



IN THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Appellate Jurisdiction)

W.A. No. 02 of 2018

1. The Sikkim University,
Represented through its Registrar,
Sikkim University,
Tadong, East Sikkim.
 2. The Vice Chancellor,
Sikkim University,
Tadong, East Sikkim.
- ...Appellants

Versus

1. Dr. Vaidyanathan Krishna Ananth,
Chair and Professor,
School of Liberal Arts and Basic Sciences,
Shri Ramsami Memorial University,
Amravati, Neerukonda,
Magalore Mandol,
Guntur District, Mongola Giri,
Andhra Pradesh-Pin Code-522502.
 2. The University Grant Commission (UGC),
Represented through its Secretary,
Bahadur Shah Zafar Marg,
New Delhi-110002.
- ...Respondents

BEFORE
HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, C.J.
HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.

For Appellants : Dr. Doma T. Bhutia and Mr. Manish Kumar Jain,
Advocates.

For Respondent No. 1 : Dr. Vaidyanathan Krishna Ananth, in-person.

For Respondent No. 2 : Mr. Thinlay Dorjee Bhutia, Advocate.

Date of Hearing : 27.02.2020.

Date of Judgment :

JUDGMENT

(Arup Kumar Goswami, C.J.)

This writ appeal is preferred against the judgment and order dated 06.03.2018 passed by the learned Single Judge in W.P.(C) No. 47 of 2017,



whereby the writ petition filed by the respondent no. 1 as writ petitioner was allowed.

2. We have heard Dr. Doma T. Bhutia, learned counsel appearing for the appellants. We have also heard respondent no.1, who has appeared in-person, and Mr. Thinlay Dorjee Bhutia, learned counsel appearing for respondent no.2.

3. The writ petitioner essentially raised a grievance regarding non-consideration of his case under Career Advancement Scheme (for short, CAS) of the Sikkim University from Stage-IV to Stage-V, i.e., from Associate Professor to Professor. According to him, though he fulfilled the eligibility criteria in terms of University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010 (for short, UGC Regulations), his case was not considered.

4. For the present, to understand the core controversy, suffice it is to say that an e-mail was sent by the Registrar of the appellant University to the writ petitioner in connection with his CAS application informing him that though on scrutiny it was found that while he qualified on all other points, the Committee had observed that he had not attached with the application any documentary proof establishing the fact of his supervising award of Ph.D. and, accordingly, requesting him to send scanned copy of any documentary evidence of successfully supervising Ph.D. at the earliest. Stand of the University is that it is permissible for the university to prescribe norms over and above the UGC Regulations and that accordingly, additional criterion was laid down to the effect that Associate Professors shall be considered for promotion to the post of Professors under CAS only after they acquire the experience of guiding research scholars of Doctoral Level. The writ petitioner disputed laying down of the additional norm.



5. It will be relevant to note that 2nd, 3rd and 4th amendment of UGC Regulations, which are relevant for the purpose of consideration of this appeal, came into effect on 13.06.2013, 04.05.2016 and 11.07.2016, respectively.

6. By the 3rd amendment of the UGC Regulations, 2010, amongst others, the existing Tables I to IX under Appendix-III of UGC Regulations, and the 2nd amendment regarding computation of Academic Performance Indicator (API) score for appointment and promotion of teachers and other academic staff in the universities/colleges/institutions were amended and substituted by the revised Tables I to IX appended to 3rd amendment regulations.

7. Clause 6.4.8 of UGC Regulations, 2010 reads as follows:

6.4.8. Associate Professor completing three years of service in stage 4 and possessing a Ph.D. Degree in the relevant discipline shall be eligible to be appointed and designated as Professor and be placed in the next higher grade (stage 5), subject to (a) satisfying the required credit points as per API based PBAS methodology provided in Table I-III of Appendix IV stipulated in these Regulations, and (b) an assessment by a duly constituted selection committee as suggested for the direct recruitment of Professor.
Provided that no teachers other than those with a Ph.D. shall be promoted or appointed as Professor.

8. Clause 6.0.2 of the UGC Regulations, 2010 was amended and substituted by the 2nd amendment with the following clause:

6.0.2. The Universities shall adopt these Regulations for selection committees and selection procedures through their respective statutory bodies incorporating the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS) at the institutional level for University Departments and their Constituent colleges/ affiliated colleges (Government/ Government aided/ Autonomous/Private colleges) to be followed transparently in all the selection processes. An indicative PBAS template proforma for direct



recruitment and for Career Advancement Schemes (CAS) based on API based PBAS is annexed in Appendix III. The Universities may adopt the template proforma or may devise their own self-assessment cum performance appraisal forms for teachers. While adopting this, universities shall not change any of the categories or scores of the API given in Appendix-III. The universities can, if they wish so, increase the minimum required score or devise appropriate additional criteria for screening of candidates at any level of recruitment. (Emphasis ours)

9. It is the case of the writ petitioner that as he was eligible for appointment and designation as Professor from 01.07.2016, he had submitted his application on 17.06.2016 in terms of the Appendix-III of 3rd amendment of UGC Regulations. He had to re-submit his application on 01.03.2017 in view of a letter dated 27.02.2017 issued by appellant no. 2 requesting him to re-submit the application as the earlier application could not be located. After re-submission of his application on 01.03.2017, an e-mail dated 18.05.2017 was sent by the Internal Quality Assurance Cell, for short, 'IQAC', of the University requesting the writ petitioner to submit his application as per the format prescribed by the 4th amendment of UGC Regulations, as API would have to be computed in terms of 4th amendment of UGC Regulations. It was also observed in the said e-mail that the writ petitioner's application was in terms of the format of the 2nd amendment. The writ petitioner by e-mail dated 19.07.2017, while questioning the authority of IQAC to deal with the subject as indicated in the e-mail dated 18.05.2017, also stated that as he had submitted his application on 17.06.2016, and date of eligibility of promotion claimed being 01.07.2016, which is prior in point of time to coming into effect of the 4th amendment of UGC Regulations, request made to him for applying on the format as prescribed in 4th amendment was inappropriate. Thereafter, an e-mail dated 10.07.2017 was sent by the Registrar of the University, amongst others, to the writ petitioner informing that his application for CAS had been



scrutinized and that while he qualified on all other points, the Committee had observed that no documentary proof was attached with the application establishing the fact of supervising award of Ph.D. and, accordingly, requesting him to send scanned copy of any documentary evidence of successfully supervising Ph.D. at the earliest. The petitioner replied back by his letters dated 10.07.2017 and 17.07.2017 stating that consistent stand of the University was that award of Ph.D. under one's supervision was not necessary for promotion as Professor under CAS. The petitioner came to learn that selection committee meetings were held after 31.07.2017 and in such meetings, applications of applicants who had submitted applications much later than the petitioner, had also been considered but the case of the petitioner was not considered.

10. In the counter-affidavit filed by the respondent nos.1 and 2, a preliminary objection was taken to the effect that the writ petition suffers from non-joinder of necessary and proper party as the writ petitioner had not made the similarly situated persons parties though he had sought parity with other Professors who were promoted under CAS. Another preliminary objection was taken that in absence of any challenge made to the rule making power of the Statutory Authority, the norms laid down seeking evidence of having guided research scholars of Doctoral Level as a pre-requisite under CAS cannot be challenged. It is pleaded that it is permissible for the university to prescribe norms over and above the UGC Regulations and that accordingly, additional criterion was laid down to the effect that Associate Professors shall be considered for promotion to the post of Professors under CAS only after they acquire the experience of guiding research scholars of Doctoral Level. It is pleaded that only because the writ petitioner had completed three years as Associate Professor would not entitle him to be promoted under CAS, but the same would entitle him to be in the zone of consideration only. It is stated that the writ petitioner had the eligibility as per UGC Regulations, 2010 including 3rd



and 4th amendment up to 2016. The UGC Regulations including amendments made in the year 2016 had been adopted after approval was granted by the Executive Council in a meeting held on 10.06.2016. It is pleaded that the application submitted by the writ petitioner on 17.06.2016 was never actually received in the office files and therefore, the writ petitioner was directed to re-submit his application. It is stated that by the 4th amendment, terms of API calculation were relaxed and list of UGC approved journals were expanded and accordingly, in order to give the benefit of amendment, the writ petitioner was directed to re-submit his application in good faith. Six candidates of various departments, who applied for promotion under CAS, were promoted to the post of Professors in their respective departments as they possessed evidence of guiding research scholars of Doctoral Level. It is also stated that a departmental enquiry against the petitioner for gaining illegal access and use of confidential document in the form of Annexure-P13 was under consideration. It is stated that the application stated to have been submitted by the petitioner, annexed as Annexure-P1, would itself demonstrate that none of Ph.D. Scholars under his supervision had completed their course.

11. A reply affidavit was filed by the writ petitioner, stating, amongst others, that discretion conferred on the university to prescribe additional criteria for screening of candidates at any level of recruitment is limited to only direct recruitment and not to promotion under CAS. The petitioner disputed laying down of an additional norm requiring experience of guiding research at Doctoral Level and had contested the document at Annexure R-1 of affidavit of respondents no.1 and 2 stating that the letter head, on which contents of Annexure R-1 had been typed, had come to be used only from the month of August, 2017. It is asserted that no such decision was taken by the appropriate authority and, therefore, the Annexure R-1 document was not put in public domain. The petitioner also placed reliance on a Circular No.13/2017 dated 07.03.2017, wherein while inviting applications for promotion under



CAS, additional criterion of experience of guiding research scholars to Ph.D. was not mentioned.

12. In its affidavit, the respondent no.3 pleaded that Clause 6.0.2 of 2nd amendment of the Principal UGC Regulations confers power on the universities to increase the minimum required score or devise appropriate additional criteria or screening of candidates at any level of recruitment and that promotion under CAS would have to be considered on the basis of Regulations which were in force on the date of eligibility and not on the date of interview.

13. The learned Single Judge, on consideration of the pleadings and arguments of the parties, had noted that the following issues had arisen for consideration of the court:-

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

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



14. In respect of the point no. 1 of the points for consideration, the learned Single Judge opined that when the writ petitioner had not sought for any relief against the six promoted candidates or the selection committee, the writ petition did not suffer from non-joinder of necessary parties.

15. The learned Single Judge, in point no.2 for consideration as noted above, had held that in view of Clause 6.0.2 of the UGC Regulations as amended by the 2nd Amendment, the appellant no. 1 is clothed with power to prescribe additional criteria over and above those set out in Clause 6.4.8 of the UGC Regulations for screening of candidates at any level of recruitment, which includes promotion, and thus, negating the challenge made by the writ petitioner that no additional criteria could have been prescribed by appellants no. 1 and 2 apart from those laid down in Clause 6.4.8 of the UGC Regulations for promotion from Stage-IV to Stage-V under the CAS. However, having concluded so, the learned Single Judge held that the additional criterion stated to have been laid down by the University was non-est in law. It was held that the document annexed as Annexure-I of the counter-affidavit of appellants no.1 and 2 wherein additional criterion that an Associate Professor shall be considered for promotion to the post of Professor under CAS only after acquiring the experience of guiding research at Doctoral level, was not even notified or circulated.

16. The learned Single Judge repelled the argument advanced by the appellants that application dated 17.06.2016 submitted by the writ petitioner was never received by them. As the 4th amendment of the UGC Regulations came into force with effect from 11.07.2016 and as the petitioner was held to be eligible before coming into force of the 4th amendment, relying upon a public notice dated 21.11.2014 providing that promotion under CAS shall be governed by the UGC Regulations which are in operation on the date of eligibility and not on the date of interview, concluded that appellants no. 1 and



z could not have required the writ petitioner to submit his application under the 4th amendment.

17. So far as the point no.4 of the points for consideration, as formulated by the learned Single Judge, is concerned, it will not be necessary to dilate on the issue as Dr. Doma T. Bhutia has submitted that she will not raise the issue as the writ petitioner had re-joined the University.

18. Dr. Doma T. Bhutia, learned counsel for the appellants, has submitted that the learned Single Judge committed error of law in holding that Writ Petition did not suffer from non-joinder of parties. According to her, the six selected candidates were necessary parties as the writ petitioner had questioned his non-consideration for promotion and, therefore, for non-joinder of necessary parties, the Writ Petition is liable to be dismissed. She has submitted that all the six candidates had been considered for promotion as they had the additional norm, which is annexed as Annexure P-1 of the affidavit of the respondent no.1. The learned Single Judge was not correct in holding that there is no compliance of the provisions of Sikkim University Act, 2006 (for short, the Act) while laying down the additional criterion and therefore, the same was non-est in the eyes of law. Learned counsel also submits that the learned Single Judge was not correct, in absence of any tangible materials on record, in accepting the argument of the writ petitioner that the aforesaid document was prepared for the purpose of the case by the University. Dr. Bhutia has drawn the attention of the Court to an application filed by the writ petitioner, registered as I.A. No.02/2019, for placing additional documents and on the basis of the objection filed thereto, contends that the documents sought to be relied upon by the writ petitioner ought not to be considered. She has also submitted that direction to consider the case of the writ petitioner for promotion under 4th Amendment is also totally uncalled for as, by the time the writ petitioner had re-submitted his application on 01.03.2017, 4th Amendment had come into effect. Drawing attention to page



125 of the paper-book under the heading – ‘Details of Ph.Ds Awarded’, she has pointed out that it is evident there from that no scholar under the writ petitioner was awarded Ph.D., which is a requirement under the additional criterion laid down by the University. It is also contended that learned Single Judge granted reliefs which were not even prayed for. Accordingly, learned counsel submits that it is a fit case for interference with the judgment of the learned Single Judge.

19. She has further submitted that though the case of the writ petitioner was considered because of an order dated 21.08.2019 passed in the instant appeal, the result is kept in a sealed cover as a departmental proceeding was initiated against the writ petitioner in the year 2019. Therefore, even otherwise, the result is required to be kept in sealed cover till the conclusion of the departmental proceeding. She has placed reliance on the judgments of the Hon’ble Supreme Court in ***Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others***, reported in ***(1984) 4 SCC 27***; ***Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others***, reported in ***(1990) 1 SCC 305*** and ***The Chancellor and Another Vs. Dr. Bijayananda Kar and Others***, reported in ***(1994) 1 SCC 169***.

20. Dr. Vaidyanathan Krishna Ananth, who has appeared in person, has supported the impugned judgment and submits that he was aggrieved by the so-called additional criterion fixed by the University and, therefore, the learned Single Judge was correct in holding that the writ petition does not suffer from non-joinder of necessary parties. Referring to the Annexure-I of the counter-affidavit of respondent no.1 (appellant no.1 herein), he has submitted that the same is an undated document and was, at no point of time, circulated. He reiterates the submissions made before the learned Single Judge that the same is a manufactured document. He has submitted that the said document was



not in existence as otherwise if the aforesaid norm was really in force, there would have been no occasion for the University not to have mentioned the additional criterion purported to have been framed while inviting applications for CAS vide Circular No.13/2017 dated 07.03.2017. Rather, the said Circular refers to eligibility criteria, etc., as laid down by the UGC for promotion under CAS. Referring to page 125 of the paper-book, he submits that in absence of any requirement for guiding a scholar to Ph.D., learned counsel for the appellants is making a mountain out of a molehill. He submits that document itself indicates that information was called for with regard to Ph.D. submitted/awarded only because of the fact that 10 points are to be given for award of Ph.D. for each candidate and 7 points for submission of Ph.D. for each candidate. He has submitted that the notification dated 14.08.2018 makes it abundantly clear and re-enforces the conclusion arrived at by the learned Single Judge that the additional criterion was not earlier notified by the University. It shows that the same was formally approved only on 29.06.2018. He has submitted that contention advanced by Dr. Bhutia that a disciplinary proceeding is pending and, therefore, no direction should be issued for his consideration of promotion under CAS or that the result should be kept in a sealed cover, is without any merit as he was illegally deprived of being considered way back in the year 2016. He submits that the disciplinary proceeding was initiated for extraneous consideration. He contends that submission of Dr. Bhutia that the learned Single Judge granted relief beyond what was prayed for, is without any merit and submits that, at any rate, the Court has power to mould relief depending upon the facts and circumstances of the case. He places reliance on the judgment of the Hon'ble Supreme Court in the case of ***Union of India and Others Vs. K.V. Jankiraman and Others***, reported in **(1991) 4 SCC 109**.

21. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.



22. A necessary party is one in whose absence a writ petition cannot be effectively adjudicated. It is to be noted that no right of the selected candidates was sought to be impinged in the writ petition. The core question was whether an additional norm of eligibility was laid down at all by the University and if so, whether the same was done in accordance with law. The University and the Vice-Chancellor had been made parties and rightly so, as they are certainly necessary parties. Having regard to the contour of the controversy raised in the writ petition, the learned Single Judge was wholly justified in rejecting the preliminary objection that in absence of necessary party, the writ petition is liable to be dismissed.

23. Relevant portion at page-125 of the paper-book, on which much reliance is placed by Dr. Bhutia, reads as follows:

“Details of Ph.Ds Awarded / submitted

Name of the Scholar	Title of the Thesis	Submitted/ Awarded	Name of the University	Month and Year	Points
NA	NA	NA	NA	NA	NA
Total points over assessment period					

Note: (i) 10 points / each candidates awarded.
(ii) 7 points for Ph.D submitted.”

24. Though it is apparent from the above that the writ petitioner had not guided any scholar to award of Ph.D., same does not indicate laying down of additional norm. It only indicates how points are to be awarded for award/submission of Ph.D.

25. Orders of this Court dated 25.11.2019 indicated that the order dated 21.08.2019 directing the University to consider the case of the writ petitioner within a period of four weeks was not complied with in letter and spirit. Subsequently, an affidavit was filed on behalf of the University, amongst others, indicating that the case of the writ petitioner was considered by the Selection Committee on 12.02.2020 and the decision of the Selection Committee was placed before the Executive Council. It was further stated that decision was kept in sealed cover as a disciplinary proceeding was pending against the writ petitioner. As there was substantial compliance of the order of the Division Bench dated



21.08.2019, it was noted in the order dated 20.02.2020 that these aspects would be considered in the final hearing of the appeal and accordingly, the appeal was heard.

26. Annexure-1 of the counter-affidavit in opposition of the appellants reads as follows:

“Statement about Sikkim University norm for Professorship under CAS

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

The Vice-chancellor has established the above under Section 12(2) of the Sikkim University Act, 2006 (No. 10 of 2017).”

27. It is relevant to state that in the objection filed in I.A. No.02/2019, the appellant University had not disputed the documents. All that is said is that Annexures-A1 and A2 of I.A. No.02/2019 had come into effect post the date of judgment of the learned Single Judge and, therefore, the same should not be considered. Annexures-A3 and A4 are stated to be having no bearing with the instant case.

28. This Court is of the considered opinion that there cannot be any impediment for a writ appellate Court to take note of a document in the interest of justice if the document, though subsequent in point of time, can throw light to the controversy.

29. Annexure-A1 reads as follows:

Notification – 97/ 2018

Subject: Policy for promotion under CAS for placement of Stage IV
(Associate Professor) to Stage V (Professor)

University has adopted UGC’s Regulations on minimum qualification for appointment of teachers and other academic staff in University and



Colleges and measures for the maintenance of standard of higher education, 2010. University also adopted a policy of having successfully guided Ph.D as one of the requirements for promotion under CAS from Stage IV (Associate Professor) to Stage V (Professor). This was made known to all prospective candidates informally but was not notified by the University. Accordingly all those candidates who had successfully guided Ph.D after fulfillment of other conditions as prescribed in UGC Regulations were considered under CAS for placement from Stage IV to Stage V in 2017.

The Executive Council in its 31st meeting held on 29th June 2018 formally approved the policy of the University of having successfully guided Ph.D (awarded) as one of the requirements for promotion under CAS for placement from Stage-IV (Associate Professor) to Stage-V (Professor). Moreover, the new UGC Regulations 2018 has also clearly mentioned the successfully guided Ph.D for promotion from Associate Professor to Professor.” (Emphasis ours)

30. Relevant portion of Annexure-A2 reads as follows:

“..... The Council was informed that the University has adopted a policy of having successfully guided Ph.D as one of the minimum requirements for promotion under CAS from Stage-4 (Associate Professor) to Stage-5 (Professor). Though this policy has not been notified by the University but it was made known to all prospective candidates informally. As such all CAS cases from Stage-4 to Stage-5 in 2017 were considered and those having successfully guided Ph.D were placed in Stage-5 (Professor), after fulfillment of other conditions as prescribed in UGC’s Regulation. Case of Dr. V. Krishna Ananth, Associate Professor could not be considered for placement at Stage-5 (Professor) as he did not fulfill the criteria of having successfully guided Ph.D. He thereafter



approached the High Court of Sikkim. Single bench of High Court though stated that the University is within its powers to lay down additional criteria, yet it ruled against the University as the policy of having successfully guided Ph.D had not been notified. However, University has filed a review petition for consideration of the matter by the Division Bench which has been accepted.

The policy of having successfully guided Ph.D for CAS from Stage-4 to Stage-5 was kept as it is a mandatory criterion for direct recruitment at Associate Professor level as per UGC guidelines. But this guideline was not followed by the University for direct recruitment of Associate Professors from the beginning. To compensate the shortfall, the above policy for CAS from Stage-4 to Stage-5 was adopted.

The Council after deliberations formally approved the policy of the University of having successfully guided Ph.D (Awarded) as one of the main requirements for promotion under CAS from Stage-4 (Associate Professor) to Stage-5 (Professor).

(Emphasis ours)

After adopting the resolution Dr. K.R. Rama Mohan, Dr. S. Manivannan and Dr. Subit Mukhopadhyay were asked to re-join the meeting.”

31. Relevant portion of Annexure-A3, a letter dated 13.09.2018, reads as follows:

5. **Withdrawal of Notification No. 97/2018:** Notification No. 97/2018 dated 14th August 2018 has been issued in pursuance to the policy approved by the Executive Council in its 31st meeting held on 29th June 2018 of having successfully guided PhD (awarded) as one of the requirements for promotion under CAS for placement from Stage-IV (Associate Professor) to Stage V (Professor). Notification of such a



policy was warranted as per the advice of our Counsels to place in the Division bench of Hon'ble High Court.

32. Annexure-A4 is a notification dated 18.07.2018, whereby UGC Regulations 2010 was superseded. Annexure-A5 is a letter dated 07.08.2014 on the subject of officers performing current duties of a post which is issued by the Government of India, Ministry of Human Resource Development, Department of Higher Education.

33. Going through the contents of the documents and as the authenticity of the documents are not questioned, we are of the opinion that it will be in the interest of justice to take note of Annexures-A1 to A4. However, we do not think Annexure-A5 is relevant.

34. In ***Maharashtra State Board of Secondary and Higher Secondary Education*** (supra), the Hon'ble Supreme Court laid down that a bye-law cannot be struck down by Court unless it can be said that a bye-law is manifestly unjust, capricious, inequitable, or partial in its operation, it cannot be invalidated by the Court on the ground of unreasonableness. In ***Dalpat Abasaheb Solunke*** (supra), the Hon'ble Supreme Court laid down that it is not the function of the Court to hear appeals over the decisions of the Selection Committees or to scrutinize the relative merits of the candidates. In ***Dr. Bijayananda Kar*** (supra), the Hon'ble Supreme Court has held whether a candidate fulfils the requisite qualification or not is a matter which should be entirely left to be decided by the academic bodies.

35. The application of propositions of law as laid down in the aforesaid judgments does not arise in the present case as what falls for consideration is whether the University had laid down an additional criterion for promotion under CAS from Stage-IV to Stage-V in addition to norms under UGC Regulations.

36. It is virtually the admitted position that but for the additional criterion stated to have been laid down by the University, the writ petitioner had qualified in terms of the UGC regulations. Annexure-1 of the counter-affidavit of the respondents no. 1



and 2 is not dated. Given the importance of the issue, it is, to say the least, very surprising. Content of the same is very vague. It is not indicated when such an additional norm was 'established' by the Vice Chancellor. All that is said is that the norm was 'established' since 2015. That is the only document that was brought on record by the appellants relating to laying down of additional norm. There is an unequivocal admission in Annexures-A1 and A2 that the additional norm was not notified by the University. It is also admitted therein that Executive Council approved the above policy only on 29.06.2018. In view of the above, this Court is of the unhesitant opinion that even if a policy laying down additional norm was formulated, without notifying the same and without due approval, it could not have been acted upon. It was in that context the learned Single Judge had noted that the same was non-est in law. The appellants have also failed to reconcile how Circular No.13/2017 dated 07.03.2017, wherein while inviting applications for promotion under CAS, additional criterion of experience of guiding research scholars to Ph.D. was not mentioned, and Annexure-1 of the counter-affidavit of the appellants can stand together.

37. The six candidates who had been promoted under CAS may not have questioned application of additional norm. That does not mean the writ petitioner has to follow suit. He can certainly articulate his grievance in accordance with law. When this Court has held that additional criterion could not have been applied during the relevant time when the application of the petitioner for CAS was initially under consideration, an argument cannot be countenanced that the eligibility of the writ petitioner cannot be considered on a lesser yardstick as compared to other candidates in the fray.

38. There is an acknowledgement of receipt of the application dated 17.06.2016 of the writ petitioner for CAS. By the letter dated 27.02.2017 (Annexure P-5 of the writ petition) the Assistant Registrar of the University requested the writ petitioner to re-submit his application. The said letter



indicates that his application could not be located. There was no other communication in between with regard to the aforesaid subject. The learned Single Judge had, as noted earlier, not accepted the argument of the University that the application was not received. Learned counsel for the appellants has failed to show why the aforesaid conclusion of the learned Single Judge is wrong.

39. The application dated 17.06.2016 was submitted prior to coming into force of 4th Amendment of UGC Regulations. The stand of the University was that the writ petitioner was requested to re-submit his application in order to give benefit of 4th Amendment. When the writ petitioner had qualified under the 2nd Amendment and 3rd Amendment, it is not understood why the benefit under the 4th Amendment had to be given to the writ petitioner.

40. The learned Single Judge issued the following directions:

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

(b) The Respondents No. 1 and 2 shall consider the Application of the Petitioner for promotion under the 3rd amendment



dated 4th May, 2016 of the UGC Regulations, 2010 which are applicable to him and not under the 4th amendment dated 11th July, 2016, which has no retrospective effect t.

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

41. The writ petitioner essentially prayed for completing the process of consideration of his case for promotion from Stage-IV to Stage-V as per 3rd Amendment of UGC Regulations. While deciding the aforesaid prayer, validity of the additional criterion as laid down in Annexure-1 of the counter-affidavit had arisen. Viewed in that context, it cannot be said that relief beyond prayer was granted by learned Single Judge. Even otherwise, it is well-settled that in the facts and circumstances of a case, a writ court will be justified to mould the relief for ends of justice.

42. The appellants have not brought on record the charge memo though 4 affidavits had been filed by them during the course of the appeal. The date of charge memo is also not mentioned. Dr. Bhutia had submitted that departmental proceeding was initiated in the year 2019. From the averments made in the affidavits and the documents annexed thereto it would appear that a disciplinary proceeding was initiated against the writ petitioner along with other members of a screening committee in respect of calculation of API score in respect of a candidate. The learned Single Judge had directed to consider the case of the writ petitioner by the order dated 06.03.2018 within 4 weeks. Prayer for stay of the judgment and order was rejected on 21.08.2019 with a further direction to consider the case of the writ petitioner within 4 weeks in terms of the order of the learned Single Judge. This order was not assailed in any forum. The order does not indicate that any submission was advanced that a disciplinary proceeding had been initiated against the writ petitioner. The developments after 21.08.2019 had already been noted in paragraph 25 of this



judgment. The counter-affidavit of the appellants dated 28.10.2017 goes to show that the 6 other applicants had been appointed as Professors by them.

43. In ***K.V. Jankiraman*** (supra), it is laid down as follows:

"8.

The "sealed cover procedure" is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over."

At the relevant time, there was no disciplinary proceeding pending against the writ petitioner and therefore, we are of the opinion that it is not a case where result should be kept in sealed cover.

44. In view of the above discussions, we find no merit in the appeal and accordingly, the same is dismissed.

45. No cost.

Judge

Chief Justice