

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WP(C).No. 9390 of 2012 (W)  
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PETITIONER:  
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DR.K.PRATHAPAN,  
MISSION DIRECTOR, STATE HORTICULTURE MISSION  
GOVERNMENT OF KERALA, UNIVERSITY P.O.  
THIRUVANANTHAPURAM-34 (ON WORKING ARRANGEMENT)  
ASSOCIATE PROFESSOR OF AGRONOMY  
KERALA AGRICULTURAL UNIVERSITY, VELLANIKKARA  
THRISSUR-680656.

BY ADVS.SRI.S.ABHILASH  
SRI.K.SIJU  
SRI.O.V.RADHAKRISHNAN (SR.)

RESPONDENT(S) :  
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1. KERALA AGRICULTURAL UNIVERSITY  
MAIN CAMPUS, VELLANIKKARA  
KERALA AGRICULTURAL UNIVERSITY P.O., THRISSUR-680656  
REPRESENTED BY ITS REGISTRAR.

2. STATE OF KERALA  
REPRESENTED BY ITS CHIEF SECRETARY  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

3. RUBBER BOARD  
P.B. NO. 1122, SUB JAIL ROAD, KOTTAYAM-686002  
REPRESENTED BY ITS SECRETARY.

RR3 BY ADV. SRI.V.ABRAHAM MARKOS  
RR3 BY ADV. SRI.MATHEWS K.UTHUPPACHAN  
RR3 BY ADV. SRI.BINU MATHEW  
RR3 BY ADV. SRI.TERRY V.JAMES  
RR3 BY ADV. SRI.B.J.JOHN PRAKASH  
RR3 BY ADV. SRI.TOM THOMAS (KAKKUZHIYIL)  
RR-R1 BY ADV. SRI.BABU JOSEPH KURUVATHAZHA, SC, KERALA  
AGRICULTURAL UNIVERSITY  
R BY GOVERNMENT PLEADER SRI RAFEEQ.V.K  
R BY SRI.K.P.MUJEEB, SC, KERALA AGRI. UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 10-07-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**A P P E N D I X**

**PETITIONER'S EXHIBITS**

EXT.P1: TRUE COPY OF G.O NO.85/10/AD DT.31.3.2010.

EXT.P2: TRUE COPY OF THE MEMORANDUM DT.1.5.1989.

EXT.P3: TRUE COPY OF THE ORDER DECLARING PROBATION WITH EFFECT FROM 25.9.1991 ISSUED BY R3 DT.12.12.1995.

EXT.P4: TRUE COPY OF THE CIRCULAR DT.8.3.1994.

EXT.P5: TRUE COPY OF THE CERTIFICATE DT.6.1.1999 ISSUED BY R2.

EXT.P6: TRUE COPY OF THE ORDER DT.6.2.1996.

EXT.P7: TRUE COPY OF THE RELEVANT PAGES OF THE GOVERNMENT ORDER DT.21.12.1999.

EXT.P8: TRUE COPY OF THE UNIVERSITY ORDER DT.2.3.2000.

EXT.P9: TRUE COPY OF THE LETTER DT.19.4.2001 OF THE INDIAN COUNCIL OF AGRICULTURAL RESEARCH.

EXT.P10: TRUE COPY OF THE UNIVERSITY ORDER DT.15.10.2005.

EXT.P11: TRUE COPY OF THE ORDER DT.21.01.2006.

EXT.P12: TRUE COPY OF THE UNIVERSITY ORDER DT.4.9.2007.

EXT.P13: TRUE COPY OF THE UNIVERSITY ORDER DT.19.03.010.

EXT.P14: TRUE COPY OF THE REPRESENTATION DT.11.11.1998.

EXT.P15: TRUE COPY OF THE JUDGMENT DT.10.07.2009 IN WPC.NO.18942/2009.

EXT.P16: TRUE COPY OF THE LETTER DT.26.03.2010.

EXT.P17: TRUE COPY OF THE COMMUNICATION DT.27.03.2010.

EXT.P18: TRUE COPY OF THE LETTER DT.7.7.2010.

EXT.P19: TRUE COPY OF THE UNIVERSITY ORDER DT.11.5.2010.

EXT.P20: TRUE COPY OF THE COMMON JUDGMENT IN WPC.NO.11799/2010 AND WPC.NO.18370/2010 DT.17.3.2011.

EXT.P21: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER IN PURSUANCE TO EXT.P20.

EXT.P22: TRUE COPY OF THE LETTER DT.23.06.2010 OF THE VICE CHANCELLOR.

EXT.P23: TRUE COPY OF THE UNIVERSITY ORDER DT.9.11.2011.

EXT.P24: TRUE COPY OF THE MINUTES OF THE 466TH MEETING OF THE EXECUTIVE COMMITTEE.

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EXT.P25: TRUE COPY OF THE LETTER DT.4.6.2011 ISSUED BY R1 TO R3.

EXT.P26: TRUE COPY OF THE MINUTES OF THE 482TH MEETING OF THE EXECUTIVE COMMITTEE HELD ON 3.5.2011.

EXT.P27: TRUE COPY OF THE MINUTES OF THE 483RD MEETING OF THE EXECUTIVE COMMITTEE HELD ON 16.5.2011.

EXT.P28: TRUE COPY OF THE MINUTES OF THE 486TH MEETING OF THE EXECUTIVE COMMITTEE HELD ON 29.10.2011.

EXT.P29: TRUE EXTRACT COPY OF THE UGC REGULATIONS ON MINIMUM QUALIFICATIONS FOR APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES AND MEASURES FOR THE MAINTENANCE OF STANDARDS IN HIGHER EDUCATION, 2010.

EXT.P30: TRUE COPY OF THE ADDENDUM ISSUED AS PER PROCEEDINGS NO.GA/C2/20608/09 DT.23.5.2015.

RESPONDENTS' EXHIBITS

NIL.

/TRUE COPY/

P.S TO JUDGE

**P.V.ASHA, J.**

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W.P(c) No.9390 of 2012-W

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Dated this the 10<sup>th</sup> day of July, 2015

**JUDGMENT**

Petitioner who is working as Mission Director in the State Horticulture Mission, under the Kerala Agricultural University (hereinafter referred to as the “University”), ha filed this Writ Petition challenging Ext.P23 order passed by the University by which it reviewed its own decision in Ext.P13 and held that petitioner would not be entitled to reckon his previous service in the Rubber Research Institute as Research Assistant (Agronomy/Soil Field Experimentation)/ Junior Scientist for the period from 25.09.1989 to 29.01.1996 for the purpose of Career Advancement Promotion.

2. The facts leading to Ext.P23 are as follows: The petitioner is at present working as Mission Director in the State Horticulture Mission, under the 1<sup>st</sup> respondent University . Prior to his appointment in the University, he had served as Research Assistant under the Rubber Board, the 3<sup>rd</sup> respondent. His initial appointment in Rubber Board was based on Ext.P1 memo issued

on 1.5.1989 in the post of Research Assistant (Agronomy/Soil Field Experiments) in the scale of pay of Rs.1640-60-2600-EB-75-2900 plus usual allowances at the Central Government rate. As per Ext.P3 order dated 12.12.1995, his probation was declared and he was confirmed in the post of Junior Scientist w.e.f 25.9.1991. While the petitioner was working in the Rubber Board he got appointment in the University as Assistant Professor of Agronomy as per Ext.P6 order dated 6.2.1996, in the scale of pay of Rs.2200-75-2800-100-4000 in the Faculty of Agriculture.

3. In the meanwhile the revised scale of pay was introduced in various Universities under the UGC Scheme. In the 277<sup>th</sup> Executive Committee meeting of the University held on 20.12.1993, it was resolved to take into account the qualified services rendered by the Scientists/teachers in other Universities – ICAR and its institutions for career advancement in UGC/ICAR scale in the University. Accordingly the University issued Ext.P4 circular stipulating the guidelines for the same, according to which, the services rendered in a post, qualifications for which were not lower than the qualification prescribed by the UGC for the post of Lecturer as well as service rendered in a post in an equivalent grade/scale of pay as the post of Lecturer could be

reckoned for the purpose of placement in Senior Grade/Selection Grade. The further conditions were to the effect that the incumbents concerned should have possessed the minimum qualification prescribed by the UGC; the appointment should be in accordance with the prescribed selection procedure as laid down by the University/State Government and appointment was not adhoc or in a leave vacancy of less than one year duration. While so, Govt issued orders on implementation of the UGC Scheme including revision of pay scales of teachers of Universities and colleges in Kerala, as per Ext P7-G.O(P) 171/99/H.Edn. dated 21.12.1999,. Under clause 7.1 of this order, previous service without any break as a Lecturer or equivalent in a University, College, National Laboratory or other scientific organization, eg. CSIR, ICAR, DRDO, UGC, ICSSR, ICHR and as a UGC Research Scientist should be counted for placement of Lecturer in senior scale/selection grade which provided that the post was in an equivalent grade/scale of pay as the post of Lecturer.

4. The University thereafter issued Ext.P8 order on 2.3.2000, implementing the UGC Scheme and revision of scale of pay on the basis of the decision of the executive committee in its

343<sup>rd</sup> meeting held on 7.1.2000. Accordingly the scale of pay of Assistant Professor was revised from 2200-75-2800-4000 to 8000-275-13500. Thereafter the Indian Council of Agricultural Research issued Ext.P9 order on 19.04.2001 in respect of Career Advancement Promotion Scheme for Scientists of ICAR and teachers of the Universities under it, according to which a Scientist (Senior Scale)/Lecturer (Senior Grade)/Assistant Professor (Senior Scale) with 5 years experience in the senior scale or with a total of 9 years service (with Ph.D)/10 years service (with M.Phil)/11 years service would be eligible for promotion as Senior Scientists/Scientist (Selection Grade)/Reader(promotion)/Associate Professor (promotion)/Lecturer (Selection Grade). The University thereafter issued Ext.P10 order, in implementation of the UGC/ICAR Scheme, 1996 for the teachers/Scientist/Library staff. The eligibility criteria for career advancement was provided in clause 6.20 to 6.23. The minimum eligibility criteria for movement to the grade of Assistant Professor (Senior Scale)) was stipulated as 4 years for those with Ph.D, 5 years for those with M.Phil and 6 years for others. An Assistant Professor Senior Scale can move to the grade of Assistant Professor(Selection Grade)/Associate Professor. Under

clause 6.21, the minimum eligibility criteria for movement to the grade of Associate Professor and above was fixed as Ph.D. Those who were without Ph.D were eligible to go up to the level of Assistant Professor (Selection Grade). Under clause 6.22 an Associate Professor with a minimum of 8 years of service in that grade were made eligible to be considered for appointment as Professor.

5. The petitioner was granted Career Advancement Promotion (hereinafter referred to as 'CAP') to the cadre of Assistant Professor (senior scale) on scale of pay of Rs. 10000-15200 w.e.f 30.01.2000, as per Ext.P11 order issued on 21.01.2006, under the 1996 UGC scheme. By Ext.P12 order dated 4.9.2007, he was granted CAP to the cadre of Associate Professor in the scale of pay of Rs. 12000-18300 w.e.f 30.01.2005 under the 1996 scheme.

6. The petitioner had submitted a representation Ext.P14, requesting to reckon his entire service in the Rubber Research Institute as Junior Scientist, for CAP pointing out that the Rubber Research Institute of India in which he was working was a National Research Institute and qualification for the post of Scientists is not lower than the qualification prescribed by the

UGC and selection is also in accordance with the prescribed selection procedure. The University had sought clarification regarding his service from the Rubber Board, though it did not respond. The Executive Committee deliberated the issue in its 460<sup>th</sup> meeting and constituted a committee to consider the issue regarding appointment to the post of Professor (Agronomy), which again placed the matter before the executive committee for considering the case of petitioner with reference to clause 7.1 to 7.7 of the UGC Scheme, 1996, according to which previous service without break as Lecturer or in equivalent grade in a University, College, National Laboratory or Scientific Organization can be considered for CAP. The issue was considered in the 466<sup>th</sup> meeting of the executive committee and it was resolved to reckon the previous service of petitioner in the Rubber Research Institute. Based on that decision, the University issued Ext.P13 order dated 19.03.2010, according sanction to consider the previous service rendered by him as Junior Scientist in Rubber Research Institute as equivalent to the service of Assistant Professor in the University.

7. In the meanwhile petitioner approached this Court in W.P© No.18942 of 2009, as the selection committee was not

considering his case for CAP as Professor in Agronomy. This Court had, by Ext.P15 judgment dated 10.07.2009 directed the Vice Chancellor to consider and pass orders on his representation before finalizing the selection for promotion as Professor in Agronomy. Eventhough a call letter was issued asking him to appear before the screening committee for considering him for CAP as Professor, by Ext.P17 letter, the call letter was cancelled, saying that he was not eligible for promotion as Professor on the date of screening ie, on 6.4.2010 since he was on leave without allowance on employment abroad for the period from 23.09.2004 to 26.06.2005 and that his promotion as Assistant Professor (senior scale) will be only on completion of one year as Assistant Professor after joining the University. Petitioner thereupon submitted representation dated 26.03.2010 producing the certificate from Rubber research institute regarding his previous service.

8. Thereafter on 11.05.2010, the University, issued Ext P19 order revising the date of his CAP as Assistant Professor (Senior scale) w.e.f 30.01.1997, reckoning the past service from 25.09.1989 to 29.01.1996. It was stated that the benefit of promotion would be sanctioned only on completion of one year

from the date of joining in the University. He was further granted promotion as Associate Professor w.e.f 30.01.2002, on completion of 5 years as Assistant Professor (SS).

9. Aggrieved by the action of the University in insisting one year service after joining the University, invoking the provisions contained in the proviso to Rule 28(a)(i) of Kerala State & Subordinate Service Rules (KS&SSR for short), for CAP ie, denial of CAP, as senior scale and selection grade/Associate Professor/Professor, on completion of the requisite number of years of service, the petitioner approached this Court by filing W.P© 11799 of 2010 and 18370/2010. This Court, found that the action of the Registrar in passing Ext P19 order (Ext P8 in W.P.(C) 18370/2010 & connected case), was not proper and that the matter should have been considered first by the executive committee. The writ Petitions were disposed of by Ext P20 judgment dated 17.3.2011, quashing Ext P19 order and directing the executive committee of the University to consider the various claims of petitioner and to take an appropriate decision inaccordance with the UGC scheme and the relevant orders which are in force as well as in the light of the executive committee decision taken on 19.03.2010 in favour of the

petitioner, within a period of 2 months.

10. Thereafter the University issued Ext P23 order dated 29.11.2011, cancelling its order passed on 19.3.2010(Ext P13) and revising the date of his CAP as Assistant Profesor Senior Scale as 30.1.2000 under 1996 scale and as Associate Professor as 3.11.2005. The order show that the executive committee of the University, in its 486<sup>th</sup> meeting held on 29.10.2011, considered the issue with reference to clarifications obtained from Rubber Research Institute and ICAR and decided to cancel its decision in 466<sup>th</sup> meeting to consider the past service of petitioner in Rubber Research Institute as equivalent to that Assistant Professor of the University.

11. It is in the above circumstances that this Writ Petition is filed challenging Ext P23 order. The main contention raised is that the executive committee does not have any power to review its own decisions.

12. The University has filed a counter affidavit supporting the impugned orers. According to them the decision was taken alfter seeking clarifications from the Rubber Research Institute as to the equivalency, scale of pay, qualification, nature of appointment, procedure adopted for selection, etc in respect of

the appointment of petitioner under them. The Rubber Research Institute informed them that they were not in a position to furnish any instruction other than that petitioner was offered a temporary appointment. The 1<sup>st</sup> respondent further stated that clarifications given by ICAR cannot be implemented by it unless there are Govt orders. According to them the decision was taken in the 486<sup>th</sup> meeting of executive committee, in terms of Ext P20 judgment, after considering the same in the 482<sup>nd</sup> and 483<sup>rd</sup> meeting and after seeking clarifications from Rubber Research Institute and ICAR; it was found that the earlier decision was not in terms of the schemes of ICAR and UGC; University realised that the service rendered by petitioner was not equivalent to the service of Assistant Professor in University; He can be given promotion only on completion of at least one year after joining the University, in terms of proviso to Rule 28(a) of Part II KS& SSR. Ext P13 order happened to be passed by mistake, which was only rectified in Ext P23. However the University stated that they are not of the view that petitioner was in a lower grade, but the scale of pay was lower.

13. I heard the learned Senior Counsel Sri. O.V. Radhakrishnan appearing for the petitioner and Sri. Babu Joseph

Kuruvathazha, the learned Standing Counsel for the University. The contention raised by the learned Senior counsel for the petitioner is that the decision to reckon the previous service of the petitioner was taken by the executive committee. Ext P23 order also the decision is taken by the executive committee. Under the provisions of the University Act, the executive committee is not conferred with any power of review. Hence Ext P23 order on a review of the earlier decision of the executive committee as evident from Ext.P13 is null and void. It is further contended that there was no reason for the University to consider the issue when the question to be considered was only with respect to the requirement of one year service in University for CAP. When there was no challenge as against the benefits granted to him based on Ext P13, it was not proper for the University to take away the benefits already granted, while considering his request for additional benefits. It is contended that the petitioner's previous service was liable to be reckoned for CAP. It is further contended that provisions in KS&SSR are not applicable to CAP and hence insisting one year service in University for CAP was illegal. The learned Senior Counsel relied on the decision of the Apex Court in **Patel Narshi**

**Thakershi v. Pradyumansinghji Arjunsinghji** [AIR 1970 SC 1273] and **Chandra Bhan Singh v. Latafat Ullah Khan** [AIR 1978 SC 1814] in support of his contention that the power to review cannot be exercised in case it is not conferred under the statute, as it is not an inherent power.

14. In the light of rival contentions raised, I will consider the contention regarding the power of executive committee to undertake the review of its own decision, first. The executive committee of the University in its 466<sup>th</sup> executive committee meeting held on 4.2.2010, decided to consider the previous service rendered by the petitioner as Junior Scientist in Rubber Research Institute as equivalent to the service of an Assistant Professor in the Kerala Agricultural University, as can be seen Ext.P24 as well as Ext P13. Therefore the order Ext.P23 in effect reviewing the decision contained in Ext P24 and the order Ext.P13 to the detriment of the petitioner is without authority.

Section 16 of the Agricultural University Act, 1971 provides for the powers of executive committee. Section 12 of the Act provides for the powers and function of General Council. The Act or Statute does not confer any power of review for the the executive committee. Even though Section 12 confers power for

review on the general council, the same is only when the act of executive committee is not in exercise of the powers conferred on it. At the same time executive committee is not clothed with any authority to undertake a review. As rightly contended by the Senior Counsel, the power to review is not inherent, but it has to be conferred under the Statute. In the absence of any provision under the Act, Statue or ordinance conferring the power of review on the executive committee, the decision Ext.P23 reviewing its own earlier decision is nullity, as held by a series of judgments of the apex court. In **Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji**, AIR 1970 SC 1273 the apex court , while considering the the validity order passed by Govt in effect reversing an earlier order held as follows:

“4. XXXX It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to notice from which it could be gathered that the Government had power to review its own order.”

15. In **Major Chandra Bhan Singh v. Latafat Ullah Khan** AIR [1978 SC 1814], while considering the orders passed by the Competent officer under the Evacuee Interest

(Separation) Act, 1951, the apex court held that it is well settled that review is a creature of statute and cannot be entertained in the absence of a provision therefor. In the judgment in **Dr.(Smt) Kundesh Gupta v. Management Hindu Kanya Mahavidyalaya** [AIR 1987 SC 2186=(1987) 4 SCC 525] that, unless power of review is specifically conceded by the Statute, the power of review cannot be exercised on its own and hence the action is without jurisdiction. This position was reiterated in **Kalabharati Advertising v. Hemant Vimalnath Narichaniya** [2010(3) KLT 986 (Supreme Court)] and in several other judgments.

16. In the light of the above provisions of law and precedents, it can be concluded that the order Ext P23 is a nullity and the benefits granted to petitioner based on Ext P13 could not have been revised or withdrawn to his detriment and hence the same is liable to be set aside.

17. It is seen that the University has issued Ext P23 order taking away the benefits already granted to him counting his previous service in the Rubber Research Institute, without even issuing any notice to him, in flagrant violation of the principles of natural justice, while considering her claim for certain additional

benefits. The order Ext P23 is liable to be set aside on that ground also.

18. Now it is necessary to examine the provisions in Ext P7 order, by virtue of which CAP was introduced reckoning the previous service. Clause 7.1 to 7.6 of Ext P7 deals with counting of past service, which read as follows:

“7.1: Counting of past service

Previous service, without any break as a Lecturer or equivalent in a University, College, National Laboratory or other scientific organization, eg. CSIR, ICAR, DRDO, UGC, ICSSR, ICHR and as a UGC Research Scientist, should be counted for placement of Lecturer in Senior Scale/Selection Grade provided that:

7.2: The post was in an equivalent grade/scale of Pay as the pos of Lecturer,

7.3: The qualifications for the post were not lower than the qualifications prescribed by the UGV for the post of Lecturer,

7.4: The Candidates who apply for direct recruitment should apply through proper channel;

7.5: The concerned Lecturers possessed the minimum qualifications prescribed by the UGC for appointment as Lecturers;

7.6: The post as filled in accordance with the prescribed selection procedure as laid down by the

University/State

Government/Central

Government/Institution's regulations."

19. Thus the requirement in clause 7.2 is that the post should have been in an equivalent grade/scale of pay as the post of Lecturer. As far as other conditions in clause 7 is concerned, there is no objection raised by the University. However, it can be seen that petitioner was having the qualification, as required for Assistant Professor. The claim of the petitioner that the Rubber Research Institute is a National Laboratory is also not disputed. The University did not get any clarification as to the nature of appointment of petitioner except that it was temporary one. But on a perusal of Ext P1 and P2 orders, it can be seen that it was a regular appointment. Petitioner's claim that his appointment there was made on the basis of a selection conducted on all India basis, from a select list, is not disputed. It is evident from Ext P1 offer of appointment and P2 order declaring his probation, that he was holding a post on regular basis. The University does not dispute the equivalency in grade also. In this context, the contention raised by the 1<sup>st</sup> respondent in their counter affidavit is relevant. In paragraph 13 of the counter affidavit, the University has stated as follows:

“13. Kerala Agricultural University does not have the impression that the post of Junior Scientist is inferior to the post of Assistant Professor. One condition in the UGC Order (7-2 Clause) is that to count the past service, the post would be in an equivalent grade/scale of pay as the post of Assistant Professor. But the scale of pay of the petitioner at RRI was Rs.5500-175-9000 and entered in Kerala Agricultural University service in the scale of pay Rs.8000-13500/-.”

Thus the only objection is with respect to scale of pay, which is raised on a misinterpretation of the provisions contained in clause 7.2 of Ext.P7, which provides for counting of previous service for CAP. The only condition under Clause 7.2 of Ext.P7 as well as the subsequent orders implementing the UGC scheme issued from time to time is that previous service should be in an equivalent grade/scale of pay. On a reading of Cl.7.2, it can be seen the service in an equivalent grade should not be in equivalent scale of pay and vice versa. In these circumstances, the action of the University in insisting equivalency in grade as well as scale of pay attached to the post of Assistant Professor cannot be correct. To say that ‘a post is in an equivalent grade’ and ‘a post is in equivalent scale’ is distinct and different. Their

objection is with respect to the scale of pay of the post in which the petitioner was working in the Rubber Research Institute. But it is evident from Clause 7.2, that the only requirement is that the post should either be in an equivalent grade or in an equivalent scale of pay. When it is admitted that the petitioner has not been working in an inferior grade, it is not necessary that the post held by him should have been in the same scale of pay as that of Lecturer also. That being so, there was no circumstance at all for reviewing the decision and withdrawing the benefits already granted to him.

20. In the counter affidavit it is stated that Ext.P13 order was issued in violation of the provisions of law in order to render undue personal benefit to the petitioner. The conditions prescribed in all the orders issued by Government/UGC/University on CAP, subsequent to Ext P7 also are the same, as in Cl.7. i.e in Cl. 6.20 to 6.23 of Ext P10 order dated 15.10.2005 of the University, Cl.10.1 of Ext P29-the UGC Regulations on Minimum Qualification for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010. Ext P30 order of the University, the requisite

number of years of service in a particular post for the purpose of placement, coupled with certain screening. Therefore there is absolutely no basis for the contention that the counting of previous service was contrary to rules or in an way illegal.

21. Now the next issue to be considered is the requirement of completion of one year service after joining University, for the purpose of promotion under the CAP scheme. On a perusal of the provisions contained in CAP scheme, either issued by the UGC as well as those by Govt and the University, it can be seen there is no provision which insists one year service as eligibility criteria for CAP. The University has relied on the third proviso to Rule 28(a) of the Part II KS&SSR in order to insist one year period for the purpose of promotion. Rule 28(a)(i) of Part II KS&SSR begins with :

“(a) Promotion-(i)) except in the case of appointment to the posts of Heads of Departments no member of a service or a class of a service shall be eligible for promotion from the category in which he was appointed to the service unless he has completed his probation in that category.”

28(a) (ii) provides as follows:

“(ii). Where **the Special Rules for a service provide for appointment by promotion to any class or category from a specified class or category of service**, no member shall be eligible for such appointment unless he is a full member or

an approved probationer in the class or category so specified.

Provided that if he is the holder of a post in any service for which no probation is prescribed, he shall not be eligible for promotion unless he has put in satisfactory service in that post for a period of one year on duty within a continuous period of one year on duty within a continuous period of 2 years."

22. So it can be seen that Rule 28(a) (ii) deals with cases of promotion in accordance with Special Rules and probation is prescribed for such promotions. The Proviso to 28(a)(ii) has to be construed in the light of what is provided in the main provision, which deals with regular promotion alone, that too when promotion is from a class or category to another class or category in the service as per the Special Rules. Therefore the promotion referred to in the proviso can only mean those promotions governed by the Special Rules. The promotions/placements under the CAP scheme is on the basis of executive orders issued from time to time by the Government in tune with the Regulations issued by UGC, which do not find a place in Special Rules. None of the orders issued by Govt or University or regulations of UGC provides for completion of probation for the purpose of career advancement under the CAP scheme. The respondents also do not have a case that there is any such provision under the scheme or Government Orders

relating to CAP scheme. Even under the 2010 UGC Regulations on Minimum Qualification for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, the provisions regarding career advancement and counting of previous services continued to be the same. In 2010 regulation under paragraph 10.1 it provides that previous regular service, whether national or international, as Assistant professor, Associate Professor or Professor or equivalent in a University, College, National Laboratories or other scientific/Professional Organisations such as CSIR, ICAR, DRDO, UGC, ICSSR, ICHR, ICMR, DBT etc. should be counted for direct recruitment or promotion under career advancement scheme on conditions as prescribed under clause 7.1 to 7.7 of Ext.P10.

23. It is pertinent to note that the exercise of review was made when the petitioner claimed CAP without insisting one year service in the University. As rightly pointed out by the learned Senior Counsel, the benefits already granted to the petitioner before he approached this Court leading to Ext P20 judgment, should not have been taken away, in the process of consideration of his request for further additional benefits,

especially when the benefit already granted to him was not questioned from any corner.

In the above circumstances, the Writ Petition is allowed. Ext.P23 order is quashed. There will be a direction to the 1<sup>st</sup> respondent University to grant all the benefits due to the petitioner in terms of Ext.P13 order reckoning the previous service rendered by the petitioner in the Rubber Research Institute for the purpose of placement, without insisting completion of one year in the University and to grant him all consequential benefits, within a period of four months from the date of receipt of a copy of this judgment.

Sd/-  
**(P.V.ASHA, JUDGE)**

rtr/