

# **THE HIGH COURT OF SIKKIM : GANGTOK**

(Civil Extra Ordinary Jurisdiction)

DATED: 6<sup>th</sup> March, 2018

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**SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

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WP(C) No. 47 of 2017

**Petitioner** : Dr. Vaidyanathan Krishna Ananth,  
Associate Professor,  
Department of History,  
Sikkim University,  
Tadong,  
East Sikkim.

**versus**

**Respondents** : 1. Sikkim University,  
Represented through its Registrar,  
Sikkim University  
Tadong,  
East Sikkim.

2. The Vice Chancellor,  
Sikkim University  
Tadong,  
East Sikkim.

3. The University Grants Commission (UGC)  
Represented through its Secretary,  
Ministry of Human Resource Development ,  
New Delhi.

**Application under Article 226 of the Constitution of India.**

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**Appearance**

Dr. Vaidyanathan Krishna Ananth, Petitioner in person.

Dr. Doma T. Bhutia and Mr. Umesh Gurung, Advocates for the Respondents No. 1 and 2.

Mr. Thinlay Dorjee Bhutia, Advocate for the Respondent No.3.

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# J U D G M E N T

Meenakshi Madan Rai, J.

**1.** The grievance of the Petitioner pivots around the legality of his non-promotion under the Career Advancement Scheme (hereinafter 'CAS'), from Stage 4 to Stage 5, viz. from Associate Professor to Professor, despite fulfilment of eligibility criteria in terms of the University Grants Commission Regulations, 2010 (for short 'UGC Regulations, 2010') . The reliefs sought for by the Petitioner, *inter alia*, are a direction to the Respondents No. 1 and 2 to complete the process of his promotion from Stage 4 to Stage 5 as per the UGC Regulations, 2010. To issue a Writ in the nature of Mandamus directing the Respondents No.1 and 2 to consider his Application for promotion under the 3<sup>rd</sup> amendment (of 4<sup>th</sup> May, 2016) of the UGC Regulations, 2010 and not under the 4<sup>th</sup> Amendment (of 11<sup>th</sup> July, 2016) thereof.

**2.** The facts summarised are that the Petitioner joined the Sikkim University, Gangtok, as an Associate Professor in the Department of Journalism and Mass Communication in 9.3.2012 and continued in service as an Associate Professor, Department of History from 1.7.2013, as per Orders of the Respondents No. 1 and 2. On completion of three years as an Associate Professor in Stage 4 on 30.6.2016, he accrued the requisite credit points as per the Academic Performance Indicator (for short 'API') based Performance Based Appraisal System (for short 'PBAS') methodology, provided in

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Table I-III, Appendix-IV of the UGC Regulations, 2010 and was thus eligible for appointment and designation as Professor from 1.7.2016. Consequently, he submitted his Application in terms of the 3<sup>rd</sup> amendment to the UGC Regulations, 2010, on 17.6.2016, in the prescribed format, for promotion under CAS from Stage 4 to Stage 5, along with evidence of API score. In response, he received a letter from the Respondents No. 1 and 2, dated 27.2.2017 requesting him to resubmit the application as the earlier Application could not be located. In compliance thereof, he resubmitted his Application on 1.3.2017 along with all necessary documents, duly received by the Respondents No.1 and 2. Pursuant thereto, he received an e-mail on 18.5.2017 from the Internal Quality Assurance Cell (for short 'IQAC') of the University, requesting submission of his application as per the format of UGC Regulations 4<sup>th</sup> Amendment and that his API Application would be computed accordingly. The Petitioner on 19.5.2017 responded that the request was fallacious as his date of eligibility (1.7.2016) preceded the enforcement of the 4<sup>th</sup> amendment (effective from 11.7.2016), apart from remonstrating that the e-mail was not from the appropriate authority which ought to be the Expert Committee. On 10.7.2017, an e-mail was received by him from the Respondent No.1 stating that he had qualified on all other points/requirements but required him to submit proof of Ph.D. awarded under his supervision to enable completion of interviews by early August, 2017. The Petitioner protested this as there was no stipulation in the UGC Regulations, 2010 of such a requirement and reminded the Respondent No.1 of the position taken by them in this regard in

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another matter vide a communication (Annexure P-13) sent to the Central Bureau of Investigation in April/May 2016, stating *inter alia*, that according to the UGC Regulations, 2010, the experience of guiding research at doctoral level is not required even for the post of Professor under CAS, leave alone for the post of Associate Professor, hence, arbitrary inclusion of a new criterion is improper. On 17.7.2017, he followed this up with another representation to the Respondent No.1 reiterating that the UGC Regulations of 2010 do not insist on a Ph.D. awarded under supervision of the person seeking promotion under CAS. Meanwhile, he learnt that meetings of various Selection Committees were held at New Delhi, from 31.7.2017, and in the week following thereto applications submitted much after the Petitioner's Application, in some other departments, were considered by the Selection Committee, duly constituted for promotion under CAS, while his case was excluded, thereby violating the provisions of Article 14 and 15 of the Constitution. That, due to non-consideration of his case for more than eighteen months, he is deprived of appointments to various statutory bodies, membership to which are based on ex-cadre seniority. That, insertion of the additional qualification by the Respondents No.1 and 2 is arbitrary and *mala fide*, violating the Petitioner's rights guaranteed under Article 14 and 15 of the Constitution of India, hence the aforesaid prayers.

**3.** The Respondents No.1 and 2 filed a joint Counter-Affidavit disputing the averments of the Petitioner, contending that although the Petitioner seeks parity with other Associate Professors

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who have been promoted under CAS, he has failed to implead them as parties to the Petition, which thus suffers from non-joinder of parties and merits dismissal. That, the Petitioner has not challenged the Statutory Authority of the Autonomous Sikkim University with regard to Rule making Powers. Exercising this power under Section 12(2) of the Sikkim University Act, 2006, the norm (at Annexure-I) requiring guidance to research scholars at the Doctoral level for promotion from Stage 4 to Stage 5, over and above UGC standards was included in order to maintain the quality of higher education which cannot be assailed. Besides, mere completion of three years as an Associate Professor does not *per se* entitle the Petitioner to promotion but merely places him in the zone of consideration. That, contrary to the averment of the Petitioner, no application of eligible candidates have been kept beyond the time limit of six months prescribed in the UGC Regulations, 2010. That, it was in good faith and to enable the Petitioner to avail the benefit of the 4<sup>th</sup> amendment to the Regulations, which relaxed the API calculations and expanded the UGC approved journals, that he was directed to resubmit his application on parity with other candidates. However, he failed to submit proof of having supervised award of Ph.D. course of any such scholar as per the required norms. That, no fault can be attributed to issuance of letter by the IQAC, in terms of the instructions of the answering Respondents. That, in fact, departmental inquiry against the Petitioner is being contemplated for utilising confidential documents, being document Annexure P-13, to fortify his case, apart from which the appointment referred to in the correspondence pertained to 2012 and 2013, prior to adoption

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of the new norm in 2015 and is of no avail to the Petitioner. That, a Selection Committee constituted in anticipation of the Petitioner's fulfilment of the University norms of 2015, had to be cancelled on the Petitioner's failure to produce the requisite proof as elucidated above. No question of discrimination arises as the other six candidates were promoted on the same norm and the Petitioner despite awareness of the norm has approached this Court. It is prayed that the Petition be dismissed with costs.

**4.** The Respondent No. 3 in its Affidavit highlighted its functions and duties and while drawing attention to the provisions of the second amendment dated 13.6.2013 in the "*University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) (2<sup>nd</sup> Amendment) Regulations, 2013*" averred that in Clause 6.0.2 thereto, it has been laid down that the Universities can if they so desire, increase the minimum required score or devise appropriate additional criteria for screening of candidates at any level of recruitment. Further, that vide a Public Notice dated 21.11.2014, it was clarified that promotion under CAS would be covered by the UGC Regulations which were in operation on the date of eligibility and not on the date of interview.

**5.** In his Rejoinder, the Petitioner avers that he has not sought parity with other Associate Professors, his only plea being that the UGC Regulations, 2010 in general and Clause 6.3.1 and

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Clause 6.4.8 in particular be complied with. That, the provisions for promotion under CAS entails re-designation of posts involving no contest thereby requiring no impleadment of similarly placed persons in this Petition. That, the amendment to Clause 6.0.2 is applicable to direct recruitment and not for promotion under CAS. The amendment empowers the University to prescribe criteria, not higher or additional qualifications, while the power of Respondent No.2 is restricted to giving effect to decisions of the authorities and not to formulate policies. That, Annexure-I of the documents of the Respondents No. 1 and 2, prescribing the additional norm is devoid of any details apart from which the letter head created in August 2016 bears reference to a decision of August 2015, raising doubts about its authenticity. It was further pointed out that later in time, on 7.3.2017 (Annexure P-16), the Respondent No. 2 issued Circular inviting applications for promotion under CAS to all candidates who fulfil the eligibility criteria, service requirements and other conditions as laid down by the UGC, however no reference was made to any additional qualification as laid down in Annexure-I. With regard to Departmental Action contemplated against him, it is contended that Annexure P-13 (letter to the CBI) was handed over to him by the Office of the Respondent No.1 on the eve of his departure to Kolkata, to present himself before the S.P., CBI in early June, 2016. He denies knowledge of the rejection of his Application and reiterates that the Respondents chose not to reply to his representations and remained silent.

**6.** By filing I.A. No. 1 of 2018, the Respondents No.1 and 2 sought to bring to the notice of this Court that the Petitioner vide his letter dated 20.11.2017 addressed to the Respondents No.1 and 2, informed them that he intended to join the SRM University, Amravati, Andhra Pradesh, as Chair and Professor in the School of Liberal Arts and Basic Sciences on lien, before 1.3.2018 and sought to be relieved by 25.2.2018. The Executive Council of the Respondent University approved his request effective from 23.2.2018. That, the Petitioner has thereby sought to retain his position as "Associate Professor" on lien, in which circumstance, the instant Petition becomes infructuous and the issues related therein become academic as he will be working in another University in the lien period. Refuting this contention, the Petitioner argues that the retention of his position in the University as Associate Professor on lien for a period of two years while he joins SRM University, Amravati, Andhra Pradesh, does not tantamount to waiving his rights or his prayers made before this Court and hence, the Petition deserves no consideration.

**7.** Opening his arguments, while reiterating the points made in his averments, the Petitioner urged that despite having fulfilled the requisite qualifications for promotion, yet the promotion has been denied to him. Drawing attention to the UGC Regulations, 2010, specifically Clause 6.4.8, it is contended that the criteria stipulated therein is to be achieved and duly assessed by a Selection Committee, the Regulation makes no provision for any additional qualification. Attention was also invited to the Sikkim University First

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Ordinances 2016, OB-4 which at Clause 4, provides that qualification and requirements for promotion under CAS shall be as per the Regulations adopted by the University from time to time and no other stipulation exists. While accepting that the University is an autonomous organisation, it is contended that exercise of its powers ought to be within the parameters of justice and equity and they are not empowered to insert a fresh qualification over and above the ones stipulated by the University Grants Commission (hereinafter "UGC"). Contrary to this, Annexure-I of the documents of the Respondents No.1 and 2, demands an additional qualification for promotion under CAS but is an unknown document bereft of official reference number, File number, process and date of decision or the date of issuance neither was it circulated amongst faculty nor notified. This document, the Petitioner would urge, has only been manufactured for the purposes of the instant matter as apparent from the fact that the letter head on which it is issued was in fact adopted in August 2016 but contains details of adoption of higher qualifications since 2015. That, he has no contest with the other candidates already promoted, there being no specific vacancies to the posts of Professors the only requirement being eligibility as per the UGC Regulations, 2010, which they fulfilled and in any event he does not seek inter-se seniority *vis-à-vis* the six promoted candidates. That, the Respondents No. 1 and 2 misplaced his first Application and asked him to resubmit, to comply with the time limit of six months. That, ICAQ was in error in requiring him to resubmit his application under the 4<sup>th</sup> amendment since the amendment has no retrospective effect. That, the Respondents No.1 and 2, by

procrastinating their decision on his Application for more than 18 months has prejudiced him, hence there should be a time frame ordered for disposal of his matter.

**8.** Resisting the contentions of the Petitioner, learned Counsel Dr. Doma T. Bhutia for the Respondents No.1 and 2, contended that the amended Clause 6.0.2 of the Principal Regulations permits the Universities to increase the minimum required score or devise appropriate additional criteria for screening of candidates at any level of recruitment. The Respondent No.1 thus inserted a norm according to which an Associate Professor shall be considered for promotion to the post of Professor only after acquiring the experience of guiding research at the doctoral level, in addition to the UGC norms under Section 26(1) of the UGC Act, 1956. Annexure I was issued thereby to inform all concerned. While admitting that there was no date, File notings, administrative process or documents to establish addition of the new criteria, it was pointed out that the Sikkim University "*PBAS proforma for promotion under CAS form*" at Number III D.1, enumerates that the applicant has to submit details of "*Ph.D. awarded/submitted*". This detail suffices to establish that candidates who apply for promotion ought to have guided a research scholar who was then awarded a doctorate. That, the Petition suffers from non-joinder of necessary parties in the absence of the other six selected candidates and the Screening Committee, the Petition thus, ought to be rejected. That, although the Petitioner claims to have submitted his Application for promotion on 17.6.2016, however, no such application was in fact

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received by them and hence, the subsequent application submitted by him on 1.3.2017 has been considered well within the period of six months. In any event no application is ever kept pending with the concerned authorities for more than a period of six months. The averment pertaining to lien was reiterated in her arguments. To buttress her submissions, she has placed reliance on *The Chancellor and Anr. v. Dr. Bijayananda Kar and Ors* and *Dr. Prafulla Kumar Mohapatra v. Dr. Bijayananda Kar and Ors.*<sup>1</sup> and *Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh Bhupeshkumar Sheth and Ors. And Alpana V. Mehta v. Maharashtra State Board of Secondary Education and Anr.*<sup>2</sup>.

**9.** Learned Counsel for the Respondent No.3, for his part called attention to Annexure R-3, the Public Notice dated 21<sup>st</sup> November, 2014 and also to the provisions of the second amendment dated 13.6.2013 to the UGC Regulations, specifically Clause 6.0.2, besides reiterating his averments.

**10.** The opposing arguments of the Petitioner appearing for himself, learned Counsel for the Respondents No. 1 and 2 and learned Counsel for the Respondent No.3 were heard at length. Their submissions have been given careful consideration and their pleadings and documents meticulously perused, as also the citations made at the Bar.

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<sup>1</sup> (1994) 1 SCC 169

<sup>2</sup> (1984) 4 SCC 27

**11.** What falls for consideration before this Court is;

1. Whether the Petition suffers from non-joinder of necessary parties making it liable for dismissal?
2. Whether the Respondents No. 1 and 2 are competent to prescribe any new criterion or qualification in addition to the criteria enumerated in Clause 6.4.8 of the UGC Regulations, 2010 for promotion from Stage 4 to Stage 5 under the CAS, i.e. promotion from Associate Professor to the post of Professor?
3. Whether the Petitioner is entitled to consideration for promotion from the Stage 4 to Stage 5 under CAS, having fulfilled the necessary criteria as laid down in Clause 6.4.8 of the UGC Regulations, 2010 and whether the 4<sup>th</sup> amendment to the Regulations is applicable to his case?
4. Whether relieving the Petitioner for another posting on lien, as per his request, would tantamount to waiving his rights to promotion?

**12.** To address the first question, the Respondents No. 1 and 2 have failed to enlighten this Court as to how the Petitioner's case for promotion would affect the other candidates who have already been selected. It is not the Respondents' case that promotions are confined to specific number of seats or vacancies nor is there any proof of benefits that accrue to the six promotees on account of their promotion. The Petitioner in his averments and arguments has clarified that he does not seek to claim any inter-se seniority or benefits that may accrue to him on account of such

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inter-se seniority neither does he claim any reliefs against the aforesaid six candidates or against the Selection Committee. In the aforesaid facts and circumstances, when no reliefs are sought from the other six promoted candidates or the Selection Committee, I am of the considered opinion that the Petition does not suffer from non-joinder of necessary parties. The issue of non-joinder of parties to my mind, is a red herring introduced by the Respondents No.1 and 2, to digress from the main issue of promotion.

**13.** While considering the second question, it is not disputed that the Respondent No.2 is an Autonomous University and a Statutory Authority neither have its rule making powers been assailed. The apple of discord is whether an additional qualification can be inserted by the University, to the UGC prescribed qualifications, in view of the fact that the University has in "The Sikkim University First Ordinances, 2016" at OB-4 on Career Advancement Scheme of the Sikkim University Act, 2006, at Clause 4 adopted the UGC Regulations. The said Clause reads as follows;

"4. Qualification and requirements for promotion under CAS shall be as per the UGC Regulations adopted by the University from time to time."

A reading of the provision impresses that the promotion under CAS would be as per the UGC Regulations. It is not in dispute that the University has adopted the UGC Regulations from time to time and is thereby bound by it. That having been said, to understand the matter in its correct perspective, it would be expedient now to peruse the "*University Grants Commission (Minimum Qualifications*

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*for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) (2<sup>nd</sup> Amendment) Regulations, 2013*”, dated 13.6.2013, more pertinently Clause 6.0.2, which lays down as follows;

“.....

**1. Short title, application and commencement:**

1.1 These Regulations may be called University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) (2<sup>nd</sup> Amendment) Regulations, 2013.

1.2 .....

2. ....

3. The clause 6.0.2 of the Principal Regulations shall stand amended and be substituted by the following clause:-

**“6.0.2** The Universities shall adopt these Regulations for selection committees and selection procedures through their respective statutory bodies incorporating the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS) at the institutional level for University Departments and their Constituent colleges/affiliated colleges (Government / Government aided / Autonomous/Private colleges) to be followed transparently in all the selection processes. An indicative PBAS template proforma for direct recruitment and for Career Advancement Schemes (CAS) based on API based PBAS is annexed in Appendix III. The Universities may adopt the template proforma or may devise their own self-assessment cum performance appraisal forms for teachers. While adopting this, universities shall not change any of the categories or scores of the API given in Appendix-III. The universities can, if they wish so, increase the minimum required score or devise appropriate additional criteria for screening of candidates at any level of recruitment.

.....”

[emphasis supplied]

**14.** This amendment lays down with clarity that the Universities are empowered to devise appropriate additional criteria

for screening of candidates at any level of recruitment with the mandate that the API scores given in Appendix-III shall not be changed. I have to disagree with the arguments advanced by the Petitioner that any additional criteria as contemplated in Clause 6.0.2, would be applicable only at the time of recruitment and not for promotion. Firstly, let me clear the air on what recruitment entails. In this context, useful reference may be made to the decision of the Hon'ble Supreme Court in ***K. Narayanan and Others v. State of Karnataka and Others***<sup>3</sup>, wherein at Paragraph 6 it was, *inter alia*, held as follows;

"6. ....'Recruitment' according to the dictionary means 'enlist'. It is a comprehensive term and includes any method provided for inducting a person in public service. **Appointment, selection, promotion, deputation are all well-known methods of recruitment.** Even appointment by transfer is not unknown. ...."

The ratiocination in no uncertain terms elucidates that "recruitment" brings under its ambit "promotion" as laid down *supra*. On the anvil of this interpretation, it is clear that the amended Clause 6.0.2 of the UGC Regulations would apply even to promotions under the CAS and not merely to initial recruitments. Besides, the provision is to be read conjointly and not disjunctively in order to cull out the spirit of the clause. No further discussions need ensue on this point the argument of the Petitioner on this count having been thus addressed. Linked to this discussion would be the meaning of the words "Qualification" and "Criteria", which according to the Petitioner entail different connotations and that "criteria" does not extend to insertion of an additional "qualification"

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<sup>3</sup> 1994 Supp (1) SCC 44

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as wrongly interpreted by the Respondents No. 1 and 2, while adding the requirement of guiding scholars at the doctoral level. According to *Black's Law Dictionary, 10<sup>th</sup> Edition, Year 2014*, the meaning of the words "Qualification" and "Criteria" are as follows;

Qualification :- *'The possession of qualities or properties (such as fitness or capacity) inherently or legally necessary to make one eligible for a position or office, or to perform a public duty or function.'*

Criterion :- *'A standard, rule or test on which a judgment or decision can be based or compared; a reference point against which other things can be evaluated a characterizing mark or trait.'*

In my considered opinion, there cannot be too much hair splitting on the meanings, the prior one requiring possession of certain qualities, while the latter refers to a reference point to evaluate things. Qualification would be the educational qualification, while criteria would be a yardstick required by the Respondents No. 1 and 2, for evaluation of its candidates through constituted Committees. On a careful consideration of the facts before me, inserting a requirement of guiding research at the doctoral level is surely a criterion and not additional qualification. What emanates from the provisions of Clause 6.0.2 is the undisputed conclusion that the Respondent No.1 is clothed with powers to prescribe additional criteria apart from those set out in Clause 6.4.8 for screening of candidates at any level of recruitment which includes promotion.

**15.** It would now be relevant to look at the provisions of Section 12(2) of the Sikkim University Act, 2006 (hereinafter 'the Act'). Section 12 of the Act, reads as follows;

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**"12.** (1) The Vice-Chancellor shall be appointed by the Visitor in such manner as may be prescribed by the Statutes.

(2) **The Vice-Chancellor shall be the principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of all the authorities of the University.**

(3) **The Vice-Chancellor may, if he is of the opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act and shall report to such authority at its next meeting the action taken by him on such matter:**

**Provided that if the authority concerned is of the opinion that such action ought not to have been taken, it may refer the matter to the Visitor whose decision thereon shall be final:**

Provided further that any person in the service of the University who is aggrieved by the action taken by the Vice-Chancellor under this sub-section shall have the right to represent against such action to the Executive Council within three months from the date on which decision on such action is communicated to him and thereupon the Executive Council may confirm, modify or reverse the action taken by the Vice Chancellor.

(4) The Vice-Chancellor, if he is of the opinion that any decision of any authority of the University is beyond the powers of the authority conferred by the provisions of this Act, the Statutes or the Ordinances or that any decision taken is not in the interest of the University, may ask the authority concerned to review its decision within sixty days of such decision and if the authority refuses to review the decision either in whole or in part or no decision is taken by it within the said period of sixty days, the matter shall be referred to the Visitor whose decision thereon shall be final.

(5) The Vice-Chancellor shall exercise such other powers and perform such other duties as may be prescribed by the Statutes or the Ordinances."

**16.** The provisions of Section 23 (1) of the Act may simultaneously be perused, which provides as follows;

"23. (1) The Academic Council shall be the principal academic body of the University and shall, subject to the provisions of this Act, the Statutes and the Ordinances, co-ordinate and exercise general supervision over the academic policies of the University."

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What can be culled out from the above is that the Vice-Chancellor being the Principal Executive and Academic Officer of the University exercises general supervision and control over the affairs of the University and gives effect to the decisions of the authorities. The Academic Council co-ordinates and exercises general supervision over the Academic Policies. What is rather nebulous is as to who lays down the standards or criteria, such as the one inserted in Annexure-I (Page 143 of the Paper-Book) as the Academic Council presumably exercises only supervisory powers over the Academic Policies and the Respondent No.2 while exercising general supervision over the affairs of the University is vested with the responsibility of giving effect to the decisions of the authorities. Nothing further is elucidated therein.

**17.** That having been said, we may now turn to Annexure-I at Page 143 of the Paper-Book, which has been called in question by the Petitioner, as a manufactured document. This is a document purported to be "*Statement about Sikkim University Norm for Professorship under CAS*" vide which an additional criterion for promotion has been inserted and is reproduced below for clarity;

".....

**Statement about Sikkim University norm for Professorship under CAS**

This is to state that Vice-chancellor of Sikkim University, for the sake of quality of higher education, has since 2015, established a norm according to which an Associate Professor shall be considered for promotion to the post of Professor under Career Advancement Schemes only after acquiring the experience of guiding research at doctoral level, in addition to the norms established by the University Grants Commission under Section 26(1) of the UGC Act, 1956.

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The Vice-chancellor has established the above under Section 12(2) of the Sikkim University Act, 2006 (No. 10 of 2007).

Sd/-  
(T.K. Kaul)  
Registrar"

**18.** Before proceeding further, it may be stated that "Norm" as per the *Oxford Dictionary, 12<sup>th</sup> Edition, 2011, reprinted in 2013, inter alia*, explains it as;

*"A usual, typical or standard thing. A required or acceptable standard."*

For the present purposes, it may be accepted as a requirement of having guided a scholar at the doctoral level. '*Guided a scholar at the doctoral level*' is accepted by the contesting parties as a term for award of doctorate to the scholar supervised by the candidate seeking promotion.

**19.** Reverting to Section 12(2) of the Act, this provision empowers the Respondent No.2, *inter alia*, to give effect to the decisions of all the authorities of the University which obviously includes that of the Academic Council. The document (Annexure-I) extracted above details that it is the Respondent No. 2 who has "established" the norm of acquiring the experience of guiding research at doctoral level for promotion of an Associate Professor under Section 12(2) of the Act. However, Section 12(2) of the Act empowers the Respondent No.2 to give effect to the decisions of the authorities but does not spell out that he is empowered to make unilateral decisions as the one above. Section 12(3) of the Act, *inter alia*, clarifies that, if there is urgency in a matter, the Respondent

No.2 can exercise any power conferred on any authority of the University by or under the Act, with the rider that such steps shall be reported to the concerned authority at its next meeting. This provision makes the Respondent No.2 accountable for his actions. The records furnished by the Respondents No.1 and 2, indicate no meeting of the Academic Council at any point of time or decision taken thereof to include the above criterion. If it is assumed that the Respondent No.2 had taken the decision treating the matter as urgent, then as per Section 12(3) of the Act, he is required to bring the steps taken by him to the notice of the concerned authority. No documents in this regard bear witness to such proceedings. It goes without saying that laying down a fresh criterion for promotion ought to be accorded the seriousness that such matters deserve by ensuring compliance of required formalities such as a meeting of the concerned authorities and information of the addition by way of notification. None of these formalities appear to have been observed by the Respondents No.1 and 2, which can be concluded from the absence of documents before this Court to buttress their case. Thus, it stands to reason that *sans* compliance of the provisions of the Act, the additional criterion is *non est* in the eyes of law.

**20.** The argument of the Petitioner that Annexure-I is a subsequently prepared letter head i.e. after August 2016, stands to reason in as much as the letter head appearing at Annexure P-13, which is a letter dated 24.5.2016, addressed to the Superintendent of Police, CBI, Government of India, is different. Annexure P-13 having been issued in May 2016 ought to have been in the same

letter head as Annexure-I, which contains a decision purportedly adopted in 2015. The difference in letter heads lends credence to the argument of the Petitioner that it was prepared for the purposes of this Case. The document *sans* date or details indeed appears to have been put together rather hastily.

**21.** The preparation and issuance of Annexure-I is shrouded in mystery. Would it therefore be fair on the aspiring candidates if the Respondents No.1 and 2 chose to keep the criterion closeted? It is axiomatic that ignorance of any provision would lead to the inability of the candidate to refer to it or take advantage of the provisions. Annexure-I having not been notified or circulated and evidently known only to the Respondents No. 1 and 2, the additional criterion fails to hold any value. Besides, the assertion that the other six promoted candidates were subjected to the same criterion remains unfortified in the absence of documents furnished for scrutiny by this Court.

**22.** The above discussions would necessarily take us to the next question flagged. The criteria enumerated in Clause 6.4.8 of the UGC Regulations, 2010 for promotion from Stage 4 to Stage 5, reads as follows;

**“6.4.8.** Associate Professor completing three years of service in stage 4 and possessing a Ph.D. Degree in the relevant discipline shall be eligible to be appointed and designated as Professor and be placed in the next higher grade (stage 5), subject to (a) satisfying the required credit points as per API based PBAS methodology provided in Table I-III of Appendix IV stipulated in these Regulations, and (b) an assessment by a duly constituted selection committee as suggested for the direct recruitment of Professor.

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Provided that no teacher, other than those with a Ph.D., shall be promoted or appointed as Professor.”

**23.** Clause 6.3.1 relied on by the Petitioner reads as follows;

**“6.3.1** A teacher who wishes to be considered for promotion under CAS may submit in writing to the university/college, with three months in advance of the due date, that he/she fulfils all qualifications under CAS and submit to the university/college the Performance Based Appraisal System proforma as evolved by the concerned university duly supported by all credentials as per the API guidelines set out in these Regulations. In order to avoid delays in holding Selection Committee meetings in various positions under CAS, the University/College should immediately initiate the process of screening/selection, and shall complete the process within six months from the date of application. Further, in order to avoid any hardships, candidates who fulfill all other criteria mentioned in these Regulations, as on 31 December, 2008 and till the date on which this Regulation is notified, can be considered for promotion from the date, on or after 31 December, 2008, on which they fulfil these eligibility conditions, provided as mentioned above.”

**24.** It would be necessary to first consider the arguments of learned Counsel for the Respondents No.1 and 2, that the Application dated 17.6.2016 was never received by them. The Petitioner for his part had drawn the attention of this Court to Annexure P-1 at Page 30 of the Petition, wherein his Application for promotion under CAS from Stage 4 to Stage 5 has been endorsed as “received” and signature follows therein, although the signature remained unidentified. Later in time, Annexure P-5, dated 27.2.2017, addressed to the Petitioner by the Assistant Registrar reads as follows;

“.....

SU/2014/REG-03/CAS/2885/1756

Date: 27.02.2017

To,

Dr. V. Krishna Ananth,  
Associate Professor,  
Department of History,  
Sikkim University.

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Sub.: Application for promotion under CAS -  
Regarding.

Dear Sir,

With reference to your application for promotion under CAS, we have not been able to locate your application form. Hence, I am directed to request to kindly **re-submit** your application. Any inconvenience is regretted.

Yours sincerely,  
Sd/-  
(Grace D. Chankapa)  
Assistant Registrar

Copy to:

1. P.S. to VC for kind information of the Vice-Chancellor"

The very language employed in the correspondence indicates that the Petitioner had indeed submitted his application previously which apparently has been misplaced by the Respondent No.1 and hence, the request to "re-submit the application". The request for resubmission is evidently to ensure compliance of the time frame of six months mandated in Clause 6.3.1 for disposal of such petitions.

**25.** Clause 6.4.8 (*supra*) is self explanatory laying down the requisite qualifications for promotion. A perusal of Annexure P-1 of the Petitioner's document at Page 47 of the Petition, being '*Summary of Category I and II*', would reveal that the scores obtained by him undisputedly are over and above the requisite scores. The '*Summary of Category III*' would also indicate that the requisite qualifications for making him eligible for promotion from Stage 4 to Stage 5 have been fulfilled. Annexure P-1 reveals that in Category I, his score is 286.8 whereas the requirement is of 70 per

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annum. In Category II, his score is 95 as against the requirement of 50. In Category III, the scores of the Petitioner at 182.50 is above the requisite of one hundred. In all, the total requirement is 250, however, simple calculations would reveal that his scores are well above the requirement. Annexure P-1 would also reveal the list of his publications and research publications. Annexure P-10 (documents of the Petitioner), is an e-mail addressed to the Petitioner and one Dr. Satyanarayana dated July 10, 2017 of which the contents, *inter alia*, are as herein below;

“ .....

Your application for CAS has been scrutinised by the committee. Whereas you qualify for all other points but it is reported that there is no documentary proof attached with the application establishing the fact of supervising award of PhD. PhD award notification bearing the name of the supervisor may have been issued by the competent authority. It would be appreciated if the documentary evidence of successfully supervising PhD is submitted by sending scanned copy by e-mail at the earliest. We plan to hold interviews in the first week of August, hence urgency in the matter.

.....”

The e-mail, thus, makes it abundantly clear that the Petitioner has qualified for promotion in terms of the criteria enumerated in Clause 6.4.8 of the UGC Regulations, 2010. The only stumbling block to his promotion is the alleged new criterion added by the Respondent No.2. From the foregoing discussions, it clear that the said additional criterion is *non est* having failed to comply with the Act and not having been circulated or notified thereby placing it outside the scope of consideration for any purpose.

**26.** It would be apposite to state that the 4<sup>th</sup> amendment of the UGC Regulations, 2010 was enforced from 11.7.2016. From the facts discussed hereinabove, it is clear that the Petitioner is eligible to be considered for appointment and designation as Professor from 1.7.2016 having accrued the requisite credit points as per the API based PBAS methodology of the UGC Regulations. The request of the Respondents No.1 and 2 to the Petitioner requiring him to submit his Application under the 4<sup>th</sup> amendment is fallacious since it is not for the Respondents No.1 and 2 to dictate terms to the Petitioner, when specific criteria has been laid down by the UGC Regulations and he was eligible before the 4<sup>th</sup> amendment came into force on 11<sup>th</sup> July, 2016. This is reinforced by the Public Notice of the UGC dated 21<sup>st</sup> November, 2014 already extracted and which for brevity is not being reproduced. The alleged good faith extended by the Respondents No.1 and 2, while requiring him to submit his application under the 4<sup>th</sup> amendment finds no place in the legal scheme of things. Needless to add that no rule can be applied retrospectively unless it is specified therein for special consideration. In the instant matter no such specification has been laid down. It was clarified by the Respondents No.1 and 2 that no Forms have been prepared as per the 3<sup>rd</sup> amendment, be that as it may, this should not debar the Petitioner from applying as per the Regulations applicable to him and not as per the choice and directions of the Respondents No.1 and 2. The argument advanced by the Respondents No.1 and 2 that the Form provided by them for applying for promotion under CAS, suffices as proof of the additional criterion, is at best a feeble argument befitting no consideration or

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discussion. At this juncture, it is worth noticing that the Circular dated 7.3.2017 (Annexure P-16) inviting applications for promotion under CAS, is silent about the additional norm. Perhaps it would be fair to assume that the criterion was meant to be applicable only to the Petitioner.

**27.** So far as retrospective application of rules is concerned, in ***K. Narayanan and Others v. State of Karnataka and Others*** (supra), the Hon'ble Supreme Court at Paragraph 7, *inter alia*, held as follows;

"7. Rules operate prospectively. Retrospectivity is an exception. Even where the statute permits framing of rule with retrospective effect the exercise of power must not operate discriminately or in violation of any constitutional right so as to affect vested right. The rule-making authority should not be permitted normally to act in the past. ...."

**28.** In ***B.S. Yadav and Others v. State of Haryana and Others***<sup>4</sup>, the Hon'ble Supreme Court observed as herein below;

"76. ....Since the Governor exercises a legislative power under the proviso to Article 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But the date from which the rules are made to operate must be shown to bear, either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case. ...."

The above would stand in good stead for the instant matter.

**29.** The ratiocination relied on by the Respondents No. 1 and 2 are now taken up for consideration. In ***The Chancellor and Anr. v. Dr. Bijayananda Kar and Ors and Dr. Prafulla Kumar Mohapatra v. Dr.***

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<sup>4</sup> 1980 (Supp) SCC 524

***Bijayananda Kar and Ors. (supra)***, relied on by learned Counsel for the Respondents No. 1 and 2, the Hon'ble Supreme Court was pleased to caution that the decisions of the academic authorities should not ordinarily be interfered with by the Courts. Whether a candidate fulfils the requisite qualifications or not is a matter which should be entirely left decided by the academic bodies and the concerned selection committees which invariably consist of experts on the subjects relevant to the selection. In that matter, one Dr. Kar in his representation before the Chancellor specifically raised the issue that one Dr. Mohapatra did not possess the specialisation in the "Philosophical Analysis of Values" as one of the qualifications. The representation was rejected by the Chancellor. The Hon'ble Supreme Court was in no doubt that the Chancellor must have looked into the question of eligibility of the said Dr. Mohapatra and got the same examined from the experts before rejecting the representation of Dr. Kar. In ***Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh Bhupeshkumar Sheth and Ors. And Alpana V. Mehta v. Maharashtra State Board of Secondary Education and Anr.*** (supra), also relied on by learned Counsel for the Respondents No. 1 and 2, the Hon'ble Supreme Court had cautioned that the Courts should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them.

It is evident that the matter at hand is clearly distinguishable from the matters referred to hereinabove. In the instant case, there

is no quarrel with the findings of the authorities with regard to the qualifications laid down by the UGC for promotion. The sore point is the purported additional norm which is being taken into consideration by the Respondents No. 1 and 2, for promotion of the Petitioner when it has failed to comply with established legal norms such as circulation and notification, besides other formalities already discussed hereinabove. This Court by no stretch of the imagination seeks to substitute its views in place of those formulated by academicians but is only seeking to mete out justice where it is being denied.

**30.** Coming to the question of the matter being infructuous because of the Petitioner having been relieved from the University to join another posting on lien, is based on an erroneous appreciation of the law. In this context, it would be worthwhile to refer to ***State of M.P. v. Sandhya Tomar***<sup>5</sup>, the Hon'ble Supreme Court observed as follows;

"**10.** 'Lien' connotes the civil right of a government servant to hold the post 'to which he is appointed substantively'. The necessary corollary to the aforesaid right is that such appointment must be in accordance with law. A person can be said to have acquired lien as regards a particular post only when his appointment has been confirmed, and when he has been made permanent to the said post. 'The word "lien" is a generic term, and standing alone, it includes lien acquired by way of contract, or by operation of law.' Whether a person has lien depends upon whether he has been appointed in accordance with law, in substantive capacity and whether he has been made permanent or has been confirmed to the said post."

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<sup>5</sup> (2013) 11 SCC 357

**31.** In *State of Rajasthan v. S.N. Tiwari*<sup>6</sup>, it was held that;

"17. It is well settled that when a person with a lien against the post as appointed substantively to another post, only then he acquires a lien against a latter post. Then and then alone, the lien against the previous post disappears. Lien connotes the right of a civil servant to hold the post substantively to which he is appointed. The lien of a government employee over the previous post ends if he is appointed to another permanent post on permanent basis. In such a case the lien of the employee shifts to the new permanent post. It may not require a formal termination of lien over the previous permanent post."

**32.** While explaining the word 'lien' in *Ram Lal Khurana v. State of Punjab*<sup>7</sup> the Hon'ble Supreme Court elucidated that;

"8. Lien is not a word of art. It just connotes the right of a civil servant to hold the post substantively to which he is appointed."

**33.** The ratiocination in *Arun Kumar Agarwal v. Union of India*<sup>8</sup> lays down that;

"58. It is a settled proposition of law that a deputationist would hold the lien in the parent department till he is absorbed in any post. ...."

**34.** In *Ram Lal Khurana v. State of Punjab* (supra), the Hon'ble Supreme Court while explaining the word lien also held that;

"19. The term "lien" comes from the Latin term "ligament" meaning "binding". The meaning of lien in service law is different from other meanings in the context of contract, common law, equity, etc. The lien of a government employee in service law is the right of the government employee to hold a permanent post substantively to which he has been permanently appointed."

**35.** Need this Court explain any further on the term "lien" when the aforesaid judgments so succinctly illuminate the meaning

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<sup>6</sup> (2009) 4 SCC 700

<sup>7</sup> (1989) 4 SCC 99

<sup>8</sup> (2014) 2 SCC 609

and import thereof. It is evident that the submission of the Respondents No.1 and 2 on this Court is based on an erroneous understanding of the word 'lien'. As the substantive post of the Petitioner is an Associate Professor in the Sikkim University, it would include any promotion that he obtains thereof. The question of the Petition being infructuous and only academic consequently does not arise.

**36.** In conclusion, considering the entirety of the facts and circumstances as discussed hereinabove, the Petition is allowed with the following directions;

- (a) The Respondents No. 1 and 2 shall take steps to consider the promotion of the Petitioner from Stage 4 to Stage 5, in terms of the UGC Regulations, 2010, Clause 6.4.8 and any other relevant provision. While doing so, due consideration shall be taken of the observations in the e-mail dated July 10, 2017 addressed to the Petitioner and one Dr. Sathyanarayanan from Mr. T.K Kaul, Registrar, Sikkim University, wherein the Petitioner has been informed that he qualifies on all other points except the criterion added vide Annexure-I. No consideration whatsoever shall be attached to the impugned additional criterion inserted by the Respondent No.2 vide Annexure-I (Page 143 of the Paper-Book), viz. requiring supervising award of Ph.D., the same being *non est* in the eyes of law.
- (b) The Respondents No. 1 and 2 shall consider the Application of the Petitioner for promotion under the 3<sup>rd</sup> amendment dated 4<sup>th</sup> May, 2016 of the

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UGC Regulations, 2010 which are applicable to him and not under the 4<sup>th</sup> amendment dated 11<sup>th</sup> July, 2016, which has no retrospective effect.

- (b) All necessary steps shall be completed within sixty days hence.

**37.** No order as to costs.

Sd/-  
**( Meenakshi Madan Rai )**  
**Judge**  
6.3.2018

Approved for reporting : **Yes**  
Internet : **Yes**

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