



2026:AHC:33511-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
SPECIAL APPEAL No. - 219 of 2025

AFR

Reserved on 18.11.2025
Delivered on 16.02.2026

Dr. Dipanwita Singh Roy

.....Appellant(s)

Versus

Union of India and 5 others

.....Respondent(s)

Counsel for Appellant(s)	: Shiv Baboo Singh, Shivendu Ojha, Siddharth Khare, Sr. Advocate
Counsel for Respondent(s)	: A.S.G.I., Amit Sinha, Anant Kumar Tiwari, Ashish Kumar Srivastava

HON'BLE SARAL SRIVASTAVA, J.
HON'BLE SUDHANSHU CHAUHAN, J.

(Delivered by Hon'ble Saral Srivastava,J)

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Mohd. Yasin, learned counsel for the appellant, Sri Anant Kumar Tiwari, learned counsel for the respondent no.1, Sri Amit Sinha, learned counsel for respondent-Banaras Hindu University and Sri Ashish Kumar Srivastava, learned counsel for private respondent.

2. The present appeal is directed against the judgement and order of learned Single Judge dated 18.02.2025 passed in Writ-A No.4884 of 2024 whereby the learned Single Judge has dismissed the writ petition of the appellant, who was petitioner in Writ-A No.4884 of 2024 before the learned Single Judge.

3. The case of the appellant in the writ petition was that appellant was initially appointed as Assistant Professor (Kathak) at Punjabi University, Patiala vide order dated 27.02.2009 (English translation of the appointment letter is enclosed with the writ petition). The appointment letter indicates that the post on which the appellant was appointed was Lecturer in the Department of Dance at Punjabi University, Patiala. The appellant pursuant to the Advertisement No.07/2014-15 issued by the Banaras Hindu University, Varanasi (hereinafter referred to as the 'BHU') inviting applications for several teaching posts including the post of Associate Professor (Dance) carrying Post Code No.2730 applied for appointment as Associate Professor.

4. The petitioner after having gone through the process of selection was selected as Associate Professor (Dance) by appointment order dated 03.10.2015 issued by the Deputy Registrar (Recruitment and Assessment Cell). The appellant in pursuance of the said appointment order joined as Associate Professor in the Department of Dance, Faculty of Performing Arts, BHU, Varanasi. The appointment of the appellant was on probation for a period of one year. The appellant was subsequently confirmed as Associate Professor by the order of Deputy Registrar (Admin.-Teaching) dated 22.02.2017.

5. The appellant while working as Associate Professor was also appointed as Head of the Department of Dance for the period of three years on rotational basis by order dated 23.11.2019 issued by the Assistant Registrar (General Administration). Presently, the appellant is working as Associate Professor in the Academic Level-13A.

6. On 01.09.2023, a Notification was issued by the Deputy Registrar of the BHU inviting applications on or before 30.09.2023 for consideration of promotion under Career Advancement Scheme to different academic levels including promotion to the post of Professor (Academic Level-14).

7. The appellant being eligible, applied in pursuance to the aforesaid Notification in the prescribed form. After requisite processing, the appellant was required to appear before the Selection Committee on 04.01.2024. The appellant appeared before the Selection Committee on the said date.

8. As per the averments made in the writ petition, there does not exist any Executive Council in the BHU for the past almost two years, due to which, the Vice Chancellor has been passing orders on the recommendations of the Selection Committee at his level.

9. The appellant being aggrieved by the constitution of Selection Committee, which did not include external experts for the subject in consideration, filed a representation on 01.03.2024 before the Vice Chancellor of the BHU.

10. As per the case in the writ petition, respondent no.6-Dr. Vidhi Nagar was appointed as Lecturer in Dance (Kathak) by appointment order dated 02.11.2006 in pursuance to the Advertisement No. 2/2005-06. Subsequently, the respondent no.6 was appointed as Associate Professor by an order dated 30.09.2015 in pursuance of the Advertisement No.07/2014-15 with regard to post bearing Post Code-2730.

11. The appellant and respondent no. 6 both are discharging duties in the discipline of Kathak Dance. The qualifications and experience of appellant and respondent no.6 are in the speciality of Kathak Dance. According to the appellant's case, neither the appellant nor respondent no.6 has any academic qualification or experience in Bharatnatyam.

12. Challenge to the constitution of Selection Committee has been laid by the appellant in the writ petition on three grounds noted below:-

(i). In the absence of Executive Council, the Vice Chancellor had no authority to constitute Selection Committee and nominate subject experts which can only be nominated by the Executive Council as provided under Statute 27 of the First Statute of BHU.

(ii). The post on which the selection is to be made was on a subject of Katthak in the Department of Dance whereas the subject experts nominated by the Vice Chancellor were not in the field of Katthak.

(iii). The respondent no.6 was herself an applicant for selection of Professor Level-14 under Career Advancement Scheme and was involved in forwarding the names of external experts, who participated in the selection proceedings, and thus, the selection proceedings are vitiated on the principle of bias.

13. In the aforesaid backdrop, the appellant prayed for the following relief in the writ petition:-

“(i) Issue a writ, order or direction of a suitable nature commanding the respondent to produce the recommendations of the selection committee which met on 04.01.2024 for promotion as Professor (Academic Level - 14), in the Department of Dance, Faculty of Performing Arts, Banaras Hindu University and to quash the same.

(ii) Issue a writ, order or direction of a suitable nature restraining the respondent from undertaking any proceedings in pursuance to the recommendations of the selection committee which met on 04.01.2024 for promotion as Professor (Academic Level-14), Department of Dance, Faculty of Performing Arts, Banaras Hindu University, Varanasi.

(iii) Issue a writ, order or direction of a suitable nature commanding the respondent to reconvene a meeting of selection committee for consideration of the petitioner for promotion as Professor (Academic Level-14) after including therein the external expert in the subject/field of Kathak Dance within a period to be specified by this Hon'ble Court.

(iv) Issue a writ, order or direction in the nature of which this Hon'ble Court may deem fit and proper under the circumstances of the case.

(v) Award cost to the humble petitioner throughout of the present writ petition ”

14. A counter affidavit has been filed by the BHU denying the averments made in the writ petition stating inter alia that the list of External Subject Experts, Department of Dance, Faculty of Performing

Arts, BHU has been forwarded by the respondent no.6 in the capacity of Head of the Department. It is stated that the Departmental Policy Planning Committee (hereinafter referred to as 'DPPC') of the Department of Dance in its meeting held on 17.07.2023 prepared the list of External Subject Experts in which the appellant was not present due to sabbatical leave. It is further stated that the DPPC submits a list of panel of members to the Selection Committee on the basis of experience. The respondent no.6 was the Head of the Department and others including the appellant are the members of the DPPC. Since, the appellant was on sabbatical leave, therefore, she did not attend the meeting.

15. The respondent no.6, being the Head, in the capacity of Chairperson of the DPPC forwarded the panel to the Dean for further necessary action.

16. It is stated that list of panel of said Experts was submitted by the DPPC. It is further stated that the 'subject/field' for which the Selection Committee met on 04.01.2024 was 'subject/field' of Dance, and not specifically Bharatnatyam, Katthak or any other dance form. Further case of the BHU is that there is no categorisation of imparting teaching work in the Department of Dance.

17. It is further stated that the appellant was initially appointed as Associate Professor of Dance. Since, there is a common syllabus for all specific fields of Dance, therefore, respondent no.6 and appellant have been specifically conducting classes in Katthak Dance in that particular semester which was not confined only to Katthak but they can also impart classes in other fields of Dance.

18. It is also stated that Vice Chancellor nominated three Experts out of the panel of the names approved by him in terms of Section 7C(5) of the BHU Act, 1915 (hereinafter referred to as the 'Act, 1915')

19. The appellant filed rejoinder affidavit to the counter affidavit of BHU denying the averments made in the counter affidavit.

20. The respondent no.6 also filed counter affidavit contending *inter alia* that she did not perform any role of choosing External Experts because there were other members of the Committee of DPPC and all the members chose the list of Experts which was duly signed by the Dean, Faculty of Performing Arts, BHU. It is further stated that the final selection of Experts was in the hands of the Chairman of the Selection Committee i.e. Vice Chancellor. The respondent no.6 denied that she had any role in preparing or finalizing the list of external experts.

21. The learned Single Judge held that the Vice Chancellor under Section 7C(5) of the Act, 1915 has power to nominate the Selection Committee in emergency. He further held that the Selection Committee was constituted by the Vice Chancellor after receiving the directions from the Ministry of Education vide letter dated 06.01.2023.

22. On the contention of the appellant that the Subject Experts nominated by the Vice Chancellor were not in the field of Katthak Dance, whereas the post is in the subject of Katthak Dance in the Department of Dance, the learned Single Judge held that the appellant herself was appointed as Associate Professor in the Department of Dance without any specialization in Katthak or Bharatnatyam, therefore, under the Career Advancement Scheme, there was no requirement of External Experts being an expert of Katthak. Consequently, the second contention was also rejected by the learned Single Judge on the aforesaid reasoning.

23. So far as the contention of the appellant that respondent no.6 was instrumental in preparation of list of External Experts, learned Single Judge held that since the Vice Chancellor has selected the External Experts from the list of 20 External Experts, therefore, merely because the list of External Experts was forwarded by the respondent no.6, the constitution of Selection Committee cannot be said to be vitiated.

24. Challenging the order of learned Single Judge, learned Senior Counsel appearing for the appellant has submitted that the learned Single Judge has erred in law in holding that the Vice Chancellor could invoke the emergency power under Section 7C(5) of the Act, 1915 to appoint

panel of experts. He submits that the decision of the Vice Chancellor as per Section 7C(5) of the Act, 1915 is to be validated by the Executive Council in the next meeting, and since in the instant case, the Executive Council was not in existence, therefore, action of the Vice Chancellor in appointing panel of experts is *de hors* Section 7C(5) of the Act, 1915.

25. He further submits that it was not a case which required invocation of emergency power by the Vice Chancellor under Section 7C(5) of the Act, 1915 inasmuch as under the Career Advancement Scheme, there is no post and it is only an upgradation on the post on which the candidate is working. He further contends that the promotion under Career Advancement Scheme is personal to the candidate and the promotion is given from the date of eligibility of the candidate, which is also evident from the order of promotion of respondent no.6 that she has been granted benefit of Career Advancement Scheme w.e.f. 30.09.2018, therefore, there was no urgency in the instant case for the Vice Chancellor to invoke the emergency powers under Section 7C(5) of the Act, 1915.

26. He submits that the Statute 11A of the Statute of BHU provides constitution of Policy and Planning Committee. The appellant's case is covered under Clause (1) (b) & (3) (e) of the Statute 11A. He submits that Clause (1) (b) of the Statute 11A provides for the constitution of Policy and Planning Committee (PPC) for small Department, and Clause (3) (e) provides that the terms of 'reference of the PPC' shall be recommending a list of experts to the Vice Chancellor who may place the same before the Executive Council, therefore, the presence of Executive Council is necessary for two reasons; one for approving the panel of Experts and other for appointing outside panel Experts.

27. Accordingly, it is submitted that in the absence of Executive Council in the BHU, the constitution of Selection Committee and Subject Experts is bad in law in view of Statute 27 of the First Statute of BHU. In this respect, he has placed reliance upon the judgement in the

case of *Gauhati University and others Vs State of Assam & Others, 2017 (5) Gauhati Law Reports 427.*

28. He further contends that the learned Single Judge has erred in law in concluding that since the appointment is being made in the Department of Dance Faculty of Performing Arts without specifying any specialisation in Kathak or Bharatnatyam, inasmuch as there does not exist any generic subject like Dance.

29. He contends that only two dance forms namely, Kathak and Bharatnatyam are taught in the Department of Dance. He contends that prior to appointment as Associate Professor in BHU, the appellant had functioned as Lecturer in Kathak at Punjabi University Patiala, and after appointment as Associate Professor in the Department of Dance at BHU, the appellant has been teaching Kathak. He further submits that since, the appointment has been made on the post of Professor in the stream of Kathak, therefore, the panel Expert should have been from the Kathak stream.

30. He submits that Selection Committee constituted for selection was bad in law, inasmuch as out of three Experts, two Experts namely, Dr. Arti H. Shetty and Dr. Uma Rele were exponent of Bharatnatyam and did not have any academic qualification and teaching experience or expertise in Kathak Dance.

31. He contends that so far as the third member of the Selection Committee, namely, Dr. Kamalini Asthana is concerned, she was not eligible to be member of the Selection Committee for the reason that she is neither known to have any academic qualification in Kathak nor did she hold the post of Professor or a post equivalent thereto as was a mandatory condition specified in the communication of the Joint Registrar (Recruitment and Assessment Cell) dated 03.07.2023.

32. In this respect he has placed reliance upon the judgement of the Apex Court in the case of *Dr. Triloki Nath Singh Vs. Dr. Bhagwan Din Misra & Others, 1990 (4) SCC 510 & Dr. (Mrs.) Kalpana Sinha Vs. Union of India & Others, 2015 SCC OnLine Patna 5269.*

33. He contends that the learned Single Judge has erred in law in placing reliance upon the judgement of this Court in the case of ***Dr. Monika Bansal Vs. Union of India & Others*** passed in Writ-A No.12176 of 2024.

34. He lastly contends that the Selection Committee is vitiated for the reason that the respondent no.6, who was an applicant and candidate, was instrumental in preparation of the list of External Experts. It is contended that it is a case of bias as the respondent no.6 admittedly was involved in the preparation of panel of Experts, and had forwarded the list of Experts to the Vice Chancellor. In this regard, he has placed reliance upon the judgement of the Apex Court in the case of ***A.K. Kraipak & Others Vs. Union of India & Others, 1969 (2) SCC 262.***

35. Rebutting the aforesaid submissions, learned counsel for the respondents would contend that in the instant case, learned Single Judge has given elaborate reasons in concluding that the Vice Chancellor has rightly invoked the emergency powers under Section 7C(5) of the Act, 1915 which are not unfettered but are subject to checks and balances.

36. He submits that if the Vice Chancellor on the material on record forms an opinion to invoke emergency power under Section 7C(5) of the Act, 1915, the Vice Chancellor is well within his right to constitute the Selection Committee in exercise of emergency power under Section 7C(5) of the Act, 1915, and the decision of the Vice Chancellor is subject to the approval by the Executive Council in the next meeting. He submits that this Court in Writ-A No.18332 of 2023 has issued a direction to the Vice Chancellor to invoke emergency powers under Section 7C(5) of the Act, 1915 to constitute a Selection Committee for promoting the petitioner under Career Advancement Scheme. He further submits that the judgement in Writ-A No.18332 of 2023 has been affirmed by this Court in Special Appeal No.788 of 2024, and therefore, no illegality has been committed by the Vice Chancellor in invoking power under Section 7C(5) of the Act, 1915 to constitute the Selection Committee and finalize the selection.

37. So far as the constitution of Selection Committee is concerned, he submits that the appellant has been appointed as Associate Professor in the Department of Dance, Faculty of Performing Arts carrying Post Code 2730 pursuant to the Advertisement No.07/2014-15, and since, there was no specification/specialization mentioned against the post on which the petitioner was appointed as Associate Professor, therefore, there is no illegality in the constitution of Selection Committee as the appellant's appointment is in the Department of Dance, Faculty of Performing Arts.

38. He submits that in the Department of Dance various subjects are taught which the appellant is to teach, and Katthak is one of the subject amongst other subjects which the appellant is to teach, therefore, it is not necessary that the members of the Selection Committee should belong to stream of Katthak.

39. He contends that Professor Dr. Uma Rele having specialization in Bharatnatyam interviewed the appellant during selection as Associate Professor, therefore, the appellant's contention that the Selection Committee should consist of the Experts of Katthak stream is misconceived and not sustainable in law. In this respect, he has placed reliance upon the judgement in the case of ***Dr. Monika Bansal (supra)***.

40. Lastly, he contends that merely because the respondent no.6 forwarded the names of Expert of panel to the Vice Chancellor that would not vitiate the selection proceeding inasmuch panel of Experts is selected by the DPPC, therefore, the contention of the appellant in this regard is also misconceived. In this respect, he has placed reliance upon the judgement of this Court in the Bunch of petitions leading of which is ***Writ-A No.19427 of 2023 (Prof. (Dr.) Mujahid Beg Vs. Union of India and Others)***.

41. Sri Ashish Srivastava, learned counsel for the respondent no.6 states that he also adopts the arguments raised by the learned counsel for the University. However, he submits that principles of estoppel would apply in the instant case because of the conduct of the appellant.

42. We have considered the rival submissions advanced by the learned counsel for the parties and perused the record.

43. The facts have already been delineated above, therefore, they are not being reiterated to unnecessarily burden the judgement. Accordingly, we proceed to deal with the arguments raised by the learned counsel of respective parties.

44. Now coming to the first submission of learned Senior Counsel for the appellant that it is not a case where Vice Chancellor should have invoked his emergency powers under Section 7C (5) of the Act, 1915, it would be apt to reproduce Section 7C (5) of the Act, 1915:-

“7C. Powers and duties of Vice-Chancellor.

(1)...

(2)...

(3)...

(4)...

(5) *If, in the opinion of the Vice-Chancellor, any emergency has arisen which requires immediate action to be taken, the Vice-Chancellor shall take such action as he deems necessary and shall report the same for approval at the next meeting to the authority which, in the ordinary course, would have dealt with the matter:*

Provided that, if the action taken by the Vice-Chancellor is not approved by the authority concerned, he may refer the matter to the Visitor, whose decision thereon shall be final:

Provided further that, where any such action taken by the Vice-Chancellor affects any person in the service of the University, such person shall be entitled to prefer, within thirty days from the date on which he receives notice of such action, an appeal to the executive Council.

(6) *The Vice-Chancellor shall exercise such other powers as may be prescribed by the Statutes, the Ordinances or the Regulations.”*

45. Now, the question which arises for consideration in the present case is whether the opinion formed by the Vice Chancellor that in the present case there exists an emergency, which requires invocation of emergency power of the Vice Chancellor and as to whether the decision of Vice Chancellor to invoke emergency power is based upon proper appreciation of facts on record.

46. It is not in dispute that Executive Council does not exist in the BHU for the last two years. It is also not in dispute that selection was held for the grant of benefit of Career Advancement Scheme. In Career Advancement Scheme, there is no post, and it is only an upgradation on the post on which a candidate is working and candidate will be promoted from the date of eligibility. The said fact is also evident from the promotion order of respondent no.6 which reflects that the respondent no.6 has been promoted with effect from 30.09.2018. So the delay in not extending the benefit of Career Advancement Scheme do not prejudice the rights of a candidate eligible for the benefit under Career Advancement Scheme.

47. The Statute as well as Ordinance provides that Vice Chancellor after receiving the list of panel of Experts shall place the same before the Executive Council for its approval. Further, the approval of Executive Council is necessary for appointment of outside panel Experts.

48. Statute 11A of the BHU prescribes formation of Policy and Planning Committee (PPC), which is reproduced hereinbelow:-

“11A. POLICY AND PLANNING COMMITTEE

(1) The Policy and Planning Committee (PPC) shall consist of:

(a) For a large department (containing ten or more teachers):

(i) Two senior most teachers of the Department;

(ii) The present Head of the Department (Convener)

(iii) The past Head of the Department, preceding the present Head;

(iv) The teacher likely to be appointed as the next Head; after the expiry of the terms of the present Head;

(b) For a small department (containing less than ten teachers):

- (i) *The past Head of the Department, preceding the present Head;*
- (ii) *The present Head of the Department (Convener)*
- (iii) *The teacher likely to be appointed as the next Head after the expiry of the term of the present Head.*

NOTE 1: *The programme Coordinator of Centre of Advanced Study/Special Assistance Programme etc., be included in the PPC.*

NOTE 2: *Whenever the required number of teachers for filling the composition of the Policy & Planning Committee is not available or on account of non eligibility, the Vice-Chancellor may nominate any teacher of the Faculty.*

NOTE 3: *For the Departments as specified at (a) and (b) above-Institute of Medical Sciences shall have representation to super-specialties.*

(2) *The Head of the Department shall consult the "PPC" and take action only after the decisions are taken by the "PPC".*

(3) *The terms of reference of the PPC shall be:*

- (a) taking decisions in all policy matters which effect the long-term growth of the Department keeping in view the requirements of continuity and stability and steady and consistent development;*
- (b) formulating and finalizing five-year plan proposals and other development plans;*
- (c) selecting thrust areas for development and for research;*
- (d) formulating the qualifications for the posts to be advertised including specifying the specializations, if any;*
- (e) recommending a list of experts to the Vice-Chancellor who may place the same before the Executive Council;*
- (f) finalizing the equipment to be purchased out of capital grants and their allotment to different laboratories in the Department;*

(g) preparing the Annual Report, maintaining an up-to-date information regarding the departmental activities, achievements and other statistical data; and

(h) taking policy decisions on all matters pertaining to discipline and smooth working of the department.

NOTE: In order to ensure the effective working of the Policy and Planning Committee of the Departments all recommendations sent by the Heads of the Departments with respect to Policy and Planning matters to various functionaries of the University be accompanied by a copy of the Resolution passed by the Policy and Planning Committee concerned in respect of recommendations made.

49. Clause-4 of the Ordinance governing the procedure to be followed by the Selection Committee in making recommendations for appointment against the posts of Professor, Associate Professor and Assistant Professor and such other posts as are declared teaching posts by the Academic Council under the provisions of Statute 27 (2) of the Act, 1915 and Statutes provide for nomination of expert members to serve on Selection Committee..

50. According to Sri Ashok Khare, learned Senior Counsel, Statute 11A(1) (b) is applicable in the present case and placing reliance upon said Statute, he contends that PPC shall consist of the persons mentioned in (i), (ii) (iii) of the said Statute. He further submits that as per Statute 11A (3) (e), the terms of reference of PPC shall be recommending a list of experts to the Vice Chancellor who may place the same before the Executive Council.

51. He further contends that Clause 4(a) of the Ordinance mandates the Vice Chancellor to place the list of expert members for all disciplines recommended by the PPC of the Departments and collected from other sources before the Executive Council for its consideration and approval. He further contends that Clause 4(b) of the Ordinance further makes it obligatory upon the Vice Chancellor to ordinarily invite Experts for

attending the meeting of Selection Committee from the panel approved by the Executive Council, and if the Vice Chancellor finds that there is a special urgency, he may make additions to the panel and report the same to the Executive Council.

52. In the counter affidavit filed by the BHU, it is averred that in compliance of the Notification dated 03.07.2023, the Head of Department of Dance, Faculty of Performing Arts of the BHU provided the names of External Experts through its DPPC as per rules, then the Vice Chancellor nominated three Experts out of panel of names approved by him in terms of Section 7C (5) of the Act, 1915. In this regard, paragraph nos.17 and 18 of the counter affidavit filed by the BHU are being reproduced herein below:-

“17. That the contents of paragraph no.29 of the writ petition as stated are not admitted hence denied. In reply it is stated that in compliance of the notification dated 03.07.2023, the Head of the Department of Dance, Faculty of Performing Arts, Banaras Hindu University provided the names of External Experts through its Departmental Policy Planning Committee as per rules. Then, the respondent no.3 nominated the three Experts out of the panel of names approved by him in terms of Section 7-C(5) of the Banaras Hindu University Act, 1915.

18. That the contents of paragraphs no.30 and 31 of the writ petition are not admitted as stated. In reply it is stated that the three External Experts in the Department of Dance, Faculty of Performing Arts were nominated by the Vice-Chancellor by exercising the power vested in him under Section 7C(5) of the Banaras Hindu University Act, 1915. The interview for the post of Assistant Professor (Academic Level-10) and Associate Professor (Academic Level-13A) under the Direct Recruitment as well as for promotion as Professor (Academic Level-14) under Career Advancement Scheme was held accordingly. The recommendation of the selection committee in respect of the promotion under Career Advancement Scheme for various Departments of the University including the Department of Dance, Faculty of Performing Arts, is still under sealed cover. It is pertinent

to mention here that the Vice-Chancellor has nominated three External Experts for direct recruitment as well as for promotion under Career Advancement Scheme under the subject of Dance.”

53. Perusal of Section 7C(5) of the Act, 1915 reveals that Vice Chancellor is to form an opinion that emergency is such which requires immediate action to be taken.

54. No material has been placed on record to indicate that for invoking power under Section 7C(5) of the Act, 1915, any opinion has been formed by the Vice Chancellor on the basis of material on record indicating that urgency is such which requires immediate action.

55. So far as the letter of Ministry of Education dated 06.01.2023 on which reliance has been placed by the learned counsel for the respondents to support the decision of Vice Chancellor to invoke power under Section 7C(5) of the Act, 1915 is concerned, it would be appropriate to reproduce the letter dated 06.01.2023:-

*“Government of India
Ministry of Education
Department of Higher Education
Shastri Bhawan, New Delhi*

Dated: 06.01.2023

To,

*The Vice Chancellor
Banaras Hindu University (BHU),
Varanasi-221005,
Uttar Pradesh*

Subject: Permission of opening the envelopes containing the recommendations of Selection Committee for promotion of faculty members In Banaras Hindu University-reg.

Sir:

I am directed to refer to BHU's letter No. VC/532 dated 17.12.2022 on the subject mentioned above and to say that Section 7(5) of the BHU Act, 1915 provides that:

"....if, in the opinion of the Vice-Chancellor any emergency has arisen which requires immediate action to be taken, the Vice-Chancellor shall

take such action as he deems necessary and shall report the same action for approval at the next meeting to the authority which, in the ordinary course, would have dealt with the matter."

You are therefore requested to take necessary action in terms of Section 7(5) of the BHU Act, 1915.

This issues with the approval of the competent authority."

56. Perusal of 'subject' of the letter dated 06.01.2023 reveals that selection process for promotion of Faculty members of the University was completed, and recommendation of the Selection Committee for promotion was lying with the Vice Chancellor and to open the same, the Vice Chancellor sought permission from the Government. The letter dated 06.01.2023 was written in reference to the letter no.VC/532 dated 17.12.2022 of the Vice Chancellor of the University which is being reproduced herein below:-

"Dear Shri Murthy:

The University as on date has an existing strength of about 1550 teaching faculty. Promotions against various stages as Assistant Professors, Associate Professors and Professors under Career Advancement Scheme are conducted from time to time on the basis of assessment of academic and research performance of the teaching faculty. In the month of November 2020 selection committee meetings were held for promotion of 48 faculty members in various Departments of the University by the then Vice-Chancellor. The recommendations of selection committees are placed under sealed envelopes.

In spite of the promotions recommended by the Selection Committees the same have not been extended due to lack of approval by the Executive Council. You will agree that holding back promotions by more than two years is a big challenge with respect to faculty morale.

Considering the above situation and the fact that Executive Council of the University is not in place for considerable period, the Vice-Chancellor may therefore be permitted to open the envelopes

containing the recommendations of selection committee for promotion so as to enable the University to issue the letters.

With regards,”

57. At this juncture, it would be apt to refer to the letter dated 11.06.2001 issued by the Ministry of Human Resource Development (Department of Secondary Education & Higher Education), which reads as under:-

“OFFICE MEMORANDUM

Sub.: Guidelines for observance by the Vice Chancellors of all the Central Universities while invoking their emergency powers:-

1. In all the Central Universities either the Acts or the Statutes vest certain emergency powers in the Vice Chancellor. By virtue of these powers, the Vice Chancellors are authorised, in matters requiring urgent action, to exercise powers vested in any authority of the University. These powers have enabled Vice Chancellors to deal with emergencies and unforeseen contingencies without having to wait for the relevant bodies of the Universities to meet. There have, of late, been complaints that in a few universities this power is being invoked as a matter of routine with the result that the statutory bodies, like the Court, the Executive Council and the Academic Council etc. are being increasingly asked to endorse action taken on their behalf by the Vice Chancellors. Complaints have also been received that such powers are being used to marginalise these bodies and to reduce frequencies of their meetings. This being a rather regressive development needs to be checked thereby enabling statutory bodies to play the critical important role envisaged for them in the overall democratic governance of the Universities.

2-In view of the above, the President, as the Visitor of all the Central Universities, has approved the following guidelines for observance by the Vice Chancellors of all the Central Universities:

(i) Emergency powers conferred on the Vice Chancellors should be exercised with restraint and only in such emergency situations where the authority ordinarily empowered to exercise such powers is unlikely to meet in the near future and deferring a decision for consideration of

the appropriate body is likely to create serious administrative inconvenience.

(ii) Routine matters like creation of teaching and academic posts, appointment to the said posts, finalising recruitment procedures, promotions under Merit Promotion Scheme/Career Advancement Scheme, upgradation of posts making them personal to the incumbents should invariably be placed before the authorities MISSI ordinarily empowered to take decisions in such cases. Emergency powers should not be exercised by the Vice Chancellors in such cases.

(iii) Policy matters like amending/making/repealing of Statutes which, in fact, require assent of the Visitor should in no case be decided by the Vice Chancellors by invoking emergency powers.

3-Contents of this communication may please be noted for information, guidance and compliance in future.

4-This issues with the approval of the Visitor.

5-The receipt of this letter may kindly be acknowledged.”

58. The Ministry of Human Resource Development, Department of Higher Education, again by letter dated 24.09.2015 reiterated that the Central University is to strictly adhered to the guidelines laid down by the Ministry of Human Resource Development in its letter dated 11.06.2001. Relevant extract of the letter dated 24.09.2015 is reproduced herein below:-

“3. In order to ensure that all Central Universities follow the due procedure in decision making process and approval of the competent statutory authorities is invariably takers in a democratic manner, this Ministry has already circulated the guidelines with the approval of the Visitor vide O.M. No. F.3-9/97-Desk(U), dated 11th June, 2001, regarding invoking of emergency powers by Vice Chancellors (Copy enclosed). It is hereby reiterated that these guidelines should strictly and invariably be complied with by all the Central Universities. It is also requested to ensure that all decisions in the Central Universities are taken with the approval of the concerned

competent Statutory Bodies of the University, in accordance with the procedure laid down in the Acts/Statutes.

4. Further, it is to add that the Government has no role in day-to-day functioning of Central Universities. Visitor's nominees in the Statutory Bodies of the Universities have a very vital role to play in taking transparent and fair decisions besides contributing in overall functioning and improvement of the Central Universities. Being nominees of the Visitor, it is also their duty to report the irregularities, if any come to their notice, to the Government. Accordingly, all Central Universities are requested to kindly bring these instructions/guidelines to the notice of all the Members of Court, Academic Council, Executive Council, Finance Committee and Selection Committees for information and strict compliance and send action taken report.”

59. The counter affidavit filed by the BHU does not reflect that while invoking power under Section 7C(5) of the Act, 1915 for Career Advancement Scheme, the Vice Chancellor has adhered to the guidelines laid down in the letter dated 11.06.2001 and as provided in Paras 2(i) and (ii).

60. It is pertinent to mention that Executive Council has been entrusted with several essential functions with regard to promotion under Career Advancement Scheme. The Executive Council under Career Advancement Scheme is supposed to perform following functions:-

(i). Under Statute 27 (1)(b)(3) of the First Statute of the University, the Executive Council is required to nominate three persons associated with Selection Committee having special knowledge of the subject with which persons to be appointed would be concerned.

(ii). Regulation 5.1.3 read with 5.1.2 of 2010 UGC Regulation requires nomination of Experts from “the panel of names approved by the relevant Statutory body of the University concerned.” Relevant statutory body for approving panel of Expert body in the present case is the Executive Council.

(iii) Clause 4 (a) of the Ordinance mandates the Vice Chancellor to place the list of expert members for all disciplines recommended by the PPC of the Departments and collected from other sources before the Executive Council for its consideration and approval. Clause 4(b) of the Ordinance provides that the Vice Chancellor shall ordinarily invite the Experts for attending the meeting of Selection Committee from the panel approved by the Executive Council, and in the event of special urgency, the Vice Chancellor is authorized to make additions to the panel and report the same to the Executive Council.

(iv). Executive Council is entrusted with the duty to approve the recommendation of the Selection Committee before they are implemented.

61. The role of Executive Council detailed above in the process of selection cannot be given a go by in a hushed up manner, so as to defeat the object for which the Executive Council is entrusted with the functions, under the relevant provisions for the purpose of grant of benefit of Career Advancement Scheme. The Ministry of Human Resource Development, Department of Higher Education has also laid the guidelines in the letter dated 11.06.2001, extracted above, which the Vice Chancellor is supposed to abide by while exercising power under Section 7C(5) of the Act, 1915.

62. The law is settled that when the Statute requires a thing to be done in a particular manner, it should be done in that manner only and not in any other manner.

63. The Apex Court in paragraph no.14 of the judgement of the Apex Court in the case of ***Opto Circuit India Limited Vs. Axis Bank & Others 2021 (6) SCC 707*** held that if statute provides for a thing to be done in a particular manner, then it should be done in that manner only and not in any other manner. Paragraph no.14 of the said judgement is reproduced herein-below:-

“14. This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be

done in that manner alone and in no other manner. Among others, in a matter relating to the presentation of an election petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an election petition in Chandra Kishore Jha v. Mahavir Prasad and in the course of consideration observed as hereunder: (SCC p. 273, para 17)

"17. It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner."

Therefore, if the salutary principle is kept in perspective, in the instant case, though the authorised officer is vested with sufficient power; such power is circumscribed by a procedure laid down under the statute. As such the power is to be exercised in that manner alone, failing which it would fall foul of the requirement of complying with due process under law. We have found fault with the authorised officer and declared the action bad only insofar as not following the legal requirement before and after freezing the account. This shall not be construed as an opinion expressed on the merit of the allegation or any other aspect relating to the matter and the action initiated against the appellant and its Directors which is a matter to be taken note of in appropriate proceedings if at all any issue is raised by the aggrieved party."

64. Similarly, the Apex Court in paragraph nos.15 to 17 of the judgement in the case of ***Union of India & Others Vs. Mahendra Singh, 2022 SCC OnLine SC 909*** has held as under:-

"15. A three Judge Bench of this Court in a judgment reported as Chandra Kishore Jha v. Mahavir Prasad held as under:

"17....It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage: Nazir Ahmad v. King Emperor [(1935-36) 63 IA 372: AIR 1936 PC 253 (2)], Rao Shiv Bahadur Singh v. State of V.P [AIR 1954 SC 322: 1954 SCR 1098], State of U.P. v. Singhara Singh [AIR 1964 SC 358: (1964) 1 SCWR 57].) An election petition under the rules could only have been presented in the open court up to 16-5-1995 till 4.15 p.m.

(working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done.....”

16. The said principle has been followed by this Court in *Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh* wherein this Court held as under:

"14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure...."

17. Similarly, this Court in *Municipal Corporation of Greater Mambal (MCGM) v. Abhilash Lal and OPTO Circuit India Limited v. Axis Bank* has followed the said principle. Since the advertisement contemplated the manner of filling up of the application form and also the attempting of the answer sheets, it has to be done in the manner so prescribed. Therefore, the reasoning given by the Division Bench of the High Court that on account of lapse of time, the writ petitioner might have attempted the answer sheet in a different language is not justified as the use of different language itself disentitles the writ petitioner from any indulgence in exercise of the power of judicial review.”

65. We are of the view that judgement of ***Gauhati University (supra)*** supports the case of the appellant. Paragraph nos.5 & 6 of the said judgement are being reproduced herein below:-

“5. A bare reading of the above quoted section 15A (1) (b) makes it clear that in making recommendations for the appointment of Professors of the University, the Selection Committee shall co-opt the Head of the Department concerned, if he is a Professor, one Professor of the Department to be nominated by the Vice-Chancellor and two persons not in the services of the University to be nominated by the Executive Council out of a panel of not less than five names of persons recommended by the Academic Council, who have special knowledge of the subject for which the Professor is to be selected.

6. Admittedly, in the case at hand, the Selection Committee was not constituted in terms of section 15A (1) (b) of the Act, as the Vice-

Chancellor himself nominated two persons as members instead of calling for the nomination of such two persons by the Executive Council. Section 15A(1)(b) of the Act clearly states that Vice-Chancellor is to nominate one Professor of the Department whereas Executive Council is to nominate two persons who have special knowledge of the subject. The role of participation of such experts is crucial in the selection process because it is expected from the Selection Committee to make endeavour to select the best suitable candidate. Section 15A(1)(b) does not permit the Executive Council to delegate its power on the Vice-Chancellor to nominate two persons who have special knowledge of the subject. Therefore, the nomination of such two persons can be made only by Executive Council and not by the Vice-Chancellor. It is well settled principle of law that a statutory power must be exercised only by the authority or the person on whom it is conferred unless the statute by express words or necessary implication permits delegation. From the language used in section 15A(1)(b) also, it is apparent that requirement of nomination of two persons by the Executive Council from the panel of experts is mandatory, which the learned Single Judge has rightly held by giving cogent reasons in paragraph 31 of the order. There is yet another settled principle of law which says that when power is given to do a certain thing in a certain way, the thing must be done in that way and not at all. In other words, if the manner of doing a particular act is prescribed under any statute the act must be done in that manner and not at all. Therefore, in the constitution of Selection Committee even this principle of law was violated by the appellants”.

66. Though, Section 7C(5) of the Act, 1915 requires decision of the Vice Chancellor to be placed before the authority in the next meeting, who in the ordinary course would have dealt with the matter, but the intention behind conferring the emergency power is an exception to the general power and should be exercised in the manner prescribed under Section 7C(5) of the Act, 1915, therefore, before taking any decision to invoke emergency power under Section 7C(5) of the Act, 1915, there has to be an opinion of the Vice Chancellor formed on the basis of material on record that emergency is such, which requires immediate action to be

taken, and if no action is taken, that would be prejudicial or detrimental to the interest of the University or any wing of the University. The respondent has not placed any opinion of the Vice Chancellor that the emergency is such that if, emergency power under Section 7C (5) is not invoked, and if no action is taken, this would be prejudicial or detrimental to the interest of the University or any wing of the University.

67. So far as the judgement of this Court in the case of ***Dr. Bhaktiputra Rohtam (supra)*** affirmed by this Court in Special Appeal No.788 of 2024 is concerned, we find that said judgement has been rendered in a different factual backdrop, which is evident from paragraph nos.19 to 22 of the judgement of learned Single Judge. Paragraph no.19 of the judgement of the learned Single Judge reflects that learned Single Judge proceeded on the basis that the promotion under CAS was to be made on the basis of seniority and not on the basis of selection, and therefore, if Executive Council was not there and Vice Chancellor was of the view that papers of the petitioner had reached the assigned cell designated for the purpose of processing of valuation, it was required for the designated cell to have processed the papers. In such circumstances, the learned Single Judge held that Vice Chancellor could have invoked the power under Section 7C(5) and he had no occasion to wait for the decision of the Government asking the Vice Chancellor to act on behalf of Executive Council in purported exercise of power under Section 7C(5) of the Act, 1915.

68. Hence, the judgement of learned Single Judge as well as Appellate Court affirming the judgement of learned Single Judge did not notice the aforesaid aspect of the matter as detailed above while allowing the writ petition and as such are not applicable in the present case.

69. Similarly, the judgement in the case of ***Dr. Monika Bansal (supra)*** relied on the issue of invocation of urgency power by the Vice Chancellor under Section 7C(5) of the Act, 1915 does not help the respondents inasmuch as the said judgement has also not considered the

relevant issues, which have been noted by this Court in reference to the powers of Vice Chancellor under Section 7C(5) of the Act, 1915.

70. Now, coming to the question as to whether the Selection Committee should consist of the subject expert in the field of Kathak, and for this reason, the constitution of Selection Committee is vitiated as out of the three members of the Selection Committee, two members namely, Dr. Arti H. Shetty and Dr. Uma Rele, who had expertise in Bharatnatyam and were not eligible to act as member of the Selection Committee.

71. According to the appellant, there is no generic subject like Dance and since the appointment was on the post of Professor in the field of Kathak, therefore, the members of the Selection Committee should have expertise in Kathak Dance and not in any other form of Dance.

72. On the other hand, learned counsel for the respondents contends that the appointment of the appellant is in the Department of Dance under Faculty of Performing Arts and Career Advancement Scheme is also for the Department of Dance, Faculty of Performing Arts, in which many subjects are taught and Kathak is only one of the subjects, which the appellant is also supposed to teach, therefore, it is not necessary that the Selection Committee should consist of experts in Kathak Dance.

73. The three experts that were part of the Selection Committee, which met on 04.01.2024 are as follows:-

“(i) Dr. (Miss.) Uma Rele, Principal, Nalanda Nritya Kala Mahavidyalaya.

(ii) Kamalini Asthana, Padamshree Exponent of Kathak.

(iii) Dr. Aarty H. Shetty, Eminent Kathak Varanasi Style.”

74. It is the case of the appellant in the writ petition, that neither the aforesaid three members were qualified or eligible for participating as experts for consideration for promotion as Professor in the discipline of Kathak dance. According to appellant, Dr. Arti H. Shetty and Dr. Uma

Rele are exponents of Bharatnatyam and do not have any academic qualification, teaching experience or expertise in Katthak Dance.

75. So far as Dr. Kamalini Asthana is concerned, she is an exponent of Katthak dance. However, she is not known to have any academic qualification in Katthak dance nor she holds the post of Professor or a post equivalent thereto as was mandatorily specified in the communication of the Joint Registrar (Recruitment and Assessment Cell) dated 03.07.2023. The letter dated 03.07.2023 issued by the Joint Registrar (Recruitment and Assessment Cell) reads as under:-

“Dear Sir/Madam,
As you are aware that in terms of the provisions contained in the Statute 27 of BHU Statutes and UGC Regulations 2018, external subject experts are associated in the Selection Committees for recommending the names of candidates for appointment/ promotion to the teaching posts in the University.
In view of above, I am directed to request you to kindly provide a specialization-wise list of at least 20 names of external subject experts not below the rank of Professor from top 20 NIRF ranking institutions or from Institutions of National Importance or experts of national/international repute; with their complete contact details in the proforma given hereunder, duly approved by the respective PPC of the concerned Department/School/Centre and send it to the Office of the undersigned on or before 17th July, 2023.
This may kindly be given TOP PRIORITY.

LIST OF EXTERNAL SUBJECT EXPERTS

Department _____ Faculty/Institute: _____

Sl. No.	Name of Expert	Area Of Specialization	Contact Details					
			Address		Telephone No.		Mobile No.	Email ID
			Office	Residence	Office	Residence		

76. According to the said letter, the subject expert should not be below the rank of Professor from the top 20 NIRF ranking institutions, therefore, according to appellant, Dr. Kamalini Asthana was not eligible to participate as expert in the Selection Committee. The appellant in this respect has made necessary averments from paragraph nos.32 to 37 of the writ petition, which has been replied by the BHU in paragraph no.19 of the counter affidavit.

77. The BHU does not deny the fact that Dr. Uma Rele is an exponent of Bharatnayam, however, it is asserted in paragraph no.19 of the counter affidavit that Dr. Kamalini Asthana and Dr. Aarti H. Shetty have specialization in the field of Katthak.

78. The averments of the respondent University in paragraph no.19 of the counter affidavit that Dr. Arti H. Shetty is an expert in Katthak have been denied by the appellant in paragraph no.6 of the rejoinder affidavit. The appellant in paragraph no.6 of the rejoinder affidavit has reiterated that specialization of Dr. Arti H. Shetty is in Bharatnayam.

79. The petitioner in support of her contention that Dr. Arti H. Shetty is an exponent of Bharatnayam has placed on record the detail of Dr. Arti H. Shetty downloaded from the Official Website of Amrita Vidyalayam, annexed as Annexure-18 to the paper book, but the BHU has not enclosed any document on record indicating that Dr. Arti H. Shetty had specialization in Katthak also.

80. At this stage, it would be appropriate to reproduce Statute 27 of the First Statute of the BHU which is as follows:-

“27 - Selection Committee:

(1)(a) There shall be Selection Committee for making recommendations to the Executive Council for appointment to the posts of Professors, Readers, Lecturers, Registrar, Controller of Examinations, Librarian and such other posts as are declared teaching posts by the Academic Council.

(b) Every Selection Committee shall consists of Vice Chancellor who shall be the Chairman thereof and a person nominated by the Visitor,

and in addition the Selection Committee for making recommendations for appointment to a post specified in column (1) of the Table below shall have as its members the persons specified in the corresponding entry in column (2) of the said Table:

<i>Professor</i>	<i>(1) The Dean of the Faculty concerned, provided he is a Professor, except in cases where they are applicants or when the post held by them is being filled up.</i> <i>(2) The Head of the Deptt. concerned, provided he is a Professor, except in cases where they are applicants or when the post held by them is being filled up.</i> <i>(3) Not less than three persons not being in the service of the Executive Council who have special knowledge of the subject with which the person to be appointed will be concerned, to be nominated by the Executive Council.</i>
<i>Reader/Lecturer and Teaching post</i>	<i>(1) Dean of the Faculty concerned;</i> <i>(2) The Head of the Department concerned.</i> <i>(3) Not less than two persons not being in the service of the University or members of the Executive Council who have special knowledge of the subject with which the person to be appointed will be concerned, to be nominated by the Executive Council.</i>
<i>Registrar/ Controller of Examination</i>	<i>Three Members of the Executive Council nominated by it.</i>
<i>Librarian</i>	<i>Not less than three persons not being in the service of the University or members of the Executive Council who have special knowledge of the subject of Library Science to be nominated by the Executive Council.</i>
<i>Professors, Readers and Lecturers and other teaching post in the Institute of Technology, Institute of Medical Sciences and the Institute of Agricultural Sciences</i>	<i>The Director of the concerned Institute will also be a member of the Selection Committee constituted as above for the respective post.</i>
<i>Professors, Readers and Lecturers and</i>	<i>Principal, Mahila Mahavidyalaya, will also be a member of the Selection Committee, constituted in as above for the post of Mahila Mahavidyalaya.</i>

<i>other teaching post Mahila Mahavidyalaya</i>	
<i>Professors, Readers and Lecturers in the Centre of Advanced study/ Departments selected for Special Assistance Programme/Schools</i>	<i>Programme Coordinator of the concerned Departments (CAS/SAP and Schools) will also be a member of the Selection Committee.</i>

(c) Provided that the meetings of the Selection Committee shall be fixed only after prior consultation with and subject to the convenience of the Visitor’s nominee and the persons nominated by the Executive Council under Clause (b) above.

Provided further that the proceedings of the Selection Committee shall not be valid unless:

(i) Where the number of Visitor’s nominee and the persons nominated by the Executive Council is four in all, at least three of them attend the meeting; and

(ii) Where the number of Visitor’s nominee and the persons nominated by the Executive Council is three in all, at least two of them attend the meeting.

(d) Notwithstanding the provision under Statute 27(1)(a) the Executive Council may constitute a Special Committee to suggest names of persons of high academic distinction eminence and professional attainments for filling in Special Chairs of Professors.

(2)The procedure to be followed by a Selection Committee in making recommendations shall be laid down in the Ordinances.

(3)If the Executive Council is unable to except any recommendation made by the Selection Committee, it shall record its reasons and submit the case to the Visitors for orders.”

81. Learned counsel for the appellant has laid emphasis upon the word ‘concerned subject/field’ employed in Regulation 5.1.2 of UGC

Regulations. According to him, there is no generic subject like Dance, and Faculty of Dance is imparting education in Katthak or Bharatnatyam. Further he has placed on record the qualifications of the appellant while submitting the application for being appointed as Associate Professor pursuant to the Advertisement No.07/2014-15.

82. He has submitted that the appellant while applying for the post of Associate Professor has disclosed her qualifications showing that she possesses a Degree in Sangeet Prabhakar in Katthak Dance, and M.A. Degree from Indira Kala Sangit Viswavidyalaya in Katthak Dance (both Theory and Practical), Post Diploma from Katthak Kendra, New Delhi in Katthak Dance (Theory & Practical). He has further invited attention of the Court to the application of the appellant with respect to Research Degree, according to which, her specialization is 'Doctoral' in 'Katthak Dance' and Title of Thesis is, 'Comparative Study of the Lucknow and Jaipur Gharanas of Katthak Dance', and for the Post Doctoral, D.Litt/D.Sc., her specialization is, 'Katthak Dance' and Title of Thesis is, 'Movements Executed On The Technical Compositions of Katthak Dance; an Analytical Study.' Thus, considering the qualifications of the appellant, she has been appointed as Associate Professor to teach Katthak.

83. At this stage, it is also relevant to note that respondent no.6 was appointed as Lecturer in Dance (Katthak), which is evident from the appointment letter of the respondent no.6 dated 02.11.2006.

84. The question, which arises for consideration is whether the constitution of Selection Committee consisting two out of three Experts from the stream of Bharatnatyam is a validly constituted Selection Committee when it is not in dispute that when the only two candidates, namely, appellant and respondent no.6, were having expertise in Katthak Dance. Further the issue for consideration is whether the third expert namely, Dr. Kamalini Asthana was eligible to participate as an expert member in the Selection Committee.

85. The appellant in paragraph no.25 of the writ petition has categorically stated that the appellant as well as respondent no.6 are discharging their duties in the discipline of Katthak Dance, qualification of the appellant and respondent no.6 is also in specialty of Katthak Dance. It is also stated that neither the appellant nor the respondent no.6 had any academic qualification nor experience in Bharatnatyam. Paragraph no.25 of the writ petition is reproduced herein below:-

“25. That the petitioner as also Dr. Vidhi Nagar both are discharging duties in the discipline of Katthak Dance. The qualification and experience of the petitioner as also Dr. Vidhi Nagar is in the specialty of Katthak Dance. Neither the petitioner nor Dr. Vidhi Nagar had any academic qualification nor experience in Bharat Natyam.”

86. Paragraph no.25 of the writ petition has been replied by the BHU in paragraph no.14 of the counter affidavit. Paragraph no.14 of the counter affidavit is reproduced hereinbelow:-

“14. That the contents of the paragraph no.25 of the writ petition so far it relates to the petitioner are not admitted as stated and hence denied. In reply it is stated that the petitioner was appointed as Associate Professor in the Department of Dance, Faculty of Performing Arts against Advertisement No.07/2014-2015 under (Post Code-2730) without showing any specialization in Katthak/Bharatnatyam.”

87. The respondent no.6 has also replied the paragraph no.25 of the writ petition in paragraph no.18 of her counter affidavit which is also reproduce herein below:-

“18. That, the contents of para no.25 of the writ petition as they stand need no comments.”

88. The specific averment made by the appellant in paragraph no.25 of the writ petition, extracted above, with regard to the fact that she as well as respondent no.6 are discharging duties in the discipline of Katthak Dance and they have specialty in Katthak Dance and have no qualification nor experience in Bharatnatyam have not been denied either by the BHU or respondent no.6 in their counter affidavit.

89. So, it is not in dispute that Selection Committee was to adjudge suitability of the candidates for promotion under Career Advancement Scheme of the candidates who admittedly have the qualification and expertise in Katthak Dance, and have been discharging their duties in the discipline of Katthak Dance.

90. The Statute 27(b) provides for constitution of Selection Committee. Column-I of the table below Statute 27 (b) specifies the post and persons referred in Column-II of the said table are the members of the Selection Committee against the post specified in Column-I. Paragraph (3) in Column-II of the table, against the post of Professor prescribes, “not less than three persons who have special knowledge of the subject with which the person to be appointed will be concerned, to be nominated by Executive Council.”

91. Thus, the Statute provides that the Expert should have special knowledge of the subject with which the person to be appointed, meaning thereby the Expert should possess special knowledge of the subject in which the person is to be appointed.

92. In the form filled by the appellant for promotion on the post of Professor under Career Advancement Scheme, the appellant at serial no.9 and 10 has given the following details:-

<i>Department</i>	<i>Dance</i>
<i>Faculty/Institution Department</i>	<i>Faculty of Performing Arts</i>
<i>Present Designation on which you are working</i>	<i>As an Associate Professor Katthak Dance</i>

93. From the aforesaid, it is evident that in the application form, the appellant has given the details of her Department as ‘Dance’ and designation on which she is working as ‘Associate Professor Katthak Dance’.

94. She has given her details at Serial No.22 in the form as, ‘Assistant Professor Katthak’ in Punjabi University, Patiala. In the column of

‘Fields of Specialization’, she has mentioned her specialization in ‘Katthak stream’.

95. At this juncture, it is also relevant to note that respondent no.6 was initially appointed as Lecturer in Dance (Katthak), which is evident from her appointment letter dated 02.11.2006 in the Faculty of Performing Arts, BHU. The relevant extract of the appointment letter of respondent no.6 on the post of Lecturer in Dance (Katthak) is reproduced herein below:-

*“Dr. (Ms.) Vidhi Nagar
C-1143, Indira Nagar,
Lucknow-226016*

Dated: 2.11.2006

*Ref: Your application for the post of Lecturer in Dance (Kathak)
against Advt. No. 02/2005-06.*

Madam,

*The Executive Council of the University at its meeting held on
31.10.2006 has been pleased to appoint you as Lecturer in Dance
(Kathak) in the Faculty of Performing Arts, Banaras Hindu
University, on the terms noted below.....”*

96. Learned counsel for the respondent-University has emphasized that the Advertisement No.07/2014-15 pursuant to which the appellant was appointed as Associate Professor, she applied against the Post Code-2730 as Associate Professor, and the specialization column in the Advertisement against the Post Code-2730 was blank, whereas in the specialization column against Post Code-2677, ‘Bharatnatyam’ is mentioned. Therefore, he submits that the appellant was appointed as Associate Professor (Dance) without any specialization, in the Department of Faculty of Performing Arts. On that basis, he submits that when the appellant was selected as Associate Professor, Professor Dr. Uma Rele having specialization in Bharatnatyam interviewed the appellant during her selection as Associate Professor, and thus, it is established that interview for selection on the post of Associate Professor was in the Department of Dance without any specialization. Thus, he submits that the candidates selected against the Post Code-2730 do not

belong to any specific subject as the selection was for Department of Dance, Faculty of Performing Arts, BHU.

97. He has further placed the appointment letter of the appellant and also the resolution of the Executive Council to demonstrate that the appointment of the appellant was as Associate Professor in the Department of Dance, Faculty of Performing Arts, BHU.

98. To buttress the said submission, he has pointed out that since the appointment of the appellant is in the Department of Dance without any specialization, and if, she has any specialization that is not relevant as she is to be promoted as Professor in the Department of Dance, Faculty of Performing Arts without there being any specialization.

99. He has also placed on record the syllabus for the Bachelor of Performing Arts to submit that Department of Dance, Faculty of Performing Arts is a composite Department where Dance of various streams namely, Bharatnatyam, Katthak and other forms of Dance are taught, and thus, appellant has been appointed as Dance Teacher without any specialization.

100. We have perused the syllabus of subjects taught in Bachelor of Performing Arts, enclosed with the paper book, wherein various subjects in different semesters are taught to the students, for example in Semester-I students are taught History of Bharatnatyam-1, History of Dance-1 (Common Paper), Nritya Prayog-1 etc. In Semester-II, History of Bharatnatyam-II, History of Dance-II, Nritya Prayog. Similarly, in other semesters, other subjects are taught.

101. Though, it is true that in the Bachelor of Performing Arts, various subjects are taught in different semesters, but we cannot lose sight of the fact that Department of Faculty of Performing Arts also imparts education in the Post Graduate Courses in Dance stream and there is a Post Graduate Course in the name of MPA in Dance Katthak/ Bharatnatyam as per Post Graduate Information Bulletin, 2022. For admission in the aforesaid courses, qualification prescribed is that the

candidates should possess B.Music/BPA in Dance in Indian Classical Dance (Kathak/Bharatnatyam).

102. Similarly, the BHU is awarding Post Graduate Degree in Master of Performing Arts Dance (Kathak), and Master of Performing Arts in Bharatnatyam. The BHU is awarding Degree in Bachelor of Performing Arts in specialized subject Kathak, the mark-sheet of various students in respect to Post Graduation as well as Bachelor of Performing Arts have been enclosed by the appellant with the writ petition. The appellant has made submissions in this regard in paragraph nos.47 to 49 which are reproduced herein-below:

“47. That in the Department of Dance the Degrees which are awarded are Bachelor's Degree in Performing Art and Degree in Performing Art. Each such Degree is awarded with reference either to Kathak Dance or Bharat Natyam Dance and there is no Degree awarded generically for Dance as a subject. In support of the aforesaid the petitioner brings on record some mark sheets/degrees pertaining to Bachelor of Performing Art and Master of Performing Art as also Doctorate Degree collectively as Annexure 21 to this writ petition. A perusal of the several degrees so awarded would demonstrate that each such Degree is either in Kathak or in Bharat Natyam Dance.

48. That the petitioner also brings on record the relevant extract of post graduate information bulletin 2022 as Annexure 22 to this writ petition.

49. That clause 3.1.12 (b) of the aforesaid information brochure would demonstrate that University is awarding Master's Degree in Performing Arts either in Kathak Dance or in Bharat Natyam Dance”.

103. Paragraphs no.47 to 49 have been replied by the BHU in paragraph no.24 of its counter affidavit and by the respondent no.6 in paragraph no.33 of her counter affidavit.

104. Paragraph no.24 of the counter affidavit of the BHU and paragraph no.33 of the counter affidavit of respondent no.6 are reproduced respectively herein-below:-

“24. That the contents of the paragraphs no. 47, 48, 49 of the writ petition are not admitted as stated. It is further submitted that the Banaras Hindu University is having Department of Dance and the petitioner was appointed as Associate Professor in the Department of Dance, Faculty of Performing Arts without any specialization in Kathak or Bharatnatyam dance. It is further stated that the syllabus for all courses i.e. Bharatnatyam, Kathak or any other dance course is common. The syllabus is to be taught by the dance teacher irrespective of their specialization.”

“33. That, the contents of para nos.47, 48 & 49 of the writ petition as they stand are denied being misconceived and incorrect. In reply it is submitted that syllabus of the courses either Bharnatnyam or Kathak Dance is common. The syllabus is to be taught by the Dance Teacher irrespective of her specialization and the said fact is also proved from the appointment of the petitioner as Associate Professor in the Department of Dance, Faculty of Performing Arts without any specialization in Kathak or Bharat Natyam Dance hence awarding of Degree either in Kathak or Bharatnatayam Dance would not mean that the person who is teaching should also be holding the post of Associate Professor in the said specialized Dance field”.

105. The facts delineated above establish that in the Department of Dance, Faculty of Performing Arts, various subjects of different streams are taught, therefore, it is obvious that Expert in those subjects are required to teach those subjects. Various mark-sheets enclosed with the writ petition including thereof graduation and post graduation, and the information brochure would establish that Degrees are being awarded either in Katthak stream or Bharatnatyam stream. The respondents could not demonstrate from the record that there is any Dance form taught in the Department of Dance.

106. The appointment letter of the appellant dated 03.10.2015 states that the appointment of the appellant is made on the post of Associate Professor in the Department of Dance, Faculty of Performing Arts. So, it is evident that there is a Department of Dance in the Faculty of Performing Arts, and there is no subject in the name of ‘Dance’, which is

being taught in the Department of Dance. But Katthak and Bharatnatyam are two streams/subjects of Dance which are taught in the Department of Dance, Faculty of Performing Arts, BHU.

107. If we appreciate the context in which the words in the Statute 27, 'persons should have special knowledge of the subject with which the person to be appointed will be concerned' has been employed, we can say with certainty that it will undoubtedly refer to the Subject Expert nominated by the Executive Council who has special knowledge in the subject in which the person is to be appointed.

108. In the case in hand, both the candidates namely, appellant and respondent no.6 are the candidates to be appointed in Katthak stream as both of them have special knowledge of Katthak Dance and as there is no subject in the name of 'Dance', therefore, the Subject Expert cannot have any special knowledge in the subject of 'Dance'. This means that the candidates are to be appointed in the subject in which they have expertise which in the instant case is 'Katthak' as both the candidates, namely, appellant and respondent no.6 have specialization in Katthak Dance.

109. The purpose of the Selection Committee is to adjudge the suitability of a candidate for the post for which he/she has applied. If, the appointment is to be made in Katthak stream as both the candidates have special knowledge in Katthak, the two Subject Experts in the Selection Committee namely, Dr. Uma Rele and Dr. Aarti H. Shetty, who have expertise in Bharatnatyam, which said fact is established from the record, obviously cannot assess and adjudge the suitability of the two candidates who are from different stream i.e. Katthak.

110. The law is settled that Statute should be interpreted in a manner so as to achieve the object and purpose of the Statute for which it has been legislated. At this stage, it would also be useful to refer to Regulation 5.1.2 dealing with the constitution of Selection Committee for the Associate Professor and Regulation 5.1.3 dealing with the constitution of

Selection Committee for the post of Professor. Regulation 5.1.2 and Regulation 5.1.3 respectively are reproduced herein-below:-

“5.1.2. Associate Professor in the University

(a) The Selection Committee for the post of Associate Professor in the University shall 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; wherever applicable.*
- 3. Three experts in the concerned subject/field nominated by the Vice Chancellor out of the panel of names approved by the relevant statutory body of the university concerned.*
- 4. Dean of the faculty, wherever applicable.*
- 5. Head/Chairperson of the Department/School.*
- 6. An academician representing SC/ST/OBC/Minority/Women/Differently-abled categories, if any of candidates representing these categories is the applicant, to be nominated by the Vice Chancellor; if any of the above members of the selection committee do not belong to that category.*

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

5.1.3 Professor in the University

The composition of the Selection Committee for the post of Professor in the University shall be similar in composition as that for the post of Associate Professor set out in Clause 5.1.2 above.”

111. Regulation 5.1.2 specifies that Vice Chancellor should appoint three Experts in the concerned subject/field.

112. The appellant has placed reliance upon the judgement of **Dr. Triloki Nath Singh (supra)** wherein the advertisement was issued for selection on the post of Reader in Linguistics in Department of Hindi. However, the Selection Committee consisted of an Expert in Hindi Literature and not in Linguistics, paragraph no.14 of the said judgement is reproduced hereinbelow:-

“14. The above provision laying down essential qualifications also goes to show that first or high second class degree and doctorate in the subject concerned was an essential qualification. As already mentioned above posts were mentioned separately for three Readers in Hindi and one Reader in Linguistics in the Department of Hindi. Explanation II could only apply in a case where the post of teacher to be selected was common to more than one subject of study. Advertisement nowhere provided that one Reader in Linguistics in the Department of Hindi was to be selected as common to more than one subject of study. Merely because the post of Reader in Linguistics was required in the Department of Hindi, it cannot be held that such Reader in Linguistics was to teach the subject of Linguistics as well as the subject of Hindi Language and Literature. It may also be noted that from a perusal of the above advertisement along with the prospectus of the University clearly goes to show that for the post of Reader in Linguistics it was necessary to have an essential qualification of first or high second class master's degree and doctorate in the subject of Linguistics. Explanation II can apply in a case where one common teacher is to be selected for more than one subject of study and in that contingency it provides that the expert may belong to either of such subjects of study. In the case in hand before us the advertisement did not mention that the post of one Reader in Linguistics in the Department of Hindi was common with any other subject of study. Thus the appointment of all the experts in the present case of subject of Hindi for the selection of one Reader in Linguistics in the Department of Hindi was totally wrong and illegal.”

113. Reliance has further been placed by the learned counsel for the appellant on the judgement of learned Single Judge in the case of **Dr. (Mrs.) Kalpana Sinha (supra)** wherein a challenge to the Selection Committee for selection in ‘English’ was laid on the ground that Selection Committee did not consist of an expert in ‘English’.

114. The aforesaid challenge was refuted on the ground that petitioner was to be appointed in the National Institute of Technology (NIT) as Associate Professor in the subject, ‘Humanities and Social Sciences’, therefore, experts in any field of Humanities and Social Sciences can be

treated to be the experts in the 'subject' within the meaning of Clause 23 (5) (a) of the First Statute of National Institute of Technology. Patna High Court in paragraph nos.22 to 25 of the said judgement has held as under:-

"22. As has been noted in the very opening paragraph of the present judgment, what meaning is to be given to the word "expert" as occurring in "Clause 23(5)(A) of the Statutes is the central point which requires determination in the present case for the purpose of constitution of a Selection Committee, to consider cases for grant of advancement in the scale of Professor with A.G.P. under C.A.S., in the Department of Humanities and Social Sciences in N.I.T., Patna. It has been stated on behalf of the respondents that there are nearly 170 subjects, which fall within the category of "Humanities and Social Sciences" and it has been canvassed that experts in either of these subjects could be appointed as expert-members of the Selection Committee. According to the respondents, in the absence of the word 'subject' mentioned in Clause 23(5)(a) of the Statutes, the said word cannot be read into the said provision in order to conclude that expert would mean "subject expert".

23. In my opinion, Clause 23(5)(a) of the Statutes requires to be read with the purpose for which it is there in the Statutes. The purpose is manifest and obvious. The fundamental and primary purpose of constitution of the Selection Committee is to evaluate and assess the proficiency and knowledge of a faculty member for recruitment to a post/promotion to higher grade or grant of advancement to higher grade and in the present case to the grade of Professor under CA.S. The Selection Committee consists of 6 members, two of whom should be the experts, to make assessment/evaluation in tune with the guidelines, as contained in letter dated 14.03.2012, issued by the Department of Higher Education, Ministry of Human Resource Development, Government of India. The function and duty of the Selection Committee is thus to assess "proficiency and knowledge in once chosen field of research and teaching" (emphasis added). Thus, while considering the case of an Associate Professor, whose chosen field of research is English, it would be difficult to accept the plea that persons having no experience or

expertise in such field can still assess the proficiency and knowledge of a person being considered for advancement/promotion under C.A.S.

24. Mr. Kanth, learned senior counsel, appearing on behalf of the petitioner, is right in his contention that the expert, as occurring in Clause 23(5)(a) of the Statutes for the purpose of constitution of Selection Committee, could not mean expert in any subject of the stream under Humanities and Social Sciences and if such interpretation is given, it would give rise to an anomalous and absurd situation. Purposive construction is an effective well accepted and established tool for Interpreting Statutes, and has been applied by Supreme Court in the case of New India Assurance Company Ltd. v. Nusi Neville Wadia" (Supra). In case of "N. Kannadasan v. Ajoy Khose" (Supra), the Supreme Court held that if plain meaning assigned to the sections result into absurdity and anomaly, literal meaning would not be applied and held that the Court may have to change the interpretative tool, if necessary to give effective, contextual meaning to a statutory provision. The Court held that construction of Statute must subserve the tests of justice and reason. Relevant portion of paragraph-55 of the said decision is extracted hereinbelow:-

55. Construction of a statute, as is well known, must subserve the tests of justice and reason. It is a well-settled principle of law that in a given case with a view to give complete and effective meaning to a statutory provision, some words can be read into; some words can be subtracted. Provisions of a statute can be read down (although sparingly and rarely).

25. In my opinion, therefore, while selecting experts for constitution of the Selection Committee for the aforesaid purpose, experts in the subject were required to be appointed as members, otherwise, very purpose of selection, with experts as its members would stand frustrated. I must take note of the fact that though the petitioner was working as an Associate Professor in the Department of Humanities and Social Sciences, but that would not mean that she was appointed to teach all subjects of Humanities and Social Sciences in the said Department. This is not even the case of the respondents. She was appointed to teach English in the said Department. The subjects which

are taught in the subject of Humanities and Social Sciences have been mentioned in Paragraph-4 of the judgment. From the reading of the list of subjects/ sub-subjects, it would appear that the petitioner's appointment was for Item Nos.-(i) to (iv) and she had not experience of teaching other items mentioned therein, which position is admitted."

115. As has already been held above that as per the Statute 27 and Regulation 5.1.2, the subject expert in the constitution of Selection Committee refers to the expert having special knowledge of the subject with which the person to be appointed will be concerned, which in the instant case is Katthak, as both the candidates namely, the appellant and the respondent no.6, have qualifications and expertise in Katthak Dance. Further, Katthak is one of the dance forms, which is being taught in the Department of Dance, Faculty of Performing Arts, the said fact is also established from the various mark-sheets of Post Graduation Courses as well as that of Bachelor of Performing Arts, enclosed with the paper book. Therefore, we are of the view that the Selection Committee should consist of experts from the stream of Katthak.

116. The respondents could not demonstrate that there is any subject in the name of Dance or education is being imparted in the Dance stream in the Department of Dance, Faculty of Performing Arts, and since, there is no such subject, there cannot be any expert in Dance, and the expert could only be either in the subject of Katthak or Bharatnatyam, which streams are being taught in the Department of Dance. Therefore, in the case in hand, since, the appellant and respondent no.6 are having qualification and specialization in Katthak Dance, it is obvious that the selection is being made on the post of Professor in Katthak, and mentioning of subject in the specialization column is not relevant in the context of the present case.

117. If, the contention of learned counsel for the respondents that since the selection was being made on the post of Professor in the Department of Dance where various forms of Dance are taught and the appellant is supposed to teach any subject in the Department of Dance, therefore, the composition of Selection Committee consisting of two experts namely,

Dr. Arati H. Shetty and Dr. Uma Rele, having expertise in Bharatnatyam would not vitiate the Selection Committee is accepted, that interpretation would render the insertion of words, “having special knowledge of subject with which the person to be appointed” in Statute 27 otiose and would lead to an absurdity inasmuch as it could not be the intention of the framers of the Statute, while incorporating the said words in the Statute that the expert from other subjects would also be eligible to become members of Selection Committee to adjudge the suitability of a candidate of different stream. The reason why we say so is that the object of formation of the Selection Committee is to adjudge the suitability of the candidate based on qualification, experience and competence in a particular field so that only the best of the candidates are appointed. We find that the aforesaid aspect of the matter has not been considered by the learned Single Judge in the case of ***Dr. Monika Bansal (supra)***, which has been heavily relied upon by the learned counsel for the respondents in support of their arguments.

118. We also do not agree with the finding of learned Single Judge in the case of ***Dr. Monika Bansal (supra)*** that since, the petitioner in that case had been granted the benefit by the same Selection Committee, which had found the petitioner to be unsuitable for promotion at the stage of Level-14, therefore, the petitioner cannot raise objection to the constitution of Selection Committee. Hence, we reject the submissions advanced by the learned counsel for the respondents, who has tried to invoke the principles of estoppel on the ground that the Selection Committee for the appointment of appellant as Associate Professor consisted of Dr. Uma Rele who has expertise in Bharatnatyam, therefore, it is not open for the appellant to raise objection in respect of the constitution of Selection Committee, at this stage.

119. It is settled in law that there cannot be any estoppel against a Statute. The Apex Court has also stated the said principle of law in the case of ***Employees State Insurance Corporation Vs. Union of India & Others, 2022 (11) SCC 392.***

120. In view of foregoing discussions, we are of the view that inclusion of two expert members namely, Dr. Aarti H. Shetty and Dr. Uma Rele who have expertise in Bharatnatyam and have no expertise in Katthak would render the constitution of Selection Committee bad. Hence, we do not deem it necessary to consider the eligibility of third expert member namely, Dr. Kamalini Asthana of Selection Committee on the ground that she was not eligible to become a member of the Selection Committee.

121. Now, coming to the third submission raised by Sri Ashok Khare, learned Senior Counsel for the appellant that preparation of list of external experts is vitiated because of the fact that there was every likelihood of bias in preparing the list of External Experts as respondent no.6 was also an applicant and a candidate in the selection and was also instrumental in preparing the list of external experts, we may note that the fact of participation in preparation of list of external experts is not disputed by the respondents. However, respondent no.6 has stated that she being the Head of Department forwarded the list of external experts and the appellant as well as respondent no.6 both were eligible to participate in the preparation of list of external experts, and appellant did not participate in the preparation of list of external experts because of sabbatical leave, therefore, there is no element of bias in preparation of list of external experts because of participation of the respondent no.6 in the PPC.

122. At this juncture, it would be apt to have a glance at Note-2 of the PPC, extracted above. Note-2 specifically provides that whenever the required number of eligible teachers for filling the composition of PPC is not available, the Vice Chancellor may nominate any teacher of the faculty.

123. The respondent no.6 was an applicant and candidate for selection, therefore, there is every likelihood that there exists an element of bias in preparation of list of external experts because of participation of respondent no.6 in preparation of panel list. It is true that PPC consists of

several members and the decision is taken collectively, but in the instant case, the Vice Chancellor had an option to appoint another member of the Department, where a teacher who is member of PPC is not eligible to function as a member of PPC, therefore, to remove the element of bias in preparation of list of panel of experts, the Vice Chancellor should have appointed another member in place of respondent no.6 in PPC for preparation of list of external experts.

124. It would be apt to reproduce paragraph nos.22 & 23 of the judgement of the Apex Court in the case of ***A.K. Kraipak & Others Vs. Union of India & Others, 1969 (2) SCC 262*** which are as follows:-

“22. It was next urged by the learned Attorney General that the mere fact that one of the members of the Board was biased against some of the petitioners cannot vitiate the entire proceedings. In this connection he invited our attention to the decision of this Court in Sumer Chand Jain v. Union of India. Therein the Court repelled the contention that the proceedings of a departmental promotion committee were vitiated as one of the members of that committee was favourably disposed towards one of the selected candidates. The question before the Court was whether the plea of mala fides was established. The Court came to the conclusion that on the material on record it was unable to uphold that plea. In that case there was no question of any conflict between duty and interest nor any member of the departmental promotion committee was a judge in his own case. The only thing complained of was that one of the members of the promotion committee was favourably disposed towards one of the competitors. As mentioned earlier in this case we are essentially concerned with the question whether the decision taken by the board can be considered as having been taken fairly and justly.

23. One more argument of the learned Attorney General remains to be considered. He urged that even if we are to hold that Naqishbund should not have participated in the deliberations of the selection board while it considered the suitability of Basu, Baig and Kaul, there is no ground to set aside the selection of other officers. According to him it will be sufficient in the interest of justice if we

direct that the cases of Basu, Baig and Kaul be reconsidered by a Board of which Naqishbund is not a member. Proceeding further he urged that under any circumstance no case is made out for disturbing the selection of the officers in the junior scale. We are unable to accept either of these contentions. As seen earlier Naqishbund was a party to the preparation of the select list in order of preference and that he is shown as No.1 in the list. To that extent he was undoubtedly a judge in his own case, a circumstance which is abhorrent to our concept of justice. Now coming to the selection of the officers in the junior scale service, the selections to both the senior scale service as well as junior scale service were made from the same pool. Every officer who had put in service of 8 years or more, even if he was holding the post of an Assistant Conservator of Forests was eligible for being selected for the senior scale service. In fact some Assistant Conservators have been selected for the senior scale service. At the same time some of the officers who had put in more than eight years of service had been selected for the junior scale service. Hence it is not possible to separate the two sets of officers.”

125. Learned counsel for the respondents has placed reliance upon the Division Bench Judgement of this Court in the case of **Prof. (Dr.) Mujahid Beg (supra)** to contend that the contention of learned Senior Counsel for the appellant on the issue of bias is misplaced. We find that that the judgement relied upon by the learned counsel for the respondents does not help the respondents and is distinguishable on facts, inasmuch as in the said case Professor (Dr.) Mujahid Beg chaired the Executive Council while his wife got recommended by the Visitor for appointment as Vice-Chancellor. In challenge to the appointment of Professor Naima Khatoon, as Vice Chancellor, the respondent contended that the appointment of Vice Chancellor was based on cast of votes as such it was a case of election wherein plea of bias would be unavailable. However, this Court in paragraph no.61 of the judgement has held that appointment on the post of Vice Chancellor was based on selection and not election. Consequently, this Court repelled the objection of

respondent-State that concept of bias would not be attracted in the said case.

126. This Court deprecated the participation of husband of Naima Khatoon as Chairperson to Executive Council. However, after appreciating the concept of bias, this Court was of the view that the selection of Naima Khatoon should not be disturbed.

127. The facts of the present case are distinguishable from the facts of ***Prof. (Dr.) Mujahid Beg (supra)*** inasmuch as in the present case, respondent no.6 was an applicant and candidate for consideration for the benefit under Career Advancement Scheme and she had participated in preparation of list of External Experts and experts from the list of External Experts forwarded by respondent no.6 were the members of Selection Committee, who selected the respondent no.6. Therefore, there is every likelihood of bias in participation of such expert members in the Selection Committee. Therefore, we find that there is an element of bias in the selection process. Thus, for this reason also, we find that selection of respondent no.6 is vitiated.

128. It has also been brought on record by the learned counsel for the respondent-University that now the Executive Council has been constituted and selection of respondent no.6 has been approved, copy of Resolution of Executive Council, ECR dated 09.10.2025 has been brought on record by the respondent no.3 through supplementary counter affidavit.

129. However, we are of the view that approval of appointment of the respondent no.6 by the Executive Council would not regularize the illegality committed by the respondents in carrying out the selection and therefore, we set aside the Resolution of Executive Council, ECR dated 09.10.2025.

130. For the reasons detailed above, we hold that constitution of Selection Committee is bad in law, and therefore, the selection of respondent no.6 is also bad in law. Consequently, we set aside the judgement of learned Single Judge as well as the selection of respondent

no.6 on the post of Professor, Department of Dance, Faculty of Performing Arts, BHU, Varanasi. We further direct the respondent no.3- Vice Chancellor, Banaras Hindu University, Varanasi to hold fresh selection by constituting a Committee by excluding the appellant and respondent no.6 from the PPC for preparation of panel of Experts and form a Selection Committee consisting of Experts from Katthak stream having essential qualifications to become Subject Expert within a period of two months from the date of production of certified copy of this order.

131. Consequently, the appeal is *allowed* with no order as to costs.

(Sudhanshu Chauhan,J.) (Saral Srivastava,J.)

16th February, 2026
Sattyarth/NS