

deposited income-tax in excess, which was later on returned to them. Payment of income-tax, its assessment, its excess payment or its refund had nothing to do with the liability of the accused-respondents for deducting 21 per cent tax on the amount of interest credited by them to Messrs J. R. Bansal and Company Private Limited. The provisions of section 194-A of the Act are mandatory and the accused-respondents were duty bound to comply with these provisions.

(19) Considering all the above facts and the authorities cited by both the parties, in my considered view the Courts below have fallen into an error in discharging the accused-respondents/affirming the order of discharge of the accused persons. The accused-respondents are required to prove whether there was any reasonable cause for them not to deposit the amount of balance tax of Rs. 976 on the due date. *Mens rea* is not an ingredient of this offence.

(20) Accordingly, the impugned orders are quashed. The learned Chief Judicial Magistrate, Ludhiana, is hereby directed to frame charge against the accused-respondents. The petitions under consideration are thus allowed.

J.S.T.

Before Hon'ble N. K. Sodhi, J.

DR. VEER SINGH,—Petitioner.

versus

PUNJAB UNIVERSITY, CHANDIGARH & OTHERS,—Respondents.

C.W.P. No. 2991 of 1994.

1st July, 1996.

Constitution of India, 1950—Art. 226—Punjab University Calendar Volume III, 1990—Chapter LIV—Rls. 2.1 & 3—Regulations 4, 5 & 6 of Chapter V(A)—Punjabi University Act, 1961—Clause 6 of Part-B of Chapter II—Clause 15 of Chapter I—University Grants Commission's Merit Promotion Scheme—University regulations making posts of Readers & Professors direct recruitment posts—Merit promotee professor does not form part of the cadre of professors, such merit promotion being personal to him—Merit promotee professors cannot claim seniority over directly recruited professors—Nature of appointment of the two is totally different—Merit promotee professors have no right to appointment as Chairman/Head of the Department by rotation since they do not hold a

substantive post in the cadre of professors—Appointment of respondent as Chairman quashed.

Held that, when we examine the provisions of the Merit Promotion Scheme very closely what emerges is that it is a 'flexible complementing scheme' wherein no additional posts are created and the existing persons on the basis of critical assessment of their work are promoted to the next higher level and the position is held by such incumbents as personal to them and that no resultant vacancy is required to be filled because none is created. In other words, what the scheme provides is that when a Reader is given merit promotion as a Professor, the promotion is personal to the teacher concerned and he shall continue to work as a Professor so long as he is in service. On his promotion, no additional post of a Professor is created nor is any vacancy caused in the cadre of Readers. On his ceasing to be in service either on account of superannuation or otherwise, the vacancy caused will be that of a Reader from which post he was given merit promotion and not of a post from where he has retired. Again, when a Reader is promoted as a Professor, he carries his own post to a higher level and on his ceasing to work, the post of a Reader falls vacant. Normally, when a person gets promoted from a lower post to a higher post, the post from which he is promoted falls vacant but this is not the case when a teacher is given merit promotion under the Merit Promotion Scheme.

(Para 12)

Further held, that the scheme envisages that a Reader who gets merit promotion as Professor does not become a part of the cadre of Professor and he stands outside the cadre. The promotion is obviously then to an ex-cadre post which ceases to be a post of Professor as soon as the incumbent ceases to hold the same, it being personal to him. These peculiar features of the Merit Promotion Scheme make it abundantly clear that merit promotees do not form part of the cadre or posts to which they are promoted. On the other hand, the statutory regulations framed by the University provide for appointment as Reader and Professors only through direct recruitment after the posts are advertised and applications invited from the open market. As observed earlier, the regulations do not provide for promotion to the post of a teacher i.e. either to the post of a Lecturer, Reader or Professor. In other words, a Lecturer promoted as a Reader or a Reader promoted as a Professor will not form part of the cadre of Readers and Professors respectively but only those Readers and Professors who have been directly recruited as such will form the cadre of Readers and Professors.

(Para 12)

Further held, that both a direct recruit and a merit promotee are appointed after selection by a Selection Committee but the mode and purpose of their selection is totally different. A merit promotee gets selected on the basis of an evaluation of his work in the

Department and the selection is confined to Readers and Lecturers from within the department who are eligible for such promotion. A direct recruit, on the other hand, is selected from the open market after the post is advertised. The two selections cannot, therefore, be equated. It is true that the University while giving merit promotion places the incumbent on probation though it is not the requirement of the Merit Promotion Scheme. In fact, such a promotee is not required to be put on probation at all.

(Para 13)

Further held, that since a merit promotee cannot be appointed against a substantive post in the cadre, there is no question of his fitness being determined for that post and he is, therefore, not required to be put on probation.

(Para 13)

Further held, that merely because the University on its own chooses to place a merit promotee on probation without there being any provision for in the Scheme will not equate such a promotee with a direct recruit.

(Para 13)

Further held, that the scales of pay of a direct recruit and a merit promotee even if same will not equate the two nor will it make the ratio of the decision in *Dr. Rashmi Srivastava v. Vikram University and others* J.T. 1995 (4) S.C. 51's case inapplicable to the case in hand.

(Para 14)

Further held, that a merit promotee is not a part of the cadre of posts to which he is promoted and only those who are appointed by way of direct recruitment to a substantive post in the cadre, in accordance with the procedure prescribed by the regulations after their posts are advertised form part of the cadre of posts to which they are appointed. Since the regulations and the rules framed by the University do not contain any provision for merit promotions so as to make the promotees part of the cadre, there can be no question of determining their interse seniority with those directly recruited. The merit promotees form a class by themselves who stand outside the cadre. Of course, there can be interse seniority amongst the merit promotees but that is not the dispute here.

(Para 14)

Further held, that a perusal of Rule 2.1 contained in Chapter LIV of the Panjab University Calendar Volume III, 1990 makes it abundantly clear that Chairman/Head of a Department is to be appointed from amongst the Professors in the Department by rotation according to seniority. Seniority of teachers in a Department is to be determined only from amongst those who are members

of the cadre and since merit promotees are outside the cadre, they cannot be considered for Chairmanship/Headship of a Department because when seniority is to be determined/reckoned they do not come into the picture. Moreover, the use of the word 'Professors' in this rule obviously refers to those who are appointed against a substantive post of a Professor i.e. by way of direct recruitment through advertisement and in accordance with the regulations framed by the University. I have already held above that a Reader who is given merit promotion as a Professor does not form part of the cadre of 'Professors' and, therefore, such a merit promotee is not eligible for appointment as Chairman/Head of a Department. It again follows that only a directly recruited Professor in accordance with the regulations of the University alone is eligible. In the result, it must be held that respondent 3 is ineligible for appointment as Chairman/Head of the Department of Laws.

(Para 15)

Further held, that Rule 15 of Chapter 1 of Panjabi University Act, 1961 deals only with the seniority of the members of the cadre which consists of the directly recruited teachers alone. The University is, therefore, not justified in preparing a common seniority list of direct recruits and the merit promotees.

(Para 20)

J. S. Khehar, Sr. Advocate with A. M. Punchhi, Advocate, for
the Petitioner.

Anupam Gupta, Advocate for respondents No. 1 & 2.

Rajiv Atma Ram, Advocate for respondent No. 3.

JUDGMENT

N. K. Sodhi, J.

(1) Whether a University teacher who has been given merit promotion as a Professor can claim to be a member of the cadre of Professors so as to be eligible to be appointed Head of the Department by rotation and whether a merit promotee can claim seniority over a directly recruited teacher are the twin questions which arise for determination in these two Civil Writ Petitions 2991 of 1994 and 14161 of 1995 which were ordered to be heard together by the Motion Bench. Since the issues involved in both the writ petitions are identical, they are being disposed of by this judgment.
Civil Writ Petition 2991 of 1994.

(2) Petitioner herein is Dr. Veer Singh who is working as a Professor in the Department of Laws in the Panjab University,

Chandigarh (for short the University). He was appointed as a Lecturer in the Department of Laws of the University on 1st October, 1970. Thereafter in the year 1975, through a selection process, he was appointed a Reader in the same department by direct recruitment and he assumed his duties as such on 1st February, 1976. Post of a Professor fell vacant in the year 1985 and the same was to be filled up by direct recruitment. It was accordingly advertised and a high powered selection committee consisting of outside experts was constituted to interview the candidates. The petitioner and respondent 3 were amongst the seven candidates who appeared for interview. The Selection Committee unanimously selected the petitioner for the post. The petitioner on his selection assumed the duties of the post of Professor of Laws in the Department on 1st December, 1986 and he was put on probation for a period of one year.

(3) Respondent 3 is also working as a Professor in the Department of Laws in the University. He was appointed a Lecturer in the Department by open selection on 7th July, 1969. In the year 1975, he was appointed a Reader in the same department through open selection i.e. by direct recruitment in accordance with the rules and regulations framed by the University in this regard. In fact, the petitioner and respondent 3 were both selected as Readers in the same selection but the latter having been assigned higher position in the merit list prepared by the Selection Committee, ranked senior to the petitioner as a Reader. Respondent 3 applied for the post of a Professor that fell vacant in the year 1985 which was filled up after advertisement by direct recruitment. He competed with other candidates who applied in response to the advertisement but was not selected. Dr. S. P. Tewari was selected and appointed Professor against the advertised post. Again in the year 1986, another post of a Professor fell vacant which was to be filled up by direct recruitment and the same was advertised in accordance with the regulations. Both the petitioner and respondent 3 who were working as Readers in the Department applied for the said post alongwith others. The petitioner was selected but respondent 3 was unsuccessful. However, in the year 1987, respondent 3 applied for promotion as a Professor under the Merit Promotion Scheme (also known as Personal Promotion Scheme) and got selected. He was accordingly promoted as a Professor under the aforesaid scheme on 23rd November, 1987 and has been working since then and he too on his promotion as Professor was put on probation for one year. It is not in dispute that the University has not circulated any seniority list of Professors either in the Department of Laws or in any other

Department and that the petitioner made a representation on 18th October, 1993 addressed to the Vice-Chancellor seeking clarification regarding his seniority as Professor *viz-a-viz* respondent 3 who is a merit promotee Professor. Since the petitioner did not receive any reply from the Vice-Chancellor, he sent further reminders and representations copies of which have been attached as Annexures to the writ petition. It may be mentioned here that it became necessary for the petitioner to know his position in the seniority *viz-a-viz* respondent 3 because the post of Chairman, Department of Laws was falling vacant with effect from 1st April, 1994 on superannuation of the then incumbent. It is also relevant to mention here that the post of Chairman/Head of Department is filled up by rotation from amongst Professors according to seniority. The Vice-Chancellor on receipt of the representations from the petitioner referred the same to the Registrar. In the meantime, the matter regarding confirmation of the petitioner and respondent 3 as Professors was put up before the Senate in its meeting held on 27th March, 1988. As mentioned earlier, both the petitioner and respondent 3 were then working as Professors on probation, the former having been appointed through direct recruitment whereas the latter was a merit promotee. The Senate decided that Readers and Lecturers who were eligible for promotion under the University Grants Commission (for short UGC) Merit Promotion Scheme on or before 31st March, 1986 and were promoted as Professors and Readers upto 26th November, 1987 be confirmed with effect from 26th November, 1987. Respondent 3 came in this category of Professors and was confirmed with effect from this date. As regards those who were recruited directly as Professors from amongst the in-service Readers and whose appointments were made after 31st March, 1986, the Senate decided to confirm them as well with effect from 26th November, 1987. The petitioner who fell in this category was also confirmed with effect from the same date on which respondent 3 was confirmed. The Senate further decided that the *inter se* seniority of the teachers concerned in the departments will be as in the respective lower cadre i.e. before promotion/appointment to the next higher position(s) provided they were confirmed on the same date. It appears that decision regarding *inter se* seniority of the teachers was taken by the Senate because the rules framed by the University for Fixation of Seniority of University Teachers (hereinafter called the Seniority Rules) as contained at Page 144 of the Panjab University Calendar Volume II 1990 which are reproduced hereunder were

silent in regard to the *inter se* seniority of the teachers who got confirmation on the same date :

“FIXATION OF SENIORITY OF UNIVERSITY TEACHERS

1. The seniority of a teacher in a particular cadre shall be determined according to the date of his confirmation.
2. Where two or more teachers are selected at the same time for appointment, their seniority shall be determined according to the ranking given by the Selection Committee, irrespective of the dates of joining the duties. Provided that the date of joining in case of a teacher who has been ranked higher is not later than six months from the date of issue of the appointment letter to him. This shall, however, not apply to teachers of the University sent on deputation or on duty outside the University for more than six months.
3. Where the relative seniority of a teacher or teachers is otherwise in doubt, the Registrar, may, of his motion and shall at the request of the concerned teacher submit the matter to the Syndicate, whose decision thereon shall be final”.

From a plain reading of Rule 3, it is clear that where the *inter se* seniority of teachers is in any way in doubt, the Registrar may on his own and shall at the request of the concerned teacher submit the matter to the Syndicate, whose decision thereon would be final. Since the Registrar thought that there was no doubt regarding the *inter se* seniority of the petitioner and respondent 3 as both of them were confirmed on the same day i.e. 26th November, 1987 and respondent 3 being senior to the petitioner as a Reader the latter was senior as a Professor as well, in terms of the decision of the Senate dated 27th March, 1988. Consequently, the Registrar notified to all the concerned teachers including the petitioner and respondent and not only the decision of the Senate taken on 27th March, 1988 but also the dates of their confirmation as Professors. Annexure P-8 is the copy of the order passed by the Registrar in this regard notifying the dates of confirmation. This annexure is only an extract from the original order which was produced before me at the time of arguments. In the list of Professors who were promoted under Merit Promotion Scheme the name of respondent 3 figures at serial No. 4 and the date of confirmation mentioned against his name is

26th November, 1987. Again in the list of Professors who had been appointed through open selection as direct recruits the name of the petitioner appears at serial No. 3 and he too is shown to have been confirmed on 26th November, 1987. This order cannot be described as determination of *inter se* seniority of the teachers as it contains only the names of those who had been confirmed by the Senate on 27th March, 1988. The present writ petition was filed in March, 1994 and the primary prayer made is that the petitioner be declared senior to respondent 3 as the latter was found unsuitable in the selection process in which the former was selected and appointed a Professor and also for the reason that respondent 3 was selected almost one year after the petitioner. Another ground taken by the petitioner for being declared senior to respondent 3 is that the latter could not be confirmed on the post of Professor as he was never appointed against a substantive post and, therefore, there could be no question of his being senior to the petitioner. The decision of the Senate dated 27th March, 1988 and the consequent order passed by the Registrar dated 25th May, 1988 (Annexure P-8 with the writ petition) notifying the dates of confirmation of the petitioner and respondent 3 have also been challenged for the same reasons.

(4) When the writ petition came up for motion hearing on 7th March, 1994 a Division Bench of this Court by an interim order directed the Registrar of the University to refer the question of *inter se* seniority between the petitioner and respondent 3 for decision to the Syndicate at its next meeting which was being held on 10th March, 1994. In pursuance to this direction, the matter was placed before the Syndicate and it was decided that the dispute regarding *inter se* seniority of the petitioner and respondent 3 be referred to a one man committee of Shri Jagan Nath Kaushal who was authorised to take a decision on behalf of the Syndicate. Shri Kaushal after examining the relevant facts and the law on the subject opined that respondent 3 was senior to the petitioner as a Professor in the Department of Laws. A copy of this order was produced during the course of arguments and the same has been taken on record. After the matter was decided by Shri Kaushal, the Vice-Chancellor appointed respondent 3 as Chairman/Head of the Department of Laws for a period of three years with effect from 1st April, 1994 and this order was communicated to respondent 3 and some others by the Deputy Registrar (Establishment) as per his communication dated 31st March, 1994. Since this order was passed after the filing of the writ petition, a copy of the communication dated 31st March, 1994 was placed on the record through Civil Misc. 5011 of 1996.

(5) In the written statement filed on behalf of the University, it is pleaded that the dispute regarding *inter se* seniority of the petitioner and respondent 3 was referred to the Syndicate which in turn referred the same to a one man committee of Shri Jagan Nath Kaushal who had decided the matter holding respondent 3 to be senior to the petitioner and, therefore, the decision is final and could not be challenged thereafter. It has also been pleaded by way of a preliminary objection that the writ petition merits dismissal on the ground of delay. According to the University, the seniority of the petitioner and respondent 3 was settled by the order of the Registrar dated 25th May, 1988 (Annexure P-8 with the writ petition) and the writ petition having been filed in the year 1994 was highly belated. On merits, the action of declaring respondent 3 senior to the petitioner is sought to be justified on the ground that both were Professors within the meaning of this term and they having been confirmed on the same date, respondent 3 being senior to the petitioner as a Reader had to rank senior as Professor as well in terms of the decision of the Senate dated 27th March, 1988. The University has treated respondent 3 as a Professor appointed against a substantive post and therefore, at par with the directly recruited Professors and accordingly determined their *inter se* seniority holding respondent 3 to be senior though a formal seniority list has not been issued. Similar is the stand taken by respondent 3 in his written statement. The stand of the University is being challenged by petitioner as being contrary to the rules and regulations governing the appointment of teachers including Professors in the University.

(6) Mr. Ashu Punchhi, Advocate for the petitioner strenuously urged that respondent 3 was a merit promotee and having been promoted under the Merit Promotion Scheme was not working as a Professor against a substantive post in the Cadre and, therefore, there was no question of any *inter se* seniority between him and the petitioner who (petitioner) being a direct recruit had been appointed against a substantive post in the cadre of Professors. He referred to the provisions of the Merit Promotion Scheme to contend that merit promotees were not members of the cadre and that their promotion was dehors the rules and regulations governing the appointment of Professors in the University. He further contended that merit promotees being outside the cadre of Professors could not be appointed as Chairman/Head of a Department by rotation. The rotational system, according to the counsel, had to be confined only to the Professors who are members of the cadre and were appointed through direct recruitment in terms of the regulations of the University. The order of the Vice-Chancellor appointing respondent 3

as Head of the Department has, thus, been challenged by the petitioner on the ground that it is in contravention of the statutory regulations of the University. In support of his contentions, the learned counsel placed reliance on a decision of the Supreme Court in *Dr. Rashmi Srivastava v. Vikram University and others* (1).

(7) Mr. Anupam Gupta, Advocate appearing for the University and Mr. Rajiv Atma Ram, Advocate appearing for respondent 3 refuted the submissions made on behalf of the petitioner is being contended that both the petitioner as well as respondent 3 were Professors working against the post of Professors and that there could be no distinction between a Professor appointed through direct recruitment and the one promoted under the Merit Promotion Scheme. According to the counsel, both deliver and equal number of lectures, perform identical duties and draw the same scale of pay and are members of the cadre of Professors and, therefore, respondent 3 was eligible for appointment as Chairman/Head of the Department by rotation on the basis of his seniority. It was further submitted on behalf of the respondents that both the petitioner and respondent 3 having been confirmed on the same date, respondent 3 had to rank senior to the petitioner as Professor as he (respondent 3) was admittedly senior as a Reader in the department. In support of this contention, the learned counsel relied upon the decision of the Senate taken in its meeting held on 27th March, 1988. The learned counsel also tried to distinguish the judgment of the Supreme Court in *Dr. Rashmi Srivastava's case* (supra) and submitted that the facts as well as the rules and regulations in that case were different from the ones with which we are concerned in the present case.

(8) Let me first deal with the preliminary objections raised by the respondents. It was contended that the petitioner being a Professor of Laws was aware of the regulations governing his service and even though the University had determined his seniority viz-a-viz respondent by an order dated 25th May, 1988, it was only on 18th October, 1993 that the petitioner for the first time made representation and not having succeeded filed the present writ petition in the year 1994 which is highly belated and deserves to be dismissed on the ground of laches. There is no merit in this preliminary objection. It is common case of the parties that the University has not so far prepared any seniority list of Professors either at the University

(1) J.T. 1995 (4) S.C. 51.

level or at any department level and, therefore, there was no occasion for the petitioner to dispute his seniority at any earlier point of time. The order dated 25th May, 1988 (Annexure P8 with the writ petition) passed by the Registrar only notifies the dates of confirmation of a large number of Professors including the petitioner and respondent 3. This order cannot be termed as a seniority list. It only notifies the dates of confirmation of some of the promotees and direct recruits separately and does not determine their *inter se* seniority. Moreover, the question of seniority assumed importance only when Dr. S. P. Tewari the predecessor of respondent 3 retired on 31st March, 1994 and the post of Chairman/Head, Department of Laws fell vacant on 1st April, 1994. It was in view of the impending retirement of Dr. S. P. Tewari that the petitioner sought clarification from the University regarding his seniority viz-a-viz respondent 3. This being the position, the writ petition cannot be described as belated and the first preliminary objection, thus, stands, over-ruled.

(9) It is pleaded by the University that the dispute regarding *inter se* seniority between the petitioner and respondent 3 having been referred to the Syndicate under the orders of this Court and the same having been decided by Shri Jagan Nath Kaushal as one man committee on behalf of the Syndicate, his decision thereon is final in terms of Rule 3 of the seniority Rules referred to above. This objection too is without any merit. It is true that the decision of the Syndicated determining the relative seniority of the teachers *inter se* is final so far as the University is concerned but it is always subject to judicial review by this Court under Article 226 of the Constitution. This preliminary objection was indeed not seriously pressed at the time of arguments.

(10) Before I deal with the merits of the rival contentions of the parties, it is necessary to examine the regulations dealing with the procedure and mode of appointment of teachers in the University and also the provisions of the Merit Promotion Scheme as introduced by the UGC. Chapter V(A) of the Panjab University Calendar Volume-I, 1989 deals with University teachers and their mode and procedure for appointment. The provisions of this Chapter are the statutory regulations framed by the University in exercise of its powers under Section 31(1) (i) and (2) (e) of the Panjab University Act, 1947. Regulation 1.1 of this Chapter describes—University teachers to mean Professors, Readers and Lecturers and such other persons as may be approved for imparting instruction in the University or in institutions managed by the University and are designated as teachers by the Senate. The regulations further provide that the

conditions of service of University teachers shall be the same as for other officers of Class A laid down in the regulations in Chapter-VI, Calendar, Volume I. According to Regulation 1 of Chapter VI-A, all University teachers i.e. Professors, Readers, Lecturers and some others (with whom we are not concerned) are Class A Officers of the University and according to Regulation 3.1 contained in the same Chapter Senate is their appointing authority. Senate has the power to determine from time to time after considering the recommendations of the Academic Council and the Syndicate, the Departments of Study for which Professorships, Readerships and Lecturerships are instituted. No new appointment of a Professor, Reader, Lecturer or any other teacher can be made unless the Senate has previously sanctioned the creation of the post. As regards the mode of appointment to the post of a teacher the regulations provide only for open selection through direct recruitment after advertisement. Regulations 4, 5 and 6 of Chapter V(A) which are relevant for our purpose read as under :—

- “4. Whenever there is a vacancy in the post of a Teacher, the post shall be advertised and applications invited before the vacancy is filled. Provided that the Vice-Chancellor shall have power to place before the Selection Committee the name of suitable persons for its consideration along with the applications received in response to the advertisement.
5. Notwithstanding anything contained in these Regulations—
 - (a) Vice-Chancellor shall have authority to—
 - (i) make an emergent temporary appointment for a period not exceeding one year ; and
 - (ii) allow higher starting salary within the grade of the post ;
 - (b) Syndicate shall have the authority to make emergent temporary appointment on the recommendation of the Vice-Chancellor—
 - (i) for a period exceeding one year, or on contract basis for a limited period ;
 - (ii) allow higher starting salary within the grade of the post.

An appointment made under this Regulation shall be reported to Senate.

6.1 Save as provided in Regulations 5 and 8 of this Chapter, the Syndicate shall appoint a Selection Committee consisting of 5 to 7 members to recommend persons for appointment as Professors or Readers of whom at least two shall be experts in the subject from outside the territorial jurisdiction of the University. This committee shall interview suitable persons and make recommendations which will be placed before the Syndicate. If the Syndicate does not accept the recommendation of the Selection Committee it may order readvertisement of the post or take such other action as may be considered necessary.

The Committee, in recommending a person for appointment as Professor or Reader, shall have regard to (i) his capacity for research (ii) his ability as a teacher, and (iii) generally his eminence in the subject of his profession.

6.2 The quorum shall be—

- (i) Three if the Committee consists of five members ;
- (ii) Five if the Committee consists of six or seven members.

6.3 No retired or honorary teacher of the University residing outside its territorial jurisdiction shall be nominated as an outside expert on a Selection Committee."

A plain reading of the aforesaid regulations makes it clear that all teachers-whether a Professor, Reader or Lecturer have to be appointed by direct recruitment after advertising the post and inviting applications from the open market. Promotion to any of these posts is not provided for in the regulations. The procedure prescribed for their appointment is that Syndicate appoints a Selection Committee consisting of 5 to 7 members to recommend persons for appointment as Professors or Readers. The Selection Committee consists of at least two experts in the subject from outside the territorial jurisdiction of the University. The Selection Committee then interviews suitable persons and make recommendations which are placed before the Syndicate. If the Syndicate does not accept the recommendation, it may order readvertisement

of the post or take such other action as may be considered necessary. If the recommendation is accepted, the same is forwarded to the Senate which may appoint the selected persons. Regulation 5 contained in Chapter VI-A provides that every appointment to a substantive post shall be made on probation for a period of one year which may be extended by the appointing authority for a period not exceeding one year. Again, according to clause (xi) of Regulation 2 contained in the same Chapter a person on probation on a post is one appointed by selection to a post for determining his fitness for eventual substantive appointment to the post.

(11) The salient features of the Merit Promotion Scheme as introduced by the UGC in different Universities including the respondent-University which has adopted the same may now be examined. Recognising that the role of a teacher is crucial in the maintenance of academic standards and discipline in an educational institution and that a teacher has to be devotedly involved in programmes of teaching, research, examination and extension activities taken as a whole, the UGC framed the Merit Promotion Scheme with a view to provide opportunities for professional advancement to teachers working in the University and who merit academic recognition. Such teachers were to be given promotion on merit and not on the basis of their seniority. The objective of this scheme are :—

- (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 contribution which would merit recognition and promotion."

It will be seen that the method to implement the selection as suggested by the UGC is that teachers in the University departments engaged in advanced teaching and research and whose contributions for merit promotion in the first instance after completing 8 years of continuous service in their respective cadres, of which at least 4 years should be in the institution where he/she is considered for such assessment and merit promotion. A teacher who has been considered and not selected for merit promotion in the initial presentation could, however, submit his work again only after a lapse of two years. Teachers who want to be considered for merit promotion are required to present their work to the University through department latest by 31st December each year. The scheme envisages that the work of an individual teacher is required to be referred to two referees in the concerned subject/discipline who are to be selected by the Vice-Chancellor. Merit promotion is to be given by the appointing authority to a teacher only on the recommendation of a Selection Committee duly constituted after it has taken into consideration the opinion of the referees. According to the scheme, the Selection Committee should consist of at least two outside experts in the case of promotion to Readers and three outside experts for promotion of Professors. Another important aspect of the scheme that needs to be noticed is that the post of a Reader given to a Lecturer or the position of a Professor given to a Reader through merit promotion would be personal to the incumbent concerned and that the main criteria for promotion under the scheme would be the merit of the work and not seniority of the teachers. It is further provided that not more than 1/3rd of the number of total permanent positions of Lecturers or Readers within a department may hold such merit promotions at next higher level at any given time. Again, not more than two Readers may be given such merit promotion as Professors within a department. The scheme also provides that persons holding such merit promotions would not count for determining the total posts in the cadre of Readers for the purpose of merit promotion to Professors. The UGC provides additional funds required to implement the scheme. No additional/extra staff was to be provided in the category of posts from which a person has received merit promotion to the next higher post consequent upon the implementation of the scheme. The work load is, therefore, to be adjusted suitably without seeking additional positions.

(12) It is in the light of the aforesaid statutory regulations governing the mode and manner appointment of teachers in the University and the provisions of the Merit Promotion Scheme that we have to examine that rival contentions of the parties and answer the questions posed in the earlier part of the judgment. When we examine the provisions of the scheme very closely what emerges is that it is a 'flexible complementing scheme' wherein no additional posts are created and the existing persons on the basis of critical assessment of their work are promoted to the next higher level and the position is held by such incumbents as personal to them and that no resultant vacancy is required to be filled because none is created. In other words, what the scheme provides is that when a Reader is given merit promotion as a Professor, the promotion is personal to the teacher concerned and he shall continue to work as a Professor so long as he is in service. On his promotion, no additional post of a Professor is created nor is any vacancy caused in the cadre of Readers. On his ceasing to be in service either on account of superannuation or otherwise, the vacancy caused will be that of a Reader from which post he was given merit promotion and not of a post from where he has retired. Again, when a Reader is promoted as a Professor, he carries his own post to a higher level and on his ceasing to work, the post of a Reader falls vacant. Normally, when a person gets promoted from a lower post to a higher post, the post from which he is promoted falls vacant but this is not the case when a teacher is given merit promotion under the Merit Promotion Scheme. Another important aspect that is high lighted by the scheme is that persons holding merit promotions do not count for determining the total posts in the cadre of Readers for the purpose of merit promotion to Professors. In other words, when a Reader gets promoted as a Professor, he is not counted in the total strength of Professors in the department. Similarly, when a Lecturer gets promoted as a Reader, he is not counted in the total strength of Readers in the department. To put in differently, the scheme envisages that a Reader who gets merit promotion as a Professor does not become a part of the cadre of Professor and he stands outside the cadre. The promotion is obviously then to an ex-cadre post which ceases to be a post of Professor as soon as the incumbent ceases to hold the same, it being personal to him. These peculiar features of the Merit Promotion Scheme make it abundantly clear that merit promotees do not form part of the cadre or posts to which they are promoted. On the other hand, the statutory regulations framed by the University provides for appointment as Reader and Professors only through direct recruitment after the posts are

advertised and application invited from the open market. As observed earlier, the regulations do not provide for promotion to the post of a teacher i.e. either to the post of a Lecturer, Reader or Professor. In other words, a Lecturer promoted as a Reader or a Reader promoted as a Professor will not form part of the cadre of Readers and Professors respectively but only those Readers and Professors who have been directly recruited as such will form the cadre of Readers and Professors.

(13) The learned counsel for the respondents very forcefully contended that there is no distinction between a Professor who is given merit promotion and the one who has been directly recruited as they are both appointed after selection and on probation and it is submitted that the regulations make no distinction between the two. I am afraid there is no merit in these contentions either. No doubt that both a direct recruit and a merit promotee are appointed after selection by a Selection Committee but the mode and purpose of their selection is totally different. A merit promotee gets selected on the basis of an evaluation of his work in the Department and the selection is confined to Readers and Lecturers from within the department who are eligible for such promotion. A direct recruit, on the other hand, is selected from the open market after the post is advertised. The two selections cannot, therefore, be equated. It is true that the University while giving merit promotion places the incumbent on probation though it is not the requirement of the Merit Promotion Scheme. In fact, such a promotee is not required to be put on probation at all. Clause (xi) of Regulation 2 in Chapter VI(A) of the Panjab University Calendar Volume-I, 1989 requires that only such persons are to be placed on probation whose fitness for eventual substantive appointment to a cadre post is to be determined. Since a merit promotee cannot be appointed against a substantive post in the cadre, there is no question of his fitness being determined for that post and he is, therefore, not required to be put on probation. The regulation, on the other hand, envisages that only a direct recruit who is to be appointed against a substantive post in the cadre should be put on probation for the purpose of determining his fitness for his eventual substantive appointment. Merely because the University on its own chooses to place a merit Promotee on probation without there being any provision for it in the Scheme will not equate such a promotee with a direct recruit.

(14) It was then submitted on behalf of the respondents that the judgment of the Supreme Court in *Dr. Rashmi Srivastava's case* (supra) is not applicable to the facts of the present case and the same

was distinguishable inasmuch as in that case the Vikram University was giving lower scales of pay to the merit promotees and the direct recruits were drawing a higher scale whereas in the case before us, the University has made no such distinction and both the merit promotees and the direct recruits are drawing the same scale of pay. The scales of pay of a merit promotee and that of a direct recruit were of course different in *Dr. Rashmi Srivastava's case (supra)* whereas they are the same in the case before us but that, in my opinion, makes no difference. The scales of pay of a direct recruit and a merit promotee even if same will not equate the two nor will it make the ratio of the decision in *Dr. Rashmi Srivastava's case (supra)* inapplicable to the case in hand. Having carefully gone through the judgment of the Supreme Court in *Dr. Rashmi Srivastava's case (supra)*, I am of the opinion that the same is clearly applicable to the facts of the present case. This being the position, it has to be held that a merit promotee is not a part of the cadre of posts to which he is promoted and only those who are appointed by way of direct recruitment to a substantive post in the cadre, in accordance with the procedure prescribed by the regulations after their posts are advertised form part of the cadre of posts to which they are appointed. Since the regulations and the rules framed by the University do not contain any provision for merit promotions so as to make the promotees part of the cadre, there can be no question of determining their *inter se* seniority with those directly recruited. The merit promotees form a class by themselves who as discussed above stand outside the cadre. Of course, there can be *inter se* seniority amongst the merit promotees but that is not the dispute here.

(15) The only question that now survives for consideration is whether a Reader who is given merit promotion as a Professor can be considered for being appointed as Chairman/Head by rotation. Before we answer this question, it is necessary to refer to the relevant part of Rule 2.1 contained in Chapter LIV of the Panjab University Calendar Volume-III, 1990 which reads as under :—

“2.1 Each Teaching Department shall have a Chairman/Head who may be a Professor or a Reader with five years' teaching experience or a Lecturer with eight years' teaching experience as Lecturer, appointed by the Senate on the recommendations of the Syndicate in the manner indicated below :—

(i) After the expiry of the term of the Chairman/Head of the Department so designated in April, 1978, the

Chairman/Head of a Department shall be appointed from amongst the Professors in the Department, by rotation according to seniority.

(ii) xx

xx

xx”.

A perusal of the aforesaid rule makes it abundantly clear that Chairman/Head of a Department is to be appointed from amongst the Professors in the Department by rotation according to seniority. Seniority of teachers in a Department is to be determined only from amongst those who are members of the cadre and since merit promotees are outside the cadre, they cannot be considered for Chairmanship/Headship of a Department because when seniority is to be determined/reckoned they do not come into the picture. Moreover, the use of the word ‘Professors’ in this rule obviously refers to those who are appointed against a substantive post of a Professor i.e. by way of direct recruitment through advertisement and in accordance with the regulations framed by the University. I have already held above that a Reader who is given merit promotion as a Professor does not form part of the cadre of ‘Professors’ and, therefore, such a merit promotee is not eligible for appointment as Chairman/Head of a Department. It again follows that only a directly recruited Professor in accordance with the regulations of the University alone is eligible. In the result, it must be held that respondent 3 is ineligible for appointment as Chairman/Head of the Department of Laws.

(16) For the reasons recorded above, the writ petition is allowed and the appointment of respondent 3 as Chairman/Head of the Department of Laws quashed. Respondents 1 and 2 are directed to appoint the Chairman/Head of the Department of Laws in accordance with Rule 2.1 of the aforesaid Rules from amongst the directly recruited Professors according to their seniority. There is no order as to costs.

Civil Writ Petition 14161 of 1995

(17) Petitioners herein are directly recruited Readers in the Punjabi University, Patiala (for short the University) and respondents 4 to 10 are merit promotees working as Readers. The University has prepared a combined seniority list (Annexure P2 with the writ petition) of Readers/Lecturers working in different teaching departments in which some of the merit promotees have been shown senior to the direct recruits on the basis of their continuous length

of service. The prayer made in the writ petition is for quashing the seniority list and for a direction to the University to prepare a seniority list of Readers strictly in accordance with the University regulations and also in accordance with the decision of the Supreme Court in *Dr. Rashmi Srivastava*' case (supra) to which a reference has been made in Civil Writ Petition 2991 of 1994. In other words, the relief sought is that the University be directed to prepare a seniority list of directly recruited Readers after excluding the merit promotees who do not form part of the cadre of Readers by reason of their having been promoted under the Merit Promotion Scheme. The respondents have opposed the petition on the ground that *Dr. Rashmi Srivastava*'s case (supra) is not applicable to the facts of this case since the regulation of the University provide for merit promotion as well and, therefore, the University is justified in preparing a joint seniority list showing *inter se* seniority of the direct recruits and the merit promotees on the basis of their continuous length of service. This, according to the respondents, is in accordance with the seniority rule contained in Rule 15 Chapter-I of the Statutes of the Punjabi University.

(18) Before we examine the rival contentions, it is necessary to refer to the statutory provisions governing the mode and manner of appointment and seniority of teachers. The schedule to the Punjabi University Act, 1961 contains the statutes of the Punjabi University and Chapter II thereof deals with the creation of teaching departments and appointment of staff. According to the provisions of this Chapter, each department shall have a Head who may be a Professor or a Reader and whose duties and functions and terms and conditions of appointment shall be prescribed by the Ordinances. It further provides that only such Readers shall be eligible for appointment as Head of the Department as have a minimum of 8 years' experience as Lecturer/Reader in a University, out of which three years' experience should be as Reader at the Punjabi University. Clause 6 of Part-B of Chapter II which is relevant reads as under :—

“6. Whenever a post of a Principal, University Professor, or of a University Reader, or of a University Lecturer is to be filled up, it shall be advertised and applications invited

Provided that for the post of a Professor, the Vice-Chancellor shall have the power to place before the Selection Committee the name of a suitable person for the consideration

along with the applications received in response to the advertisement but such persons shall not be from amongst those in the service of the University or those who have retired from its services."

Clause 10 of this Chapter provides that all the conditions of service of Professors and Readers and Lecturers of the University shall, unless otherwise defined in the Statutes, be the same as of other Officers of Class A. This Chapter further provides that the teachers of the University shall be of two classes, namely :-

- (i) Appointed Teacher of the University ; and
- (ii) Recognized Teachers of the University.

and that no person shall be appointed or recognised as a teacher of the University except on the recommendation of a Selection Committee constituted for the purpose. The word 'service' has been defined in the Statute to mean the whole period of continuous service including the period spent on leave and 'Permanent Post' means a post carrying a definite rate of pay sanctioned without limit of time and included in the cadre of sanctioned posts. Clause 15 of Chapter I of the Schedule deals with seniority and it reads as under :—

- "15. (1) Whenever, in accordance with these Statutes, any person is to hold an office or be a member of any Authority of the University by rotation according to seniority, such seniority shall be determined according to the length of continuous service of such person in his grade or post, as the case may be, and in accordance with such other principles, as the Syndicate may, from time to time, prescribe.
- (2) It shall be the duty of the Registrar to prepare and maintain in respect of each class of persons, to whom the provisions of this Statute apply, a complete and up-to-date seniority list in accordance with the provisions of the foregoing clause.
- (3) If two or more persons have equal length of continuous service in a particular grade or post, or the relative seniority of any person or persons is otherwise in doubt, the Registrar may on his motion, and shall, at the request of any such person, submit the matter to the Syndicate whose decision thereon shall be final."

A perusal of the University Statutes governing the mode and manner of appointment of teachers makes it abundantly clear that they are appointed against permanent posts included in the cadre of sanctioned posts through direct recruitment after the posts are advertised and applications invited. The Statutes do not provide for promotion to any of these posts. Clause 15 of Chapter I which deals with seniority provides that seniority is to be determined according to the length of continuous service of a person in his grade or post, as the case may be.

(19) The University has also adopted that Merit Promotion Scheme and that too has been included in the Statutes. It is the same as was prepared by the UGC. It also provides that the promotion of Lecturers/Readers to the next higher position will be made on their post without addition to the number of faculty positions. Another significant feature incorporated in the Statutes is that persons holding such merit promotion shall not count for determining the total posts in the cadre of Readers for purposes of merit promotion to Professors. In short, the basic features of the Merit Promotion Scheme as incorporated in the Statutes of the University are the same which was prepared by the UGC though the Statutes also provide for *inter se* seniority of the merit promotees which is to be reckoned according to their seniority on the post from which they are promoted. There is no provision in any Statute which relates to the determination of *inter se* seniority amongst the merit promotees and the directly recruited teachers nor is there any provision equating the merit promotees with the direct recruits. In the absence of any such provision, the decision in *Dr. Rashmi Srivastava's* case (supra) would be applicable to the present case and whatever I have held while deciding Civil Writ Petition 2991 of 1994 will apply *mutatis mutandis* to this case as well.

(20) The learned counsel for the respondents not only tried to distinguish the judgment of the Supreme Court in *Dr. Rashmi Srivastava's* case (supra) but also drew my attention to the latest judgment of the Apex Court in *Dr. Km. Suman Agarwal v. The Vice-Chancellor and others* (2), to support their contention that a merit promotee would be a member of the cadre to which he is promoted and, therefore, the University was right in determining their *inter se* seniority. The argument is being noticed only to be

rejected. The decision of the Supreme Court in *Suman Agarwal's case* (supra) is clearly distinguishable and not applicable to the facts of the present case. In that case the appellant was a direct recruit as a Reader and the third respondent therein was a merit promotee. Next promotion was to be made to the post of a Director which fell vacant. The question arose as to who should be appointed to that post temporarily till a regular appointment of the Director was made. The merit promotee who was promoted earlier in point of time as a Reader claimed seniority *viz-a-viz* the direct recruit and her claim was upheld by the Supreme Court because of Rule 11(i) framed by the University which reads thus :—

“The post of Reader or Professor to which personal promotion is made, shall be temporary addition to the cadre of Professor or Reader, as the case may be, and the post shall stand abolished on the incumbent ceasing to occupy it.”

There was also a rule providing for *inter se* seniority of teachers appointed by personal promotion and by direct recruitment which is as under :—

“In the same cadre, inter-seniority of teachers, appointed by personal promotion or by direct recruitment, shall be determined according to length of continuous service in such cadre.”

It was because of these rules that the Supreme Court upheld the claim of the merit promotee to be senior to the direct recruit as she had been promoted earlier. In the case before us, there is no such rule providing for a merit promotee to become a member of the cadre and nor is there any rule providing for their *inter se* seniority. Rule 15 of the Seniority Rules quoted above deals only with the seniority of the members of the cadre which consists of the directly recruited teachers alone. The University is, therefore, not justified in preparing a common seniority list of direct recruits and the merit promotees.

(21) For the aforesaid reasons and in view of what has been held in Civil Writ Petition 2991 of 1994, I accept the contention of the petitioners herein and allow the writ petition quashing the seniority list (Annexure P2 with the writ petition). The University is directed to prepare a fresh seniority list of only those who are members of the cadre i.e. the direct recruits in accordance with the

Punjab Anand Lamp Employees Union v. M/s Punjab Anand Lamp Industry Limited and another (G. S. Singhvi, J.) 275

seniority rules. The parties are left to bear their own costs. Copy of this order be given *dasti* on payment of usual charges.

R.N.R.

Before Hon'ble G. S. Singhvi & S. S. Sudhalkar, JJ.

PUNJAB ANAND LAMP EMPLOYEES UNION,—Petitioners

versus

M/S PUNJAB ANAND LAMP INDUSTRY LTD. AND ANOTHER,—Respondents.

C.W.P. No. 594 of 1996.

22nd February, 1996.

Industrial Disputes Act, 1947—Ss. 2(k), 2-A, 10, 11-A & 12—Reference—Workmen dismissed after inquiry for proved misconduct—Government declining reference on the ground that misconduct was of serious nature—Government cannot go into the merits and demerits of the dispute and usurp the adjudicatory function—If reference is refused in cases of dismissal after inquiry it would take away the power of the Labour Court u/s 11-A to interfere with the punishment imposed by the employer—Section 11-A gives power to Tribunal to go into the quantum of punishment—Appropriate Government cannot deprive workmen of their remedy under the Act by refusing reference—General instructions issued to Punjab, Haryana and U.T. Chandigarh Governments to deal with references in accordance with the law and decline them only in rare and appropriate cases.

Held, that Sections 10 & 12 nowhere indicate that the Government is required to exercise power of making or not making a reference in a judicial or quasi judicial manner. Similarly, there is no requirement of hearing the parties before taking a decision to refer or not to refer a dispute. However, what the Government is required to see is whether there exists an industrial dispute or there is an apprehension of an industrial dispute. The Government cannot decide for itself whether the demand made by an employee or the employer or by the Union is justified or not. The irresistible conclusion is that the Government cannot go into the merits or demerits of the dispute and make an adjudication of it directly or indirectly.

(Para 26)