

**Reserved on 05.10.2020**

**Delivered on 12.10.2020**

**AFR**

**Court No. - 74**

**Case :-** WRIT - A No. - 5744 of 2020

**Petitioner :-** Dr. Ransheel Kumar Upadhyay

**Respondent :-** Union Of India And 6 Others

**Counsel for Petitioner :-** Vikram D. Chauhan, Radha Kant Ojha  
(Senior Adv)

**Counsel for Respondent :-** A.S.G.I., Amit Kumar Singh, Kuldeep  
Singh Chauhan, Raj Deo Singh, Rijwan Ali Akhtar

**Hon'ble Ajit Kumar, J.**

1. Heard Sri Radha Kant Ojha, learned Senior Advocate assisted by Sri Vikram D. Chauhan, learned counsel for the petitioner, Sri Rakesh Pande, learned Senior Advocate assisted by Sri Amit Kumar Singh, learned counsel for respondent nos. 5 & 6 and Sri S.P. Singh Additional Solicitor General of India assisted by Sri Kuldeep Singh Chauhan, learned Central Government Counsel for respondent nos. 1 to 4.

2. The controversy involved in the present case has arisen on account of the petitioner's lien coming to an end with the parent employer for attaining the age of superannuation and the respondents having appointed the petitioner taking him to be in service with the parent employer, it is alleged, it has been on deputation basis. Thus, service of the petitioner has been treated to be co terminus with that of his previous employment.

3. Facts of the case can be drawn in a narrow compass like this

that respondent no. 5 namely the Central Institute of Higher Tibetan Studies, Sarnath, Varanasi, U.P., a deemed Central University, issued an advertisement bearing no. 2/2015 inviting applications from the eligible candidates for appointment on the post of Registrar of the University besides other posts.

4. The petitioner was selected and offered appointment vide letter dated 22.10.2016. The petitioner was given the option to join first if he accepted the offer and agreement was to be executed later. Petitioner accepted offer and reported for joining on 16.11.2016 and so he was issued with a formal order of appointment dated 17.11.2016 on deputation basis for a period of five years from the date of joining. Agreement was executed on 15.12.2016. The Banaras Hindu University, the previous employer issued an order permitting deputation for three years w.e.f. 16.11.2016 upto 15.11.2019 and then for another six months i.e. 30.06.2020 when the petitioner would finally attain the age of 60 years, the superannuation admissible to his original post of Assistant Registrar with the University.

5. The Board of Directors, the ultimate appointing authority of Tibetan University discussed the issue of continuance of the appointment of the petitioner as deputation was to end on 30.06.2020, in its meeting held on 29.06.2020 and resolved *per* majority to continue him till 15.11.2021, the date when five year term

will come to end.

6. A consequential order was issued by the Vice Chancellor extending the term of appointment of the petitioner till 15.11.2021. However, the Joint Secretary, Ministry of Culture, Government of India who had put a note of dissent in the meeting of Board of Governors held on 30.06.2020, issued a letter cum order to the Vice Chancellor, that Government of India in exercise of power vested with it under clause 8 of the Memorandum of Association, overriding the decision of the Board, directed for relieving of the petitioner w.e.f. 30.06.2020. The Vice Chancellor issued a consequential order on 01.07.2020 and hence this petition.

7. The contention advanced by learned Senior Advocate appearing for the petitioner is that under the recruitment rules framed for the purposes of selection and appointment on the post of Registrar, there are two sources of recruitment: one is direct recruitment; and the other is recruitment of the officers already under employment on a deputation basis. He argues that the term of appointment as per the offer letter of appointment is fully governed by the agreement to be reached between employer and the employee i.e. the petitioner and the respondent no. 5 herein this writ petition and also the order of appointment. He submits that though the petitioner had come on deputation as it was one of the sources of

recruitment but the petitioner had been appointed for a period of five years of short term contract basis and submits that he cannot be made to retire prior to attaining the age of 62 years. He submits that the deputation would last until the time a person attains the age of superannuation and even if a person has more years to go before he attains superannuation in the parent University or Department, his continuation on deputation would not last beyond the period of five years. He also submits that even if a person is appointed for a period of five years but if he attains the age of 62 years, he would not be continued beyond that age. He argues that a person can have a term less than five years, if he attains the age of superannuation i.e. 62 years. This age factor is not governed either by the term deputation or by the term contract. He has drawn the attention of the Court to the terms and conditions no. 2 of the agreement which clearly stipulates that *“the appointee shall be on service under this agreement w.e.f. date of joining for a period of five years or till he attains the age of superannuation of 62 years, whichever is earlier.”*

8. He argues that this term and condition is in line with the order of appointment dated 17.11.2016 which specifically stipulates the appointment of the petitioner as *“on deputation basis for a period of five years from the date of his joining.”* He further argues that the selecting University fully knows that a person who is coming on

deputation from parent University or Department then his age of retirement in that Department is governed by the service conditions and rules applicable to the post of that department and therefore, the respondent University knew very well that the petitioner would attain the age of superannuation in the parent University by 30.06.2020 which is a period of 18 months lesser to the period for which he was appointed by the respondent no. 6 and therefore, both the office order of appointment as well as offer of appointment and also agreement could have contained a clause that the petitioner would continue on a deputation basis for a period of five years or till he attained the age of superannuation in the parent University, whichever was earlier. However, this is not the condition given either in the offer of appointment or in the office order of appointment or in the contract of the agreement of service.

9. Yet another argument has been advanced by learned counsel for the petitioner that the Board of Governors is admittedly an appointing authority and, therefore, it is the Board of Governors who is empowered to dispense with the services of the petitioner, to discontinue or otherwise to discontinue the services of the petitioner and once the Board of Governors has passed a resolution extending the services period of the petitioner, a mere member of the Board who happened to be the Joint Secretary, Ministry of Culture,

Government of India could not have given executive direction to the Vice Chancellor to dispense with the services of the petitioner / discontinue the services of the petitioner/ disengage the petitioner as he has attained the age of superannuation with the parent University and so his deputation would be taken to be co terminus with the age of superannuation. It is argued that the Vice Chancellor has acted mechanically in the matter in complete derogation to the authority of Board of Governors and unless such an agenda item is placed for reconsideration of Board of Governors, both the Joint Secretary as well as Vice Chancellor could not have acted contrary to the resolution passed by the Board of Governors on 29.06.2020. Thus, it is argued that they have acted in clear transgression of the authority vested with them under the Memorandum of Association and the Rules governing the University as well as its employees. He has argued that clause – 8 of Memorandum of Association which has been heavily relied upon by the Joint Secretary in her letter dated 30.06.2020, do not contemplate any such administrative exercise of power as has been done in the present case. He argues that the power has been vested with the Government of India for the purpose of carrying out or achieving the objects as set out in Memorandum of Association and Rules. One more argument has been raised that the orders have been passed in gross violation of principles of natural justice and hence unsustainable.

10. Learned counsel for the petitioner has relied upon the judgment of Apex Court in the case of **Dr. L.P. Agarwal v. Union of India and others [(1992) 3 SCC 526]**; and also in the case of **Union of India and Anr v. Shardindu [(2007) 6 SCC 276]**.

11. *Per contra* the argument advanced by Sir Rakesh Pande, learned Senior Advocate appearing for the respondent University is that once the petitioner has been appointed on deputation basis, the appointment of the petitioner would only last till his services last in the parent department. He submits that a person on deputation means a person is to continue till his lien continues in respect of the vacancy against which he is working in the parent department. He submits that though the language of the agreement is not happily worded and so also the order of appointment and the offer of appointment but rules since provide appointment either by direct or on deputation and the offer of appointment clearly stipulates that it was an appointment/ or short term contract, the offer of appointment to the petitioner would be deemed to be only on deputation not on a short term contract. He submits that the petitioner's appointment could have been made only till he enjoyed lien on the post on which he was working in the parent department. He also argues that the University could not have extended the appointment *de hors* the rules and, therefore, in order to ensure that the rules framed for the purposes of

recruitment, selection and appointment on the post of Registrar are fully complied with and followed in their correct spirit, the Government of India does enjoy such power under Clause 8 of the Memorandum of Association framed for the University in question. He, therefore, finds no fault with the order issued by the Secretary and the consequential order of Vice Chancellor and therefore, submits that the writ petition deserves to be dismissed.

12. Sri S.P. Singh, learned Additional Solicitor General argues on similar line and submits that the petitioner having been appointed on deputation basis, his appointment would last only till he gets deputation orders from the University and the moment he attained superannuation with the parent University, his deputation automatically ceased to exist and, therefore, he could not have been continued with the respondent University in the capacity of Registrar. He argues that the Joint Secretary in her order has taken note of various factors and the opinion expressed from time to time *qua* the issue in question and the University having been found at fault in giving extension to the service of the petitioner beyond the scope of appointment and rules, there was no option left for the Joint Secretary, Government of India but to step in to correct and rectify the error. He submits there are ample powers with the Government of India under Clause 8 of the Memorandum of Association.

13. Learned counsel for respondent Union of India and of respondent University are relying upon the judgment of Apex Court in the case of **Umapati Chaudhary v. State of Bihar and Anr [AIR 1999 SC 1948]**; and also in the case of **Kunal Nanda v. Union of India and Anr. [AIR 2000 SC 2076]**.

14. Rival submissions fall for consideration.

15. Having heard learned counsel appearing for respective parties, the Court finds that following three issues emerge and are needed to be addressed to:

(i) Source and procedure of appointment of Registrar of the respondent University and the impact of Rules framed for such purposes;

(ii) Nature and tenure of appointment offered to the petitioner against the post of Registrar by the respondent University; and

(iii) Scope of power of the Government of India under clause 8 of Memorandum of Association of the University viz a viz powers of the Board of Governors in matters of appointments on the post in question.

16. Coming to the **first issue**, it is necessary to first refer to the

advertisement issued by the University for the post in question and the Rules framed for the same.

17. The advertisement as issued by the University is reproduced hereunder:

*“CENTRAL UNIVERSITY OF TIBETAN STUDIES  
(Deemed to be University) Sarnath, Varanasi-221007 (U.P.  
Advt. No. CUTS/Adm. Rectt. 02/2015*

*Applications in the prescribed application form are invited from the eligible candidates for appointment to the following posts.*

1. **Registrar (one-UR, Contract/deputation)**, 2. Asstt. Registrar (one-UR), 3. Asstt. Engineer Civil (one-UR), 4. Section Officer (One-UR), 5. Senior Clerks (Four : 2-UR, 1-OBC, 1-OH.), 6. Jr Clerks (Six: 1-UR, 3-SC, 1-OBC, 1-OBC (Backlog)), 7. Professional Assistant (Two: 1-UR, 1-OBC), 8. Sr. Computer Operator Gr. II (One-UR), 9. Semi Professional Assistants (Seven: 1-UR, 1-UR (Tib. Special), 1-UR (Audio Visual), 1-OBC, 2-OBC (Tib. Spl), 1 OBC (backlog)], 10. Library Attendant (Three: 1-UR, 1-OBC, 1-VH), 11. Jr. Engineer Electrical (1-UR), 12. Dy. Registrar (one-UR on deputation for one year), 13. Public Relation Officer (one-UR), 14. Nurse/ Compounder (one-UR), 15. Pump Operator (One-UR), 16. Plumber (One-UR), 17. Dy. Librarian (One-UR), 18. Asstt. Librarian (one-UR).

*The eligibility criteria, application forms and other details in respect of all abovementioned posts can be downloaded from the Website of the central University of Tibetan Studies [www.cuts.ac.in](http://www.cuts.ac.in). Duly filled application form, separately for each post with self – attested required enclosures should reach by registered post/ by hand only to the office of the Registrar, Central University of Tibetan Studies, Sarnath,*

*Varanasi – 221007, U.P. within 30 days from the date of advertisement in the Rozgar Samachar.*

*Registrar”*

*(Emphasis added)*

18. From a bare reading of aforesaid advertisement, it is clear that the advertisement was issued for an appointment on contract/deputation basis to a candidate in the unreserved category. The eligibility criteria including application form and other details were made available on the web portal of the University. The recruitment rules for administrative posts have been prescribed for and the post of the Registrar is classified as a Group – A post. The Rules, as have been framed for the administrative post in question have been brought on record as Annexure No. 2 to the writ petition, have not been denied in the counter affidavit and accordingly for ready reference, are reproduced hereunder:

Central University of Tibetan Studies

(Deemed University)

Sarnath Varanasi – 221007

|   |   |   |
|---|---|---|
| 1 | Name of Post                                    | Registrar                               |
| 2 | No. of Post(s)                                  | 1 (One)                                 |
| 3 | Classification                                  | Group A                                 |
| 4 | Scale of Pay (Revised)                          | PB-4-Rs. 37400-67000+GP Rs.<br>10,000/- |
| 5 | Whether Selection Post or<br>Non Selection Post | N.A.                                    |
| 6 | Age limit for direct                            | N.A.                                    |

|    |   |   |
|----|---|---|
|    | recruitment   |   |
| 7  | Educational and other qualifications required for direct recruitment  | N.A.  |
| 8  | Whether the age and qualification prescribed for direct recruitment will apply in case of promotees   | N.A.  |
| 9  | Period of probation, if any,  | N.A.  |
| 10 | <b>Method of recruitment whether by direct recruitment or by promotion or by deputation and percentage of the vacancies to be filled by various methods</b> | <b>Deputation/ Short term Contract</b>  |
| 11 | <b>In case of recruitment by deputation/ short term contract, grades from which deputation/ short term contract to be made</b>                              | Deputation/ Short Term Contract:<br>Qualifications:<br>Holding the analogous post on regular basis. Or<br>I) A Master's Degree with at least 55% of marks or its equivalent grade of B in the UGC Seven Point Scale.<br>ii) At least 15 years of experience as Assistant Professor in the AGP of Rs. 7000 and above or with 8 years' of service in the AGP of Rs. 8000 and above including as Associate Professor along with experience in educational administration. Or<br>Comparable experience in research establishment and/ or other institutions of higher education. Or<br>15 years of administrative experience, of which 8 years shall be as Deputy |

|    |                                       |  |
|----|---------------------------------------|--|
|    |                                       | Registrar or an equivalent post<br>Desirable Qualifications: Ph. D./ MBA/<br>LLB<br><b>Age Limit : 56 years (both for<br/>deputation and Short Term<br/>Contract)</b>  |
| 12 | Composition of Selection<br>Committee | Annexure – 1   |
| 13 | <b>Remarks</b>                        | <b>I. The period of Deputation including the period of deputation in another Ex. Cadre post held immediately preceding this appointment in the same or some other organization/ department shall ordinarily not exceed 5 years.</b><br><br>II. The minimum requirements of 55% shall not be insisted upon for the existing incumbents who are already in the University system. However, it should be insisted upon for those entering the system afresh as per the UGC letter No. F.3-2/99(PS) dated 23.6.1999. |

*(Emphasis added)*

19. Clause 10 of the aforesaid Rules provides two sources of recruitment: (a) by direct recruitment and (b) by either promotion or deputation. Clause 11 of the Rules provides that in case of recruitment on deputation or a short term contract, one must have 15 years administrative experience and out of which 8 years should be at least of a Deputy Registrar or equivalent post. Clause 13 of the Rules provides that period of deputation including the period of deputation

in another ex cadre post held immediately preceding this appointment in the same or some other organization / department shall ordinarily not exceed five years, meaning thereby, the maximum period of deputation would be five years that a person can enjoy while holding the post of Registrar and at the same time having lien on a post earlier held by him in the parent department.

20. A conjoint reading of various clauses of the rules clearly indicate that term for appointment on the post of Registrar would be governed by either short term contract or five years as a deputation, but since the minimum age prescribed is 56 years for a candidate to apply and the age of Registrar of a Central University is 62 years, the appointment can even last beyond the period of five years. Rules use words and expression “ordinary shall not exceed five years” in case of appointment on deputation.

21. Since the source of recruitment as per rules is either direct or a deputation and the advertisement did not provide for any such particular source to be eligible, it was a recruitment process undertaken in respect of all eligible candidates direct or on deputation and it was after selection that appointment was to be governed by the term of appointment and agreement to be reached between the incumbent and the respondent University in that regard. Rules contemplate that even a deputationist could be appointed for five

years though ordinarily a deputation should be for five years and beyond and so even a direct recruitment could be appointed for a period less than five years. Further since the age of superannuation on the post in question is 62 years in Central Universities, term of appointment would be co terminus with the age of superannuation. Rules do not contemplate an appointment to be co terminus with the period of deputation, rather make deputation to be co terminus with the term of appointment. Deputation herein is for the purposes of recruitment as a source only. If the University required a Registrar for two years or three years only, it would prefer a candidate on deputation as any fresh candidate from direct recruitment for such a short term may not be available. Moreover, the age is 56 years and any Assistant Registrar of Central University below the grade of Registrar has the age of superannuation as 60 years only. Thus, the appointment if treated to last as per deputation, it will not be for five years because deputation would end with the superannuation and under such circumstances, the rule could not have used words and expression of five years for appointment on deputation. Further rule says such period shall not ordinarily be for more than five years, meaning thereby period of appointment of a candidate may be taken initially on deputation but is quite extendable beyond the deputation i.e. upto 62 years of age.

22. So in the ultimate analysis the Court comes to the conclusion that even if a candidate is selected as on deputation, his term of appointment can be for a term beyond the period of deputation if deputationist comes to end prior to attaining the age of 62 years or term of his appointment which ever is earlier. Even in case if term comes to end, it is quite extendable upto the age of 62 years in exceptional circumstances not ordinarily, but of course, subject to the discretion of the appointing authority.

23. Now the **second issue**, this issue would largely depend upon the terms of appointment order / agreement reached between the parties and in the event of confusion, upon the relevant rules. Now coming to the facts of the case in hand, I find that the petitioner who happened to be Joint Registrar (Accounts) in the Central Office of Banaras Hindu University, Varanasi, another Central University, applied for the post of Registrar and came to be selected and consequently an offer of appointment was issued to him on 22.10.2016. This offer of appointment is reproduced hereunder:

*“Central University of Tibetan Studies, Sarnath, Varanasi  
(Deemed to be University)*

*CIHTS/Admn-II/GNS/Registrar/560/16-1993 Dated 22.10.2016*

*To,*

*Dr. Ransheel Kumar Upadhyay,  
Joint Registrar (Accounts)-II  
R.O. (Finance), Central Office,  
B.H.U., Varanasi.-05*

*Ref.: Your application dated 08.12.2015*

Sir,

*In pursuance of the approval of the Board obtained through circulation, you are hereby offered the post of Registrar, CUTS, Sarnath, Varanasi on the below mentioned terms and conditions:-*

|                                 |   |
|---------------------------------|---|
| <i>Salary</i>                   | <i>Salary will be fixed as per rules.</i> |
| <i>PB-4</i>                     | <i>37400-67000+GP 10000/-</i>             |
| <i>Dearness Allowance</i>       | <i>As per rules</i>                       |
| <i>Other Allowances, if any</i> | <i>As per rules</i>                       |

*Your appointment is on deputation/ or contract basis for a period of 05 years.*

*You are given one month's time from the date of the receipt of this offer of appointment to inform the University of your willingness to join the post, failing which the offer of appointment would be treated as cancelled.*

***The terms of the appointment and services as mentioned above are subject to the Memorandum/ Bye Laws, Rules and Regulations of the University applicable from time to time.***

***You shall have to enter into a written contract with University within three months time of your joining for which a prescribed proforma shall be furnished shortly.***

***If you accept the offer on the terms stated above, please report yourself to the Vice Chancellor for duty at an early date but not later than 22<sup>nd</sup> November, 2016.***

*Your joining report should be submitted along with a copy of your LPC, Matriculation/ or (equivalent) and other certificates self attested in support of your age and*

*qualification, two character certificates by competent authorities and a Medical fitness certificate from a recognised Medical Officer, Grade-I.*

*Vice Chancellor*

*CC: to*

- 1. Registrar*
- 2. Joint Registrar (Admn-I)*
- 3. I/c Librarian*
- 4. Asstt. Registrar (Admn-II)*
- 5. Personal file*

*Vice Chancellor”*

*(Emphasis added)*

24. This offer of appointment dated 22.10.2016 besides providing pay scale etc. specifically provided that *“the terms of appointment and services, as mentioned above are subject to the memorandum / bye-laws, rules and regulations of the University applicable from time to time”*, and it further provided that the petitioner *“shall have to enter into a written contract with the University within three months time of your joining for which a prescribed proforma shall be submit shortly.”* This offer of appointment quite interestingly also provided that *“if you accept the offer on terms stated above, please report yourself to the Vice Chancellor for duty at an early date but not later than 22<sup>nd</sup> December, 2016.”*

25. The above contents of the letter giving offer of appointment to the petitioner, therefore, clearly stipulates that the petitioner, if accepts the conditions, as contained in the offer, shall report for duty before the Vice Chancellor prior to 22.10.2016. The terms and

conditions of service of the petitioner shall be a subject matter of written contract to be entered by the petitioner with the University within three months of his joining. So virtually this offer of appointment was an appointment letter.

26. It appears that the petitioner reported for duty accepting the offer of appointment on 16.11.2016 and so an office order for appointment was issued on 17.11.2016. The office order of appointment dated 17.11.2016 is also reproduced hereunder:

*“Central University of Tibetan Studies, Sarnath, Varanasi*

*(Deemed to be University)*

*CUTS/Admn-II/GNS/Registrar/560/16*

*Date. 17.11.2016*

*Office Order*

*With reference to the offer letter No. CUTS/Admn-II/GNS/Registrar/560/16-1993 dated 22.10.2016 and his joining report dated 16.11.2016 forenoon, Dr. Ransheel Kumar Upadhyay is hereby appointed to the post of Registrar in the PB-4 37400-67000 + GP10000/- on deputation basis for the period of five year from the date of his joining i.e. 16.11.2016 F/N. His salary will be fixed as per rule of CUTS.*

*(Prof. N. Samten)  
Vice Chancellor*

*To,*

*Dr. Ransheel Kumar Upadhyay,  
Registrar, CUTS*

*Copy forwarded for information and necessary action to:*

- 1- All Deean/ Heads of Faculty/ Departments*
- 2- Assistant Registrar Admn-II*
- 3- In charge, Library*
- 4- Estate Officer*

- 5- Joint Registrar Admn-I
- 6- In charge Account
- 7- In charge Examination
- 8- Heads/ Incharge, all Deptt. Unit, Section
- 9- Personal file of Dr. R.K. UPadhyay

(Prof. N. Samten)  
Vice Chancellor”

(Emphasis added)

27. From bare reading of the aforesaid order of appointment, it clearly transpires that the petitioner was appointed on a deputation basis but for a period of fixed term of five years from the date of his joining. It is worth noticing that the Banaras Hindu University sanctioned deputation for a period of 3 years to the petitioner vide letter dated 07.11.2016 w.e.f. 16.11.2016. As per the terms of offer of appointment and the appointment order, an agreement of service was entered into between the respondent University and the petitioner on 15.12.2016. The contract of agreement of service as entered between the petitioner and respondent no. 5 is reproduced hereunder:

**“CONTRACT/ AGREEMENT OF SERVICE**

*AN AGREEMENT for service made this 15<sup>th</sup> (fifteenth) date of December Two thousand sixteen 2016 between Dr. Ransheel Kumar Upadhyay (hereinafter called the appointee) of the one part and the Central University of Tibetan Studies, Sarnath, Varanasi, registered as a Society under the Societies Registration Act (Act XXII of 1860) hereinafter called the CUTS of the other part.*

**WHEREAS, in terms of Rule 8(K), the Board of Governors of the CUTS has been pleased to appoint the appointee as Registrar, the appointee has accepted such**

***appointment upon such terms and conditions hereinafter appearing. NOW THESE PRESENTS WITNESSES and the parties hereto respectively agree as follows:***

1) *That this agreements of service shall be deemed to have been entered into subject, at all times, to the provisions of the Memorandum of Association and Rules and Regulations of the Society and also the Rules of the CUTS.*

2) ***The Appointee shall be on service under this agreement with effect from the date of joining for a period of five years or till he attains the age of superannuation of 62 years, whichever is earlier.***

3) *The Appointee shall be a full time employee of the CUTS.*

4) *The Appointee shall devote his whole time to the service of the CUTS and will be subject to the Rules ad code of Conduct laid down by the CUTS for the Staff as amended from time to time.*

5) *The Services of Appointee may during the period of Deputation/ contract be terminated by the CUTS at any time by three calendar months' notice given in writing without assigning any reason. Provided the CUTS may in lieu of notice herein give the appointee a sum equivalent to the amount of his basic pay with admissible allowances for three months.*

*The Appointee may terminate his service at any time by giving to the CUTS three calendar months' notice in writing.*

6) *During the period of his service except in respect of any period of suspension/ reduction in rank and also any period of leave without pay, the appointee shall be entitled subject to the Indian Income Tax to an initial pay of Rs. .... in the scale of Rs. 37400 – 67000 G.P. Rs. 10000/-or pay in any other scale of a post to which he is subsequently appointed by the*

*CUTS. He will draw his annual increment unless it is withheld and other allowances like D.A. etc. as admissible under the Rules of the CUTS.*

7) *The appointee shall be entitled to leave as admissible under the rules of the CUTS.*

8) ***In respect of any matter for which no provision has been made in this agreement the appointee will be governed by the Memorandum of Association and Rules and Regulations of the Society/ CUTS for the time being in force.***

*IN WITNESS WHEREOF this day and the year first above written, the Chairman of the Board of Governors of the CUTS has hereunto set his hand and the appointee has hereunto set his hand.*

|   |   |
|---|---|
| <i>Signed and delivered for the Central<br/>University of Tibetan Studies by The<br/>Chairman, Board of Governors of the<br/>CUTS</i> | <i>Chairman,<br/>Board of Governors,<br/>Central University of<br/>Tibetan Studies, Sarnath,<br/>Varanasi</i> |
|---|---|

*In the presence of (Signature of witness with address)*

*Signed and delivered by the said appointee,*

*in the presence of (Signature of witnesses with addresses*

*(Appointee)"*

*(Emphasis added)*

28. Since the petitioner was offered appointment for a period of five years and his contract was also for a period of five years and since the source of appointment of the petitioner was deputation, the question arose of the petitioner's continuance in office as per terms

and conditions of the agreement beyond the period of deputation.

29. Rule 1 have already discussed above while dealing with the first issue and have clearly held that even if a candidate is selected to continue on deputation, his appointment would be governed by the term fixed in the appointment order. Deputation being only a source of recruitment, it would not govern the terms of appointment which is independent of his status as an employee of a parent department/ employer. It will be well within the right of the University giving appointment on deputation, to continue such employee even if previous employer dispenses with the services of such a candidate.

30. The tenure of appointment given in the appointment order is five years or attaining the age of 62 years, whichever is earlier. While the appointment order uses the words and expression "*deputation basis*", the agreement does not use the word deputation at all much less an expression, "appointment is co terminus with deputation". It is rather an absolutely independent appointment of an incumbent's existing lien on the post he has been working with his previous employer at the time of this new appointment.

31. In my view, therefore, the term of appointment of the petitioner is five years or upto the age of 62 years whichever is earlier.

32. One of the arguments advanced by learned counsel for the

Union of India and also learned counsel appearing for the University is that Rules if provide for appointment on deputation and appointment order does not fix appointment co terminus with deputation by transcribing such an expression, it would only be a case where appointment order can be taken as not happily worded and so also language vide the agreement, should be taken as inadvertently transcribed, and so such an appointment order / agreement would not change the term of appointment so as to extend it beyond the period of deputation prescribed by the previous employer.

33. I am not impressed by such an argument either. The cardinal rule of fixing appointment under service jurisprudence is to go by appointment order and/ or terms of agreement, if reached between employer and employee and in the event of any ambiguity only, recourse to have of rules. In the present case neither there is any ambiguity in the appointment order *qua* term of appointment nor, any such ambiguity is in the agreement reached between the petitioner and the respondent University on 15.12.2016. The condition no. 2 under the agreement clearly stipulates “***The Appointee shall be on service under this agreement with effect from the date of joining for a period of five years or till he attains the age of superannuation of 62 years, whichever is earlier.***”

34. Thus under above facts and circumstances, there is no question to take recourse to Rules. However, the Rules do provide for appointment for five years and in exceptional circumstances beyond five years even in deputation cases. So even if deputation with the previous employer ended with the age of superannuation before the expiring of the term of appointment which is five years or upto 62 years of age as is in the present case, the University was well within its authority to continue with such appointment upto the period appointment was made. One must remember that unless expressly barred by rules, in service jurisprudence, term of appointment is always extendable at the discretion of employer, at least upto the age of superannuation. In matters of appointment on deputation, the period of deputation is only at the discretion of the employer sanctioning deputation but the continuance of such an applicant beyond the period is always at the discretion of the employer who has given appointment on deputation unless and until the lending employer objects and withdraws deputation.

35. In the case of Dr. L.P. Agarwal (*supra*) relied upon by learned Senior Advocate appearing for the petitioner, the issue was that once the Director of AIIMS was appointed for a period of 5 years or till he attained the age of 62 years, whichever was earlier, whether such an employee could have been prematurely compulsorily retired. The

appointment order of the Director Dr. Agarwal in the said case clearly stipulated that he was being appointed “w.e.f. February 18, 1979 for a period of 5 years, or till he attains the age of 62 years, whichever is earlier.” However, the Institute governing body decided to prematurely retire the Director from service by passing a resolution as below:

*“The Institute resolved, in the public interest, to retire Dr. L.P. Agarwal, Director, All India Institute of Medical Sciences, New Delhi, with immediate effect by giving him three months' pay and allowances, in lieu of notice.”*

*[(quoted from the judgment (supra)]*

36. The Division Bench of Delhi High Court rejected the claim of Dr. Agarwal for continuance for the period as stipulated in the appointment order. However, in the Special Leave Petition, the judgment was reversed. Quoting the contention of the appellant and *ratio* of the judgment of High Court vide paras 14 and 15, the Apex Court vide para 16 has held that such a premature retirement in a matter of contract of appointment where tenure has been clearly stipulated and the post is to be filled up by direct recruitment, such premature retirement was clearly unsustainable. Paras 14, 15 and 16 of the judgment are reproduced herein below:

14. *The appellant on the other hand contended before the High Court and reiterated the same before us that the post of Director of*

*the AIIMS is a tenure post under the Recruitment Rules of the Institute and he was appointed to the said post by way of direct recruitment. According to him his tenure could not be cut short by bringing in the concept of superannuation or premature retirement which is alien to a tenure post.*

15. *The High Court rejected the contention of the appellant on the following reasoning :-*

*"Though the Director's post is mentioned as a tenure post in the amended schedule to the recruitment rules relied upon (and at this stage we make no comment as to whether the said rules are statutory), the petitioner's appointment itself was for a period of 5 years or the date when he attains the age of 62 years, whichever is earlier.....In our view, reading the order of appointment of the petitioner the concept of superannuation is to be clearly found to be existing. The order of appointment does not state that the petitioner was being appointed Director for a period of 5 years or on a tenure of 5 years. The tenure mentioned in the appointment order is 5 years or attainment of the age of 62 years, whichever is earlier. The age of 62 years mentioned in the appointment order is obviously in consequence of the proviso to Regulation 30(2) which permits the normal age of superannuation to be extended from 60 years to 62 years for members of the teaching faculty in cases of persons who are exceptionally talented, subject of course to their physical fitness and continued efficiency. The petitioner cannot be heard to say that he was appointed for a tenure of 5 years. The post may or may not be tenure post what is relevant is the terms on which the petitioner was appointed.....We now turn to the argument regarding what the petitioner claims to be a statutory rule which respondents 1 to 3 say is not a statutory rule. We need not express any firm opinion as to whether the rule relied upon is or is not statutory. The Schedule relied upon is of the Recruitment Rules. It states that the post of the Director is as Class I post to be filled direct recruitment. The upper age limit for the post is 50 years and the tenure is 5 years inclusive of one year probation. As the Supreme Court had held in Dr. Bool Chand's case the tenure of 5 years fixed by the rules is a limitation placed upon the appointing authority and does not create an indefeasible right in the person appointed as Director to a five year term. In any case, as we have held earlier, the petitioner is bound by the terms of his own appointment which was to the effect that the tenure was to be of five years or till the petitioner attained the age of 62 years*

*whichever was earlier. Indeed, the manner in which the appointment order is worded makes it clear that the appointing authority was conscious of the limitation placed upon it that the tenure should not be more than 5 years. That is why it fixed the maximum period of tenure at 5 years or till the petitioner attained the age of 62 years, whichever expired earlier".*

16. We have given our thoughtful consideration to the reasoning and the conclusions reached the High Court. We are not inclined to agree with the same. Under the Recruitment Rules the post of Director of the AIIMS is a tenure post. The said rules further provide the method of direct recruitment for filling the post. These service-conditions make the post of Director a tenure post and as such the question of superannuating or prematurely retiring the incumbent of the said post does not arise. The age of 62 years provided under Proviso to Regulation 30(2) of the Regulations only shows that no employee of the AIIMS can be given extension beyond that age. This has obviously been done for maintaining efficiency in the Institute-Services. We do not agree that simply because the appointment order of the appellant mentions that "he is appointed for a period of five years or till he attains the age of 62 years", the appointment ceases to be to a tenure-post. Even an outsider (not an existing employee of the AIIMS) can be selected and appointed to the post of Director. Can such person be retired prematurely curtailing his tenure of five years? Obviously not. The appointment of the appellant was on a Five Years Tenure but it could be curtailed in the event of his attaining the age of 62 years before completing the said tenure. The High Court failed to appreciate the simple alphabet of the service jurisprudence. The High Court's reasoning is against the clear and unambiguous language of the Recruitment Rules. The said rules provide "Tenure means for five years inclusive of one year probation" and the post is to be filled "by direct recruitment". Tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of

*the office on completion of his tenure. The question of prematurely retiring him does not arise. The appointment order gave a clear tenure to the appellant. The High Court fell into error in reading "the concept of superannuation" in the said order. Concept of superannuation which is well understood in the service jurisprudence is alien to tenure appointments which have a fixed life span. The appellant could not therefore have been prematurely retired and that too without being put on any notice whatsoever. Under what circumstances can an appointment for a tenure be cut short is not a matter which requires our immediate consideration in this case because the order impugned before the High Court concerned itself only with premature retirement and the High Court also dealt with that aspect of the matter only. This Court's judgment in [Dr. Bool, Chand, v. The Chancellor, Kurukshetra University](#), [1968] 1. S.C.R. 434 relied upon by the High Court is not on the joint involved in this case. In that case the tenure of Dr. Bool Chand was curtailed as he was found unfit to continue as Vice-Chancellor having regard to his antecedents which were not disclosed by him at the time of his appointment as Vice-Chancellor. Similarly the judgment in [Dr. D.C.Saxena v. State of Haryana](#), [1987] 3 S.C.R. 346 has no relevance to the facts of this case.*

*(Emphasis added)*

37. The analogy sought to be drawn by learned Senior Advocate in the case before the aforesaid judgment is that if the Court comes to the conclusion that it is an appointment for fixed term, a premature annulment of appointment is clearly an inconceivable concept in service jurisprudence. In my view the above judgment squarely covers cases where appointments are made on contract basis.

38. Coming to the second authority cited by learned Senior

Advocate in the case of **Union of India and another v. Shardindu (2007) 6 SCC 276**, I find that the issue involved in the said case was a premature termination of probation by the authority appointing on probation was whether legal merely on the ground that the lending department had initiated recovery proceeding against such an employee. The Apex Court held that merely because the proceedings have been initiated, the services could not have been terminated prematurely of a deputationist by a borrowing department unless the rules so provided. Vide para 20 the Court held thus:

*“20- As against this, learned Senior Counsel for the respondent, Mr. Gupta has strenuously urged before us that in case of statutory appointment there is no scope to cut short except to terminate the services of the incumbent in the manner provided under the Act. In this connection, our attention was invited to a decision of this Court in Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi (1975) 1 SCC 421 wherein the Constitution Bench held that the termination of service of an incumbent by the Corporation created by the statute without complying with the regulations framed by the Corporation cannot be made. The reason was that the termination contravened the provisions contained in the regulations. In short, when the appointment is made, the service conditions are laid down. The termination of such appointment could only be made in the manner provided in the statute and by no other way. Once the regulations have been framed and detailed procedure laid down therein, then in that case if the services of an incumbent are required to be terminated then that can only be done in the manner provided and none else. Similar view has been taken in State of Kerala v. Mathai Verghese (1986) 4 SCC 746. Therefore, in this background, we are of opinion that the submission of learned Additional Solicitor General cannot be sustained.*

*(Emphasis added)*

39. This above authority in my opinion is on different set of facts and does not come to the aid of the petitioner.

40. Learned Senior Advocate appearing for the University as well as learned Additional Solicitor General appearing for Union of India have relied upon the judgment of Apex Court in the case of Umapati Chaudhary (*supra*), the issue in the said case was absorption of employee in the borrowing department where the lending department had consented.

41. In the aforesaid case challenge was made that the confirmation of a deputationist in the borrowing department as a controller of examination. The appellant before the Apex Court in the said case was originally Lecturer of the University and after constitution of Bihar Sanskrit Education Board, with the consent of the University, got appointed as a controller of examination and this is how he came to be later on confirmed in such capacity even while working on deputation.

42. The Patna High Court in the above case disposed of the writ petition questioning the confirmation of the deputationist, with a direction to the State Government to decide whether they needed the controller of examination and in that event they should lay down

procedure for substantive appointment. This judgment was challenged before Apex Court. However, in the meanwhile the very deputation of the appellant was put to end with the termination of his services and it also came to be approved by the State Government. These orders were challenged before the Apex Court in I.A. No. 1 of 1992 and were stayed by the Apex Court. The appellant's reinstatement was directed and while the petition kept pending the appellant deputationist retired sometimes in the year 1996.

43. Defining the concept of deputation and the rule discretion of lending and borrowing departments, the Apex Court vide para 9 held thus:

*“Deputation can be aptly described as an assignment' of an employee (commonly referred to as the deputationist) of one department or cadres or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled. The University, the parent department or lending authority, the Board, the borrowing authority and the appellant the deputationist, had all given their consent for deputation of the appellant and for his permanent absorption in the establishment of the borrowing authority. There is no material to show that the*

*deputation of the appellant was not. in public interest or it --.'as vitiated by favoritism or mala fide. The learned single Judge in the previous writ petition had neither quashed the deputation order nor issued any direction for its termination. Indeed the learned single Judge had dismissed the writ petition. No material has been placed before us to show that between November 1987 when the judgment of the single Judge was rendered and December 1991 when the Division Bench disposed of the writ petition filed by the appellant the petitioners of the previous case had raised any grievance or made any complaint regarding non-compliance of the directions made in the judgment of the learned single Judge. In these circumstances the Division Bench was clearly in error in declining to grant relief to the appellant. Further, the appellant has, in the meantime, retired from service, and therefore, the decision in the case is relevant only for the purpose of calculating his retiral benefits.”*

44. In my considered opinion, the issue in the above case, was that once the borrowing and lending department had consented for appointment of appellant on deputation and that there was no complaint, then there was no occasion to terminate the services of a deputationist by a borrowing department as assigning the reason “not in public interest”.

45. The issue whether a deputationist could have been absorbed in the borrowing department, is quite distinguishable one and in my view no such issue was there before the Apex Court as is involved in the present case and the case is also quite distinguishable on facts and so this authority does not come to any aid to respondents.

46. Now coming to the second authority cited by learned counsel

appearing for the respondents in the case of Kunal Nanda (*supra*), I find that the issue in the said case was that the appellant in the said case had misled the department on the question of his qualification and thereafter when for verification he was required to submit the papers, he took the stand that the said qualification was not necessary to make him eligible for appointment on the post in question. The appellant in the said case was on deputation from the lending department of CRPF to CBI. The department discontinued his deputation and decided not to confirm him in borrowing department as he had misled on the point of qualification. However, dealing with the issue of absorption in the borrowing department and the right in that respect of a deputationist, the Court vide para 6 observed thus:

*“On the legal submissions made also there are no merits whatsoever. It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation. The reference to the decision reported in [Rameshwar Prasad vs M.D., U.P. Rajkiya Nirman Nigam Ltd. and Others](#) [1999 (8) SCC 381] is inappropriate since, the consideration*

*therein was in the light of statutory rules for absorption and the scope of those rules. The claim that he need not be a graduate for absorption and being a service candidate, on completing service of 10 years he is exempt from the requirement of possessing a degree need mention, only to be rejected. The stand of the respondent department that the absorption of a deputationist being one against the direct quota, the possession of basic educational qualification prescribed for direct recruitment i.e., a degree is a must and essential and that there could no comparison of the claim of such a person with one to be dealt with on promotion of a candidate who is already in service in that department is well merited and deserves to be sustained and we see no infirmity whatsoever in the said claim.”*

*(Emphasis added)*

47. The proposition as laid down in the aforesaid judgment regarding rights of deputationist in the borrowing department in so far the absorption is concerned, is clearly indisputable. It was held that repatriation of the deputationist in his parent department cannot be questioned by him.

48. In my considered opinion, here is a different case of present petitioner on facts also besides the legal issue involved. Neither the petitioner's appointment can be said to be an appointment clearly on deputation because it is a contract appointment permitting such a person to have lien on his post with the lending previous employer and at the same time there is no question of absorption of services of the petitioner with the respondent University. It is a pure contractual appointment and does not talk of termination of the term or tenure of

the appointment as co terminus with that of deputation.

49. In my view, therefore, this judgment also does not come to aid of the respondents.

50. Having decided both the first and second issue in favour of the petitioner, now the question arises as to how far Government of India enjoyed authority to override decision of the Principal Governing Body of the University, more especially in the circumstances, where the authority passing the order had participated in the meeting of Board of Governors and having failed to muster support to her view, could only put up her note of dissent and hence the third issue.

51. Before, I deal with the **third issue**, it is necessary to recall chronology of events from 15.11.2019 onwards when the deputation of the petitioner with previous employer first ended.

52. The Banaras Hindu University extended the period of deputation vide order dated 14.08.2019 upto 30.06.2020, as the Joint Registrar (Admin.) of the said University provided that the petitioner would not be required to be present on last working day in the University. In the meanwhile, the Joint Secretary to the Government of India wrote a letter to the Vice Chancellor of the Central University of Higher Tibetan Studies, Sarnath, Varanasi that since the petitioner had been appointed on the basis of deputation, he could not

be continued beyond the period of deputation and therefore, the order dated 17.11.2016 appointing the petitioner for a period of five years was clearly untenable and required to be withdrawn and the process of further selection through advertisement be undertaken as the post would be taken to have fallen vacant on 15.11.2019 with the end of deputation of the petitioner by the Banaras Hindu University on 15.11.2019. It also appears that in the meanwhile the Deputy Registrar of the Central Institute of Higher Tibetan Studies, Sarnath, Varanasi wrote a letter to the Registrar, Banaras Hindu University on 15.10.2019 to extend the period of deputation from 16.11.2019 onwards. The Assistant Registrar (Admin.), Banaras Hindu University passed an order on 01.11.2019 extending the period of deputation of the petitioner from the parent University from 16.11.2019 to 13.06.2020. The Vice Chancellor, it appears issued a consequential order dated 11.11.2019 extending the period of service of the petitioner on deputation from 16.11.2019 till 13.06.2020 against the initial offer of five years appointment but on same terms and conditions. The order extending the tenure of the service of the petitioner as issued by the Vice Chancellor of the respondent University dated 11.11.2019 is reproduced hereunder:

*“Central Institute of Higher Tibetan Studies, Sarnath, Varanasi*

*(Deemed to be University)*

CUTS/ADMN-II/GNS/REGISTRAT/560/16/229 Date 11.11.2019

**Order**

*With reference to the Banaras Hindu University letter Ref. No. : AB/2-A-80/35579 dated 02.11.2019 regarding extension of period of deputation in r/o Dr. R.K. Upadhyay to work on the post of Registrar, CIHTS, Sarnath up to 30.06.2020. The present deputation period of Dr. Ransheel Kumar Upadhyay, Registrar is hereby extended up to 30.06.2020 against the initial offer of five years tenure appointment on the same terms and conditions.*

*Vice – Chancellor*

*To,*

*Dr. R.K. Upadhyay, Registrar*

*CC.:*

- 1- Joint Secretary, BTI Section Ministry of Culture, New Delhi.*
- 2- Joint Registrar*
- 3- Asstt. Registrar*
- 4- Section Officer, Accounts*
- 5- Personal File*

*Vice Chancellor”*

*(Emphasis added)*

53. However, on 26.11.2019, the Deputy Registrar wrote a letter to the University Grants Commission seeking supporting documents enabling the appointment of the incumbent petitioner after 30.06.2020 till he attains the age of 62 years as he was appointed for a period of five years on contract basis. This letter as was written by the Deputy Registrar dated 26.11.2019 of the Central Institute of Higher Tibetan Studies, Sarnath, Varanasi is reproduced hereunder:

“केन्द्रीय उच्च तिब्बती शिक्षा संस्थान, सारनाथ, वाराणसी

Dr. Himanshu Pandey  
Dy Registrar

CIHTS/ADM/REG/UGC/2019-2778 November 26, 2019

Dr. Archana Thakur  
Joint Secretary (DU),  
University Grants Commission,  
Bahadurshah Zafar Marg,  
New Delhi – 110002

Subject: Possibility to keep engaged to the post of Registrar – reg.

Madam,

I am directed to invite your attention towards a case relating to keep the appointment on the post of Registrar after expiry of deputation period as well as attainment of superannuation from the post of Joint Registrar to the post of the Registrar up to the age of 62 years, the applicable age for superannuation of Registrar. The case history is as under:

- 1- **The Institute advertised the post of Registrar for appointment on deputation / contract basis for a period of 05 years. (copy attached as Annexure – 1)**
- 2- **Accordingly, the incumbent selected by a selection committee was served with Offer of Appointment on deputation/ contract basis for a period of 05 years (copy attached as Annexure – 2)**
- 3- *The incumbent joined the Institute (CIHTS), as per the sanction accorded, initially for 03 years by his parent organization on deputation to join the institute in the light of offer of appointment for 05 years (copy attached as Annexure – 3)*
- 4- **Thereafter, the Institute issued an Order of Appointment for a period of 05 years in the light of offer of**

**appointment already issued. (copy attached as Annexure – 4)**

5- The period of initial deputation of the incumbent expires on 15.11.2019. However, on our request, the parent organization has further extended the period of his deputation up to 30.06.2020, the date of superannuation of the incumbent concerned in the parent organization. )copy attached as Annexure – 5)

6- The parent organization has also directed the incumbent concerned that there stands no compulsion for him to be present there on last working day i.e. 30.06.2020 (copy attached as Annexure – 6)

7- **The incumbent would draw/ avail pension and pensionary benefits from his parent Institution i.e. B.H.U., Varanasi after superannuation i.e. 30.06.2020 and his five years' tenure as Registrar at CIHTS will complete on 15.11.2021.**

**Taking in view all the facts as stated above, future needs of the Institute and the incumbent's capabilities in discharging the duties of the post (Registrar), the Institute is willing to keep his services in the capacity of Registrar continued up to the age of 62 years, i.e. the applicable age of superannuation of Registrar.**

Therefore, the Institute is in need of some supporting documents enabling the continuation of the appointment of the concerned employee after 30.06.2020 i.e. after ending of the deputation period as well as the date of superannuation of the official concerned from his parent organization, without any break upto 15.11.2021 as mentioned in the order of appointment.

With regards,

Yours sincerely,  
(Dr. Himanshu Pandey)  
Deputy Registrar

C.C.:  
PS to V.C. For information of Hon'ble Vice Chancellor  
Dy. Registrar”  
(Emphasis added)

54. Considering the above request of the Deputy Registrar of Central Institute of Higher Tibetan Studies, Sarnath, Varanasi, it was clarified by the University Grants Commission through a letter of Joint Secretary dated 29.05.2020 that there was no need for the University to obtain any further extension from the Banaras Hindu University for the remaining period but his retirement in BHU would be regulated as reemployed pensioner. This letter of the Joint Secretary of UGC dated 29.05.2020 is reproduced hereunder:

“F. No. 0-1/2020(DU) By Speed Post  
29<sup>th</sup> May 2020

To,  
The Vice Chancellor,  
Central Institute of Higher Tibetan Studies,  
Varanasi  
Uttar Pradesh -221007

Sub.: Employment of Dr. R.K. Upadhyay, Registrar –  
regarding.

Sir,

**With reference to your letter No. F. CIHTS/ADM/REG/MoC/501/2018-2717 dated 16.08.2019 on the above subject, I am directed to inform you that after retirement of Dr. R.K. Upadhyay as Joint Registrar, Banaras Hindu University (BHU), he can continue to be the Registrar, IHTS, Sarnath for remaining period for which there is no need of any communication or permission from BHU but his**

***pay in CIHTS after his retirement in BHU would be regulated as re employed pensioner.***

*This issues with the approval of competent authorities.*

*Yours faithfully,  
(Dr. Archana Thakur)  
Joint Secretary”*

*(Emphasis added)*

55. It appears that this issue of extension of service of the petitioner as per the terms of his appointment came to be considered by the Board of Governors of which the Joint Secretary, Ministry of Culture, Government of India was also a constituent member, as agenda item no. 1. In the deliberations held by the Board of Governors, while the Joint Secretary happened to disagree from the majority view for continuation of the incumbent, against a tenure appointment, the Board of Governors *per* majority resolved that “*as the deputation term of Dr. Upadhyay was going to end on 30.06.2020, he would be continued as re employed pensioner.*” The entire deliberations on agenda item no. 1 and the ultimate resolution of the Board that ended with the Vote of Thanks to the Chair dated 29.06.2020 is reproduced hereunder:

*“Agenda Item No. 1*

*Continuation of appointment of Dr. R.K. Upadhyay, Registrar, CIHTS after 30.06.2020.*

*The Chairman apprised the members that he has called the special meeting of the Board to discuss and decide the matter*

*relating further continuation of Dr. R.K. Upadhyay as Registrar of the Institute for the remaining periods against the Institute's appointment of five years on deputation. The post of Registrar was advertised and the appointment of Dr. R.K. Upadhyay to the post of the Registrar was done on the recommendation of the Selection Committee duly approved by the Board for a tenure period of five years. As per practice of the Institute, the matter was reported to the 55<sup>th</sup> Board of Governors meeting held on July 30, 2017 under agenda item No. 55-3-10 and the Board endorsed the appointment of the Registrar on deputation initially for a period of three years against Institute offer of five years. The matter relating further extension of deputation in favour of Dr. R.K. Upadhyay from 16.11.2019 to 30.06.2020 was put up before the 58<sup>th</sup> Board of Governors meeting held on September 21, 2019. The Board observed that extension letter issued personally to Dr. Upadhyay from BHU is not as per norms and therefore, the Board directed that for further extension of Dr. R.K. Upadhyay beyond three years, CIHTS should approach B.H.U. Administration at the earliest possible for seeking their approval towards continuation of the incumbent on deputation for the remaining period till his superannuation and completing the procedural deficiency in consultation with the lending authority i.e. B.H.U. The period of extension of Dr. R.K. Upadhyay be extended w.e.f. 16.11.2020 to 30.06.2020. Accordingly, the Institute completed the formalities and issued order for extension of period of deputation up to 30.06.2020 against the Institute's appointment order for five years from the date of joining i.e. 16.11.2016 and also the agreement executed between the Institute and Dr. R.K. Upadhyay.*

*As his (Registrar) continuation on deputation after superannuation from BHU on 30.06.2020, would not be possible against the tenure appointment of five years, the Institute wrote a letter to UGC seeking UGC's views in the matter of continuation of Dr. Upadhyay as Registrar of the*

*Institute for the remaining period and in response the UGC has conveyed “after superannuation from BHU, Dr. Upadhyay can continue to be the Registrar, CIHTS, Sarnath as re-employed pensioner for the remaining period”. Taking the view of UGC, the Institute approached the Administrative Ministry (MoC) in the light of the UGC letter and two O.Ms. of Dop&T for consideration and in response, the MoC has stated “continuation on deputation beyond the age of superannuation is not permissible under the policy of DoP&T”.*

*The Chairman further stated that as the Board of Governors is the appointing authority, the matter is before the Board for consideration.*

*The Board discussed the matter elaborately but it did not arrive at any conclusion unanimously. Thereafter, the Chairman referred MoA's Clause 11 according to which, “all decisions of the Board shall be taken unanimously or by majority.”*

*As no unanimous decisions were arrived even after detailed deliberations, the individuals' opinions were sought and a majority were of the view that it is a prevailing practices in all universities that the incumbent appointed on deputation against a tenure appointment, remain continued til the completion of the tenure, in absence of deputation, as re employed pensioner subject to fulfillment of the required norms.*

*Here the Joint Secretary was not in consonance of the rest members. She strongly opined that the recruitment rules for Registrar in their present form did not permit the appointment of Dr. Upadhyay as Registrar on short term contract beyond his period of superannuation. For continuation of Registrar beyond 30.06.2020, the Recruitment Rules for the post of Registrar would require to be changed accordingly. Also the*

*two OM's referred to by Dr. Upadhyay & by the CIHTS administration to the Ministry as well as Dr. Upadhyay in his representation do not support the same as had been clarified by DOPT. It was also reiterated that the Ministry since 2017 had been repeatedly pressing for rectification of Dr. Upadhyay's appointment as Registrar, the erroneous five year appointment order dated 17.11.2016 issued by CIHTS, when Dr. Upadhyay's service period was only till 30.06.2020. Even the earlier BoG's had only resolved Dr. Upadhyay's appointment as Registrar, first for three years in its 55<sup>th</sup> meeting held on 30.07.2017 subsequent extension till 30.06.2020 vide meeting dated 21.09.2019. Thereafter, this Ministry's the Ministry of Culture's dissent should be recorded as a part of minutes.*

*As the deputation term of Dr. Upadhyay was going to end on 30.06.2020, the Board exercising its power given under clause 10 at point (xvi) also authorized, the Chairman of the Board to take action in the matter and arrange to report the action in the next Board.*

*The meeting ended with a vote of thanks to the Chair.”*

*(Emphasis added)*

56. In view of the resolution adopted by the Board, the Vice Chancellor issued a consequential order on 01.07.2020 directing the continuance of the petitioner w.e.f. 01.07.2020 till 15.11.2021. The consequential order as passed by the Vice Chancellor on 30.06.2020 is reproduced hereunder:

*“Central University of Tibetan Studies, Sarnath, Varanasi*

*(Deemed to be University)*

*CIHTS/Adm-II/GNS/Registrar/560/16/2020-300 Date. 30.06.2020*

**Office Order**

*In pursuance of the decision of the Board of Governors in its Special Meeting held on 29.06.2020, Dr. R.K. Upadhyay, whose term of deputation is going to expire on 30.06.2020, shall remain continued on the post of Registrar w.e.f. 01.07.2020 to 15.11.2021. His pay would be regulated as re-employed pensioner.*

*(Prof. N. Samten)  
Vice Chancellor*

To,

*Dr. Ransheel Kumar Upadhyay,  
Registrar, CIHTS, Sarnath, Varanasi*

*Copy forwarded for information and necessary action to:*

- 1- Joint Secretary (BTI Section), Ministry of Culture*
- 2- Joint Secretary (DU), UGC, New Delhi*
- 3- All Deans/ Heads of Faculty/ Departments (Teaching/ Non Teaching)*
- 4- Prof. I/c Library*
- 5- Dy. Registrar Adm-I*
- 6- Asst. Registrar (Adm-II) to put up the decision before the next meeting of BoG for its endorsement*
- 7- Section Officer (Accounts*
- 8- Personal file*

*(Prof. N. Samten)  
Vice Chancellor*

*(Emphasis added)*

57. It appears that since the Joint Secretary had disagreed with the majority view of the members of the Board of Governors, she adopted a different course of writing an administrative letter to the Vice Chancellor that as per clause-8 of Memorandum of Association of Central Institute of Higher Tibetan Studies, Sarnath, Varanasi, the Government of India has overriding powers to issue such directives as may be considered necessary from time to time to the institute and

therefore, direction is hereby given to relieve Dr. Upadhyay from the post of Registrar w.e.f. 30.06.2020. This overriding power, has been exercised by the Joint Secretary taking aid of clause-8 of Memorandum of Association. The letter of Joint Secretary dated 30.06.2020 is reproduced hereunder:

*Amita Prasad – Sarbhai  
Joint Secretary*

*Government of India  
Ministry of Culture*

*D.O. No. BTI-13/3/2020-BTI Date: 30<sup>th</sup> June, 2020*

*Dear Prof. Samten,*

*Kindly recall the discussion held during the special meeting of BoG of CIHTS, Sarnath ondate i.e. 29<sup>th</sup> June 2020 regarding the Continuation of appointment of Dr. R.K. Upadhyay, Registrar, CIHTS after 30.06.2020.*

***2- It may be recalled that the selection of Dr. Upadhyay to the post of Registrar, CIHTS, Sarnath with effect from 16.11.2016 on deputation from BHU was initially only for a period of 3 years as is clear from the letter of the lending organisation i.e. BHU dated 07.11.2016. This is also ratified in the 55<sup>th</sup> meeting of the Board of governors of CIHTS dated 30.07.2017 which approved the appointment for a period of 3 years only. However, CIHTS issued a letter of appointment dated 17.11.2016 for 5 years and also entered into a contract with Dr. Upadhyay which stated “the Appointee shall be on service under this agreement with effect from the date of joining for a period of five years or till he attains the age of superannuation of 62 years, whichever is earlier.” These amounts to a serious administrative lapse and calls for an enquiry under vigilance matters.***

***3- No efforts were made to rectify the mistake even after the decision of the BoG dated 30.07.2017. Ministry in its letter dated***

23.05.2019 and 06.09.2019 had clearly directed CIHTS Sarnath to modify the said order and to initiate further action for filling up the vacancy of Registrar so arising consequent upon the completion of 3 years of deputation in respect of Dr. Upadhyay with effect from 15.11.2019.

4- However, the deputation term of Dr. Upadhyay was decided to be extended upto 30.06.2020 the date of his superannuation from the substantive post of Joint Registrar of BHU Varanasi in BoG held on 21.09.2019 and the matter was resolved with the direction “that all necessary action must be undertaken to fill up the post of Registrar CIHTS by way of advertising the post well in time.”

5- Therefore, the proposal for continuation of appointment of Dr. Upadhyay after his superannuation is in contravention to the earlier decisions.

6- **Just by the mere fact that the institution was declared as “Deemed-to-be-University” does not give the power to BoG to change the earlier decisions taken with the consultation of the administrative ministry. As per clause 8 of the Memorandum of Association of CIHTS Sarnath, “the Government of India shall have the powers to issue such directives as it may consider necessary from time to time the Society or the Institute for the purpose of carrying out or achieving the objectives set out in the Memorandum of Association and Rules”.**

7- **In view of the above, the directions is hereby given by Government of India (Ministry of Culture) to relieve Dr. Upadhyay from the post of Registrar w.e.f. 30.06.2020 i.e. the date of his superannuation from the substantive post of Joint Registrar of BHU, Varanasi.**

8- Dr. Upadhyay will not be entitled to receive any pay/ allowances from the CIHTS Sarnath or Ministry of Culture beyond 30.06.2020 in any capacity.

9- Any contravention/ deviation from the above Government of India's order would be liable for administrative action.

This issues as the directive of Government of India (Ministry of Culture) under clause 8 of Memorandum of Association of CIHTS, Sarnath.

Best wishes,

Yours sincerely,

(Amita Prasad – Sarbhai)

Prof. Geshe Ngawang Samten  
Vice Chancellor  
Central Institute of Higher Tibetan Studies (CIHTS)  
Varanasi  
Uttar Pradesh – 221007

Copy for information to : (i) PS to HCM  
(ii) PPS to Secretary Culture

(Emphasis added)

58. The Vice Chancellor, as an obedient officer to the Joint Secretary did not render due application of mind to the resolution earlier adopted by Board of Governors and acted in a quite mechanical manner as a subordinate to the Joint Secretary by passing an order afresh on 01.07.2020, withdrawing his earlier letter dated 30.06.2020 which was passed as a consequence to the resolution of the Board of Governors. The order of the Vice Chancellor dated 01.07.2020 is reproduced hereunder:

“Central Institute of Higher Tibetan Studies  
Deemed to be University,  
Sarnath, Varanasi.

**Office order**

With reference to letter D.O. No. BTI-13/3/2020-BTI dated June 30, 2020 of Ministry of Culture, Government of India, New Delhi, direction given to point 7 of the said letter and further Ministry's letter received in continuation of the said letter, the Office Order No. CIHTS/Adm-II/GNS/Registrar/560/16/2020-300 dated 30.06.2020 issued by the Institute is hereby withdrawn and accordingly Dr. R.K. Upadhyay, Registrar of the Institute is deemed to be relieved from the post of Registrar. He will hand over the charge of the post of Registrar to Dy. Registrar today forenoon positively. The Dy. Registrar of the Institute will work as Officiating Registrar in addition to his normal duties w.e.f. 1<sup>st</sup> July 2020 for three months or till other arrangement is made, whichever is earlier.

(Prof. N. Samten)  
Vice- Chancellor

To:

- (i) Dr. R.K. Upadhyay, CIHTS, Varanasi
- (ii) Dr. Himanshu Pandey, Dy. Registrar, CIHTS

CC:

- 1- PS to HCM, Govt. of India, New Delhi
- 2- PPS to Secretary Culture, Govt. of India, New Delhi
- 3- Ms. Amita Prasad Sarbhat, Jt. Secretary, MoC, Govt. of India, New Delhi.
- 4- Librarian, CIHTS
- 5- A.R., CIHTS
- 6- Accounts Section
- 7- Estate Office
- 8- Examination
- 9- Record file.”

(Emphasis added)

59. For better appreciation the objects as set out in the Memorandum of Association, Clause 3 (part 1) of Memorandum of Association are reproduced hereunder:

### 3. Objects

*The objects for which the Society is established are, to establish, develop and to maintain the educational institution called 'The Central Institute of Higher Tibetan Studies', Sarnath, Varanasi and”to manage, supervise and administer its affairs, subject to the approval of the Government of India, and also the orders of Government of India, the Society shall have the power to do all*

*things and acts necessary and incidental to the above mentioned objects and without prejudice to the generality of the above to do the following things in particular:*

*(a) to provide for instruction for various course of study, training and for research in different branches of Tibetology, Philosophical and Cultural Studies for the Degrees and Diplomas of the Institute and to conduct Examination thereto;*

*(b) to provide for research and publication for restoration and advancement of knowledge;*

*(c) to declare branch campus of the Institute in any part of India for imparting instruction of similar subjects with prior approval of Government of India.*

*(d) to provide for land and building for the Society and/ or the Institute and to construct, demolish or alter any building which may be necessary or expedient for its object;*

*(e) to provide hostels for students and residential accommodation for staff (teaching and other staff) and to promote their health, general welfare, cultural and corporate life;*

*(f) to create teaching, administrative, technical, ministerial and other posts and to appoint, promote, remove or dismiss, reduce in rank any member of the teaching and administrative staff of the Society;*

*(g) to purchase, take on lease or accept as gift, or otherwise acquire, transfer, surrender, give on lease or otherwise alienate any real or personal property or rights therein or privileges attaching thereto which may be necessary or convenient for its purpose;*

*(h) to buy, sell, endorse, negotiate or transfer, Government*

*or other securities, negotiable instruments including Hundis and to collect and realise interest, bonus, dividends and profits on such securities, negotiable instrument etc. for the purpose of the Society;*

*(i) to invest funds belonging to the Society or under the control of that Society in such property and/ or securities as are authorised by law for the investment of trust funds or such other classes of securities as may from time to time be approved by the Government of India or in any other manner as may be specifically approved by the University Grants Commission;*

*(j) to borrow or raise money for the fulfillment of the objects of the Society with or without security by creating a charge, loan or mortgage on whole or any part of its properties, assets, rights or privileges on such terms and conditions and to such extent as may be determined by the Society from time to time with prior approval of the Government of India, provided that no such loan with or without security shall be taken by the Society without prior approval of the Government of India. The Government of India shall have the right to examine the purpose for which the loan is taken and whether or not the terms and conditions for the grant of loans are reasonable and in the interest of the Institution;*

*(k) to award fellowships, scholarships, prizes and medals in accordance with the Rules and Bye-laws of the Society and subject to the terms and conditions of grant of such fellowships, scholarships, prizes and medals;*

***(l) to frame rules, regulations and bye-laws for the administration of the Society;***

*(m) to appoint such Committees or Sub-Committees as may be expedient;*

(n) to prescribe, demand and collect fees and other charges in accordance with the rules and bye-laws of the Society;

(o) to do all such other acts and thing incidental and ancillary to attainment of any of the objects specified above as may be expedient for the functions of the Society as an educational Institution.”

*(Emphasis added)*

60. From the reading of various provisions of clause 3 it transpires that the only clause relevant for the purpose of present case is clause (l) which provides for framing of rules, regulations and bye-laws for administration of the Society.

61. Clause 8 of the bye-laws is reproduced hereunder:

*“8. Directives by the Government of India*

*The Government of India shall have the powers to issue such directives as it may consider necessary from time to time to the Society or the Institute for the purpose of carrying out or achieving the objectives set out in the Memorandum of Association and Rules.”*

62. From the perusal of aforesaid clause it is clear that for carrying out the purposes and achieving the objectives as set out in the Memorandum of Association and the Rules, the administrative power can be exercised by the Government of India to issue such directives as may be necessary from time to time.

63. It is argued on behalf of the petitioner that it could be a matter of framing of rules or modification of the provisions as contained in the rules, if there be need of any change, modification or any policy decision that the directives can be issued by Government of India in supersession to the statutory body i.e. Board of Governors but where service conditions of employees are governed by the rules and tenure is fixed under a contract executed by the appointing authority, it is appointing authority that shall have the last say in the matter as in the present case is Board of Governors. A supervisory or superintending power can not be exercised beyond the prescribed rules nor, in derogation to the prescribed procedure.

64. The powers of Board of Governors under no circumstances can be by passed, the manner in which they have been done. The Rules have been framed as the rules of Central Institute of Higher Tibetan Studies, Sarnath, Varanasi, U.P. and vide rule 10 of the Rules, the powers and duties of the Board of Governors have been defined. Rule 10 of the Rules are reproduced hereunder:

***“10. Powers and Duties of the Board of Governors***

*The Board of Governors shall be the Principal executive authority of the Institute responsible for the general superintendence, direction and control of the affairs of the Institute. The Board of Governors shall hold, control and administer the property and funds of the Institute as well as*

*other funds placed at the disposal of the Institute for specific object.*

*The Board of Governors may appoint Committee or Committees which may be deemed necessary to assist the Board of Governors in matter, e.g. academic, finance, research, publications and others.*

*The Board of Governors shall in addition to all other powers and duties vested in them have the following powers:*

*(i) to acquire, purchase, take on loan or on hire or in exchange or in gift or dispose any movable or immovable property with the approval of the Central Government and to construct, improve, maintain, alter or demolish any house, building and other properties as may be necessary for the Institute.*

***(ii) to enter into, carry out, confirm and cancel contracts and agreements on behalf of the Institute.***

*(iii) to make, accept, endorse and execute promissory notes, bills of exchange, cheques and other negotiable instruments in connection with the affairs of the Institute.*

*(iv) to consider and approve the annual budget, the revised budget, the annual reports, the annual accounts, audit reports and the financial estimates and to lay before the University Grants Commission/ Government of India or the Parliament, annual statements of financial requirements, plans and projects of the Institute, as the case may be.*

*(v) to fix admission, tuition and other fees to be charged from students reading and/ or residing in the Institute.*

***(vi) to approve courses of study and research, conduct examinations and award degrees and diplomas thereto.***

*(vii) to approve award of fellowships, scholarships, prizes and medals.*

*(viii) to Institute, suspend, alter or abolish such teaching and administrative posts as may be considered necessary for the institution provided posts carrying maximum pay in excess of Rs. 1600/- p.m. In (pre-revised scale) are created with the approval of the Government of India, and thereafter filled by the Board of Governors; provided that prior approval of the Government is obtained for the appointment of Director and other posts carrying minimum pay in excess of Rs. 2500/- p.m. In (pre-revised scale).*

*(ix) to appoint teaching and administrative staff excluding group C and D employees of the Institute and to lay down conditions of services for all employees of the Institute in accordance with the provisions made hereinbefore.*

*(x) to grant on the recommendation of the Director study leave and leave without pay to the teaching staff of the Institute subject to the rules and regulations of the Institute.*

*(xi) to make arrangements for exercise of powers and functions and discharge of duties of Director in casual temporary vacancies.*

*(xii) to open an account or accounts in the name of the Institute with such scheduled bank or banks as the Board of Governors may think fit and to keep the funds of the Institute deposited with such banks.*

*(xiii) to take such Insurance in respect of property or employees of the Institute as the Board of Governors may think fit.*

*(xiv) to make rules/ bye-laws and alter, amend or repeal the same.*

(xv) *to co-operate with any other organisation in the matter of education, training and research.*

(xvi) *to delegate at its discretion any of its powers as may be necessary from time to time to the Chairman and / or the Director of the Institute and to appoint a Committee or Committees for disposal of or for advise in any matter pertaining to the Institute.*

***(xvii) to exercise such other power and to do such other acts or things as may be necessary or expedient for the proper performance of its duties and for furtherance of the aims of the Society.”***

*(Emphasis added)*

65. The provisions as contained under clause 8 of the Memorandum of Association have to be read in harmony with the provisions as contained in clause 10 of the Memorandum of Association. The powers are specific to the respective authorities. The cardinal rule of interpretation is go firstly by literal meaning of a provision. Clause 8 clearly stipulates exercise of authority by the Government of India in issuing direction to carry out and achieving objectives set out in the Memorandum of Association and Rules. Objectives have been set out in clause 3 of the Memorandum of Association and (a) framing rules and regulations and bye laws besides (b) budgetary issues, can be the objectives referable here but there was no such issue involved in the present case. In so far as carrying out of the existing rules is concerned, I have already held

that appointment of the petitioner and his continuation as such till 15.11.2021 is fully saved under the rules and the interpretation thereof by the Joint Secretary in her letter cum order impugned dated 30.06.2020 is, therefore, clearly misplaced.

66. Thus except for two above contingencies which do not exist in the present case, there remained no further scope for exercise of such power by Government of India taking recourse to the provisions contained under clause 8 of the Memorandum of Association.

67. Reading of various sub clauses of Clause 10 of the Memorandum of Association makes it quite explicit that in respect of administrative, financial and the other allied matters, the Board of Governors have absolute power and it is not qualified by any rider of vesting power of prior approval with the Government of India. Sub clause (ii) and (ix) give absolute power of entering into contracts of all kinds on behalf of the Institution and to make appointment on all teaching and administrative positions, to the Board of Governors. In such event a contract shall last unless repudiated in accordance with law i.e. under lawful exercise of power to rescind it mid term and no authority can override such agreement or conditions of appointment. Any interpretation to provide an authority to the Government of India to repudiate any appointment under a contract by means of an executive *fiat* would be to provide arbitrary inroads to the executive

in the affairs of autonomous bodies and institutions, to overthrow sanctity of agreements. Board of Governors being an autonomous body, the Government of India can take recourse to placing its objection before the Board of Governors on any issue in matters governed by rules and contract and that is all. It is for the Board to take a final decision by adopting appropriate resolution but of course, *per majority*.

68. It would be not only unfortunate but a very colossal loss of principles of trust and faith with which autonomous bodies are created, if a member who enjoys an authority in the Government and also happens to be member of such an autonomous governing body like the Board here, is permitted to exercise power to impose its will merely because it got reduced to minority and Board took a decision *per majority*. Powers of the Board are not in doubt and the manner in which the Joint Secretary has issued an order overriding the resolution of the Board of Governors, it cannot be approved of and so also the consequential order of the Vice Chancellor.

69. It is clearly averred vide para 34 of the writ petition that Board of Governors have never recalled the resolution passed by it in its meeting held on 29.06.2020 *qua* continuation of the petitioner up to 15.11.2021. Para 34 of the writ petition runs as under:

*“34- That the respondent no. 6 while passing the impugned order dated 01.07.2020 withdrawing his order dated 30.06.2020, has failed to take into consideration the fact that the resolution of the Board of Governors in its meeting dated 29.06.2020 referred to in the order dated 30.06.2020 of the respondent no. 6 has not been undone by the Board of Governors and the same has not been cancelled by any court of law. It is further submitted that the Board of Governors is the appointing authority in respect of the post of Registrar and as such the respondent no. 1 is not competent to issue the order dated 30.06.2020 specifically when the Ministry of Culture is one of the member of the Board of Governors and as such is bound by the resolution passed by the Board of Governors as a collective body.”*

*(Emphasis added)*

70. In reply to para 34 of the writ petition in the counter affidavit again this fact has not been denied. The contents of para 20 of the counter affidavit filed on behalf of respondent nos. 5 & 6 is reproduced hereunder:

*“20- That the contents of paragraph nos. 34 of the writ petition are emphatically denied in the forms stated therein in reply it stated that the contents of the said resolution clearly shows that the order of the respondent no. 6 extending the petitioner's tenure was by way of administrative convenience and once the Government of India categorically directed the respondent no. 6 to relieve the petitioner from his service, the answering respondents were bound by the provisions of paragraph no. 8 of the memorandum of association and thus, the impugned order dated 01.07.2020 accordingly issued.”*

*(Emphasis added)*

71. In the counter affidavit also filed on behalf of respondent nos. 1 to 4, vide para 15, it has been submitted in reply as under:

*“15- That the contents of paragraph no 34, 35, 36, 37, 38 and 39 of the writ petition are emphatically denied in the forms stated therein in reply it stated that the petitioner himself having being appointed on deputation can at best claim to continue till the period which the deputation was session i.e. 30.06.2020. The petitioner having superannuated with effect from 30.06.2020, the petitioner has no right to claim to continue as the Registrar of the institution. It is relevant to disclose here that the post of Registrar bears both administrative and financial responsibilities and as per UGC norms a re-employed pensioner is not eligible for holding administrative and financial responsibilities of the institute. The DoPT which is the nodal authority to decide such service matters in the Central Govt. specifically clarified that continuation of Deputation beyond the age of superannuation is not permissible under the policy laid down by the DoPT through its Oms dated 13.04.1988 and 29.05.2019. The may be appreciated that the petitioner is trying to confuse the issue by way of quoting “tenure appointment” and “re-employment”. The fact remains that the petitioner was selected and appointed on Deputation to the post of Registrar, CIHTS, Sarnath. The extant Rrs for the post of Registrar, CIHTS, Sarnath do not provide for tenure appointment or re-employment terms. In such a*

*situation it was out of question to consider the case of petitioner of extension beyond his superannuation as clarified by the DoPT through their communication dated 24.06.2020. The petitioner held the substantive post of Joint Registrar, BHU up till the age of superannuation this substantive post is 60 years. The answering respondents have issued the impugned order wholly in accordance with law. The impugned order wholly just, legal and proper, writ petition is devoid of merits and the same is liable to be dismissed with cost through out.”*

72. There is no reply to para 34 of the writ petition. Thus, the averments made in para 34 of the writ petition that the Board of Governors had never recalled their resolution dated 29.06.2020 extending the services of the petitioner upto 15.11.2021 remains admitted and the argument, therefore, of learned counsel for the petitioner that unless and until the resolution is recalled by the Board of Governors of the Central University of Higher Tibetan Studies, Varanasi is not justified in passing his order dated 01.07.2020 recalling his earlier order dated 30.06.2020 passed as a consequence to the resolution of the Board and on this ground also the impugned order passed by the Vice Chancellor deserves to be set aside.

73. Even otherwise, if the appointment is a result of written contract and term is fixed under it, any step to trace it back by reducing the term would be hit by principles of promissory estoppel

and so also the impugned orders are not justified.

74. Now coming to the last argument advanced by learned counsel appearing for the petitioner that before passing the impugned order, neither the Government of India nor Vice Chancellor afforded any opportunity of hearing to the petitioner, I find merit in the same. Records themselves speak that the term of the petitioner was not only for five years or attaining the age of 62 years, whichever was earlier, but there was a resolution of the Board and the consequential earlier order of the Vice Chancellor treating the petitioner in employment as a Registrar of the University until 15.11.2021.

75. It is a settled legal position that any order, having adverse civil consequence, must always be proceeded with at least a notice much less a show cause notice to an employee and this is quite lacking apparently both from the order of Joint Secretary and the consequential order of Vice Chancellor, more especially in the face of the fact that the term of the petitioner had been extended upto 15.11.2021 by the Board of Governors, the appointing authority of the petitioner. The averment to this effect has been made in para 28 of the writ petition, which runs as under:

*“28- That no opportunity of hearing was granted to the petitioner by the respondent authorities prior to passing of the impugned order dated 30.06.2020 and 01.07.2020.”*

76. In the counter affidavit filed on behalf of respondent nos. 1 to 4, vide para 11, reply has been submitted thus:

*“11- That, the contents of paragraph no. 26, 27 and 28 of the writ petition are emphatically denied in the forms stated therein in reply it is stated that in impugned order has been issued in view of the fact the Government of India has deemed fit to discontinue the service of the petitioner as the registrar after completion of superannuation period. The order passed by the authority concerned is totally just and proper in accordance with law.”*

77. In the counter affidavit of respondent nos. 5 & 6 sworn by one Himanshu Pandey on their behalf, who is officiating Registrar of the respondent University, it has only been stated that the impugned orders do not violate the principles of natural justice on the ground that there is no prejudice caused to the petitioner under employment. Para 16 of the counter affidavit filed on behalf of respondent nos. 5 & 6 is reproduced hereunder:

*“16- That the contents of paragraph nos. 27 & 28 of the writ petition are emphatically denied in the forms stated therein in reply it stated that the impugned orders do not violate the principles of natural justice specially as the petitioner is no prejudice since he has no right to claim reemployment as pensioner on the post of which he was appointed on deputation specially as the period of deputation has ended on 30.06.2020 and the petitioner has also retired from his parent employer i.e.*

*BHU with effect from 30.06.2020.”*

78. From the pleadings as referred to herein above, it is clear that the compliance of principles of natural justice in the present case at the end of respondents, before passing the impugned orders, was quite wanting and in such view of the matter, therefore, I find merit in the submission advanced by learned Senior Advocate for the petitioner that the impugned orders are clearly unsustainable also for non compliance of principles of natural justice.

79. It is rightly said that the doctrine of fairness has emerged as a bedrock of administrative decision making process coupled with natural justice form due process, the basic ingredient of rule of law. Whatever is arbitrary, is against the rule of law and arbitrariness means an action opposed to natural law, a concept of justice i.e. impartial dealing (and taking decision after) listening to both sides of dispute (**P. Jackson: Natural Justice, 2nd Edn. 1979 115**). The authority when required to act in a procedurally fair manner means it has to conform to the principles of natural justice. I must quote hereunder the philosophy of great Judge and jurist:

***Mullan in Natural Justice and Fairness:***

*".....This did not go far enough; the old law relating to natural justice was too rigidly entrenched. More importantly, the issues were now somewhat more sophisticated, and it was recognized that it was not a case of all or nothing. Some decision making*

*functions, while not requiring full adjudicative hearings, might nevertheless have usefully had certain participatory obligations or perhaps simply an obligation of "proper" consideration attached to them.*

*Out of this predicament emerged the new vocabulary of the duty to act fairly. This was not in any sense the result of a growing feeling on the part of the courts that the time had come to assert a general review power over the wisdom of administrative decision-making, even though the subsequent conduct of one of the principal proponents of procedural "fairness" review, Lord Denning M.R., might suggest that this was indeed the case. It can best be viewed as a reaction to a particular problem in a particular area of judicial review. Hence it is ironic, though not perhaps surprising, to now see the emergence of fairness in the substantive law of judicial review as a standard for judging the merits of administrative decision-making..... . (1982) 27 McGill L.J. 273.*

80. In view of the above, the writ petition succeeds and is **allowed**. The order dated 30.06.2020 passed by respondent no. 3 Joint Secretary, Ministry of Culture, Government of India (Annexure No. 17 to the writ petition) and the consequential order passed by Vice Chancellor of the respondent no. 6 University dated 01.07.2020 (Annexure No. 16 to the writ petition) are hereby quashed. The petitioner shall be reinstated as Registrar of the Central Institute of Higher Tibetan Studies, Sarnath, Varanasi with immediate effect with all consequential financial benefits. However, since both the Universities are Central Universities, therefore, fixation of salary and payment thereof to the petitioner shall be strictly in accordance with

the resolution of Board of Governors.

81. There will be no order as to costs.

Order Date :- 12.12.2019

IrfanUddin