

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF APRIL, 2017

BEFORE

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

W.P.NO. 50788/2014

C/W

**W.P.NOs.49877/2014, 49878/2014, 50808/2014 AND
W.P.NOs.51261-51263/2014 & 51264-66/2014 (S-PRO)**

IN W.P.NO.50788/2014

BETWEEN:

SRI PREM KUMAR B.S
S/O LATE SHIVALINGAPPA
AGED ABOUT 51 YEARS
WORKING AS LIBRARIAN
AT SRI BHUVANENDRA COLLEGE
KARKALA-574 104.

... PETITIONER

(BY SRI. K.N. PUTTEGOWDA, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF HIGHER EDUCATION
(COLLEGIATE EDUCATION)
REP. BY ITS SECRETARY
M.S. BUIDLING
BANGALORE-560 001.
2. THE COMMISSIONER FOR
COLLEGIATE EDUCATION
II FLOOR, DTE BUILDING
PALACE ROAD,
BANGALORE-560 001.

3. THE DIRECTOR FOR COLLEGIATE
EDUCATION,
II FLOOR, DTE BUILDING
PALACE ROAD,
BANGALORE-560 001.
4. ACADEMY OF GENERAL EDUCATION
REP. BY ITS SECRETARY
MADHAV NAGAR,
ESHWAR NAGAR
MANIPAL-576 104
UDUPI DISTRICT.

... RESPONDENTS

(BY SRI. E.S. INDIRESH, AGA FOR R1 TO R3;
R-4 SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO
QUASH THE IMPUGNED ORDERS DATED 00.10.2014
ISSUED BY THE R-2 & R-3 VIDE ANNEXURE-A TO THE
W.P. AND CONSEQUENTLY EXTEND ALL CONSEQUENTIAL
BENEFITS TO THE PETITIONER.

IN W.P.NO.49877/2014

BETWEEN:

SRI SREEKANTIAH V.B
S/O LATE V.K. BORAI AH
AGED ABOUT 56 YEARS
WORKING AS LIBRARIAN
SRI KUVEMPU FIRST GRADE
COLLEGE, KENGAL,
CHANNAPATTANA
RAMANAGARA DISTRICT-562 161.

... PETITIONER

(BY SRI. M.S. BHAGWAT, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF HIGHER EDUCATION
(COLLEGIATE EDUCATION)
REP. BY ITS SECRETARY
M.S. BUIDLING
BANGALORE-560 001.
2. THE COMMISSIONER FOR
COLLEGIATE EDUCATION
II FLOOR, DTE BUILDING
PALACE ROAD,
BANGALORE-560 001.
3. THE DIRECTOR FOR COLLEGIATE
EDUCATION,
II FLOOR, DTE BUILDING
PALACE ROAD,
BANGALORE-560 001.
4. SRI HOMBEGOWDA EDUCATION
TRUST, REP. BY ITS SECRETARY
1120, 9TH CROSS,
ASHOKA NAGARA
BANASHANKARI I STAGE
BANGALORE-560 050.

... RESPONDENTS

(BY SRI. E.S. INDIRESH, AGA FOR R1 TO R3;
R-4 SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO
QUASH THE IMPUGNED ORDERS DATED 17.10.2014
ISSUED BY R-2 & R-3 (ANNEXURE-A TO THE WP) AND
CONSEQUENTLY EXTEND ALL CONSEQUENTIAL
BENEFITS TO THE PETITIONER.

IN W.P.NO.49878/2014**BETWEEN:**

SRI V. SANJEEVA
S/O LATE SHIVAIAH
AGED ABOUT 59 YEARS
WORKING AS LIBRARIAN
APS COMMERCE COLLEGE
N.R. COLONY, BANGALORE-560 019.

... PETITIONER

(BY SRI. M.S. BHAGWAT, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF HIGHER EDUCATION
(COLLEGIATE EDUCATION)
REP. BY ITS SECRETARY
M.S. BUIDLING
BANGALORE-560 001.

2. THE COMMISSIONER FOR
COLLEGIATE EDUCATION
II FLOOR, DTE BUILDING
PALACE ROAD,
BANGALORE-560 001.

3. THE DIRECTOR FOR COLLEGIATE
EDUCATION,
II FLOOR, DTE BUILDING
PALACE ROAD,
BANGALORE-560 001.

4. ACHARAYA PATHASHALA
EDUCATION TRUST
REP. BY ITS SECRETARY
N.R. COLONY,
BANGALORE-560 019.

... RESPONDENTS

(BY SRI. E.S. INDIRESH, AGA FOR R1 TO R3;
R-4 SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDERS DATED 17.10.2014 ISSUED BY R-2 & R-3 (ANNEXURE-A TO THE WP) AND CONSEQUENTLY EXTEND ALL CONSEQUENTIAL BENEFITS TO THE PETITIONER.

IN W.P.NO.50808/2014

BETWEEN:

DR. P.M. SHIVAMURTHY
S/O LATE PARAMAIAH M
AGED ABOUT 54 YEARS
WORKING AS SELECTION
GRADE LIBRARIAN
VIDYA VARDHAKA DEGREE
COLLEGE, VVS I GRADE
COLLEGE FOR WOMEN
II BLOCK, III STAGE
BASAVESHWARANAGAR
BANGALORE-560 079.

... PETITIONER

(BY SRI. M.S. BHAGWAT, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF HIGHER EDUCATION
(COLLEGIATE EDUCATION)
REP. BY ITS SECRETARY
M.S. BUIDLING
BANGALORE-560 001.
2. THE COMMISSIONER FOR
COLLEGIATE EDUCATION
II FLOOR, DTE BUILDING
PALACE ROAD,
BANGALORE-560 001.
3. THE DIRECTOR FOR COLLEGIATE
EDUCATION,

II FLOOR, DTE BUILDING
PALACE ROAD,
BANGALORE-560 001.

4. VIDYA VARDHAKA SANGHA
(REGD), REP. BY ITS
SECRETARY, SAPTARSHI
DHAMA, 1ST BLOCK
RAJAJINAGAR,
BANGALORE-560 010.

... RESPONDENTS

(BY SRI. E.S. INDIRESH, AGA FOR R1 TO R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO
QUASH THE IMPUGNED ORDERS NIL/10/2014 ISSUED BY
R-2 & R-3 VIDE ANNEXURE-A AND CONSEQUENTLY
EXTEND ALL CONSEQUENTIAL BENEFITS TO THE
PETITIONER.

IN W.P.Nos.51261-263/2014 & 51264-266/2014

BETWEEN:

1. SRI SANGAPPA
S/O SIDDAPPA KUDLEPPANAVAR
AGED ABOUT 63 YEARS
OCC: RETIRED LIBRARIAN
R/O NO.76/76, HULIMAVU
BANNERGATTA ROAD
BANGALORE-76.
2. SRI BASAPPA
S/O ADAPPA NALATWAD
AGED ABOUT 56 YEARS
OCC: LIBRARIAN
WORKING AT M.G.V.C
ARTS COMMERCE AND
SCIENCE COLLEGE

DIST: BIJAPUR.

3. SRI DYAMAPPA
S/O FAKKEERAPPA MABANUR
AGED ABOUT 60 YEARS
LIBRARIAN, SRI SHANKAR ARTS
& COMMERCE COLLEGE
NAVALAGUNDA
DIST: DHARWAD-582 208
R/O JAMAKANAGALLI
NAVALAGUNDI,
DIST: DHARWAD
4. VIJAYAKUMAR
S/O VEERABHADRAPPA
MYAGERI, AGED ABOUT 56 YEARS
OCC: LIBRARIAN,
SRI ANNADANESWARA
ARTS, SCIENCE & COMMERCE
COLLEGE, NAREGAL
TQ: RON, DIST: GADAG
R/O ASUTI BUILDING
BEHIND BASAVESHWARA HIGH
SCHOOL, SIDDALINGANAGARA
HUDCO COLONY, GADAG.
5. VASUDEV
S/O RAMA PAVASKAR
AGED ABOUT 54 YEARS
OCC: LIBRARIAN
MES LAW COLLEGE
SIRSI, DIST: UTTAR KANNADA
R/O NEHRU NAGAR
HANUMAGIRI, SIRSI,
DIST: UTTARA KANNADA-581402.
6. SMT. SHAILAJA HAGEDAL
W/O SHARANAPPA HAGEDAL
AGED ABOUT 49 YEARS
OCC: LIBRARIAN,
JSS SAKRI LAW COLLEGE,
HEGGERI, OLD HUBLI
DIST: DHARWAD,
R/O NO.18, SILVER TOWN

GOKUL ROAD, HUBLI
DIST: DHARWAD.

... PETITIONERS

(BY SMT RATNA N SHIVAYOGIMATH, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF HIGHER EDUCATION
(COLLEGIATE EDUCATION)
REP. BY ITS SECRETARY
M.S. BUIDLING
BANGALORE-560 001.
2. THE COMMISSIONER FOR
COLLEGIATE EDUCATION
II FLOOR, DTE BUILDING
PALACE ROAD,
BANGALORE-560 001.
3. THE DIRECTOR FOR COLLEGIATE
EDUCATION,
II FLOOR, DTE BUILDING
PALACE ROAD,
BANGALORE-560 001.

... RESPONDENTS

(BY SRI. E.S. INDIRESH, AGA FOR R1 TO R3)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDERS DATED 00.10.2014 ISSUED BY THE R3, VIDE ANNEXURE-AP, AQ, AR, AS, AT & AU RESPECTIVELY.

THESE PETITIONS BEING HEARD AND RESERVED, COMING ON FOR PRNOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioners have sought for quashing the order dated Nil.10.2014 passed by third respondent whereby promotion granted to them to the post of Librarians has been withdrawn and reverted back to the posts held by them prior to such promotion.

2. I have heard the arguments of Sriyuths M.S.Bhagawat, K.N.Puttegowda and Smt.Rathna Shivayogimath, learned Advocates appearing for the petitioners and Sri. E.S.Indiresh, learned Addl. Government Advocate appearing for the State and its agencies. Perused the records.

3. In these writ petitions petitioners came to be appointed as First Division Assistants or as Library Assistants in the respective Institutions. Some of the petitioners while in service completed their degree in “Bachelor of Library and Information Science”, while few of them also acquired “Master Degree in Library and Information Science” and “Masters of Philosophy in Library and Information Science”. In

W.P.No.50808/2014 petitioner has obtained Ph.D in Library and Information Science.

4. All the petitioners being eligible to be promoted are appointed as Librarian having regard to their qualification came to be promoted. Since common questions with regard to reversion of petitioners from the post of Librarian to the post they were holding as on the date of promotion is the only issue involved in these writ petitions, they are taken up together, heard and disposed of by this common order. The Annexures referred to during the course of this order is with reference to Annexures indicated in W.P.No.49877/2014.

5. The erstwhile Government of Mysore by Notification dated 12.07.1973 - Annexure-F created the post of Senior Librarian, Librarians and Library Technical Assistants. The Recruitment Rules of the collegiate education also came to be amended as per Notification dated 12.07.1973 - Annexure-G, which Rules came to be extended to private aided colleges –

Institutions in the State of Karnataka by Government Order dated 21.07.1988, Annexure-H. Thereafter, the Institutions in which the petitioners working resolved to promote the petitioners to the post of Librarian or permitted them to hold the post of Librarian on account of Librarian posts becoming vacant. All these petitioners have been discharging their duties as Librarians.

6. The Government of Karnataka sanctioned the 1986 – Revised UGC Pay Scales to Librarians in the First Grade College by Notification dated 05.04.1991, Annexure-M. The qualification prescribed for recruitment to the post of Librarian as per the UGC Regulations is “Masters Degree” in the relevant subject with atleast 55% marks as aggregate. The said Notification came to be modified by **Notification dated 25.06.1993, Annexure-N** to the extent of extending the revised UGC Pay Scale to the Librarians. The State Government issued G.O. dated 28.01.1995 – Annexure-P in modification to all earlier orders by extending the UGC Pay Scale to all the Librarians indicating

thereunder that all Librarians working in Government as well as Aided First Grade Degree colleges would be entitled to revised UGC Pay Scales subject to fulfillment of qualification as indicated thereunder.

7. The Government of Karnataka by Notification dated 25.09.2009, Annexure-Q, brought in Karnataka Education Department Service (Collegiate Education Department) (Recruitment) Rules, 2008 so as to bring said Rules in conformity with the UGC Regulations. The said Rules brought about change in the method of recruitment for the post of Librarian “**by direct recruitment**” as against erstwhile recruitment rules (Annexure-G), which provided recruitment to the post of Librarian providing 25% by promotion from the post of “Library Technical Assistants”.

8. Petitioners came to be issued with show cause notices calling upon them to show cause as to why the approval of their appointment to the post of Librarian should not be cancelled and as to why they should not be reverted back to the post, which they

were holding prior to the promotion. All the petitioners have replied to the show cause notices contending that their appointments by way of promotion was in accordance with the then existing Rules and they are all qualified to hold the posts or in other words, they possessed the qualification prescribed by UGC. However, respondent Nos.2 and 3 by the impugned orders passed in the respective writ petitions have withdrawn the promotion granted to the petitioners and reverted them back to the posts in which they were working prior to their promotion. The orders of withdrawal of promotion / order of reversion is under challenge in these writ petitions.

9. It is contended in the writ petitions that the withdrawal of promotions granted to the petitioners is illegal and withdrawal of their promotion based on G.O. dated 05.04.1991 – Annexure-M, cannot be sustained since they had fulfilled the minimum academic qualifications prescribed for the post of Librarians as per G.O. dated 05.04.1991 and also on the ground that

their appointments have been approved by the competent Authorities. It is also contended that method of recruitment as per the then existing Recruitment Rules provided for recruitment of Librarians by promotion to the extent of 25% from the cadre of “Library Technical Assistants” and said rule held the field till new Recruitment Rules came into existence from 25.09.2009 (Annexure-Q) and when petitioners came to be promoted said amended Recruitment Rules was not in force. It is also contended that ‘direct recruitment’ to the post of Librarian became the only mode of recruitment only in the year 2009 and as such amended recruitment rules cannot be operated retrospectively. Hence, it is contended that respondents were not justified in reverting back the petitioners by withdrawing their promotion and authorities failed to look into the fact that promotion had received their approval and before passing the order in question a personal hearing ought to have been extended to the petitioners. It is also contended by the petitioners that the impugned orders have been passed by the Director

for Collegiate Education without authority of law. It is contended that under the Karnataka Educational Institutions (Collegiate Education) Rules, 2013, it is the Commissioner who is empowered to exercise the power for removal and there being no express delegation to the Director, the impugned order is liable to be set aside on the ground of same having been passed by an authority, which do not possess power to pass the said order. On these grounds, they have sought for allowing of the writ petitions.

10. Respondents have filed their statement of objections contending interalia that petitioners have to avail alternative remedy available under Section 130 of Karnataka Education Act, 1993, and as such, writ petitions are not maintainable. It is also contended that on account of Institutions in which writ petitioners are working being affiliated to the universities and admitted to grant, the terms and conditions imposed while granting aid would be applicable. It is further contended that the Universities Grants Commission (for short

'UGC') formed a Scheme on 17.06.1987 providing for revision of pay-scales of teachers in universities and colleges, which was also extended to the Librarians and Directors of Physical Education and said Scheme mandates that recruitment for the posts of Assistant Librarians, Deputy Librarian and Librarian would be by direct recruitment only and pursuant to same, Government of Karnataka had issued a G.O. dated 05.04.1991 extending the benefit of revised pay-scale to Librarians and Physical Education Directors / Instructors and said G.O. specifically made clear that all the Librarians and Physical Education Directors appointed subsequent to the date from which the Scheme has come into force, would be governed by the Provisions of said Scheme and said order itself indicate the post of Librarians are to be filled up by direct recruitment only. It is contended that said G.O. still holds the field and no orders are passed in supersession of it and as such there was no promotional avenue available for recruitment to the post of Librarian, which method had been adopted by the College Managements

where petitioners were working and said method adopted by them is contrary to UGC Regulations and G.O. dated 05.04.1991.

11. It is also contended this Court while considering W.P.No.3362/2002 had an occasion to consider the question regarding promotion to the post of Librarians and this G.O. dated 05.04.1991 had not been brought to the notice of Court and as such said case was disposed of on the basis that promotion avenue was available and same cannot be made use of by petitioners in the instant case.

12. It is also submitted that the Central Government with a view to make provision for coordination and determination of standard in the universities had enacted UGC Act, 1956, and under Section 4 thereof has established Universities Grants Commission and the provisions of said Act is binding on all. It is also submitted that pursuant to recommendation of UGC the Central Government undertook to revise the pay-scale of teachers and other

staffs in the universities and institutions and pursuant to same, G.O. dated 05.04.1991 came to be issued by the Government of Karnataka and this fact was not brought to the notice of this Court in W.P.No.3362/2002 and as such order passed by this Court was in ignorance of the Scheme framed by the Central Government and G.O. dated 05.04.1991 and as such it is contended that reliance cannot be placed on the said judgment.

14. It is further contended that promotion given to the petitioners being in violation of Scheme of the Central Government as well as G.O. dated 05.04.1991, same has been rectified now by reverting the petitioners back to the posts which they held prior to promotion. On these grounds, respondents have sought for dismissal of the writ petitions.

15. Having heard the learned Advocates appearing for the parties and on perusal of records, this Court is of the considered view that following points would arise for consideration:

- (i) Whether the impugned orders passed by respondents reverting the petitioners to the posts which they held prior to being promoted as Librarians, is liable to be set aside or sustained?
- (ii) What order?

16. It is not in dispute that petitioners have been promoted as Librarians and have also been extended UGC pay scales. In fact, one of the petitioner i.e., Sri. Sangappa (petitioner in W.P.Nos.51261-263/2014) has already attained the age of superannuation and has retired from service also.

17. For the purposes of convenience, the names of petitioners as well as the date on which they were promoted as Librarians are tabulated hereinbelow including the date on which such promotions made by respective institutions came to be approved:

Sl. No.	Name of the Petitioner	Date of Promotion as Assistant Librarians	Date of Promotion as Librarians	Date of approval by the State
1	V.B.Sreekantaiah	----	05.02.2010	28.03.2010 w.e.f. – 18.03.2005
2	Sanjeeva V.	11.08.1982	13.03.2003	17.08.2010
3	Sangappa	07.12.1970	11.09.2007	16.06.2014*
4	Basappa	05.07.1984	20.07.2007 w.e.f. 31.03.2005	17.08.2013* and 16.06.2014 *
5	Dyamappa	01.10.1981 as SDA	01.06.2005	15.11.2006
6	Vijay Kumar	15.06.1984	18.11.2006	01.10.2009*
7	Vasudev	29.06.1990	09.04.2008	06.02.2010*
8	Shailaja	09.09.1992	10.11.2006	01.10.2009*
9	P.M.Shivamurthy	20.12.1982	08.03.1999	07.05.2005
10	Prem Kumar	05.02.1993 as FDA	26.02.2008	26.03.2008

***UGC Scale extended**

18. As records would disclose the petitioners came to be promoted as Librarians from the dates mentioned herein above. As on the date they came to be promoted, the extant Rules which was in force or vogue was the Mysore Education Department Services (Collegiate Education Department) (Recruitment) Rules,

1964 and it came to be amended in the year 1973 i.e., on 12.07.1973 – Annexure-G, which rules came to be extended to Private Aided Colleges in the State of Karnataka. The said Rules prescribed the method of recruitment for the post of ‘Librarian’ and it reads as under:

20-A.Librarian	Twenty Five percent by promotion from the Cadre of Library Technical Assistants.	<u>For Promotion:</u> Must be holder of a degree of a University established in India/ equivalent qualification, &
	If no suitable candidate is available for promotion, by direct recruitment	Must be holder of a Diploma in Library Science, awarded by the Board of Technical Examinations, Department of Technical Education/ equivalent qualification.
	Twenty five percent by promotion from the cadre of II Division Clerks If no, suitable candidate is available for	

	<p>promotion, by direct recruitment</p> <p>Fifty percent by direct recruitment.</p>	<p><u>For Direct Recruitment</u></p> <p>Must be holder of-</p> <p>(i) a degree of a University established by law in India or equivalent qualification &</p> <p>(ii) a diploma in Library Science awarded by the Board of Technical Examinations, Department of Technical Education or equivalent qualification.</p>
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19. As could be seen from the above rules, 25% posts of Librarians was to be filled by promotion from the cadre of Library Technical Assistant. The qualification prescribed for such promotions was that the candidate must hold a degree of University established in India or equivalent qualification and must be holder of a Diploma in Library Science awarded by the Board of Technical Examinations, Department of Technical Education/equivalent qualification. It would

be relevant to note at this juncture itself that 50% posts is earmarked for direct recruitment and the qualification prescribed for such direct recruitment is the same qualification, which is also prescribed for the promotees. In other words, both the promotees as well as direct recruits are required to have the same qualification as indicated herein above. It is not in dispute that all the petitioners who have been promoted on the respective dates as noticed herein supra were possessing the prescribed requisite qualification.

20. On the recommendation of University Grants Commission on 17.06.1987, the Government of India issued a Scheme for providing revision of pay scales to teachers working in Universities and colleges. It was also extended to Librarians and Directors of Physical Education as indicated in Appendix - II dated 22.07.1988 vide Clause 4 (Anneuxre-R1).

21. Pursuant to the same, the Government of Karnataka by order dated 05.04.1991 extended the 1986 revised UGC pay scales to Librarians and Physical

Education Directors/Instructors working in the first grade Government colleges and also to those aided by the Government under the control of Department of Collegiate Education. It has been made clear therein that all Librarians etc. appointed subsequent to the date of Scheme coming to force they would be governed by the provisions of the said scheme. On the basis of representations received from the Federation of Karnataka State College Librarians and Physical Education Directors, Bangalore, the Government of Karnataka by order dated 25.06.1993 - Annexure-N, accorded to extend the benefit of revised UGC pay scales to the Librarians and Physical Education Personnel working at Government as well as Aided First Grade (Degree) with effect from 01.01.1986 subject to fulfillment of qualifications indicated thereunder. A perusal of G.O. dated 25.06.1993 - Annexure-N would disclose that persons appointed on or after 05.04.1981 should possess Masters Degree in the respective subject with not less than 55% marks and as prescribed by the

UGC from time-to-time for being appointed as Librarians.

22. Government of Karnataka issued a Government Order on 28.01.1995 – Annexure-P in partial modification to its earlier orders, extending the UGC pay scale indicating thereunder the minimum qualification required or should be possessing for being eligible to claim or receive the UGC pay scales and it reads as under:

Sl. No.	Date of Appointment	Qualification for Librarians
1	Persons appointed prior to 31-12-72	Basic degree plus B.Library Science Degree
2	Persons appointed between 01-01-73 to 31-12-85	Master's Degree B.Lib.Science Degree
3	Persons appointed between 01-01-86 to 05-04-91	First or Second Class basic degree plus first or second class M.Lib.Science or First or Second class Master's degree and First or Second class B.Lib. Science or Diploma in Library Science.
4	Persons appointed on or after 05-04-1991	i) Good academic record with at least a high second class Master 's

		degree in a subject other than Lib. Science.
		ii) Master's degree in Lib. Science with first or high second class.

23. However, the recruitment Rules governing the recruitment of Librarians which provided for recruitment by promotion to an extent of 25% posts, which was in existence, came to be amended by Government of Karnataka for the first time in the year 2009 i.e., 25.09.2009. The said amendment changed the method of recruitment for the post of Librarian and it provided for recruitment to the post of Librarian only by direct recruitment. As on the date said amendment came into force, all the petitioners had already been promoted on the basis of the then existing Rules which provided for 'recruitment by promotion' i.e., 25% quota.

Thus, incidental and moot question that would arise for consideration in the writ petitions is:

“Whether the recruitment Rules in existence which provided for recruitment

by promotion would prevail or the UGC Regulations?

24. The said issue is no more *res integra* in view of the law laid down by Apex Court in the case of ***ANNAMALAI UNIVERSITY REP. BY ITS REGISTRAR VS. SECRETARY TO GOVT. INFORMATION AND TOURISM DEPT. AND OTHER*** reported in **(2009)4 SCC 590** whereunder it has been held that UGC Act is binding on all the universities and regulations formed by it in terms of Section 26 of UGC Act are of wide amplitude and they equally apply to all universities. It is held:

“40. The UGC Act was enacted by Parliament in exercise of its power under Entry 66 of List 1 of the Seventh Schedule to the Constitution of India whereas the Open University Act was enacted by Parliament in exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the Statement of Objects and Reasons of the Open University Act shows that the formal system of education had not been able to provide an effective means to equalize educational opportunities. The system is rigid inter alia in respect of attendance in

classrooms. Combination of subjects are also inflexible.

42. The provisions of the UGC Act are binding on all universities whether conventional or open. Its powers are very broad. The Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-section (1) of Section 26 are of wide amplitude. They apply equally to open universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinbefore that the functions of UGC are all-pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12-A and clauses (a) and (c) of sub-section (2) thereof.

43. Indisputably, as has been contended by the learned counsel for the appellant as also the learned Solicitor General that the Open University Act was enacted to achieve a specific object. It opens new vistas for imparting education in a novel manner. Students do not have to attend classes regularly. They have wide options with regard to the choice of subjects but the same, in our opinion, would not mean that despite a parliamentary Act having been enacted to give effect to the constitutional mandate contained in Entry 66 of List I of the

Seventh Schedule to the Constitution of India, activities and functions of the private universities and open universities would be wholly unregulated.

50. the UGC Act, thus having been enacted by Parliament in terms of Entry 66 of List I of seventh Schedule to the Constitution of India would prevail over the Open University Act.”

25. Thus, it cannot be gainsaid by the petitioners that the State Recruitment Rules would prevail. In fact, the Government order dated 05.04.1991 it has been specifically indicated therein that extension of UGC pay scales as per the Scheme which would be effective from 01.01.1986 would be governed by the conditions prescribed for recruitment and qualifications being met. A perusal of the Government Order dated 05.04.1991 would indicate that recruitment to the post of Librarians and Physical Education Directors/Instructors in colleges would be on the basis of merit through All India advertisement and selection and the minimum qualifications required for appointment to the post of Librarians and Physical Education Director, Instructors in colleges would be as

prescribed by the UGC from time to time. The minimum qualification which has been fixed is Masters Degree in relevant subject with at least 55% marks.

26. Under the impugned orders, promotions granted to the petitioners has been withdrawn or recalled by reverting the petitioners back to the posts which they held prior to promotion based solely on the above referred G.O. dated 05.04.1991 and noticing that the UGC Scheme prescribes for appointment to the posts of Librarians by direct recruitment only and it would be applicable with retrospective effect from 01.01.1986 and on the ground that filling of posts of Librarian through promotion is deemed to have been removed.

27. It is not the case of the State that on the date the petitioners were promoted the extant Rules (Annexure-G) governing such promotions did not provide for recruitment by promotion and it is also not the stand of the Government that petitioners did not possess the requisite qualification prescribed by UGC.

On the other hand, records would disclose that some of the petitioners are possessing qualification higher than what has been prescribed by UGC. Thus, to unsettle the promotions which have been granted to the petitioners at this length of time would not only be too harsh but also it would not subserve the ends of justice. However, at the same time, the appointments which are not in conformity with Government Order dated 05.04.1991 also cannot be held as valid. Thus, a balancing act between these two has to be struck by keeping in mind the principles enunciated by Hon'ble Apex Court in the case of **UNIVERSITY OF DELHI vs RAJSINGH & OTHERS** as well as **ANNAMALAI UNIVERSITY's** case whereunder it came to be held that University of Delhi can seek prior approval of UGC for relaxation of the prescribed requirement.

28. It requires to be noticed that the petitioner in W.P.No.49877/2014 had approached this Court in W.P.No.3362/2002 to consider his case for promotion with retrospective date for the post of Librarian. Said

writ petition came to be allowed by order dated 29.08.2003 - Annexure-W. Coordinate Bench after taking note of the fact that candidates who were similarly placed like the petitioner namely, Sriyuths P.T.Kadam and N.D.Kamat had been extended the benefit of UGC pay-scale as per the communication dated 18.11.2000 (produced in the said writ petition as Annexure-B), directed the authorities to approve the promotion of petitioner as Librarian with effect from 21.09.1999 and this has been given effect to by the respondent - authorities. It requires to be noticed that in the writ petition the stand of the State was to the effect that on account of Government Order dated 01.03.2009 it had been resolved that all vacancies that came to be created on account of death, retirement or resignation should not be filled up and as such the petitioner's claim therein had not been considered or had been rejected. This Court held that the G.O. dated 01.03.2001 should be understood as one in respect of which either appointment or promotions have not been made and it will not apply in all the cases where

appointment either by way of recruitment or by way of promotion is made in respect of which approval is pending consideration before the authorities.

29. There cannot be any dispute to the proposition that UGC regulation is applicable to all the Universities and Institutions and that the qualification prescribed under UGC would be applicable for all appointments. This view is also fortified by the law laid down by the Apex Court in the case of **UNIVERSITY OF DELHI VS. RAJ SINGH** reported in (1994) 3 Supp. SCC 516 and **ANNAMALAI UNIVERSITY REP. BY ITS REGISTRAR VS. SECRETARY TO GOVT. INFORMATION AND TOURISM DEPT. AND OTHER** reported in (2009) 4 SCC 519. The principles laid down in the said decisions would clearly indicate that the qualification prescribed in the UGC shall be the minimum qualification for the purposes of appointment.

30. As noticed hereinabove, when the petitioners came to be appointed the Recruitment Rules (Annexure-G) provided for the mode of recruitment of 25% posts by

promotion to the post of Librarians and Senior Librarians. Said Rules held the field till Recruitment Rules came to be substituted by issuance of Notification dated 25.09.2009, Annexure-Q, whereunder recruitment by promotion was done away and method of direct recruitment was brought in. Said rules would also indicate that such recruitment would be in accordance with UGC Regulations / guidelines issued from time to time.

31. As could be seen from the show cause notices issued to the petitioners, the impugned orders passed and the reason assigned by the authorities for withdrawing the promotions is on the premise that the Hon'ble Apex Court in **RAJ SINGH's** case referred to supra has held that the Regulations framed by the UGC would be applicable to all the Universities and same being the mandate to the University to abide by the UGC Regulations and also the fact that Scheme of Revision of pay scales extended by the Government of India under G.O. No. F-1-21/87 U.I dated 17.06.1981

(Annexure-R1) Appendix II, the method of recruitment and qualification for extending the revision of pay scales to Assistant Librarian, Deputy Librarian, Librarian, etc. being on the basis of merit through All India Advertisement was not followed in the case of petitioners and recruitment of the petitioners not being in consonance with the said Scheme.

32. It requires to be noticed that said UGC Scheme - Annexure-R1 does not even remotely suggest that appointments if made by the Universities by following the extant recruitment rules, is to be disturbed or unsettled. The Scheme does not indicate that even in case of qualification prescribed therein not being met by such of those employees who have already been recruited by any mode is to be disturbed. It would also be necessary at this juncture itself to notice the observations of Hon'ble Supreme Court in **RAJ SINGH's** case made while examining the direction issued by High Court of Delhi. The facts obtained in the said case would disclose that one Mr. Raj Singh had applied for

the post of Lecturer in Commerce in three colleges affiliated to the Delhi University and had not been called for an interview. It was contended by him that advertisement for applications did not lay down that candidates should have passed the test prescribed by the Regulations prescribed by UGC and it also did not prescribe that candidates who had not passed the test would not be called for interview. In the said writ petition Delhi University took a stand that UGC Regulations were beyond the competence of UGC and it was only directory and not mandatory. In this background, the Delhi High Court held:

“Delhi University should select lecturers for appointment in itself and in its affiliated colleges strictly in accordance with University Grants Commission (Qualifications Required of a Person to be appointed to the Teaching Staff of a University and Institutions Affiliated to it) Regulations, 1991 notified on 19.09.1991”.

On this aspect it has been clarified by the Apex Court to the following effect:

“It is now appropriate to clarify the direction that the Delhi High Court

issued in allowing the writ petition. It held that the notification dated 19.09.1991, by which the said Regulations were published, was valid and mandatory and the Delhi University was obliged under law to comply therewith. The Delhi University was directed to select lecturers for itself and its affiliated and subordinate colleges strictly in accordance with the notification. Put shortly, the Delhi University is mandated to comply with the said Regulations. As analysed above, therefore, the Delhi University may appoint as a lecturer in itself and its affiliated colleges one who has cleared the test prescribed by the said Regulations; or it may seek prior approval for the relaxation of this requirement in a specific case; or it may appoint a lecturer one who does not meet this requirement without having first obtained the UGC's approval, in which event it would, if it failed to show cause for its failure to abide by the said Regulations to the satisfaction of the UGC, forfeit its grant from the UGC. If, however, it did not show cause to the satisfaction of the UGC, it not only would not forfeit its grant but the appointment made without obtaining the UGC's prior approval would stand regularized."

Since, Delhi University had taken a contention that UGC Regulations was beyond the competence of UGC and said Regulations were directory and mandatory,

said contention was not accepted by Delhi High Court and finding recorded thereon came to be clarified as noted hereinabove. However, the show cause notices issued to the petitioners in the instant cases, would disclose that reason for withdrawing the promotion granted to them and reverting back the petitioners to the respective posts is solely on the ground that UGC Regulations do not provide for recruitment by promotion. As already noticed herein above and at the cost of repetition, the Rules governing the appointment of Librarians in the State of Karnataka provided for recruitment by promotion to an extent of 25% posts vide Annexure-G. It is pursuant to said provision available in the recruitment Rules, petitioners came to be promoted and have been discharging their duties as such. It is not the case of respondents that petitioners herein do not possess the requisite qualification as prescribed under the then existing Recruitment Rules or the qualification prescribed under the 1986 Scheme by the UGC. But, on the other hand, it is the stand of respondents that on account of petitioners having been

recruited by adopting procedure of promotion which the UGC Scheme did not provide for they are to be reverted back. In view of the observation made by the Apex Court in RAJ SINGH's case that University therein can seek prior approval for relaxation of such requirement as provided under the Regulations, in the peculiar facts obtained in the case, this Court is of the considered view that similar olive branch can also be extended to the petitioners, particularly in the background of UGC having not objected to either extending the UGC pay scale to the petitioners on the ground of violation of the conditions of the Scheme or having called upon the respondents to withdraw the revised pay scales extended to them. As such, the respondent – authorities namely, respondent Nos.1 to 3 can seek appropriate approval from the UGC by specifically making a request or a prayer for relaxation of the condition prescribed in the 1986 Scheme insofar as petitioners are concerned by highlighting the dicta (observations) of the Hon'ble Apex Court in **RAJ SINGH's** case and seek one time approval. This Court would have also issued

appropriate directions to the UGC for considering the same but for the reason that UGC not being a party to the present proceedings. It is needless to state that in the event of UGC were to reject the request of respondent Nos.1 to 3 for any reason whatsoever, then in such an event, the respondent Nos.1 to 3 would be at liberty to communicate the said decision to the petitioners and call upon them to show cause and thereafter proceed to adjudicate the said show cause notice on merits and in accordance with law.

33. One another aspect which cannot go unnoticed is, impugned orders have been passed by the Director for Collegiate Education. As per G.O. No.ED 2 UEC 88, Bangalore, dated 30.01.1988 and Annexure-1 to the said order would disclose that approval of appointments in private colleges (both aided and unaided) would be accorded by the Director for Collegiate Education in Karnataka and he is vested with the power. However, the said authority is not vested with the power for passing the order of removal. On the

contrary, Rule 3(1) of Karnataka Educational Institutions (Collegiate Education) Rules, 2003, vests the power with the Commissioner. The Commissioner is also empowered to delegate such administrative powers he possess to such Officers he may consider necessary. In the instant case, there is no material on record to indicate that such power had been delegated by the Commissioner for Collegiate Education authorizing the Director for Collegiate Education to pass the impugned orders. However, the Government Advocate has sought to sustain the impugned orders by referring to the endorsement found in the impugned orders which indicates **“note having been approved by the Commissioner”** to contend that it has received the approval of the Commissioner. Said contention does not hold merit, inasmuch as the delegation is to be expressed as provided under Rule 3 as otherwise post-facto approval would not legalise the act of the Director for Collegiate Education to pass the impugned orders, since the extant Rules do not vest the said authority to exercise the power of Commissioner. In other words, the

Director for Collegiate Education did not have the authority and competence to pass the impugned orders. On this ground also, the impugned orders cannot be sustained.

34. In the light of aforesaid discussion, I proceed to pass the following:

ORDER

- (1) Writ petitions are hereby allowed in part and order dated 17.10.2014 and Nil.10.2014 – Annexure-A in W.P.Nos.49877/2014, 50808/2014, 50788/2014, 49878/2014 and Annexures-AP, AQ, AR, AS, AT in W.P.Nos.51261-266/2014 & 51264-66/2014 respectively are hereby quashed.
- (2) Respondent Nos.1 to 3 are hereby directed to seek the approval of the UGC insofar as recruitment of petitioners by promotion in the light of observations made herein above. However, it is made clear that no opinion is expressed with regard to the manner in which such request is to be

considered by the UGC since it is not a party to the present proceedings and it would be in the domain of UGC to examine the same in the manner known to law.

- (3) In the event of the request for grant of approval of petitioners' promotion submitted by respondent Nos.1 to 3 to the UGC is rejected for any reason, same shall be communicated to the petitioners by respondent No.2 and call upon them to show cause as to why their promotions should not be withdrawn and on consideration of their replies submitted, it would be at liberty to proceed to pass orders on merits and in accordance with law.

Ordered accordingly.

**SD/-
JUDGE**

DR/sp