

CHAPTER VII:

EDUCATION AND TEACHERS

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CHAPTER: VII

EDUCATION AND TEACHERS

Traditionally, in India, teachers have always been held in high esteem. Hymns are sung in honour of the teacher in religious scriptures in India. In the ancient Indian tradition, teachers have been elevated to the rank of God. In several Government documents too, teachers have been assigned a place of great distinction.

Teachers are responsible for:

- planning and teaching assigned courses faithfully and diligently in the classes or subject assigned to the teacher by the principal;
- to encourage the pupils in the process of learning; establishing and maintaining learning environment which is pleasant, orderly, respectful and conducive to students' learning;
- evaluating student achievement and explaining the evaluation procedures used in each course;
- communicating information about student progress, attendance and behaviors to students, parents, and administration;
- providing an environment that will promote self esteem;
- to inculcate by precept and example respect for religion and the highest regard for truth, justice;
- provide role models in establishing a positive tone in the school;
- ensuring that students are referred to appropriate special services when necessary;
- protecting the privacy rights of students in their "Educational Records" are "those records, files, documents and other materials which –
 - (i) contain information directly related to a student ; and
 - (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.
- Law requires people in certain occupations to report suspected child abuse. These occupations include teachers amongst others like doctors, social service workers, chiropractors and registered nurses.

- Restrain from danger- A member of the staff of a school may take any reasonable action that is immediately required to restrain a student of the school from acts or behaviour dangerous to the member of staff, the student or any other person.

The staff are to acknowledge the positive contributions of the students while also ensuring that when students behave inappropriately they will experience consistent, fair consequences.¹

In exercise of the powers conferred by clause(f) of sub-section(1) of section the 26 of the UGC. Act 1956, Commission made a Regulation in 1985 viz².The University Grants Commission (the minimum standards of instructions for the grant of the first degree through formal education in the faculties of Arts, Humanities, Fine Arts, Music, Social sciences, Commerce and Sciences). Section 5 of the regulation laid certain duties of the teachers of higher education. It says.

- 1) No teacher shall be appointed who does not fulfill the minimum qualification prescribed for recruitments as per University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of a University or other Institutions affiliated to it Regulations, 1982) notified under Section 26(i) (e) of the University Grants Commission Act,1956.
- 2) Every teacher shall be available in the Institution on a working day during the period prescribed and shall in addition to participating in teaching as indicated in sub-regulation 3(3), undertake examination/test/ evaluation/ invigilation work, general assistance to students in removing their academic difficulties,

1 Anita Abraham, “Formation and Management of Educational Institutions”. Universal Law pub. 2005,p.68

2 University Grants Commission Notification No. f.1-117/83-(cp) dated 25th November 1985: published in the gazette of India, part III, section 4.

and participate in extra-curricular and institutional support activities as required.

- 3) The work load of a teacher shall take into account teaching, research and extension activities, preparation of lessons, evaluation of assignments, term papers etc. and shall be in accordance with the guidelines issued by the University Grants Commission from time to time:

Provided that the time spent on extension work where it forms an integral part of the course prescribed shall count towards the teaching load:

Provided further that no teacher shall be expected to lecture for more than three clock hours per day,

- 4) The number of full-time and/or part-time teachers shall be provided, keeping in view the total institutional workload as provided in sub-regulation 3(5), teachers workload as provided in sub-regulation 5(3) and class size in sub-regulation 6(1) and 6(2).
- 5) The group for tutorials shall not normally be more than 15 or 20 students.
- 6) A teacher shall not be expected to supervise more than 20-25 students in a laboratory class.

A: ELIGIBILITY AND APPOINTMENT

There is a wide spread concern with degradation in academic standards due to the unscientific approach accorded to the method of selection of Lectures in the various Indian Universities³. The lowest rung of the academic position in any university is a lecture or Asst. Professor as he is called in some universities. It is the foundation stone of academic superstructure. In due course lectures become professors. To ensure sound academic standards, utmost care should be taken at the time of initial recruitment of such teachers.

³ K. Ramanathan, "University News", 35(27) July 7, 1997 ,p.10

The basic qualification for the post of lecturer/Asst. professor as laid down by the UGC is a post-graduate with 55% marks in the concerned discipline having qualified NET⁴/SLET⁵ with exception in the case of those who had obtained M.Phil, Ph.D.

In early eighties, there was a general perception among the public and the leading educationists that well qualified persons were not being attracted towards teaching profession. Concerns were also expressed about the criteria that were employed for the selection of teachers. It was increasingly realized that quite a large number of people who neither had the competence nor the aptitude for teaching made an easy entry into this profession.

The committee formed by UGC in 1983⁶ on revision of pay scales of teachers in the universities and colleges under the Chairmanship of Prof. R C Mehrotra recommended the following for the post of lecturer:

- i) Qualifying at the National test conducted for the purpose by UGC or any other agency approved by UGC.
- ii) Master's degree with at least 55% marks or its equivalent grade.

The qualifications should not be relaxed even for the candidates possessing M.Phil/Ph.D at the time of recruitment." The Mehrotra Committee also found that the stipulation of M.Phil/Ph.D as an essential qualification for Lectures had neither been followed faithfully nor did it necessarily contribute to the raising of teaching and research standards. In fact it was of the view that, if at all, it had led to the dilution of research standards on account of the rush to get a research degree in the shortest possible time. In view of the diversity of standards among universities, the Mehrotra Committee recommended that passing a national qualifying examination before recruitment be made an essential pre-condition.

The National Commission of Teachers on Higher Education headed by Prof. Rais Ahmed observed that:⁷

⁴ National Eligibility Test

⁵ State Level Eligibility Test

⁶ www.ugc.ac.in.visited on 7 .3 .2008

⁷ *Supra note*

“It is extremely important to make a rigorous merit based selection for the entry level of teaching profession”

The National policy on education, 1986, which was debated in the Parliament also, states that:

“The method of recruitment of teachers will be reorganized to ensure merit, objectivity and conformity with spatial and functional requirements”.

In pursuance of this policy, it was suggested in the Program of Action of National Policy of Education, 1986 that:

“The teachers will be recruited on the basis of a common qualifying test, the details of which will be formulated by UGC. Efforts will be made to move towards the objective of making recruitment of teachers on all India basis consultation with the State Governments”

With a view to working out the modalities for the conduct for such a test, the Commission had constituted a Committee, which evolved strategies for the conduct for a national level eligibility test for the recruitment of teachers in university and colleges. Consequently, the Government of India, through a notification in 1988 entrusted the task of conducting the eligibility test for lectureship to UGC. Thereby, UGC has been conducting the National Eligibility Test for the Junior Research Fellowship and eligibility for Lectureship since 1989. It had already been conducting the examination for The Junior Research Fellowship (JRF) since 1984⁸.

Recently, the Ministry of Human Resource Development, Government of India has constituted a NET Review Committee headed by Planning Commission member Bal Chandra Mungerkar has recommended a total revamp of the National Eligibility Test (NET), a qualification for appointment to any faculty in country's institutions of higher education.

The committee's final report has also withdrawn its interim recommendation that exempted M.Phil and Ph.D degree holders from clearing NET while applying for faculty positions.

⁸ Ibid.

The University Grants Commission is expected to decide on the committee's recommendations on June 1.

The committee concluded that exemption had resulted in a decline in the quality of teaching as numerous candidates enrolled themselves for M.Phil and Ph.D to avail of the exemption. The committee found that after the exemption in June 2006, the number of registrations for M.Phil and PhD. increased to 66,500 in 12 universities from 2,433 earlier.

The committee, constituted to review NET, has said that students opting for Junior Research Fellowship (JRF) should be tested more rigorously by NET than those appearing for NET to get into teaching profession in higher education⁹.

(i) Eligibility to Teach

Minimum Qualifications for Appointment Of Teachers in Universities and colleges – UGC regulation, 2000¹⁰ are reproduced here under:

These Regulations apply to every university established or incorporated by or under a Central Act, a provincial Act or a State Act, every institution recognized by the UGC as also deemed universities. Persons applying for a teaching post in a university or institute, constituent or affiliated colleges recognized by the UGC or a deemed university can be appointed only on fulfilling the requirements prescribed by the UGC regulations subject to relaxations allowed thereunder.

Minimum qualifications for the post of Professors, Principals, Readers and Lecturers in subjects other than Fine Arts, Management, Engineering And Technology in Universities or Colleges for appointment of persons through open advertisements and for their career Advancement.

⁹ Hindustan Times , New Delhi, May 28, 2008

¹⁰ Minimum Qualifications for Appointment and Career Advancement Of Teachers in Universities And Colleges Regulations , 2000

1.0.0 Direct Recruitment

(ii) 1.1.0 Principal (Professor's Grade)

- 1) A Master's Degree with at least 55% of the marks or its equivalent grade of B in the 7 point scale with latter grades O,A,B,C,D,E and F
- 2) Ph.D or equivalent qualification.
- 3) Total experience of 15 years of teaching/Research in Universities/Colleges and other institutions of higher education.

1.2.0 Principal (Reader's Grade)

- 1) A Master's degree with at least 55% of the marks or its equivalent grade of B in the 7 point scale with latter grades O,A,B,C,D,E and F.
- 2) Ph.D or equivalent qualification.
- 3) Total experience of 10 years of teaching/Research in Universities/Colleges and other institutions of higher education.

1.3.0 Humanities, Social Sciences, Sciences, Commerce, Education, Physical Education, Foreign Languages and Law.

(iii) 1.3.1 Professor

An eminent scholar with published work of high quality actively engaged in research with 10 years of experience in post graduate teaching, and/or experience in research at the University/National level institutions, including experience of guiding research at doctoral level.

OR

An outstanding scholar with established reputation who has made significant contribution to knowledge.

(iv) 1.3.2 Reader

Good academic record with a doctoral degree or equivalent published work. In addition to these , candidates who join from outside the university system ,shall also posses at least 55% of the marks or an equivalent grade of B in the 7 point scale with latter grades O,A,B,C,D,E and F at Master's degree level .

Five years of experience of teaching and/or research excluding the period spent for obtaining the research degree and has made some mark in the areas of scholarship as evidenced by quality of publications, contribution to a educational innovation, design of new courses or curricula.

(v) 1.3.3 Lecturer

Good academic record with at least 55% of the marks or an equivalent grade of B in the 7 point scale with latter grades O,A,B,C,D,E and F at Master's degree level ,in the relevant subject from an Indian university ,or, an equivalent degree from a foreign university.

Besides fulfilling the above qualifications, candidates should have cleared the eligibility test (NET) for lecturers conducted by the UGC, CSIR or similar test accredited by the UGC.

Note- NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D degree. However, the candidate who have completed M.Phil. degree or have submitted Ph.D thesis in concerned subject up to 31st December , 2002 are exempted from appearing in the NET examination.

1.4.0 Journalism and Mass Communication

1.4.1 Professor

An eminent scholar with published work of high quality actively engaged in research with ten years of experience in post graduate teaching and/or research at University/National level institution including experience of guiding research at doctoral level in Communication/Journalism.

1.4.1 Reader

Essential

1. Ph.D. degree in Communication/Mass Communication/Journalism for an Indian University or an equivalent degree from a foreign University.

OR

Published work of doctoral standard or media production work of excellence.

2. Good academic record with at least 55% of the marks (or an equivalent grade) at Master's level in the subject.
3. Eight years experience of teaching and/or research including up to three years for research degree and having made a mark in the area of scholarship as evidenced by quality of publications, contribution to education, design of new courses and curricula.

OR

10 years full time work experience in any area of Mass communication (News paper accredited with ABC, National News, radio or television, film media, reputed advertising agencies , Public Relation Officers of the Government , Public Sector Undertakings and established Industrial and Commercial Houses.)

Lecturer

Good academic record with at least 55% of the marks or an equivalent grade at Master's degree level or an equivalent qualification from an Indian University or Foreign University/recognized institution in Communication Mass Communication/Journalism. Candidates, besides fulfilling the above qualifications, should have cleared the eligibility test (NET) for lecturers conducted by the UGC or similar test accredited by the UGC.

Note- NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D degree. However, the candidate who have complete M.Phil. degree or have submitted Ph.D thesis in the concerned subject up to 31st December , 2002 are exempted from appearing in the NET examination.

Desirable

1. Ph.D. degree in Communication/Mass Communication/Journalism from an Indian University or an equivalent degree from a foreign University.
2. Two years full time teaching/research/experience in any area of Mass communication (News paper accredited with ABC, National News Agencies ,radio or television, film media, requited advertising agencies, Public Relation Officers of the Government , Public Sector Undertakings and established Industrial and Commercial Houses.)

1.5.0 Social Work**1.5.1 Professor**

An eminent scholar with published work of high quality actively engaged in research with ten years of experience in post graduate teaching and/or research at the University/National level institutions, including experience of guiding research at doctoral level in social work.

1.5.2 Reader

Good academic record with a doctoral degree or equivalent published work. Evidence of being actively engaged (1) or (2) innovation in teaching method or (3) production of teaching materials. Possess at least 55% marks or equivalent grade at Master's degree level.

About eight years experience of teaching and/or research provided that atleast five of these years were as lecturers or in an equivalent position.

OR

10 years of experience in field practice and professional publication based on work experience, and experience in training and/or field instruction. Experience in consultation and documentation.

1.5.3 Lecturer

Good academic record with at least 55% of the marks (or an equivalent grade) at Master's degree level or an equivalent qualification from an Indian or Foreign.Candidiates, besides fulfilling the above qualification, should have cleared the National Eligibility Test (NET) for lecturers conducted by the UGC or similar test accredited by the UGC.

Note- NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D degree. However, the candidate who have completed M.Phil. degree or have submitted Ph.D in the concerned subject thesis up to 31st December , 2002 are exempted from appearing in the NET examination.

1.6.0 Social Work

1.6.1 Lecturer

Good academic record with at least 55% of the marks or an equivalent grade of B in the 7 point scale with latter grades O,A,B,C,D,E and F at Master's degree level ,in the relevant subject or an equivalent degree from an Indian/Foreign university.

Besides fulfilling the above qualifications, candidates should have cleared the eligibility test (NET) for lecturers conducted by the UGC, CSIR or similar test accredited by the UGC.

OR

A traditional or a professional artist with a highly commendable professional achievement in the concerned subject.

Note- NET shall remain the compulsory requirement for appointment as Lecturer even for candidates having Ph.D degree. However, the candidate who have completed M.Phil. degree or have submitted Ph.D thesis in concerned subject up to 31st December , 2002 are exempted from appearing in the NET examination.

The main purpose of the U.G.C behind these formulations is to maintain the high academic standards at the educational institutions .High academic standards at the educational institutions mainly depend on the quality of teachers. Any attempt to whittle down the eligibility prescribed for appointment for teacher must, therefore be viewed very seriously. When an advertisement by a university initiating applications for the post

of readers or lectures lowered the minimum qualification prescribed as essential in the university ordinances, the court held it to be an arbitrary, illegal and unsustainable action¹¹.

However, in *Dr. M.S Madhal v. S.D. Halegkar*¹² the essential qualifications for the appointment of the principal included are, MA with at least second division; and two, teaching experience of ten years. The respondent had M A degree in third class, with M.Ed. in second class and did not have the experience of ten years teaching. In spite of the absence of these two essential qualifications, the respondents appointment was not set aside because he was continuing in the said post for the last twelve years: and , therefore , the court held that it would be inadmissible and inequitous to disturb him at this late stage and that where he was not at fault .

The University Grants Commission (UGC) made regulation in 1991 which prescribed that no person shall be appointed without passing the National Eligibility Test (NET). It further provided that this condition would not apply with retrospective effect to cases where selection had already been made or prior approval of UGC was obtained for any relaxation. Section 14 of UGC Act 1956 provides the consequence for non-compliance of above condition which would result in withholding of the UGC grants.

The Delhi University did not follow the above provision. The Supreme Court¹³ held that the university was obliged to follow the UGC qualification. The University of Delhi also took the stand that the UGC had no competence to issue such regulation and, further, the university being an autonomous body, no such condition could be imposed upon it. The Supreme Court dismissed¹⁴ this argument on the ground that UGC Act 1956 came after the Delhi University Act 1922 and the demolition of university in section 2(7) of the UGC Act did not exclude the university under entry 63, List 1 including the Delhi University.

It may be noted that the Delhi High Court adjudged the provisions of the UGC regulations as ‘mandatory’ but the Supreme Court, adjudged the provisions as

11 *Biswajit Sinha v. Dibrugarh University* , AIR 1991 Gau 27. The University Students Union was held to have locus standii to challenge the action of the University .

12 (1993) 3 SCC 591

13 *University Of Delhi v. Raj Singh* AIR 1995 SC 336

14 Ibid .p.349

'recommendatory in character. In the present case the clarifying exercise of the apex court had infact resulted in overruling the High Court stand.

It may be pointed out that the Supreme Court treated the provision as recommendatory in view of the UGC rules that an autonomous institution not worried about the forfeiture of the UGC grants would be free to follow its own pattern. It is submitted that the implications involved in the forfeiture of the grants are so serious that the provision when put into operation do not remain merely recommendatory but remain mandatory¹⁵.

In the days of large scale unemployment of candidates for the primary school teachers a casual approach attracts suits, appeals, and writ petitions and special leave petitions. *Shyam Lal Joshi*¹⁶, is one of such litigations where the minimum of qualification prescribed for the appointment of the primary school teacher was the Basic School Training Certificate¹⁷ or any other equivalent recognised qualification. Later on the government authorities added the industrial examination of the state government as equivalent to BSTC. The government appointed the petitioners as 'craft teachers' and not as general teachers. This was the subject of present litigation. In this case the Supreme Court examined the contents of both courses and upheld their appointment as craft teachers. Had the educational authorities clarified the answers of both the teachers, it is submitted that it would have avoided the present litigation.

In the context of the appointment of primary teacher the Supreme Court in *Ram Sukh v. State Of Rajasthan*¹⁸ has laid down, the following principle :

"....we are not less sympathetic to the petitioners who are out of job but we can not forget the welfare of those who are not before the courts. They are the tiny tots who require proper handling by well trained teachers."¹⁹

15 C.M. , Jariwala , *Law of Education* , vol. xxx ASIL , (1994) at 253

16 *State Of Rajasthan v. Shyam Lal Joshi* AIR 1994 SC 1409

17 Herein after referred to as BSTC

18 AIR 1990 SC 592

19 *Supra note 18*

The court further held that the primary school teachers are of utmost importance in developing a child's personality in the formative years. It is not just enough to teach the child alphabets and figures, but much more is required to understand the child psychology and aptitudes. They need a different approach altogether. Only trained teacher could lead them properly. The untrained teachers can never be proper substitute to trained teachers.

In the educational institution sometimes, either intentionally or unintentionally, unacademic exercise is also done. *Udai Bhan Rai*²⁰ is an example of such an attempt, the post of lecturer in Hindi advertised and the Selection Committee interviewed candidates including appellant and he was appointed. But surprisingly his appointment was not approved as there was no post on the establishment but the reality was that the post existed which is corroborated from the counter filed by the deputy director of education. Though the refusal was based on erroneous premises, the High Court of Allahabad turned down the appointment. In consequence two posts were created and the respondent was appointed by the Management Committee. The facts showed that the respondent was having lesser qualification than the appellant and still he was appointed. The result was that the valid appointment was set aside and the undeserving candidate was appointed. But the Supreme Court, it is submitted rightly, did not allow this and put the clock back. The present case exposes the unacademic exercise educational institutions, serving the private interest.

Similarly *Suneeta Agarwal v. State of Haryana*²¹ is another example of bureaucratization of academic appointment where the experts opinion was set at rest.

In this case a selection committee recommended the name of one the lecturers for the post of reader. But in the committee, the nominees of the vice-chancellor and the director of the higher education put the above lecturer at serial no. 2. The Vice-chancellor did not approve the recommendation and ordered the post to be readvertised, a bureaucratization of academic appointment where the experts opinion was set at rest. The post was readvertised and selection committee met once again where the appellant appeared again and also filed a writ petition on the same day against the aforesaid order

20 *Udai Bhan Rai v. State Of U.P* AIR 1994 SC 1603

21 AIR 2000 SC 1058

of the Vice – Chancellor. But the Supreme Court did not extend any relief to the appellant as she was estopped from challenging the order in view of applying for the readvertised post and appearing before the selection committee without any protest. The Court must not forget the human nature which at times becomes vindictive against those who knock at the door of the judiciary. When that be the fact the court could have investigated into the matter rather than close the channel through the doctrine of estoppel. In *K. Shekar v. U Induramma*²² the high court held the appointment as lecturers invalid because the post of lecturer had not been advertised. A clause which permitted the selection committee to appoint a suitable candidate for the lower post did not enable the committee to either create a new post which had not been advertised or to consider a candidate who was not eligible to apply for the post advertised. The Supreme Court affirmed the decision of the high court; but held that the actual experience gained by the appellant will be taken into account if he applied for the post of assistant professor.

An attempt to take away the rights of teachers with retrospective effect and obligating them to repay the salary they have already received, by the enactment of a law, was nullified by the Supreme Court in *P. Tulsi Das v. Government of AP*²³. The AP Educational Service Untrained Teachers (Regulation of Service and Fixation of Pay) Act, 1991 took away the rights of untrained graduate teachers in particular subjects regarding minimum of pay scales as payable to school assistants with effect from 10.02.1967. The Supreme Court rightly quashed the provisions calling them ‘arbitrary, unreasonable and expropriatory. ‘The court however, held that the provision can be valid in its operations *in futuro*, but cannot be held valid insofar as it purports to restore *status quo ante* for the past period taking away the benefits already available, accrued and acquired by the teachers. Another provision in the same Act, which mandated that super-numerary posts created in B Ed grade shall be deemed always to have been secondary grade posts in a lower scale, was also held invalid insofar as it has retrospective re-classification by a fiction to nullify the lawful rights acquired during the past period.

22 AIR 2002 SC 1230

23 AIR 2003 SC. 43

It is submitted that in the light of the UGC regulation, the government must issue proper guidelines for selection of teachers in educational institutions to ensure that merit was not given a go by. In this respect, government of Haryana had very recently issued guidelines for selection of lecturers in private aided colleges. According to these guidelines, there will be two marks for each first division upto the level of undergraduate examination. At the postgraduate level, there will be one mark for securing 56 to 59%, 2 marks for 60 to 65%, 3 marks for 65 to 69% and 4 marks for 70% and above.²⁴

Accordingly the prospective candidate who had passed NET / SET and also possessed M. Phil will get 3 marks. One who had passed NET / SET and was also a Ph. D. will get 5 marks. One who is an M. Phil and Ph. D. and NET / SET qualified will get 8 marks.

Further, candidate having teaching experience between 3 months and one year will be given one mark. Those having more than one years teaching experience will get 2 marks. Not more than five marks can be accorded for the performance in the interview. Only candidates obtaining 12 marks out of the total of 25 marks on the above basis will be eligible for the lecturer's post.

Thus the above guidelines of the Haryana government seem to be well-laid. UGC should make it mandatory for all the Universities to follow this criterias so as to give weightage to merit and arrest the falling academic standards. Global education is in the offing. If merit is continued to be discounted there will be braindrain and the beneficiary would be the coaching centers in India or abroad which are coming up in large numbers.

B. IMPROVEMENT OF SERVICE CONDITIONS

(i) Pay Scale and Perks

An important question regarding the benefit of pay scale and perks to research assistance at par with the research associate was considered by the Supreme Court in *Gopal Krishna Sharma v. State of Rajasthan*²⁵. In this case the petitioner, a research associates raised plea for a common pay scale. The court took into consideration their

24 K Ramnathan, "University News", 35 (27) July 7, 1997, p10.

25 (1993) 2 SCC 375, also *State of Bihar v. B.S. Workshop Supl. Federation UJ (SC) 1993 1561: State of M.P. v. Pramod Bhaitiya* 1993 1 SCC 539.

minimum educational qualifications, selection process, job-charts etc. which were the same as that of a research assistants; the exploitation of the unemployed educated youth and their availability in surplus to work even for a poltry pay. The court directed the university to place them on par with the pay scale of the research assistant with no other parity. The court realizing the economic burden as an aftermath of its judgment, made suggestions to the educational institutions to work out schemes with sufficient incentives, e.g. depositing the arrears in the provident fund or the like and also to absorb these employees in the regular cadre of research assistant whenever vacancies arose.

Here the court accepted the plea ‘equal pay for equal works’: of the petitioner. But the plea cannot be accepted if there is no similarity in the work.²⁶

However, *Haryana State Adhypāk Sangh v State of Haryana*²⁷ is the case of special mention where the court held that teachers of aided private schools pay scales and other emoluments must be in parity with teachers of government schools. In this case the petitioners were teachers employed in various recognized aided private schools in the state of Haryana. The schools are maintained under private management. They receive financial aid from the state governments. The petitioners had come to the court alleging that teachers employed in government aided private schools are entitled to parity with the teachers employed in govt. schools in the matter of pay scale and other emoluments. Pathak. C.J. Speaking for the court opined that the teachers of the aided schools must be paid the same pay scale and Dearness Allowance as teachers in government schools for the entire period claimed by the petitioners, and that the expenditure on that account should be apportioned between the state and the management in the same proportion in which they share the burden of the existing emoluments of the teachers.²⁸

The Central government appointed Kothari Commission to examine the conditions of service of teachers with the object of improving the standard of education in the country. Kothari Commission, *inter alia*, recommended that the scale of pay of school teachers working under different management such as government, local bodies or private

26 In *National Federation S.N.F.C. (phy) Teachers Asson v. Union of India* AIR 1993 SC. 369. Where the plea of equal pay for equal works was not allowed in view of dissimilarities of services.

27 AIR 1988 SC 1663.

28 *Haryana State Adhyapk Singh v. State of Haryana*, AIR 1990 SC 968.

management should be the same. Almost all the states in the country, including the state of Himachal Pradesh agreed to implement the recommendation of the Kothari Commission. In the light of the commissions recommendations the question before the Supreme Court²⁹ was whether the teachers employed in various recognized aided private schools in the state of Himachal Pradesh are entitled to the pay scales which are being paid to their counterparts in the Government Schools? If so, whether such schools are entitled to receive grants-in-aid to meet 95% of net approved expenditure?

Kuldip Singh, J speaking on behalf of the court held that the aided schools teach the same syllabus and curriculum, prescribe the books and courses as per government directions and prepare the students for same examinations for which the students studying in government schools are prepared. The qualifications of the teachers are prescribed by the state govt. and the appointments are made with the approval of the state government. The fees levied and concessions allowed are strictly in accordance with the instructions issued by the education department of the state govt. from time to time. The Managing Committee of aided schools are approved by the state govt. and two members of the committee are appointed by the education department. The service conditions of the teachers including disciplinary proceeding and award of punishment etc. are governed by the rules framed by the state government.³⁰

It is thus, obvious that the state government has a deep and pervasive control on the aided private schools. The govt. school and the aided schools specially after the Kothari Commission Report have always been treated on par. The court held that the teachers working in the aided schools are entitled to the same salaries and allowances as are being paid to the teacher in the government schools.

The Supreme Court in a significant judgment in *Vijay Kumar v State of Punjab*³¹ improved the service conditions in respect of pay scale of a part time teacher .The court was of the view that the part time teacher are the most exploited of the educational committee. They carry the highest burden of teaching lead at the lowest cost. The pleas taken by the authorities were that the part-timers were bound by the service conditions of employment contract; they are also working in their spare time, and finally, they did not

29 *State of H.P. v. H.P. State Recognized and Aided School Managing Committee* (1995) 4 SCC at 507.

30 Ibid p. 511

31 AIR 1994 SC 265

work equal to regular lecturers .The Supreme Court not satisfied with the pleas held that they should be paid minimum scale of lecturers for their work till their part-time employment continued. The present judgment requires the education authorities to mend their ways by either taking the limited work or pay them for the work of regular lecturer.

In *B.P. Singh v Haryana Agriculture University*.³² The poor teachers suffering from economic loss moved the court. Twenty eight lecturers, having permitted to undergoing the Ph.D course as in service candidates, were not allowed to draw any salary during the research period in view of ‘financial stringency’ as per the order of 1972. But before 1972 the rule was that they shall get fullpay etc. during the duration of course. The apex court turned down the appeal on the ground that, they can not have higher right than what was permitted.

It is submitted that the Supreme Court adopted a rigid literal approach and erred in administering economic justice to the poor teachers. A teacher with Ph. D. degree would, it is normally presumed, deliver better goods which is in the interest of education and the educational institutions. But the position in the present case was that candidates were in fact punished for pursuing the Ph. D. Course by giving no salary during their research period.³³ It would have been proper if the court had under its extraordinary jurisdiction allowed their reasonable claim during the research period.

Recently, in the light of Sixth Pay Commission Report. The University Grants Commission hereby appoints a Committee to Review the scales of Pay of the Teachers in the Universities and Colleges. The Commission in consultation with the Ministry of Human Resource Development has finalized the terms of reference of the Committee, which are follows:³⁴

- (a) The review the implementation of the previous decision of the Government/UGC under the Scheme of Revision of Pay Scales approved for University and College Teachers, Librarians, Physical Education Personnel and other academic staff in Universities and Colleges, and in the process, to evaluate the extent to which the

32 AIR 1994 SC 7659.

33 C.M. Jariwala, *Law of Education*, vol. XXX ASIL, (1994) p. 256

34 www.ugc.ac.in visited on 9.6.2008

earlier recommendations in relation to qualifications, service conditions and pay-scales etc. have been implemented.

- (b) To examine the present structure of emoluments and conditions of service of Universities and College Teachers, Librarians, Physical Education Personnel and other academic staff in Universities and Colleges and to suggest revision in the structure, taking into account the minimum qualifications, career advancement opportunities, and total packet of benefits available to them (such as superannuation benefit, medical, housing facilities, etc.).
- (c) To make recommendations on the ways and means of attracting and retaining talented persons in the teaching profession, as well as for the furtherance of research in the University System and also for their career advancement in teaching and equivalent positions in order to improve the quality of higher education.
- (d) To look into the cases of anomalies, if any, in the matter of pay structure and/or career advancement opportunities for any categories of academic staff, consequent on revision of pay scales based on the recommendations of the preceding Pay Review Committee and to suggest remedial measures.

The Pay structure and service conditions of the non-academic staff who may be governed by the Central Pay Commission's recommendations, including those of the officers and staff working in the University Grants Commission shall be outside the purview of the Pay Review Committee.

The Committee may initiate necessary studies and analysis in regard to the terms of reference, keeping in mind the demands and requirements of university and higher education institutions.

Thus the subject of the pay scales and other benefits of teachers in universities and colleges has been receiving due attention of the government ever since independence. Successive Education Commissions and Committees appointed by the government and UGC have proved that teachers deservedly constitute the most important component of

any educational structure. Since teaching profession is considered as the mother of all the profession of the society, “hence to be attractive enough for talented persons to form the profession the pay scale given to the teacher should be comparable, if not better than those in similar profession.”³⁵

(ii) Promotion

The merit promotion was introduced in 1982 and at its infant stage it raised many difficulties and disparities in its implementation. Earlier the head of the department used to act as feudal lord and would not allow any professor’s post to be created so that there was none equal to him live in the department and his feudal superiority was intact.³⁶ Some posts of Readers created in departments would act as the proverbial carrot for lecturers and there were a race in sycophancy amongst the lecturers to get that most. The serious studious and sincere teachers would normally lose the race.

(a) UGC Regulation on Promotion: The UGC regulation, 2000³⁷ has laid down detail provisions for the promotion of University and College teachers. It is reproduced hereunder.

2.0.0 Career Advancement

2.1.1 Minimum length of service for eligibility to move into the grade of Lecturer (Senior Scale) would be four years for those with Ph. D., five years for those with M.Phil, and six years for others at the level of Lecturer, and for eligibility to move into the Grade of Lecturer (Selection Grade) / Reader, minimum length of service as Lecturer (Senior Scale) shall be uniformly five years.

2.1.2 For Movement into grades of Reader and above, the minimum eligibility criterion would be Ph.D. Those without Ph.D. can go up to the level of Lecturer (Selection Grade).

35 Rastogi Committee Report, “Report of the Committee to Review the Pay Scales of University and College Teachers”, May 1997. UGC. p.11.

36 P.C. Juneja, “University News” 35 (4), June 27, 1997, p. 11.

37 *Supra note. 10*

2.1.2 A Reader with a minimum of eight years of service in that grade will be eligible to be considered for appointment as a Professor.

2.1.2.1 The Selection Committees for Career Advancement shall be the same as those for Direct Recruitment for each category.

(b) 2.1.0 Lecturer (Senior Scale)

A lecturer will be eligible for placement in a senior scale through a procedure of selection, if she / he has:

- (i.) Completed 6 years of service after regular appointment with relaxation of one year and two years, respectively, for those with M.Phil. and Ph.D.
- (ii.) Participated in one orientation course and one refresher course of approved duration, or engaged in other appropriate continuing education programmes of comparable quality as may be specified or approved by the University Grants Commission. (Those with Ph.D. degree would be exempted from one refresher course).
- (iii.) Consistently satisfactory performance appraisal reports.

(c) 2.2.0 Lecturer (Selection Grade)

Lecturers in the Senior Scale who do not have a Ph.D. degree or equivalent published work, and who do not meet the scholarship and research standards, but fulfil the other criteria given above for post of Reader, and have a good record in teaching and, preferably, have contributed in various ways such as to the corporate life of the institution, examination work, or through extension activities, will be placed in the Selection Grade, subject to the recommendations of the Selection Committee which is the same as for promotion to the post of Reader. They will be designated as Lecturers in the Selection Grade. They could offer themselves for fresh assessment after obtaining Ph.D .and /or fulfilling other requirements for promotion as Reader and, if found suitable, could be given the designation of Reader.

(d) 2.4.0 Reader (Promotion)

2.4.1 A Lecturer in the Senior scale will be eligible for promotion to the post of Reader if she / he was.

- (i) Completed 5 years of service in the Senior Scale;
- (ii) Obtained a Ph.D. degree or has equivalent published work;
- (iii) Made some mark in the areas of scholarship and research as evidenced e.g. by self-assessment, reports of referees, quality of publications, contribution to educational innovation, design of new courses and curricula and extension activities.
- (iv) After placement in the Senior Scale participated in two refresher courses/summer institute of approved duration, or engaged in other appropriate continuing education programmes of comparable quality as may be specified or approved by the University grants Commission, and
- (v) Possess consistently good performance appraisal reports.

2.4.2 Promotions to the Post of Reader will be through a process of selection by Selection Committee to be set up under the Statutes/Ordinances of the concerned University or other similar Committees set up by the appointing authorities.

(e) 2.5.0 Professor (Promotion)

In addition to the sanctioned position of Professors, which must be filled in through direct recruitment through all India Advertisement, promotions may be made from the post of Reader to that of Professor after 8 years of service as Reader.

2.6.0 The Selection Committee for Promotion to the post of Professor should be the same as that for direct recruitment. For the promotion from Reader to Professor, the following method of promotion may be followed.

The candidate should present herself/himself before the Selection Committee with some of the following:-

- (a) Self-appraisal reports (required).
- (b) Research contribution / books / articles published
- (c) Any other academic contributions.

The best three written contribution of the teacher (as defined by her/him) may be sent in advance to the Experts to review before coming for the selection. The candidate should be asked to submit these 3 sets with the application.

- (d) Seminars / Conferences attended.
- (e) Contribution to teaching/academic environment/institutional corporate life.
- (f) Extension and field outreach activities.

2.7.0 The requirement of participation in orientation / refresher courses/summer institutes, each of at least 3 to 4 weeks duration, and consistently satisfactory performance appraisal report, shall be the mandatory requirement for Career Advancement from Lecturer to Lecturer (Senior Scale) and from Lecturer (Senior scale) to Lecturer (Selection Grade). Wherever the requirement of orientation/refresher courses has remained incomplete, the promotions would not be held up but these must be completed by the year 2000.

The requirement for completing these courses would be as follows:-

- (i) For Lecturer (Senior Scale), one orientation course would be compulsory for University and College teachers. Those without Ph. D. would required to do one refresher course in addition.
- (ii) Two refresher courses for Lecturer (Senior Scale) to Lecturer (Selection Grade).
- (iii) The senior teachers like Readers / Lecturers (Selection Grade) and Professors may opt to attend two Seminars / Conferences in their subject area and present papers as one aspect of their promotion / selection to higher level or attend refresher courses to be offered by ASCs for this level.

2.8.0 If the number of years required in a feeder cadre are less than those stipulated in this notification thus entailing hardship to those who have completed more than the total number of years in their entire service for eligibility in the cadre, may be placed in the next higher cadre after adjusting the total number of years. This situations is likely to arise as in the earlier scheme, the number of years required in a feeder cadre were much more than those envisaged under this notification.

The University Grants Commission at its meeting held on 18. 1. 2002 considered the modification in the procedure for promotion of Reader to Professor under the Career Advancement Scheme in University Departments which can be reproduced as :

The Commission RESOLVED that the following criteria and terms must be adhered to in selecting a candidate for promotion from Reader to Professor under Career Advancement Scheme in University Departments:-

- that a minimum of 8 years experience as a Reader be an eligibility.
- that the Professor already appointed under direct recruitment be not eligibility.
- that self-appraisal report for the period including five years before the date of eligibility be submitted ;
- that the minimum of research publications out of which two could be the books be submitted for evaluation/assessment before the interviews.
- that the assessment of the research publications, including books, be done by three eminent experts in the subject which shall be different than those called for interview to be conducted later on.
- that all the recommendation be positive from the three experts. In case the recommendation of one out of the three is negative the research be sent to the fourth expert for evaluation and assessment in all, there has to be minimum of three positive recommendation out of the total of four experts, in case the fourth expert has participated in the exercise due to one negative report out of the initially three experts involved in evaluation.
- that there be a separate column in the evaluation report saying whether the research publications and books are recommended or not recommended.
- that the University be permitted to hold the interview for promotion under CAS only for those candidates who have cleared by obtaining minimum of three positive recommendations from the experts on their research publication/books;
- that then after the interview be conducted inviting three experts of the concerned subject making sure that these experts be different than those who had assessed and evaluated the research publications;

- that repeat process of promotion/interview for the rejected candidates can be conducted only after a minimum of one year from the date of promotion process/interview in which the candidate was rejected ;
- that the promotion from Reader to Professor under CAS being a personal position and not against a sanctioned post, the teaching work-load of the Reader be carried forward with him/her and be undertaken by the promotee even in the capacity of the CAS Professor;
- that the aforesaid communication be communicated to all the Universities for immediate compliance with effect from March 1,2002.

(f) 3.0.0 Selection Committees recommended by UGC.

Lecturer in Private College

- (1) Chairperson of the Governing Body of the College or his/her nominee to be the Chairperson of the Selection Committee.
- (2) The Principal of the Concerned College.
- (3) One senior teacher / Head of the Department (of the concerned subject) preferably having not less than 10 years of services as a teacher.
- (4) Two nominees of the Vice Chancellor of the affiliating University of whom one should be a subject expert.
- (5) Two subject-experts not connected with the college to be nominated by the Chairperson of the governing body out of a panel of names approved by the Vice Chancellor.

For Government Colleges, the State Public Service Commission must invite three subject experts for which the State Public Service Commissions will involve the University in the selection. The Principal and Head of the Department should be necessarily included in the Selection Committee.

The quorum for the meeting should be five of which at least two must be from out of the three subject experts.

(a) 3.2.0 Lecturer in Private College

At University level, all selections must be done within the system with the Vice Chancellor as the Head of the Selection Committee.

1. The Vice Chancellor to be the Chairperson of the Selection Committee.
2. Three experts in the concerned subject to be invited on the basis of the list recommended by the Vice Chancellor and approved by the Executive Council / Syndicate.
3. Dean of the concerned Faculty / Head / Chairperson of the Department.
4. An academician nominated by the Visitor / Chancellor.

The quorum should be four; out of which at least two outside subject experts must be present.

(b) 3.3.0 For the post of Reader

The process of selection should involve inviting the bio data and reprints of three major publications of the candidate before interview and getting them assessed by the same three external experts, who are to be invited to interview the candidate. The Selection Committee should have the following composition: -

1. Vice Chancellor to be the Chairperson of the Selection Committee.
2. An academician who is the nominee of the Visitor/Chancellor.
3. Three experts in the concerned subject / field, out of the list recommended by the Vice Chancellor and approved by the Executive Council/Syndicate.
4. Dean of the Faculty.
5. Head/Chairperson of the Department.

At least four members, including two outside experts, must constitute the quorum.

(c) 3.4.0 For the post of Professor

The process of selection should involve inviting the bio data and reprints of three major publications of which one could be a book or research report, before the interview, and getting them assessed by the same three external experts who are to be invited for the

interview. The assessment report must be placed before the Selection Committee. The composition of the Selection Committee for the post of a Professor will be the same as proposed for the post of a Reader.

It may be ensured that the process of selection in every case is transparent and credible.

In the case of posts of Readers and Professors in Colleges, besides the Chairperson Governing Body, the Principal of the College, and the Head of the Department, there will be two University representatives, one of whom will be the Dean of College or equivalent position in the University, who will substitute the Visitor's nominee and the VC should be substituted by the VC's nominee.

(d) 3.5.0 For the post of Principal

1. Chairperson of the Governing Board as Chairperson.
2. One member of the Governing Board to be nominated by the Chairperson.
3. Two Vice Chancellor's nominees, out of whom one should be an expert.
4. Three experts consisting of the Principal of a college, a Professor and an accomplished educationist not below the rank of a professor (to be nominated by the Governing Board) out of a panel of experts approved by the Vice Chancellor.

At least four members, including two experts, should constitute the quorum.

The process of selection should involve the following:-

- (a) Assessment of aptitude for teaching and research
- (b) Ability to communicate clearly and effectively.
- (c) Ability to analyse and discuss.
- (d) Optional: Ability to communicate may be assessed by requiring the candidate to participate in a group discussion or by exposure to a class room situation/lecture, wherever, it is possible.

It is pertinent to note that despite of several UGC regulations and University guidelines the matter relating to the promotion of teachers from one scale to another has remained the matter of controversy.

However, the apex court, by its decision usually sets the controversy at rest and the principles of law laid down by it are normally welcomed by the parties to the controversy. The judges look into the problem thoroughly, weight the arguments for and against and finally settle the point. Since apex court is the last appellate authority it is expected that all the pros and cons and cons have been considered and no scope of injustice has been left. In *Sharadendu Bhushan v. Nagpur University*³⁸ the question before the Supreme Court was whether experience gained by a lecturer while teaching in another university for promotion into lecturer senior scale has to be taken into account. The appellant a lecturer was teaching in a degree college affiliated to the Calcutta University trained subsequently in a college affiliated to Nagpur University. His promotion to senior scale was withhold because of the length of service within the university contrary (senior scale) which reads

“A lecturer shall hold at least a master degree not lower than second class with the experience of university teaching upto degree classes for a period of not less than five years. Provided that there shall be an equitable distribution of such post in different subject.”

The Supreme Court held that not taking into account his experience of University teaching earlier is improper. Experience of University teaching upto degree classes for five years cannot mean length of service within a university.³⁹ Denial of selection grade to a teacher, overlooking his seniority and better qualification as compared to a person who has been given selection grade, was quashed by the Supreme Court in *Dharamvir Singh Tomar v Administrator, Delhi, Administration.*⁴⁰ The court directed that the petitioner be placed in the selection grade with effect from the date on which the respondent who was junior and less qualified was given that benefit.

However, in a significant development, the fight between two individual for the post of headmaster, passing through various levels of administration finally reached before a Full Bench of Kerala High Court.⁴¹ Initially no qualified teacher was available for promotion to the post of headmaster. The senior most teacher was put incharge as

38 AIR 1988 SC 335

39 Ibid p. 336

40 AIR 1991 SC 1924

41 *P. Padmanabhan Nair v. by Director of Education*, AIR 1991 Kar 199.

headmaster with the approval of District Education Officer (DEO) as stipulated by the Kerala Education Rules. Later when another teacher became qualified, the management appointed the person incharge as headmaster on the ground that he has now completed 25 years of service, and, therefore entitled to exemption from possessing test qualification. The DEO refused to approve the appointment on the ground that the period spent in undergoing BT course cannot be reckoned as qualifying service. The matter was finally referred to the Full Bench. Dismissing the petition the court held that the teacher who became qualified, as the vacancy did not cease to exist on appointment of headmaster in charge. The first person who became qualified was entitled to be appointed as headmaster from the date he became qualified, as the vacancy did not cease to exist on appointment of headmaster in charge. The first person who became qualified during the subsistence of the vacancy has to be appointed.

In *Banaras Hindu University v. M. N. Pandita*⁴², where the respondent was interviewed on 28.9.1983 but the result was kept in the sealed cover under the order of executive council which met on 3rd Feb. 1984 and his case was referred to UGC for approval. On 11.11.1983 the UGC gave its approval and on 3rd Feb 1984 his case was considered by the executive council and he was appointed as professor on 6.2.1984. Later on the executive resolved that the effective date of appointment would be the date on which it met subsequent to the selection committee meeting.

The question before the court was from which date the petitioner could be treated to be appointed as professor. The Supreme Court was of the view that on 1.4.1983 his case was not considered by the executive council. It was only on 3rd Feb. 1984 the envelop of selection was opened and it was from this date that his promotion would become effective. This decision was commented⁴³ that the university hurriedly framed its policy and landed in litigations .The University had enough time to seriously think about each aspect of the merit promotion scheme before it was put into operation.

It another significant judgment the Supreme Court is *Rashmi Shrivastava v. Vikram University*⁴⁴ instead of settling the dust has raised a storm. The teaching community, which teaches and shapes the students into good future citizens is itself involved in mud-

42 UJ (SC) 1994 1994 (2) 634.

43 C.M. Jariwala, *Law of Education*, vol. XXX, ASIL (1994) p. 255.

44 AIR 1995 SC. 1694

stinging on each other. The junior teachers out of whom many have been students of their senior colleagues have started ridiculing them because they were promoted under merit promotion scheme. The court rejected the merit promotion scheme on the ground that university Act contemplated only one source of recruitment of university teachers through direct selection.

Recently⁴⁵ in Haryana as teacher of Government Senior Secondary School allegedly managed to get promoted by submitting a fake M.A. (English) degree from the Gorakhpur University. On suspicion when the verification was made it was found that the degree was fake and not authorised by the controller of the Gorakhpur University. The principal informed the police about the issue and the police registered a case against the teacher under sections 420,467,408 and 471 of the Indian Penal Code and started further investigation.

It is submitted, opportunity for common advancement for those who train the profession should be adequate enough to help retain the talented teachers in the profession. There should be adequate number of positions at various levels. Higher positions should reflect the ladder of excellence, skills and abilities. Given the requirement of the system, there should be fair amount of possibilities for upward movement with the attainment of required abilities.⁴⁶ The question of determining seniority is a ticklish problem, resulting in deprivation of consequential benefit accruing thereof. *The S.M Bawankar*⁴⁷ case raised a very delicate question before the Supreme Court. The appellant, being senior to respondent no. 4 in the service was appointed as head mistress in the high school. But the Bombay High Court held that respondent no. 4 being senior on the basis of better merit which he acquired before the appellant, be appointed as head master. By the time the matter came to the Supreme Court, both had already retired. The Supreme Court set aside the high court judgment and held that the appellant would not be entitled to any monetary benefit except the post-retirement benefits of pension and respondent no. 4, having unauthorisedly performed the duties of headmaster, would not be subject to recovery of the amount paid to him for the period he performed as such. His pension or post-retirement benefits would also not be adversely affected. The

⁴⁵ Hindustan Times, New Delhi, 21 April 1999

⁴⁶ *Supra note. 43*

⁴⁷ *S.M. Bawankar v. Chief Officer, Municipal Council*, AIR 1999 SC 1964.

court, it is respectfully submitted, has erred in ordering that, the respondent's "pension or post-retiral benefits would also not be adversely affected". Can a person be allowed to get the benefit of the last pay drawn as head master which appointment was set aside by the Supreme Court? The sympathetic benefit could have been allowed at the most till the court delivered its judgment i.e. 4.5.1999.

The case of *S.A. Siddiqui*⁴⁸ once again open the question of *inter se* seniority between the direct recruits and merit promotes. As far back as 1995⁴⁹ the Supreme Court treated direct recruits as senior as senior to the promotes under the *M.P. Vishwavidyalaya Adhiniyam*, 1973. But under the provisions of the U.P State Universities Act, 1973, the position of both was put on par and the seniority was to be determined according to the length of service⁵⁰. In the present case the Supreme Court, in view of the provisions of the Aligarh Muslim University Act, 1920 and the status framed thereunder, held that the merit promotee, *S.A. Siddiqui* who was appointed professor much earlier than the respondent, a direct recruit, Wajid Khan, was senior to the respondent.

The theory that," the candidates from two streams fused into one cadre" might have received the stamp of validity of the apex court but the distinction cannot be obliterated. The way in which the merit promotion scheme is generally implemented in the universities is not unknown to any one. There are cases where persons appointed as lectures, are promoted as readers and even as professors with no additions at all to their qualifications and research output. This does not include those cases of promotions where there are no open posts in the department/faculties, and persons are selected under merit promotion scheme. The UGC, which was to monitor it, scrapped this scheme but re-introduced it in the name of career advancement⁵¹.

C: TERMINATION

The threat/fear of termination from employment has always been an impetus for a person to perform faithfully and loyalist in one's profession. This is specially true where the

48 *S.A. Siddiqui v. M. Wajid Khan*, AIR 1999 SC 604.

49 *Dr. Rashmi Srivastava v. Vikram University*, 1995 AIR SCW 2442.

50 *Dr. B.K. Agarwal, v. State of UP*, 1995 AIR SCW 800 followed in *Dr. Suman Agarwal v. Vice Chancellor*, 1996 AIR SCW 575.

51 C.M. Jariwala. "Education Law" Vol. XXXV, ASIL (1999) p. 253.

profession is closely related to the development, whether it be educational or otherwise of a third person vis-à-vis pupils.

The **Law Lexicon** defines termination as “the expression’ *termination*’ may no doubt in ordinary parlance be given the widest meaning of termination including one for misconduct. But in the light of the rules and the practice prevalent the said word has come to be restricted to contractual termination unconnected with any idea of punishment for misconduct”. It means a complete severance of relationship of employer and employee. Termination leads one’s jobless and are not allowed to continue his work in the same employment.

Termination of service has far reaching impact on teacher, education and educational institutions. In *P.V. Varman v. Punjab Ari. University*⁵² the apex court adopted a patch work approach in the matter. The appellant who was professor of veterinary physiology, having lost the confidence of university, was removed from the service by an order of the vice-chancellor. He challenged the said order which was set aside by the single judge bench of the Punjab and Haryana High Court. He continued in the job with the subsequent interim orders of the High Court and under the special leave petition. When the case name for final adjudication, the Supreme Court, leaving many point undecided, concentrated its attention only on the request of the appellant for voluntary retirement.

Despite of the fact that appellant had not completed twenty years to claim voluntary retirement, the court held that,” it is small hurdle which we remove hereby, and it accepted his offer subject to recent conditions. Thus the result of the judgments of Supreme Court was that, some charges remained without any punishment and the validity of the vice-chancellor’s action was kept as an open question. However, *State of Maharashtra v. Prabhu*⁵³ is the case of termination of the membership of the state Board of Maharashtra Secondary and Senior Secondary education. There were grave charges against the respondent that when he was the superintendent of examination of that centre was cancelled. In view of such past conduct of the respondent his membership was cancelled. The Bombay High Court set aside the termination order. In appeal the

52 AIR 1994 SC 83

53 (1994) 2 SCC 481

Supreme Court did not weigh the irregularity in the matter but looked to the social injury and unhealthy atmosphere which would result from upsetting the cancellation order. The court dismissed the appeal of the respondent on this ground. The present opinion⁵⁴ requires the persons involved in the examination to be responsive to their responsibility and not to remain like idol.

The significant question in this respect is whether a teacher can be terminated on the ground of misconduct. *Sanchalaksheri v. Vijaykumar Raghuvirprasad Mehta*⁵⁵ is the case where a teacher put on forged signatures of authorities on his service book to get his revised pay regularised. On enquiry he was found guilty of serious misconduct and finally dismissed from his job. He challenged his dismissal order. The Supreme court held that, a teacher is expected to maintain higher standard of honesty and integrity in view of the position he holds. He committed acts of forgery either himself or with the help of some other person of forging signature of the District Education officer, the Auditor and the Sanchalak and Principal of the school where he earlier worked, on his service book. Even after he was called upon by the School Management to disclose names of the person who had put their signatures in the service book, he had stated that it was signed by the District Education Officer. The statement was false to his knowledge. It was on the basis of the forged endorsements that he wanted to get payment as per the revised pay scale regularised.

The teacher thus committed not only a serious misconduct but also a serious criminal offence. The court further pointed out that if under such circumstances the punishment of dismissal was imposed by the School Management, it can not be said that it was shockingly disproportionate to the gravity of the misconduct. Fact that by his said acts, he was not to gain any additional financial benefit aid not have much bearing on the gravity of the misconduct. The acts committed by him constituted not only a serious misconduct but also a criminal offence.

It is the normal rule of master and servant that the services of probationers are subject to the rule of hier and fire. The *Pandurang case*⁵⁶ is one of such cases. The respondent doctor was appointed as lecturer on the probation for a period of one year on

54 *Supra note 41*

55 AIR 1999 SC. 578

56 *Gov. Coun., K.M. Ins. Of Oncology v. Pandurang*, AIR 1993 SC 302

the condition that he could be discharged before the said period if his services were not satisfactory. Six months after his joining of service, his services were not satisfactory. Six months after his joining of service, his services were terminated with one month's salary, which was challenged. In his confidential file some adverse remarks were made such as, complaints about the performance of duties, unsympathetic attitude towards the patients and roaming on scooter late in the night with girl. The Karnataka High Court, treating this case as a case of removal from service without departmental enquiry, quashed the order of termination.

But in appeal the Supreme Court reversed the High Court judgment as this was a case of termination simpliciter, the court made a distinction between 'stigma' on the one hand and 'preliminary enquiry', after taking into consideration the overall performance and some action or inaction which could attract removal and termination simpliciter respectively. According to N.P. Singh J, speaking on behalf of Ranganathan J. and himself, the governing council had taken into account "the total and overall assessment of the performance of the respondent" and, therefore, it was nothing but termination simpliciter. It may be noted that the remarks in the confidential file were such that they attracted the label of 'stigma'. Moreover, there were contradictions in the conclusions of the governing council and the patients' the opinion about his patient care. Are these facts not enough to apply the principal of 'lifting of the veil' which the apex court ruled out?

The question raised in *Francis John v. Director of Education*⁵⁷ was whether a writ petition against an order of termination of headmaster of a school, which was in receipt of grant-in-aid, was maintainable. Here disciplinary proceedings were initiated and findings of the dispute settlement who permitted termination of service of the headmaster. Reversing the decision of the Bombay High Court, the Supreme court held that the director of education while granting his approval was discharging a governmental function, and the management could not have terminated the service of the headmaster without such approval. In such circumstances it could not be said that the decision was that of private management governed by private law but it was part of the process of public law which affects the public exchequer. The court observed that grant-in-aid code was promulgated not merely for the benefit of the management but also for the benefit of

⁵⁷ AIR 1990 SC. 423

the employees whose salary and allowances the government was contributing from the public funds. A private school which received grant-in-aid under the code cannot escape from the consequences flowing from the breach of the code particularly when the director of education, who is an instrumentality of the state, is participating in the decision-making. Termination of services would have serious consequences on the teacher whose services are terminated but a valid termination fosters discipline in the educational institution. In this regard a question often repeated before the Supreme court is, has the minority educational institution the unbridled right to hire and fire any member of the teaching community? In the *Yunus Ali Sha Case*⁵⁸ the apex court once again upheld that it was “entirely under the control of the Managing Committee of the minority institution”⁵⁹ This right is exercised by the minority under article 30(1) of the Constitution of India. It may be pointed out that this article does not start with any *non-obstante* clause. And, therefore, the constitutional powers and directives conferred on the state by the other provisions of the Constitution does not eclipse in view of article 30(1). As such, indiscriminate, unreasonable or arbitrary firing on teachers by the minority institution, it is submitted, cannot become an absolute sign of the power of exploitation.

In *L.D. Dharamanekar v. Management of Vishwa Bharat Seva Samiti*⁶⁰:

There is no provision either in the Act or the Rules providing for automatic termination of services of a teacher on account of being absent without leave, the Supreme court held that, if any teacher remains absent without any leave, it is open to the Management to terminate the services of such teachers only after complying with the provision of the act and the rules or principles of natural justice. In the absence of such a provision of Act or Rules, the alleged deemed termination of services of the teacher without giving any opportunity of being heard was unlawful. Termination from services,

58 *Yunus Ali Sha V, Mohd. A. Kalam*, AIR 1999 SC 1377 at 1378 (Emphasis supplied). See also *Ahemdabad St. Xaviers College Society v. State of Gujarat*, AIR 1974 SC 1389, *Lily Kurian v. St. Lawins*, AIR 1979 SC 52; *Bihar State Madarsa Board v. Anjuman Ahla Hadees*, 1994 Supp (2) SCC 509.

59 Under the other provisions of the fundamental rights and also the directive principles of state policy, the power cannot be sustained in its total absoluteness or entirety. If this position is not accepted as correct then we are dividing the Indian education in a separate world of minority education in the preambular resolution of, “*Fraternity assuring the dignity of the individual and the unity and integrity of the Nation*”.

60 AIR 2001 SC 2836

it is submitted being an economic death, such a severe punishment ought to be imposed. The court may find out other mode of punishment inspite of termination from one's job.

D: ACCOUNTABILITY

The area of influence of the teaching profession on the rest of the system is relatively greater than any other subsystem. It is therefore imperative that the profession is accountable to all the three segments, viz, the students, the profession itself and the society. The Mechanism of accountability should therefore, be such that it is only transparent but also unimpeachable so that teachers are enabled to set is an example for other to emulate.

Better pay scales and service conditions are important requirements for ensuring the quality of higher education. However, these do not reflect the quality of teaching-learning process and the contribution made by teachers in teaching profession. Concern for the accountability of the profession had been expressed by the Radhakrishanan Commision, the Kothari Commision and the National Committees for Teachers in Higher Education as also headed by professors Sen and Mehrota. The last named Committee have even spelt out the methodology of introducing the concept of accountability in the teaching profession and pressed for its implementation⁶¹.

The National Policy On Education (1986) contemplated three requirements for the measurement/evaluation of accountability. According to it, the evaluation must be:

- i. Open
- ii. Participative;
- iii. Data based

a) Precisely speaking evaluation becomes open when:.

- (i) The components evaluated have clearly defined objectives;
- (ii) indicators of performance regarding the achievement of objectives are prescribed in advance;

61 Rastogi Committee Report, *Report of the Committee to Review the Pay Scales of University and College Teachers*, May 1997, UGC. p. 138.

(iii) the teacher has knowledge of the job he/she expected to perform along with the details of each specific role.

b) Evaluation becomes participative if the indicators of good performance and relative weightages to be given to the components of evaluation are decided upon in consultation and collaboration with the users of the system. This clearly permits the involvement of students in the evaluation process. As users of the system they are entitled to playing this role.

c) coming to the third aspect, namely making performance appraisal data-based, it realises that this is perhaps the most formidable component in the entire scheme of performance appraisal. It may be useful to discuss at some length as to how we lay down a possible quantitative/qualitative criterion that will go towards generating the necessary data. From our discussions, it appears that students evaluation must be constitute one of the main indicators in-so-far-as the performance of the individual teacher is concerned.

Further, it has to prescribe suitable criteria for research, institutional development, preparation of instruction material and general contribution to the building up to the academic atmosphere on the campus.

In this connection, the Mehrotra Committee requires to be quoted, It had said,

"A reliable and credible system of evaluation by student of teachers' performance should be worked out carefully and meticulously and introduced gradually and selectively"

Had this been done, there would not have been any problem. Now it has become necessary that the instruments of accountability are introduced without further delay and all over the country.

(i) Self-Appraisal of Teachers

In regard to self appraisal by teachers, the Mehrotra Committee recommended that it be "introduced immediately in all institutions of higher learning." "It was also suggested that the self-assessment report should include "factual information about the total workload;

the average number of periods for which he conducted actual teaching/practicals/tutorials; and the number of days for which leave of any kind was availed of etc.”

But except in a few cases, the State Governments/Universities did not evolve a system or frame regulations as so as to ensure assessment and accountability of teachers. The UGC did some follow up work by bringing forth self-appraisal proforma and code of professional ethics for university and college teachers with the help of AIFUCTO. The overall impact in both cases has been far from noticeable.

The Rastogi Committee reiterates that the self-appraisal proforma as in force (with modifications) should be made an annual feature of the review of teachers' performance as also as essential components for the grant of any type of incentive or upward movement in the career of a teacher.

(ii) Students' Assessment Of Teachers

The Rastogi Committee examined in detail the concept of students' assessment of teachers' performance in the light of frequent objections raised and apprehensions expressed in this regard. The Committee has come to the conclusion that notwithstanding, the students' evaluation of the teacher, has to be accepted as one of the components for assessing a teachers performance. The Committee recommends that students' assessment be made a part of the evaluation procedures in all colleges and universities. However this was rejected by govt.

(iii) Maintenance Of Attendance Registers

The Mehrotra Committee reiterated the following recommendations concerning the maintenance of Attendance Register and their submission by teachers as made by the National Commission on Teachers – II:

It is suggested that every teacher should maintain a register in which he/she records his/her activities for each working day. This is particularly important for the teaching function .Procedures relating to

the maintenance of attendance registers need to be strictly observed. It is suggested that registers may be submitted to the Principal's office, preferably at the end of the day, but certainly on every Saturday, and information contained therein may be made use of to remove lacunae and inadequacies during the week itself.

It should be ensured that the above requirement is strictly fulfilled. In addition, details about invigilation and examination work should also be provided. Guidelines in this regard should be framed and incorporated in the proposed statue. This would ensure uniformity of approach.

(iv) Implementation

During the discussions with the officers of the universities, Ministers and the State Governments, references were frequently made to the decline of work culture in educational institutions. The committee is aware of the fact that a lapse on the part of a few tends to become a reflection on the entire teaching community. The Teachers' Associations with whom we have had discussions in different states took the view without exception that they were in favour of ensuring accountability and submission of appraisal forms as contemplated in the Mehrotra Committee Report. It is our considered opinion that this aspect of the accountability procedure deserves the highest consideration. The recommendations of the Committee concerning performance appraisal and students' assessment of teachers, therefore, should be treated as an integral part of the package of recommendations of pay scales and service conditions and should not be viewed as detachable in any way. The Committee therefore recommends as follows.⁶²

1. The universities may have to make necessary amendments in their statutes and ordinances to take into account these recommendations and implement them effectively. Likewise the State Governments may also frame appointment rules and regulations to give effect to these recommendations in accountability.
2. It is necessary that the appraisal form by each individual teacher is submitted annually. Universities / Colleges should lay down a definite time-schedule for

⁶² Ibid, p 141

the submission of appraisal forms, their review and communication of comments as and when required. Non –submission of appraisal forms have to be viewed seriously and considered as a lapse which should invite action as per rules, to be framed in an appropriate manner.

3. There may be a provision for review of the appraisal form by a Committee constituted by the Executive Council / Syndicate / Board of Management, as the case may be. The composition of the Committee must be such as to ensure objectivity and credibility, both on the part of the faculty and the management.

(v) Generation of Appropriate Environment

Teachers' discontent is sometimes related to problems of selection. The administration should see to it that selections are made in time and in a transparent manner. Transparency alone instills confidence among teachers, students and all others concerned. It is desirable to give encouragement to good teachers. Further, efforts should be made to provide facilities to all teachers, thereby making room for enhancing their professional efficiency.

A proper, congenial, and encouraging atmosphere for academic activities can certainly be created in universities and colleges. Vice Chancellors, Principals of colleges and Heads of Departments including Professors of the departments and, indeed, all teachers have to play a vital role in this regard.

Teacher-emoluments and career opportunities are indeed very important motivating factors for the teachers to play their role effectively. Another equally important aspect is the academic environment of our institutions. Unfortunately, while emoluments have significantly improved, the institutional environment has deteriorated almost across the board. A few islands of healthy environment in the system are exceptions. We are of the view that unless conscious steps are taken at all levels-political (Centre and the states), administrative and academic – it would be rather difficult to arrest the decline. Teachers can and must perform better. They can do so only if the environment in which they function is improved. This could be achieved by having a common minimum agenda for higher education with a prospective view and an accepted code of institutional behaviour involving all concerned. The Higher Education Sector, along with the Defence sector and

the Judiciary needs to be treated as a pillar of healthy democracy by taking appropriate steps to free the sector from political interference and possible manipulations which have unfortunately become a common feature of our social life in the present times.

Certain other steps for generating the proper academic environment in colleges as well as in universities may also be thought of. Academic activities involving a cluster of colleges, whether in rural or urban areas, all over the district or towns around the universities should be organised. Frequent seminars by the parent university departments may be organised with the help of the departments of the affiliated colleges. All efforts should be made to encourage development of teaching and research capability.

In the context of accountability for all, a combination of administrative skills and academic will combined with transparency in action and real and sincere academic attitude would certainly improve matters. This will go well with the Indian psyche as referred in the following verse of the Gita.

"The way in which persons of the higher order act, ordinary persons also act in the same way. The example which they set is followed by others."

Shrimadbhagwadgita 3.21

Commenting upon the values of teachers the Supreme Court in *University of Delhi v. Ram Nath*⁶³, Gajendragadkar J.rightly observed:

"Under the sense of values recognized both by the traditional and conservative as well as the modern and progressive social outlook, teaching and teachers are, no doubt; assigned a high place of honour and it is obviously necessary and desirable that teaching and teachers should receive the respect that is due to them. A proper sense of value would naturally hold teaching and teachers in high esteem, though power or wealth may not be associated with them. It cannot be denied that the concept of social justice is wide enough to include teaching

63 1963 II LLJ. 335

and teachers, and the requirement that teachers should receive proper emoluments and other amenities which is essentially based on social justice cannot be disputed."

Though teaching the last choice in the job market, it is submitted the role of teachers is central to all processes of formal education. The teacher alone could bring out the skill and intellectual capabilities of students. He is the engine of the educational system. He is a principal instrument in awakening the child to cultural values. He needs to be endowed and energized with needed potential to deliver enlightened service expected of him. His quality should be such as would inspire and motivate into action the benefiter. He must keep himself abreast of ever changing conditions. He is not to perform in a wooden and unimaginative way. He must eliminate fissiparous tendencies and attitudes and infuse nobler and national ideas in younger minds. His involvement in national integration is more important, indeed indispensable. It is, therefore needless to state that teachers should be subjected to rigorous training with rigid scrutiny of efficiency. It has greater relevance to the needs of the day. The ill trained or sub standard teachers would be detrimental to our educational system; if not a punishment on our children. The Government and the University must, therefore, take care to see that inadequacy in the training of teachers is not compounded by any extraneous consideration.