

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. **LPA No.891 of 2012 (O&M)**

B.P.S. Mahila Vishwavidyalaya, Khanpur Kalan and another
-----Appellants

Versus

Ram Lal and another
-----Respondents

2. **LPA No.433 of 2012 (O&M)**

B.P.S. Mahila Vishwavidyalaya, Khanpur Kalan and others
-----Appellants

Versus

Sumitra Devi and another
-----Respondents

Date of decision: 07.08.2015

**Coram: Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. Tribhuwan Dahiya, Advocate
for the appellants.

Mr. R.K. Malik, Sr. Advocate with
Mr. Tej Paul Singh Dhull, Advocate
for the respondent No.1 (in LPA No.433 of 2012).

Mr. Y.P. Malik, Advocate
for respondent No.1 (in LPA No.891 of 2012)

HARINDER SINGH SIDHU, J.

This order shall dispose of the above mentioned two intra-Court appeals preferred under Clause X of the Letters Patent as in both common questions of fact and law are involved. LPA No. 891 of

2012 has been filed against the order dated 27.02.2012 passed in CWP No.20900 of 2011. LPA No. 433 of 2012 has been filed against the order dated 17.01.2012 passed in CWP No.302 of 2011. Though, there is a delay of 27 days in filing the LPA No.433 of 2012 and in this regard the appellant has filed application No.1127-LPA of 2012, yet without considering the same, we have heard learned counsel for the parties on the merits of the case. For decision, the facts are being taken from LPA No.891 of 2012.

Respondents were a regular employee of Kanya Gurukul, Senior Secondary School, Khanpur Kalan (Sonapat), which is an aided institution set up by the State of Haryana. This institution and several other educational institutions were being run by Mahasabha Gurukul Vidapeeth, Haryana Bhainswal Kalan and Kanya Gurukul Khanpur Kalan affiliated to M.D. University, Rohtak. The Government of Haryana promulgated Ordinance No.4 of 2006 dated 18.08.2006, whereby B.P.S. Mahila University was established and the educational institutions run by Mahsabha Gurukul Vidyapeeth, Bhainswal Kalan and Kanya Gurukul Khanpur Kalan, wherein respondents were working, were taken over. The Ordinance was subsequently replaced by an Act known as Bhagat Phool Singh Mahila Vishwavidyalaya Khanpur Kalan Act, 2006 (for short 'the Act'). As per Section 36 of the Act, all the properties, movable or immovable vested in Mahasabha Gurukul Vidyapeeth Haryana, Bhainswal Kalan and Kanya Gurukul, Khanpur Kalan and all the posts created and filled before the commencement of the Act, shall

vest in the University. Consequently, all the existing educational institutions, which were earlier under the control of Mahasabha Gurukul Vidyapeeth and Kanya Gurukul Khanpur Kalan became part of the University Administration as University, Colleges/ Schools. All the employees (including respondents) of Mahasabha Gurukul Vidyapeeth Haryana, Bhainswal Kalan and Kanya Gurukul, Khanpur Kalan were absorbed in the University.

Vide letter dated 15.07.2009 (Annexure P-3), respondents were brought on the regular strength of Kanya Gurukul Senior Secondary School, a constituent institute of the University. It was stated that henceforth, they would be governed by the rules and regulations of the University as framed from time to time. As the University had not framed service rules governing the service conditions of the employees, a memo (Annexure P-2) was issued that till the rules are framed by the University, the rules framed by the M.D. University shall be followed.

It was the case of the respondents that retirement age of the employees of MD University is 60 years as per Chapter XXV of the University Calender Vol.III (Rules and Regulations and Ordinance other than Exams). The office memo dated 25.02.2011 (Annexure P-5) issued by the Commissioner, Higher Education advised that as the appellant-University was following the Rules of M.D. University, the further action with regard to age of retirement of the employees of the School be taken as per provisions/regulations of M.D. University.

Despite the aforesaid, vide impugned order 30.11.2011 (Annexure P-

8), respondent No.1 was relieved from service on attaining the age of 58 years.

Aggrieved with the same, he filed the writ petition, which was allowed.

The contention of the appellant-University before the learned Single Judge was that as the University has control over both the Colleges and Schools and as it is fully funded by the State Government, the service conditions as applicable to teachers in Government Schools alone shall govern the rights of all non-teaching staff under their control. This contention was rejected by the learned Single Judge by observing that when the University has been established by an Act of State Legislature and all the terms and conditions have been settled through its own rules, which have incorporated the M.D. University Rules, there is no escape from applying the said M.D. University Regulations. The fact that the University was fully funded by the State, did not make respondent No.1 a staff in a Government School. He continues to be an employee under the University and would be governed by the University Rules. Accordingly, the writ petition was allowed.

The judgment of the learned Single Judge regarding the age of retirement clearly follows from the relevant Rules and Regulations of the University. Consequent upon the enactment of the Act, respondent No.1 has been brought on the regular strength of Kanya Gurukul Senior Secondary School, a constituent institute of the University. His appointment letter clearly stated that henceforth

he would be governed by the Rules and Regulations of the University as framed from time to time. In the light of this, there is no escape from the conclusion that the age of retirement of the respondent would be 60 years as per the University Regulations, by the incorporation of the M.D. University Rules. Hence, the order relieving respondents on attaining the age of 58 years was rightly set aside by the learned Single Judge

Accordingly, we find no merit in these appeals and the same are dismissed.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

07.08.2015
Atul