08/12/2001 to the Vice Chancellor.

3. The petitioner filed the present petition on 17/04/2002. Teaching duty was allotted to the petitioner from 04/09/2002. The University conducted first CAS consideration under 5th Pay from July, 2004 onwards. On 10/05/2002, the petitioner was promoted to the post of Reader in Philosophy under Statute SA-19 and upon recommendations from the Selection Committee and approval of the Executive Council. The appointment was effective from

01/12/2002. It is the case of the petitioner that the petitioner was eligible on 06/07/1996. The petitioner thereafter carried out amendment to the petition. The petitioner was placed as Head of Department for the period 01/10/2004 to 03/09/2006 in the absence of respondent no.4. On 08/04/2008, the petitioner was informed by the Executive Council that his representation to give post to him as Reader with effect from 06/07/1996 and to consider him for the post of Professorship had not been approved since the matter was *sub-judice*. The petitioner thereafter carried out second amendment to the petition.

4. Though several reliefs have been claimed in the petition, at the hearing of the petition, Mr. Dessai, learned Senior Counsel has pressed the following reliefs :

(aa) Without prejudice to prayer (b) and failing prayer (b), for a writ direction or order in the nature of mandamus, commanding the respondents, to relate back the petitioner's promotion as Reader, to 27th July, 1998, that is, to the starting date of implementation of University Grants Commission Scheme, with all consequential benefits, including eligibility for

further Advancement to the post of Professor by purging the illegal malafide stagnation.

(aaa) For a writ of mandamus or any other writ direction or order in the nature of mandamus, commanding the respondents to consider the petitioner for promotion, under University Grants Commission Scheme, to the post of Professor, immediately in his Career Advancement, with effect from 06/07/2004 with all consequential benefits, purging the illegal malafide stagnation.

(aaaa) Without prejudice to the prayer (aaa) and failing the prayer (aaa) for a writ of mandamus, or any other writ, commanding, the Respondents to consider the petitioner for promotion, under the University Grants Commission's scheme, to the post of Professor, in his career advancement w.e.f. and close of the 10 year period of Fifth pay regime, that is before 31/12/2005, with all consequential benefits, purging the illegal malafide stagnation.

(c) For a writ of certiorari, or any other appropriate writ order or direction in the nature of certiorari, for quashing and setting aside the provision, made by the respondent University in SA-19(xi)(4)(d).

5. On behalf of respondents no.2 and 3, affidavits have been filed opposing the writ petition filed by the petitioner. It is the case of respondents no.2 and 3 that in

April, 1992, the petitioner was not eligible for the post of Reader. Pursuant to the advertisement published in the year 1995, interviews were held in February, 1995 in which the petitioner participated, but he was not selected. Again the posts of two Readers and one Lecturer were advertised in the year 1996. But the posts of Reader were not filled as nobody was selected by the Selection Committee for the said posts. Similar was the case in the years 1997 and 1998. It is further the case of the said respondents that the petitioner is eligible for consideration for placing in the Lecturer Selection Grade (Reader) in terms of Statute SA-19 with effect from 06/07/1997 subject to the decision of Screening Committee. It is further their case that the petitioner can be designated as Reader only after screening is done by the Screening Committee and not automatically. The Departmental Council in terms of the meeting held on 24/06/1996 had allotted certain workload in terms of the time-table framed and approved. However, the petitioner refused to take lectures and made representation dated 25/06/1996 stating therein that it was not possible for him to teach arbitrarily and illegitimately divided course in a piecemeal manner forcibly assigned to him by the Head of the Department of Philosophy. A copy of the said representation has been annexed to the affidavit. Since the petitioner failed to engage lectures on the

topics allotted to him by the Departmental Council, the teaching work allotted to the petitioner was withdrawn and was assigned to other Lecturers so as not to disrupt and affect the academic course and in the interest of the students. The entire time-table was re-arranged with effect from 30/09/1996. There were several complaints made by the students to the Head of the Department of Philosophy that no lectures were delivered on the subject allotted to the petitioner. It is, therefore, the case of respondents no.2 and 3 that in fact the petitioner was not banned from teaching duties, but it was the petitioner himself who abstained from exercising his duties as is evident from his letter dated 21/09/1996. In the affidavit, reference has been made to letter dated 12/02/1997 addressed by the petitioner to the Dean of Faculty of Arts in which the petitioner had withdrawn the complaints made by him against the Head of Department of Philosophy i.e. respondent no.4 herein. A copy of the said letter has been annexed as R4 to the affidavit dated 01/07/2002 filed by Shri Jayant Budkuley, the then Registrar of respondent no.2.

6. In further affidavit filed by the Registrar dated 19/07/2002, it has been, *inter alia*, stated that attempts were made to fill the post of Reader which could be filled either by

way of direct recruitment or also by Career Advancement, but no candidate was found suitable for appointment as a Reader by direct recruitment. The petitioner was also not found suitable for the appointment to the post of Reader by the Selection Committee in terms of Statute SA-19. It is the case of the respondents no.2 and 3 that the allegation of the petitioner that the post of Lecturer Selection Grade/ Reader is created by University in contravention of UGC Standards, is unsustainable in law in view of Regulations 2000.

7. Respondent no.2 filed additional affidavit of its Registrar Dr. Mohan Sangodkar dated 31/07/2006 in which it has been stated that the petitioner has been allotted duties since 2002 and at the relevant time, the petitioner was the Head of Department of Philosophy. It has been further stated that the petitioner appeared before the Screening Committee on 10/07/2004 and the petitioner was promoted to the post of Reader in Philosophy with effect from 01/12/2002 in terms of Statute SA-19 by order dated 10/05/2005. It has been further stated that the report of one man committee was placed before the Executive Council on 29/07/2002 and the same was rejected by the Executive Council as being one sided and biased. A copy of the minutes of meeting held on 29/07/2002 has been annexed to the affidavit. It is further case of

respondent no.2 that the petitioner is not entitled to be promoted as Reader either with effect from 06/07/1996 or 27/07/1998. The Screening Committee constituted by the University considered the case of the petitioner and suggested his promotion as Reader with effect from 01/12/2002. According to the said respondents, there were no consistently satisfactory appraisal report in respect of the petitioner prior to December, 2002 which is a mandatory requirement in terms of Statute SA-19(XI).

8. Further affidavit dated 15/04/2009 of Dr. Mohan Sangodkar, the Registrar of respondent no.2 has been filed in which it has been, *inter alia*, stated that the Screening Committee considered that due to abandonment of teaching duties by the petitioner, there were no satisfactory self-appraisal report of him prior to 01/12/2002 from September, 1996 and the petitioner had reported to teaching duties from 04/09/2002 and completed satisfactory teaching work by December, 2002. The petitioner in order to be eligible to be promoted as Reader ought to have APR for 5 years whereas till 29/09/1996 when he abandoned teaching duties, he had APR only of four years completed and balance teaching work completed by him only by December, 2002. As such, the petitioner is not entitled to be promoted with effect from July,

1998 as contended by him. In further affidavit dated 07/03/2011 filed by Professor P. V. Dessai, Registrar of respondent no.2, it has been, *inter alia*, stated that although the petitioner was not to be considered for CAS upgradation to Professorship, yet his case was forwarded for consideration. But he did not receive three positive assignments for his publications. According to the respondents, negative opinion was given by the external experts and as such, the allegation made against respondent no.4, who was also a member, has no substance.

9. To sum up, it is the case of respondents no.2 and 3 that the action of respondents no.2 and 3 in promoting the petitioner to the post of Reader with effect from 01/12/2002 cannot be faulted.

10. Mr. Dessai, learned Senior Counsel appearing for the petitioner invited our attention to the statutes of respondent no.2, more particularly SA-19(xi)(4)(d) dealing with Career Advancement and submitted that the petitioner having been promoted as Lecturer (Senior Scale) with effect from 06/07/1992 is entitled to be promoted as Reader with effect from 27/07/1998 i.e. the date on which the University Grants Commission Scheme was implemented by respondent

no.2 since the petitioner had completed five years service in Senior Scale. Learned Senior Counsel further submitted that SA-19(xi)(4)(d) which deals with the promotion of Lecturer (Senior Scale) to Lecturer (Selection Grade/ Reader) is contrary to regulation framed by University Grants Commission. As such, respondent no.2 has no jurisdiction to frame statute SA-19(xi)(4)(d) contrary to the regulation framed by University Grants Commission ('UGC' for short) and the same is liable to be quashed and set aside being patently illegal and without jurisdiction. According to the learned Senior Counsel, respondent no.2 could have framed Statutes in consonance with the regulations framed by University Grants Commission Act, 1956. According to learned Counsel, it is only the Union of India acting through UGC, can frame regulations dealing with the qualification required for particular course University and laying down criteria for promotion to various posts in terms of entry 66 of List 1 of Schedule 7 of Constitution of India. According to the learned Senior Counsel, the petitioner ought to have been promoted as a Reader at least with effect from 27/07/1998 and not from 01/12/2002 as per the decision of respondent no.2. Learned Senior Counsel further submitted that the petitioner ought to have been promoted to the post of Professor in terms of statute SA-19(xi)(4)(e) which prescribes

period of 8 years service as a Reader for consideration of promotion to the post of Professor. According to learned Senior Counsel, note to statute SA-19(xi)(4)(e) is clearly attracted in the present case which has not been considered by respondent no.2 thereby depriving the legitimate right of the petitioner to be promoted as professor with effect from 06/07/2004. Learned Senior Counsel further submitted that respondent no.2 could not have considered the petitioner for the post of Professor in the year 2008. Learned Senior Counsel, therefore, submitted that the petitioner is entitled to be promoted to the post of Reader with effect from 27/07/1998 and as Professor with effect from 06/07/2004 with all consequential benefits.

11. Mrs. Agni, learned Counsel appearing for respondent no.2 submitted that the challenge of the petitioner to statute SA-19(xi)(4)(d) is not maintainable since the petitioner has not shown as to how the same has caused prejudice to the petitioner in the matter of promotion. Learned Counsel further submitted that statute SA-19(xi)(4)(d) is not contrary to the regulations framed by UGC in terms of the University Grants Commission Act, 1956. Learned Counsel further submitted that the petitioner has not laid foundation in support of the challenge to statute SA-19(xi)(4)

(d) and in the absence of any such foundation and the petitioner having not shown any prejudice having been caused to him by the said statute, no case has been made out by the petitioner for quashing and setting aside statute SA-19(xi)(4)(d). According to learned Counsel, the petitioner had no teaching experience inasmuch as the petitioner refused to take teaching classes from September, 1996 and as such, minimum period of five years required for promotion to the post of Reader, was not satisfied by the petitioner. According to the learned Counsel, the petitioner continued taking teaching classes only in the year 2002 and it was only in the year 2002 that the petitioner completed five years' period and as such, no fault could be found with respondent no.2 in promoting the petitioner to the post of Reader with effect from 01/12/2002. Learned Counsel further submitted that the petitioner has not seriously disputed that he had not discharged teaching duties from September, 1996 till 2002 and for some time during this time, he was appointed as Honourary Director Extramural Studies. Learned Counsel further submitted that the petitioner having been given timetable in the year 1996 could not have refused to take classes in respect of European Philosophy on the count that he was qualified only in Indian Philosophy. According to learned Counsel, the petitioner was bound to comply with the decision

of the Departmental Council on 24/06/1996 and discharge the duties of giving lectures in terms of the said time-table which the petitioner has chosen not to do, which clearly disentitles the petitioner from contending that he is entitled to be promoted to the post of Reader with effect from 27/07/1998. Learned Counsel further submitted that the petitioner has nowhere pleaded that he complies with the necessary requirements for being promoted to the post of Reader with effect from 27/07/1998 inasmuch as the promotion to the post of Reader from the post of Lecturer (Senior Scale), is not automatic and the petitioner has to comply with the requirement mentioned in the statute SA-19(xi)(4)(c) for the purpose of promotion to the post of Reader. According to the learned Counsel, there is serious dispute regarding the contention of the petitioner that he was not allowed to teach by respondent no.2 and this contention being disputed question of fact, is not fit to be decided in the present writ petition. Learned Counsel further submitted that the petitioner has further admitted that from September, 1996 till 2002, the petitioner did not discharge teaching duties and as such, it is evident that the petitioner had not complied with essential conditions mentioned in Statute SA-19(xi)(4)(c) for being promoted as Reader. Learned Counsel further submitted that the ground that statute SA-19(xi)(4)(d) framed

by respondent no.2 is in violation of regulations, has not been taken specifically in the petition and in any case, the statutes framed by the University are in consonance with the regulations framed by UGC. Learned Counsel further submitted that the petitioner had himself claimed the post of Reader with effect from 06/07/2000 in terms of communication dated 25/03/2000 and another communication dated 17/08/2000 addressed by the petitioner to the Vice Chancellor, Goa University and, therefore, the petitioner at this stage, is not entitled to contend that he is entitled to be promoted to the post of Reader with effect from July, 1998. Learned Counsel further submitted that the petitioner having accepted the appointment as Reader with effect from 01/12/2002, is not entitled to contend that he is entitled to be promoted to the post of Reader with effect from July, 1998 and as Professor with effect from 06/07/2004. Learned Counsel further submitted that statute SA-19(xi)(4)(e) and more particularly note thereof is not attracted in the case of the petitioner inasmuch as the petitioner has not pleaded any hardship and in any case note is applicable in a case where the candidate has not completed the minimum number of years in the feeder cadre which case is not attracted in the case of the petitioner. Learned Counsel further submitted that in the year 1997, the petitioner was not eligible to be

promoted as Reader inasmuch as teaching experience for the period of five years' self-appraisal was not available with him in the year 1997 since admittedly the petitioner was not discharging teaching duties and as such, the action of respondent no.2 in promoting the petitioner as Reader with effect from 01/12/2002 cannot be faulted. Learned Counsel further submitted that there is no allegation of malafide except against respondent no.4 and as such, the stand taken by the University on the basis of the views of the experts, deserves to be accepted. In support of her submissions, Mrs. Agni placed reliance upon the judgment of the Apex Court in the case of Basavaiah (Dr.) Vs. Dr. H. L. Ramesh and Others; (2010)8 SCC 372 and State of Andhra Pradesh and others Vs. McDowell and Co. and others; AIR 1996 SC 1627.

12. We have carefully considered the rival submissions, perused the record and the judgments relied upon by Mrs. Agni.

13. In view of the rival submissions, the following issues arise for determination in the present petition :

- (i) Whether the petitioner is entitled to be promoted to the post of Reader with effect from

27/07/1998 with all consequential benefits ?

(ii) Whether the petitioner is entitled to be promoted to the post of Professor with effect from 06/07/2004 with all consequential benefits ?

(iii) Whether statute SA-19(xi)(4)(d) is liable to be struck down ?

14. Before dealing with the rival contentions, it would be appropriate to quote Statute SA-19(xi)(4)(c)(d) and (e), upon which reliance has been placed by both the sides. They read thus :

“Statute SA-19(xi)(4)(c)-Reader (Promotion)

A Lecturer in the Senior Scale will be eligible for promotion to the post of Reader if he/ she has;

- (i) Completed 5 years of service in the Senior Scale;
- (ii) Obtained a Ph.D. degree or has equivalent qualification;
- (iii) Made some mark in the areas of scholarship and research as evidenced e.g. by self-assessment, reports of referees, quality of publications, contribution to educational innovation, design of new courses and curricula and extension activities;
- (iv) After placement in the Senior Scale participated in two refresher courses/ summer institutes of approved duration or engaged in other appropriate continuing education

programmes of comparable quality as may be specified or approved by the University Grants Commission; and

(v) Possesses consistently good performance appraisal reports.

Statute SA-19(xi)(4)(d) - Lecturer (Senior Scale) to Lecturer (Selection Grade/ Reader)

Every Lecturer in the Senior Scale will be eligible for placement in the grade of Lecturer (Selection Grade)/ Reader in the scale of Rs.12,000-420-18300 if he/ she has :

(i) Completed five years of service as Lecturer (Senior Scale);

(ii) Such a lecturer moving into this grade shall be designated as Reader provided if he/ she has a Ph.D. degree;

(iii) Made some mark in the areas of scholarship and research as evidenced by self-assessment, report of referees, quality of publications, contribution to educational innovation, design of new courses and curricula etc.,

(iv) Has participated in two refresher courses each of approximately three/ four weeks duration or engaged in other appropriate continuing education programme of comparable quality as may be specified by the U.G.C. from time to time and;

(v) Consistently satisfactory Performance Appraisal Reports.

Statute SA-19(xi)(4)(e) - From Reader to Professor

A Reader with a minimum of eight years of service will be eligible for consideration for appointment as a Professor.

Note :1. If the number of years required in a feeder cadre are less than those stipulated, thus entailing hardship to those who have completed more than the total number of years in their entire service for eligibility in the cadre, shall be placed in the next higher cadre after adjusting the total number of years.

2. The benefit of career advancement is available to teachers only."

15. From the pleadings of the parties to which reference has been made hereinabove, it is evident that the petitioner stopped taking classes with effect from September 1996 and it was only in the year 2002 that the petitioner took the classes as per the allotment made by the Departmental Council. It is the case of the petitioner that respondents no.2 to 4 could not have framed the time-table arbitrarily and the petitioner could not have been asked to deliver lectures in European Philosophy and the petitioner ought to have been allotted the subjects of Indian Philosophy. It is the case of the said respondents that the decision to allot workload was taken in the meeting held by Departmental Council on

24/06/1996 in terms of which the time-table was framed and it was the petitioner, who refused to take lectures and thereafter, made several representations against the allotment of workload. The petitioner has not disputed that it was only in the year 2002 that he started taking classes in terms of the workload allotted to him and from June 1996 till 2002, he had not delivered lectures. Once Departmental Council in the meeting held on 24/06/1996 had allotted workload to different lecturers, it was obligatory for all the concerned lecturers to take lectures accordingly. However, the petitioner chose not to take lectures on the ground that the decision to allot workload was arbitrary inasmuch as the petitioner could not have been called upon to deliver lectures in European Philosophy since he was qualified only in Indian Philosophy. In our considered view, the petitioner could not have refused to take classes in terms of workload allotted to him in the meeting held by Departmental Council on 24/06/1996. Thereafter, the petitioner started taking classes only in September 2002 as per the workload allotted to him. This being the position, the stand taken by respondents no.2 and 3 that the petitioner was not eligible for being promoted to the post of Reader since he had no five years teaching experience in Senior Scale, deserves to be accepted. From perusal of clause (d) of Statute SA-19-(xi)(4), it is evident that

the lecturer in the Senior Scale has to complete five years of service in Senior Scale for being eligible for promotion to the post of Reader and has to also comply with clauses (iii), (iv) and (v) of clause (d) of Statute SA-19-(xi)(4). Clause (v) of Statute SA-19-(xi)(4) mandates that the Lecturer (Senior Scale) must possess consistently good Performance Appraisal Report. The petitioner having not completed five years service in the Senior Scale as on 27/07/1998, he is not entitled to be promoted to the post of Reader with effect from 27/07/1998. Therefore, no fault can be found with the action of respondents no.2 and 3 in promoting the petitioner to the post of Reader with effect from 01/12/2002 since in the year 2002, the petitioner had completed five years of service in the Senior Scale.

16. Insofar as the promotion of the petitioner to the post of Professor is concerned, it is the case of the petitioner that he is entitled to be promoted to the post of Professor with effect from 06/07/2004. From a bare reading of clause (e) of Statute SA-19-(xi)(4), it is clear that a Reader with minimum 8 years of service will be eligible to be considered for appointment as a Professor. Note-1 annexed to clause (e) of Statute SA-19-(xi)(4) provides that if the number of years required in feeder cadre are less than those stipulated, thus

entailing hardship to those who have completed more than the total number of years in their entire service for eligibility in the cadre, shall be placed in next higher cadre after adjusting the total number of years. Firstly, the petitioner has not laid any foundation in support of the hardship caused to him. Moreover, the communication dated 21/02/2002 addressed by Dr. Mrs. Pankaj Mittal, Joint Secretary, University Grants Commission upon which reliance has been placed by respondents no.2 and 3, discloses that for promotion from the post of Reader to Professor under Career Advancement Scheme besides experience of 8 years as a Reader, the Reader has to submit self-appraisal report for the period including five years before the date of eligibility and has also to satisfy the following :

- (i) Self-appraisal report for the period including five years before the date of eligibility must be submitted.
- (ii) Minimum of five research publications out of which two could be the books, should be submitted for evaluation/ assessment before the interviews.
- (iii) The assessment of the research publications, including the books, should be done by three eminent experts in the subject which shall be different than those called for interview to be conducted later on.
- (iv) All the recommendations must be positive from

the three experts. In case the recommendation of one out of the three is negative, the research publications should be sent to the fourth expert for evaluation and assessment. In all, there has to be a minimum of three positive recommendations out of the total of four experts, in case the fourth expert has participated in the exercise due to one negative report out of the initially three experts involved in evaluation.

(v) There should be a separate column in the evaluation report of the expert saying whether the research publications and books are recommended or not recommended.

17. Therefore, it is clear that in order to be eligible to be promoted to the post of Professor, a Reader has to complete not only 8 years of experience but has to also comply with the above conditions. As such, the Reader, who has 8 years of experience is not entitled to be automatically promoted to the post of Professor. Moreover, the affidavit dated 15/04/2009 filed by the Registrar of respondent no.2, discloses that in the year 2008, the petitioner had filed an application for promotion to the post of Professor under CAS and five research publications of the petitioner were sent to three subject experts for evaluation and recommendations.

Since the recommendation of one of the subject experts was negative, the publications were sent to fourth subject expert, who also gave negative recommendation. The petitioner was, therefore, not called for interview before the Selection Committee which met during June/July 2008. Thus, the petitioner was considered in the year 2008 for the post of Professor, though he had not completed eight years of service as a Reader and in terms of the Statute the petitioner was not eligible for being called for interview. In any case, once no fault is found with the action of respondents no.2 and 3 in promoting the petitioner to the post of Reader with effect from 01/12/2002, the contention of the petitioner that he is entitled to be promoted to the post of Professor with effect from 06/07/2004 is unsustainable in law. However, since the petitioner has already completed eight years of service in the post of Reader, the petitioner is entitled to apply for the post of Professor and in case the petitioner applies for the said post, respondents no.2 and 3 are expected to deal with the application in accordance with the Statutes in force.

18. Insofar as the challenge to the Statute SA-19-(xi) (4)d is concerned, firstly we find merit in the submission of Mrs. Agni that no foundation has been laid in the petition by the petitioner for declaring the said statute illegal and *ultra*

vires. Moreover, the petitioner has not been able to make out a case of any prejudice having been caused to him by virtue of the said statute. We have already held that no fault can be found with the action of respondents no.2 and 3 in promoting the petitioner as Reader with effect from 01/12/2002. The promotion of the petitioner is referable to Statute SA-19-(xi)(4)(c) which provides for promotion of Lecturer (Senior Scale) to the post of Reader. The next promotional post is the post of Professor for which a Reader with eight years of service, is eligible for consideration. Therefore, from a plain reading of Statute SA-19-(xi)(4)(c), (d) and (e), it is evident that Statute SA-19-(xi)(4)(d) does not come in the way of the petitioner from being considered to the post of Professor. It is well settled that before the provision of any statute is struck down, the petitioner has to make out infraction of his rights, which in our considered opinion, the petitioner has failed to make out in the present case. Therefore, in our considered opinion, no case has been made out by the petitioner to strike down Statute SA-19-(xi)(4)(d).

18. In the result, therefore, we do not find any merit in the petition. Rule is, accordingly, discharged.

19. As stated above, the petitioner is free to apply for

the post of Professor to respondent no.2 and in case such an application is filed, needless to mention that respondent no.2 is expected to deal with the same in accordance with the Statutes and Regulations in force.

20. Writ Petition stands disposed of in aforesaid terms. No order as to costs.

A. P. LAVANDE, J.

U. V. BAKRE, J.

SMA