REPORTABLE

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO. 3493/2020
(ARISING OUT OF SLP (C) NO. 10943/2020)

NAVIN CHANDRA DHOUNDIYAL ...APPELLANT(S)

VERSUS

STATE OF UTTARAKHAND AND ORS. ...RESPONDENT(S)

WITH
CIVIL APPEAL NO. 3494/2020
(ARISING OUT OF SLP (C) NO. 11189/2020)
CIVIL APPEAL NO. 3495/2020
(ARISING OUT OF SLP (C) NO. 11055/2020)
CIVIL APPEAL NO. 3496/2020
(ARISING OUT OF SLP (C) NO. 11023/2020)
CIVIL APPEAL NO. 3497/2020
(ARISING OUT OF SLP (C) NO. 11014/2020)

ORDER

S. RAVINDRA BHAT, J.

1) Leave granted. The parties were heard finally in these appeals. The common question which arises for decision is as to the correct interpretation of a condition in the respondent-University's statutes regarding the date of superannuation of its teachers.

2. All the appellants are working as Professors in various disciplines, in the respondent Kumaun University (hereafter "the University"). They are aggrieved by an office order dated 21.12.2019 which set out their respective dates of retirement (which were the last dates in the months they attained the age of superannuation, i.e. 65 years). The appellants relied on Statute No. 16.24 of the University, applicable to them, contending that they were entitled to continue beyond the last date of the month in which each of them attained the age of superannuation, till the *"30th of June following"* in terms of that provision. That statute reads as follows:

> *"16.24 (1) The age of superannuation of a teacher of the University, whether governed by the new scale of pay or not shall be sixty-five years.*
>
> *(2) No extension in service beyond the age of superannuation shall be granted to any teacher after the date of commencement of these statutes.*
>
> *provided that a teacher whose date of superannuation does not fall on June 30, shall continue on service till the end of the academic session, that is June 30, following and will be treated as on re-employment from the date immediately following his superannuation till June, 30, following.*
>
> *(Provided further that such physically and mentally fit teachers shall be reappointed for a further period of two years, after June, 30, following the date of their superannuation as were imprisoned for taking part in freedom struggle of 1942 and are getting freedom fighters pension)*
>
> *Provided also that the teachers who were re-appointed in accordance with the second proviso as it existed prior to the commencement to the Kumaun University (Twenty-third amendment) First Statute, 1988 and a period of one year has not elapsed after the expiry of the period of their reemployment, may be considered for re-appointment for a further period of one year."*

3. The appellants were aggrieved by the office order dated 21.12.2019 and approached the Uttarakhand High Court in writ proceedings. They argued that they were entitled to continue in service, on extension up to the end of June, 2021. They had relied on a previous judgment of the Division Bench of the High Court - *Dr. Indu Singh v State of Uttarakhand*[1]. In that judgment, the Division Bench had, on an interpretation of

1 2017 SCC Online 1527

the relevant provisions (which were worded identically to Statute No. 16.24 as in this case) held that those who retire after 30th June are *"entitled to continue till the end of the academic year"*. The Division Bench placed emphasis and importance on the legislative intent *"to cater to the supreme need to not adversely affect the academic activities of the institution and to safeguard the interest of the students.*"

4. The impugned judgment rejected the appellants' writ petition, holding that *Indu Singh*[2] could not be considered as a binding authority. It was also held that Statute No. 16.24 applies to the teachers of the university. The Division Bench said that Statute No. 16.24 (2) specifically places an embargo on extension in service beyond the age of superannuation. Statute No. 16.24 (2.1) – according to the Division Bench, merely provided that if the superannuation were not to fall on June, 30th, the teacher shall continue in the service till end of the academic session i.e. June, 30th and the same will be treated as re-employment. The Division Bench was of the opinion that whenever the superannuation of an employee falls within the month of June, in that event, his or her retirement would stand extended till the end of June of that particular month. The words used "of the end of the academic session", was held to be *"misleading"*. Further, according to the Division Bench, the end of an academic session was not *"fixated as on June, even though, most of the universities end their academic session in June, 30th. It is not a matter of rule that the same happens everywhere. Therefore, the said concession has been granted only for the month of June."* In other words, the impugned judgment considered *Indu Singh*[3] to be limited to holding that the service of an employee or teacher retiring in a given month; would be *"extendable only till the end of the month and not more."* The impugned judgment stated that if the appellants were right, every officer would get an extension for a year or so, which could never be the intention of the university or of the government.

---

2 Supra n.1

3 Supra n.1

5. It is argued by Mr. Gaurav Gupta, learned counsel for the appellants, that the impugned judgment erred in holding that the proviso to Statute No. 16.24 only enables teachers to continue till the end of the month and that to understand it to say that it assures re-employment to a superannuated teacher till the end of June of the academic session is misleading. It is submitted that the purport of the proviso has to be gathered from the circumstance - that it caters to a specific eventuality, where the teacher/official superannuates on a particular day of any month, after June 30th, of an academic year. Superannuation would normally mean that the retirement date would be in accordance with the rules. In this particular case, since the provision applied only to teachers, the intention of the statute clearly was the continuance of *status quo,* to avoid disturbance, caused by the retirement, and the likely time to be taken by the University to make alternative arrangements to fill the vacancy. This was conceived in the larger interest for the students, who would have faced difficulties in completing their syllabi in the absence of the teacher, and likely time taken for the new teacher to adjust to the subject and the students.

6. It was next submitted that the High Court should not, having regard to the precedential value of *Indu Singh*[4], held that it was incorrectly reasoned, or that its facts were different, because the provision dealing with retirement was in *pari materia* with Statute No. 16.24. He relied on the provision which was considered in *Indu Singh*[5] in support of this contention[6]. Further, Mr. Gupta submitted that a bench of co-equal

---

4 Supra n.1

5 Supra n.1

6 Para 17.15 of the First Statutes of the University of Hemavati Nandan Bahuguna, Garhwal, 1978, which read as follows:

"17.15 No extension in service beyond the age of superannuation shall be granted to any teacher after the date of commencement of these Statutes:

Provided that a teacher whose date of superannuation does not fall on June 30, shall continue in service till the end of the academic session, that is, June 30 following, and will be treated as on re-employment from the date immediately following his superannuation till June 30, following:

Provided further that such physically and mentally fit teachers shall be re-appointed for a further period of two years, after June 30, following the date of their superannuation, as were imprisoned for taking part in freedom struggle of 1942 and are getting freedom fighters pension.

strength could not have refused to follow an earlier decision; if it doubted it or wished to depart from it, the proper course would have been to refer the issue to a larger, or full bench. Counsel relied on certain decisions of this court, in this regard.[7] Counsel also relied on the decision of this court in *S.K. Rathi v Prem Hari Sharma*[8] and submitted that the impugned judgment was again in error in holding that the decision of this court was not binding, as the observations were *obiter.* It was lastly urged that the consistent view of the High Court, expressed by two other Benches [in *Professor Sri Krishna Khandelwal v State of Uttarakhand* {WP (S/B) No. 601/2017}, decided on 10.01.2018 and *Binod Kumar Singh v State of Uttarakhand* {WP (S/B) No. 328/2019, decided on 25.07.2019}] in relation to the concerned statute, i.e. proviso to Statute No. 16.24, that the teacher whose age of superannuation was *after* the 30th of June of any given year, was to be continued as a re-employed officer, till the end of the academic session, i.e. 30th June of the following year.

7. Ms. Vanshaja Shukla, learned counsel for the University and the State, urged this court not to interfere with the impugned judgment. She argued that the Division Bench had good reasons to differ from the reasoning in *Indu Singh*[9]. She emphasized that the impugned judgment took note of the submissions on behalf of the state that according to a general order, whenever an employee attained the age of superannuation (regardless of the date), he/she was entitled to continue till the end of that particular month. It was submitted that the Division Bench took note of this argument, and correctly surmised that the proviso to Statute No. 16.24 merely embodied the principle underlying that

---

Provided also that the teachers who were re-appointed in accordance with the second proviso as it existed prior to the commencement of the Garhwal University (Twenty-second Amendment) First Stututes, 1988 and a period of one year has not elapsed after the expiry of the period of their re-employment, may be considered for re-appointment for a further period of one year."

7 *S. Kasi v State through Inspector of Police* 2020 SCCOnline 529; *Nahar Industrial Enterprises Ltd v Hongkong and Shanghai Banking Corporation (*2009) 8 SCC 646; *Central Board of Dawoodi Bohra Community v State of Maharastra (*2005) 2 673;

8 (2001) 9 SCC 377

9 Supra n.1

government order, ensuring that teachers retired only at the end of the month during which they attained the age of superannuation.

8. Ms. Shukla submitted that one could not read too much into the expression *"the 30th June following"* beyond the fact that it was meant to illustrate that if a teacher were to attain the age of superannuation during June of any year, she or he could be re-employed till the end of that month. Ms. Shukla submitted that surely that did not imply that the teacher, *a superannuated employee had a right to insist that he should be re-employed till the end of June of the next year.* Learned counsel underlined the intent of the main provision, which enacts the essential principle, which is that every teacher attains the age of superannuation when she turns 65; in these circumstances, he/she cannot claim entitlement to re-employment.

9. This court is of the opinion that on a plain interpretation of Statute No. 16.24, including the proviso in question, it is clearly apparent that firstly each teacher *attains the age of superannuation* on completing 65 years {Statute No. 16.24 (1)}. Secondly, no teacher who attains the age of superannuation has a right or entitlement to re-employment; in fact, the opening expression "No teacher" appears to rule out re-employment of superannuated teachers {Statute No. 16.24 (2)}. Thirdly, and importantly the *proviso* {to Statute 16.24 (2)} carves out an exception to the main provision, inasmuch as it provides that a teacher whose *"date of superannuation does not fall on June 30, shall continue in service till the end of the academic session, that is June 30, following and will be treated as on re-employment from the date immediately following his superannuation till June, 30, following."*

10. It appears that in *S.K. Rathi*[10], a resolution, perhaps a forerunner to Statute No. 16.24 was in issue. No doubt, the petitioner there was officiating as principal. His contention was that by virtue of the resolution, he was entitled to continue *beyond the*

---

10 Supra n. 8

age of superannuation, as acting principal. This court negatived his claim to continue as principal. However, crucially, the court underlined that a teacher had a right to continue till the 30th June following:

> *"3. It is not in dispute that respondent No. 1, who was a teacher, had been appointed as an acting Principal. He attained the age of 60 years sometime in December, 1999. With an effort to continue in office, he filed a writ petition (CM. Writ Petition No. 54640 of 1999) and in the impugned order dated 5th January, 2000, the Division Bench of the High Court observed that in view of the decision of another Division Bench in Udai Narain Pandey's case, respondent No. 1 could continue to function as Principal of the Institution till 30th June 2000. Hence this appeal.*
>
> *4. On a query raised by us, learned Counsel for the respondent drew our attention to a decision of the Government contained in document dated 16th February, 1999, in which it was, inter alia, stated that for teachers like respondent No. 1 the age of superannuation was 60 years. The said decision further states that no extension in service shall be granted but "if the date of superannuation of a teacher does not fall on June 30, the teacher shall continue in service till the end of the academic session i.e. June 30, following". This is the clause on which reliance is placed by the learned Counsel in support of the decision of the High Court.*
>
> *5. There is no doubt that the said decision would enable respondent No. 1 to continue as a teacher, which is his substantive appointment, up to 30th June, following the day when he attained the age of 60 years, but this clause cannot allow him to continue as an acting Principal which is a different post altogether. It cannot be disputed that the post of Principal and of the teacher is not the same. It is a teacher on promotion who is appointed as a Principal and there is no decision of the Government giving extension beyond the age of 60 years to a Principal. This being so, the appeal is allowed and the decision of the High Court permitting respondent No. 1 to function as Principal of the Institution till 30th June, 2000 is set aside."*

11. This court no doubt held that a teacher could not continue as *principal;* yet, it decisively ruled that *"There is no doubt that the said decision would enable respondent No. 1 to continue as a teacher, which is his substantive appointment, up to 30th June, following the day when he attained the age of 60 years."* In this court's opinion, such a

categorical expression about a *pari materia* norm was decisive enough for the court to have found itself compelled to follow. Yet, the impugned judgment- with respect, characterized the expression in *S.K. Rath*[11] as *obiter.* The Division Bench, in this court's view, erred on this score.

12. The issue appears to have lingered and different benches of the Allahabad High Court, in view of the differences in phraseology of rules and statutes of various institutions, seem to have expressed divergent views in the State of Uttar Pradesh. Ultimately, this led to a reference which was answered by a Full Bench, authored by Justice D.Y. Chandrachud[12] by the judgment reported as *State Of U.P. v Ramesh Chandra Tiwari*[13].

> *"Primary schools are governed by the provisions of the Uttar Pradesh Basic Education Act, 1972 and the service conditions of the teachers are governed by the Rules framed under the Act. Rule 29 lays down (i) the age of superannuation which is 62 years; (ii) the principle that a teacher who attains the age of 62 years will retire from service on the last day of the month in which the age of superannuation is attained; and (iii) the principle that a teacher who has retired during an academic session, shall continue to work till the end of the academic session and that such period of service will be deemed to be an extended period of employment. The proviso to Rule 29 enacts a legal fiction through the subordinate legislation, the effect of which is that though a teacher has attained the age of superannuation, the teacher, notwithstanding the fact that he or she had retired during the academic session, will continue to work until the end of the academic session and that such period of service will be deemed to be an extended period of employment. Rule 29 refers to the academic session as being 1 July to 30 June, since this was the academic session which prevailed right until academic session 2013-14. The reason why a special provision is made in the proviso to Rule 29 is to ensure that the educational needs of students are not disrupted by the retirement of a teacher in the midst of an academic session. In other words, the benefit is extended not so*

---

11 Supra n.8

12 At that time, the Chief Justice of the court

13 (2015 (6) ADJ 579)

> *much for teachers (though the teachers would obviously also receive the benefit of an extended period of employment) but primarily to protect the students whose education would be disturbed by the absence of a teacher for the academic session."*

13. The above analysis would show that the view of the Uttarakhand High Court, as also the Allahabad High Court (now settled by the full bench decision) consistently have been that teachers superannuating are to be treated as re-employed or allowed to continue, in the larger interest of the pupils, has prevailed. If the view that found acceptance with the impugned judgment were to prevail, there would be avoidable disruption in teaching; the likely delay in filling vacancies caused mid-session cannot but be to the detriment of the students. That apart, this court is also of the opinion that if the state or the university wished to depart from the prevailing understanding, appropriate measures could have been taken, putting all the concerned parties to notice, through amendments. In the absence of any such move, the departure from the prevailing understanding through a discordant judgment, as the impugned judgment is, injects uncertainty. Long ago, this court had underlined this aspect while ruling that long standing or established *status quo* brought about by judgments interpreting local or state laws, should not be lightly departed from, even by this Court, in *Raj Narain Pandey v Sant Prasad Tewari & Ors*[14] in the following words:

> *"In the matter of the interpretation of a local statute, the view taken by the High Court over a number of years should normally be adhered to and not disturbed. A different view would not only introduce an element of uncertainty and confusion, it would also have the effect of unsettling transactions which might have been entered into on the faith of those decisions. The doctrine of stare decisis can be aptly invoked in such a situation. As observed by Lord Evershed M.R. in the case of Brownsea Haven Properties v. Poole Corpn.(1958 [Ch] 574), there is well-established authority for the view that a decision of long standing on the basis of which many persons will in the course of time have arranged their affairs should not lightly be disturbed by a superior court not strictly bound itself by the decision."*

14 1973 (2) SCR 835

14. This court is consequently of the opinion that the impugned judgment is in error. The very object and intent of the proviso to Statute No.16.24 is to avoid the disruption caused by discontinuity of service of a teaching staff employee or official mid-session. Therefore, the view in *Indu Singh*[15], dealing with an identical statute, was correctly interpreted; the other decisions which dealt with Statute No.16.24 [*Professor Sri Krishna Khandelwal* and *Binod Kumar Singh* (supra)] too were correctly decided.

15. For the foregoing reasons, the impugned judgment and orders of the High Court are set aside. The appellants are entitled, consequently, to continue till the end of the following June on re-employment. If any of them has been superannuated, he or she shall be issued with orders of reinstatement, with full salary for the period they were out of employment, and allowed to continue till the following June, on re-employment basis. The appeals are allowed without any order as to costs.

.....J
[UDAY UMESH LALIT]

.....J
[S. RAVINDRA BHAT]

New Delhi,
October 16, 2020.

15 Supra n. 1