SUPREME COURT OF INDIA

University of Rajasthan

Vs.

Prem Lata Agarwal

C.A.No.919 of 2013

(K. S. Radhakrishnan and Dipak Misra JJ.)

05.02.2013

JUDGMENT

DIPAK MISRA, J.

1. Leave granted in all the special leave petitions.

2. The controversy that arises for consideration in this batch of appeals is whether the respondents, who were appointed to the teaching post, namely, Assistant Professors/Lecturers in different subjects and continued as such for more than two decades, would be entitled to get the benefit of pension under the University Pension Regulations, 1990 (for short "the Regulations") framed by the University of Rajasthan which came into force with effect from 1.1.1990, regard being had to the language employed in Regulation 2 that deals with the scope and application of the Regulations read with Regulations 22 and 23 that stipulates the conditions of qualifying service and the period that is to be counted towards pension in addition to the fact that the University had accepted the contribution to the Pension Fund as defined in Regulation 3(5), despite the stand and stance put forth by the University that the respondents were not regularly appointed to the posts in question in accordance with the provisions contained in Section 3(3) of the Rajasthan Universities' Teachers and Officers (Selection for Appointment) Act, 1974 (for brevity "the Act") and, hence, are not entitled to the benefit provided under the Regulations.

3. Be it noted, as the main judgment was rendered in the case of Prem Lata Agarwal, we shall refer to the facts adumbrated therein. However, the initial dates of appointment and the dates of superannuation in case of every respondent as the

same would be relevant in the course of delineation of the lis in question are stated herein. Prem Lata Agarwal, Vijaya Kabra, Janki D. Moorjani, B.K. Joshi and M.C. Goyal, the respondents herein, were appointed on 5.1.1981, 22.8.1984, 20.8.1985, 16.5.1978 and 5.8.1983 and stood superannuated on 31.3.2001, 31.8.2007, 30.6.2007, 31.1.2002 and 30.11.2007 respectively. Respondent-Prem Lata Agarwal and some others were appointed vide Office Order dated 5.1.1981 by the Vice-Chancellor in exercise of power vested in him for making the stop gap arrangement under Section 3(3) of the Act as Assistant Professors (Lecturers) in the subject of Chemistry. It was clearly mentioned in the letter of appointment that it was ad hoc in nature and it would continue upto the last working day of the current academic session or till further orders, whichever was earlier. The respondent and others were allowed to continue on the basis of the appointment letters issued from time to time. It may be noted that their services were terminated every year and fresh appointment orders were issued. In this manner, the respondent was allowed to continue upto 31.7.1988.

4. At that juncture, the ad hoc teachers had invoked the jurisdiction of the High Court seeking a mandamus for the regularization of the services but such a relief was declined. S.L.P. No. 18993 of 1991 was preferred wherein two questions were raised, namely, (i) whether a lecturer duly selected by the selection committee for being appointed temporarily should automatically be confirmed on the post which he was holding for the past 7 years on temporary basis after being selected by a duly constituted selection committee under the provisions of the Act and approved by the syndicate of the university; and (ii) whether apart from the considerations of selection by the selection committee, did a lecturer teaching for the past 7 years acquire a right to continue on that post. This Court vide order dated 20th April, 1992, dismissed the said special leave petition. Though the special leave petition was dismissed and their right to be regularized was not accepted by this Court, yet they continued in service as the orders of termination could not be implemented. It is worth noticing that another petition by ad hoc appointees was filed in 1985 before the High Court wherein they claimed equal pay on the foundation of parity with the regularly appointed Assistant Lecturers. The High Court, vide order dated 1.3.1986, passed the following order:-

> "Consequently, this special appeal is allowed and the order dated 8.03.1995 passed by the learned Single Judge is hereby set aside and accordingly it is declared that the appellants who have been appointed on honorarium basis to cover the uncovered load of the respective departments are entitled to the salary equivalent to the minimum of the pay scale of the regularly appointed lecturer of the Rajasthan University from today. The respondents are also

> restrained from discontinuing services of the appellants till regular appointments to the post of lecturers are made in accordance with law. The respondents shall be at liberty to assign the work to the appellants, which is assigned to the regularly appointed lecturers."

5. The university, being grieved by the aforesaid order, preferred Special Leave Petition No. 13 of 1998 and number of S.L.Ps. wherein this Court passed the following order:-

> "The special leave petitions are dismissed. It is clarified that the continuation of the respondents shall be only till regular selections are made and it is upto the University to take expeditious steps for making regular selections."

6. In view of the aforesaid order, the teachers were paid salary equivalent to the minimum pay scale of regularly appointed teachers and continued in service due to various orders of the High Court passed from time to time. The university, despite its best efforts, could not obtain the permission of the State Government to fill up the vacant posts on regular basis as various litigations were continuing in the Court at various stages as a consequence of which the respondent and her likes continued in service.

7. It is apt to note here that the university brought the regulations which came into force with effect from 1.1.1990. After the regulations came into force, the respondent gave her option for the purpose of availing the benefit of pension and, thereafter, there was deduction from her salary in view of the postulates in the regulations till her date of retirement, i.e., 31.3.2001.

8. It is pertinent to mention here that the Rajasthan Universities' Teachers (Absorption of Temporary Teachers) Ordinance, 2008 (3 of 2008) was made and promulgated by the Governor with a purpose of providing absorption of temporary teachers of long standing, working in the universities of Rajasthan. After the said regulations came into existence on 12th June, 2008, the respondent preferred Writ Petition No. 2740 of 2010 putting forth the grievance that pensionary benefits had been denied to her after retirement. The learned Single Judge referred to the regulations and took note of the fact that she had continued in service for a period of 20 years and her option for grant of pension was accepted by the university and pursuant to such acceptance they deposited their contribution and, hence, the university was estopped to take a somersault the stand that she was not entitled to receive pension under the Regulations of 1990. That apart, the learned single Judge opined that the nature of her appointment could not be treated as ad hoc and

temporary, regard being had to the length of service. Being of this view, he allowed the writ petition and directed the pensionary benefits be extended to her within a period of three months after completing the formalities.

9. Being grieved by the aforesaid order, the university preferred Special Appeal (Writ) No. 292 of 2011. The Division Bench, after adverting to the facts and referring to various regulations and the provisions of the Act, came to hold that the action of the university was wholly unjustified and arbitrary. The said conclusion of the Division Bench was founded on the base that there was default on the part of the university in not appointing even a single person in the service of the universities of Rajasthan in a regular manner for a long period; that the university had invited the teachers to give their option and they deposited their contribution in the C.P.F. in the pension scheme; that the appointments of the teachers were not in contravention of the provisions of the Act; and that they were deemed to be confirmed in view of the provisions contained in Regulation 23 of the Regulations. After arriving at the said conclusions, the Division Bench adverted to the issue whether the teachers were entitled for the pensionary benefits in terms of the regulations and eventually, interpreting the regulations and placing reliance on the authorities in S.B. Patwardhan and another v. State of Maharashtra and others[1], D.S. Nakara and others v. Union of India and others[2] and paragraph 53 of the pronouncement in Secretary, State of Karnataka and others v. Uma Devi (3) and others[3], came to hold that the appointments were made following due procedure of law and further the teachers, having been appointed in the cadre of substantive posts, could not be denied the pensionary benefits under the regulations. Being grieved, the University is in appeal by way of Special Leave Petitions.

10. We have heard Mr. Manoj Swarup, learned counsel for the appellants, Mr. S.K. Keshote, learned senior counsel for the respondents in Civil Appeals arising out Special Leave Petitions (C) Nos. 35974 of 2011 and 18020 of 2012, Dr. Manish Singhvi, learned Additional Advocate General for the State, and Mr. Sushil Kumar Jain, learned counsel for the respondents in Civil Appeals arising out Special Leave Petitions (C) Nos. 33969 of 2011 and 20637 of 2012.

11. Before we proceed to scrutinize the defensibility of the judgment of the High Court, it is apposite to survey the scheme of the Act and the regulations. Section 3(3) of the Act, as it stood at the relevant time, being of immense signification, is reproduced in entirety herein below:-

> “3. Restrictions on appointments of teachers and officers.–

1. Notwithstanding any thing contained in the relevant law, as from the commencement of this Act, no teacher and no officer in any university in Rajasthan shall be appointed except on the recommendations of the Selection Committee constituted under Section 4.

2. Save as otherwise provided in sub-section (3), every appointment of a teacher or of an officer in any University made in contravention of sub-section (1) shall be null and void.

3. Nothing herein contained shall apply to the appointment of a teacher or an officer as a stop-gap arrangement for a period not exceeding one year or to the appointment of a part-time teacher or of a teacher or officer in the pay scale lower than that of Lecturer or Assistant Registrar respectively.

Explanation: The expression "appointed" in sub-section (1) shall mean appointed initially and not appointed by way of promotion."

12. Section 4 at the relevant time pertained to the constitution of Selection Committees. It read as follows:-

"4. Constitution of selection committees. –

1. For every selection of a teacher or of an officer in a University, there shall be constituted a committee consisting of the following: -

(i) Vice-Chancellor of the University concerned, who shall be the Chairman of the committee;

(ii) an eminent educationist to be nominated by the Chancellor for a period of one year;

(iii) an eminent educationist to be nominated by the State Government for a period of one year;

(iv) one member of the Syndicate to be nominated by the State Government for a period of one year; and

(v) such other persons as members specified in column 2 of the Schedule for the selection of the teachers and officers mentioned in column 1 thereof:

Provided that where the appointment of a teacher is to be made in the faculty of agriculture in any University or in any University-College imparting instruction of guiding research in agriculture there shall be one more expert to be nominated by the Syndicate out of a panel of names recommended by the Indian Council of Agriculture Research:

Provided further that the Selection Committee for teaching posts in the faculty of engineering and technology shall also include an expert to be nominated by the Syndicate out of a panel of names recommended by the All India Council of Technical Education.

2. The eminent educationists nominated under clause (ii) and clause (iii) of sub-section (1) and the member of the Syndicate nominated under clause (iv) of the said sub-section shall be members of every Selection Committee constituted during the course of one year from the date of his nomination:

Provided that the member for a Selection Committee nominated under clauses (ii), (iii) or (iv) of sub-section (1) shall continue to be the member of every Selection Committee even after the expiry of his term until a fresh nomination is made by the Chancellor or, as the case may be, by the State Government subject, however, that fresh nomination of such member for Selection Committee shall be made within a period not exceeding three months from the date of expiry of his term.

3. No person shall be eligible to be nominated as an expert on any Selection Committee in any one year if he has been a member of any two Selection Committees during the course of the same year."

13. Section 5 of the Act at the time of appointment dealt with the procedure of Selection Committee. It was as follows:-

"5. Procedure of Selection Committee –

> 1. The Syndicate of the University concerned shall prescribe, by rules, the quorum required for the meeting of a selection committee required to be constituted under section 4 which shall not be less than one- half of the members of each selection committee.
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> 2. The selection committee shall make its recommendations to the Syndicate. If the Syndicate disapproves the recommendations of the selection committee, the Vice-Chancellor of the University concerned shall submit such recommendations alongwith reasons for disapproval given by the syndicate to the Chancellor for his consideration and the decision of the chancellor thereon shall be final.
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> 3. Every selection committee shall be bound by the qualifications laid down in the relevant law of the University concerned for the post of a teacher or, as the case may be, of an officer."

14. We may note with profit that the 1974 Act was amended by Act No. 24 of 1976 and Act No. 18 of 1984 and afterwards, many insertions were made. We have reproduced the provisions after the 1976 Act was brought into existence. Section 4 which dealt with the constitution of selection committee was renumbered by Act No. 18 of 1984 as Section 5 and Section 5 which dealt with the procedure of selection committee was amended by Act No. 9 of 1977 and Act No. 18 of 1984 and was renumbered as Section 6. Certain amendments were carried out in the said provision by which the quorum required for the selection committee was changed and sub-section (4) was added on 15.11.1984. For proper appreciation, we reproduce the said sub-section (4):-

> "(4) The Selection Committee, while making its recommendations to the Syndicate under sub-section (2) shall prepare a list of candidates selected by it in order of merit and shall further prepare a reserve list in the same order and to the extent of 50% of the vacancies in the posts of teachers or officers for which the Selection Committee was constituted under sub-section (1) of Section 5 and shall forward the main list in the reserve list along with its recommendations to the Syndicate."

15. Presently, we shall refer to the relevant regulations. Regulation 2 that deals with the scope and application reads as follows:-

> "Reg.2: Scope and Application:

i) These regulations shall apply to all persons regularly appointed to the service of the University of Rajasthan on or after 1.1.1990.

ii) These regulations shall also apply to all existing employees – both teaching and non-teaching- who opt for pension scheme under these regulations within the period specified in Reg. 4 for exercising option. In case of employees who do not exercise option within the specified period, it will be deemed that the concerned employee has opted for the pension scheme under these regulations.

Provided that these regulations shall not apply to:

a) Persons employed on contract or part-time basis,

b) Persons on deputation to the University.

c) Purely temporary and daily wages staff.

(d) Re-employed pensioners."

Thus, from the aforesaid, it is quite clear that the regulations are only applicable to the persons who have been regularly appointed and do not take in its sweep the persons employed on contract or part-time basis and purely temporary and daily wages staff.

16. Regulation 3(5) defines 'pension fund'. It is as follows:-

"Reg. 3(5) "Pension Fund" means the fund created for the purpose of transferring the total accumulated amount of University contribution in C.P.F. (including the amount of loan taken out of it) and interest thereon as on date of commencement of these regulations and monthly contribution made thereafter in respect of such employees who opted or are deemed to have opted the pension scheme under these regulations. The pension paid to the retired employees shall be charged to this Fund."

17. Regulation 4 deals with the exercise of option. The relevant part of the said regulation is reproduced below:-

"Reg. 4: Exercise of Option:

All existing employees who were in service on 1.1.1990 shall have to exercise their option in writing, either for the pension scheme under these regulations or for continuance under the existing C.P.F. Scheme, within 3 months from the date of notification of these regulations and shall submit the same to the Comptroller of Finance/Finance Officer in the prescribed form."

18. Be it noted, though there are three provisos to regulation 4, yet the same need not be referred to as they are not necessary for the adjudication of the present case.

19. Regulation 22 provides for calculation of qualifying service. It reads as follows:-

"Reg. 22 : Conditions of Qualifying Service:

The service of an employee does not qualify for pension unless it conforms to the following conditions:

1. It is a paid service of a regularly appointed employee under the University.

2. The employment is in substantive, temporary or officiating capacity."

20. Regulation 23 which has been taken aid of by the High Court to confer the benefit of pension on the respondent is as follows:-

"Reg. 23:

a) The service of an employee transferred from a temporary to permanent post shall be counted, if the post was at first created experimentally or temporarily.

b) The officiating services of an employee, without a substantive appointment, in a post which is vacant or the permanent incumbent of which does not draw any part of the pay or count service, shall be counted if he is confirmed without interruption in his service."

21. Regulation 47 provides for creation of the pension fund. It is as under:-

> "Reg 47: Creation of the Pension Fund:
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> In case of all such employees who opt for the pension scheme and are governed under these regulations, the total accumulated amount of University contribution in C.P.F. (including the amount of loan taken out of it) and interest there on as on 1st January 1990 will be transferred to the pension fund created under these regulations. Thereafter, the University's share of monthly contribution in respect of all such employees, as aforesaid will be deposited in the pension fund every month latest by 10th of the next month."

22. On a studied scrutiny, it is found that the High Court has placed reliance on Section 3(3) of the Act and the regulations which we have reproduced hereinabove to arrive at the conclusion that the respondents were entitled to be treated as regular teachers and, therefore, it was obligatory on the part of the University to extend the benefit of pension. The provisions of the Act, when read in a conjoint manner, make it crystal clear that the legislature had imposed restrictions on the appointment, provided for the constitution of Selection Committee and also laid down the procedure of the said committees. The intention of the legislature is, as it seems to us, to have teachers appointed on the basis of merit, regard being had to transparency, fairness, impartiality and total objectivity. Under sub- section (2), it has been clearly postulated that any appointment made barring the arrangement under sub-section (3) of Section 3 would be null and void. The language is clear and categorical. The exception that had been carved out under Section 3(3) is for an extremely limited purpose. It permits stop-gap arrangements and only covers ad hoc or part-time teachers with a small duration. It is intended to serve the purpose of meeting the situation where an emergency occurs. It was never intended to clothe any authority with the power to make any appointment beyond what is prescribed therein. The scheme of the aforesaid provisions go a long way to show that the legislature, in fact, had taken immense care to see that no one gets a back door entry and the selections are made in a seemly manner. A proper schematic analysis of the provisions enumerated hereinabove do not envisage any kind of ad hoc appointment or part-time appointment to remain in continuance. As is demonstrable from the factual depiction in the present batch of cases, some of the respondents continued with certain breaks and also due to intervention of the court. That apart, this Court had not acceded to their prayer of regularization. The only direction that was issued in Special Leave Petition (c) No. 3238 of 1997 and other connected matters, was that they would continue in service till the regular selections were made. It is noteworthy that a distinction has to be made and we are obliged to do so because of the language employed in the provisions between a

regular teacher and an ad hoc teacher or a part-time teacher who continues to work in the post sometimes due to fortuitous circumstances and sometimes due to the interdiction by the court. Their initial appointment could be regarded as legal for the limited purposes of Section 3(3) of the Act. That would only protect the period fixed therein. Thereafter, they could not have been allowed to continue, as it was only a stop gap arrangement and was bound to be so under the statutory scheme. Their continuance thereafter by operation of law has to be regarded as null and void regard being had to the language employed in Section 3(2) of the Act.

23. Be it stated, the High Court has placed reliance on Section 3(3) to come to the conclusion that as they were appointed legally, they are entitled to be regularized in terms of paragraph 53 of the pronouncement in Uma Devi (supra). Before we proceed to deal with the question whether the protection granted to certain employees in paragraph 53 in Uma Devi (supra) would be applicable to the present case or not, we think it appropriate to refer to certain authorities in the field.

24. In University of Kashmir and others v. Dr. Mohd. Yasin and others[4], the question arose whether the continuance of a lecturer made in violation of the ordinance of the university would confer any right on him solely on the ground that he had de facto continued subsequent to the statutory cessation of office and whether the principle of implied employment could be attracted. The Court, after referring to the powers and duties and the canalisation by the statutory body like the University, came to hold that when the selection committee had not considered or recommended the respondent therein for appointment and there was no suggestion that the university council appointed the respondent to the post of Professor, regard being had to the said fact situation, the ad hoc arrangement by which the respondent therein remained to teach did not acquire any legal validity because the Vice- Chancellor went through the irregular exercise of extending his period of probation. We think it apt to quote an instructive passage from the said judgment: -

> "When a statute creates a body and vests it with authority and circumscribes its powers by specifying limitations, the doctrine of implied engagement de hors the provisions and powers under the Act would be subversive of the statutory scheme regarding appointments of officers and cannot be countenanced by the Court. Power in this case has been vested in the University Council only and the manner of its exercise has been carefully regulated. Therefore, the appointment of the respondent could be made only by the Council and only in the mode prescribed by the statute. If a Vice-Chancellor by administrative drift allows such employment it cannot be

> validated on any theory of factum valet. We cannot countenance the alleged continuance of the respondent in the University campus as tantamount to regular service under the University with the sanction of law. In short, the respondent has no presentable case against the direction to quit."

25. In Anuradha Mukherjee (Smt) and others v. Union of India and others[5], this Court, while dealing with the issue of seniority, opined that when an employee is appointed de hors the Rules, he cannot get seniority from the date of his initial appointment but from the date on which he is actually selected and appointed in accordance with the Rules.

26. In State of Haryana v. Haryana Veterinary AHTS Association and another[6], while dealing with the issue of regular service under the Haryana Service of Engineers, Class II, Public Works Department (Irrigation Branch) Rules, 1970, a three-Judge Bench observed that under the Scheme of the said Rules, the service rendered on ad hoc basis or stop-gap arrangement could not be held to be regular service for grant of revised scale of pay.

27. In R.S. Garg v. State of U.P. and others[7], while dealing with the concept of recruitment, this Court has categorically laid down that the expression "recruitment" would mean recruitment in accordance with the Rules and not dehors the same and if an appointment is made dehors the Rules, it is not an appointment in the eye of law.

28. Coming back to the decision in Uma Devi (supra), the Constitution Bench, after survey of all the decisions in the field relating to recruitment process and the claim for regularization, in paragraph 43, has held that consistent with the scheme for public employment, it is the duty of the court to necessarily hold that unless the appointment is in terms of the relevant rules, the same would not confer any right on the appointee. The Bench further proceeded to state that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. After so stating, it has been further ruled that merely because an employee had continued under cover of an order of the court, he would not be entitled to any right to be absorbed or made permanent in service.

29. It is worthy to note that while repelling the contention pertaining to the legitimate expectation of a person to be regularized, the Court held that when a

person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure.

30. The Court, eventually, in paragraph 53, issued certain directions relating to regularization of irregular appointments. We think it apt to reproduce the relevant part from the said paragraph: -

> "One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore v. S.V. Narayanappa[8], R.N. Nanjundappa v. T. Thimmiah[9] and B.N. Nagarajan v. State of Karnataka[10] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed."

31. To appreciate what has been stated in the said paragraph, it is imperative to refer to paragraph 15 of the judgment wherein it has been held thus: -

> "Even at the threshold, it is necessary to keep in mind the distinction between regularisation and conferment of permanence in service jurisprudence. In State of Mysore v. S.V. Narayanappa this Court stated that it was a misconception to consider that regularisation meant permanence. In R.N. Nanjundappa v. T. Thimmiah this Court dealt with an argument that regularisation would mean conferring the quality of permanence on the appointment. This Court stated: (SCC pp. 416-17, para 26)

> "Counsel on behalf of the respondent contended that regularisation would mean conferring the quality of permanence on the appointment whereas counsel on behalf of the State contended that regularisation did not mean permanence but that it was a case of regularisation of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules"."

32. From the aforesaid delineation, it is quite vivid that the Constitution Bench made a distinction between an illegal appointment and an irregular appointment and for the said purpose, as noted above, reliance was placed on the earlier decision in T. Thimmiah (supra) which makes a distinction between the power of ratification which is possible within the power of the authority and some non-compliance with the procedure or the manner which does not go to the root of the appointment.

33. We have already analysed the scheme of Section 3 and stated that there could not have been continuance of the service after the fixed duration as provided under Section 3(3) of the Act and such continuance is to be treated as null and void. That is how the Act operates in the field. That apart, regular selection was required to be made by a High Powered Committee as provided under Section 4. It is also pertinent to state that the Act lays down the procedure of the selection committee not leaving it to any authority to provide the same by rules or regulations.

34. In view of the aforesaid, the irresistible conclusion is that the continuance after the fixed duration goes to the root of the matter. That apart, the teachers were allowed to continue under certain compelling circumstances and by interdiction by courts. Quite apart from the above, this Court had categorically declined to accede to the prayer for regularization. In such a situation, we are afraid that the reliance placed by the High Court on paragraph 53 of the pronouncement in Uma Devi (supra) can be said to be justified. In this regard, another aspect, though an ancillary one, may be worth noting. Prem Lata Agarwal and B.K. Joshi had retired on 31.3.2001 and 31.1.2002, and by no stretch of imagination, Uma Devi (supra) lays down that the cases of any category of appointees who had retired could be

regularized. We may repeat at the cost of repetition that the protection carved out in paragraph 53 in Uma Devi (supra) could not be extended to the respondents basically for three reasons, namely, (i) that the continuance of appointment after the fixed duration was null and void by operation of law; (ii) that the respondent continued in the post by intervention of the court; and (iii) that this Court had declined to regularize their services in 1998.

35. Though we have dealt with the statutory scheme, yet as the High Court has heavily relied on various regulations to extend the benefit, we think it seemly to advert to the approach of the High Court to find out whether it has appositely appreciated the purpose and purport of the regulations. The High Court, as is manifest from the orders, has made a distinction between a permanent employee and purely temporary appointee and observed that the services of the respondent could not be termed to be purely temporary or daily wages. In that context, it has referred to Regulation 22 which uses the words "regularly appointed employee". We may reproduce the said part of the ratiocination:-

> "Regulation 2(ii) is applicable to all existing employees except the persons appointed on contract or part time basis; persons on deputation; purely temporary and daily wages staff; and re- employed pensioners. The case of the petitioners is not covered under any of the aforesaid four categories. Even otherwise, it cannot be said that appointments of the petitioners were made as stop gap arrangements. They have continued for more than two decades and therefore, they cannot in any manner be termed as "purely temporary". Also the word "purely temporary" contained in regulation 2(ii)(c) is used in company with daily wages staff and there is distinction in concept of purely temporary and temporary as provided in regulation 2 and 22 of the pension scheme purely temporary is not covered whereas temporary or officiating appointment is covered under the purview of the pension regulation."

36. The aforesaid analysis, according to us, is not correct inasmuch as the regulations do not take in their sweep an employee who is not regularly appointed. The distinction between temporary and purely temporary, as made by the High Court, does not commend acceptance as there is an inherent fallacy in the same inasmuch as Regulation 2(i) clearly provides "regularly appointed to the service of the University" which has been reiterated in Regulation 22. In fact, as we perceive, the High Court has proceeded on the basis that their services have to be treated as regular. Once it is not regular service, the infrastructure collapses as a consequence

of which the superstructure is bound to founder and, hence, the distinction made by the High Court is flawed.

37. The High Court, as has been stated earlier, has pressed into service Regulation 23 and relying on the same, it has held that the services of the respondents shall be deemed to have been confirmed as in the instant cases the University has never opined that their services were not satisfactory. The language of Regulation 23 is couched in a different manner. It fundamentally deals with the computation of the period of service of an employee. That apart, Regulation 23(b) uses the words "if he is confirmed". It is a conditional one and it relates to officiating services. Both the concepts have their own significance in service jurisprudence. The respondents were not in the officiating service and by no stretch of imagination, they could have been treated to be confirmed because the words "if he is confirmed" required an affirmative fact to be done by the University. The High Court, as we find, has applied the doctrine of deemed confirmation to the case at hand which is impermissible. In this context, we may, with profit, refer to the decision in Head Master, Lawrence School, Lovedale v. Jayanthi Raghu and another[11] wherein it has been ruled thus:-

> "A confirmation, as is demonstrable from the language employed in the Rule, does not occur with efflux of time. As it is hedged by a condition, an affirmative or positive act is the requisite by the employer. In our considered opinion, an order of confirmation is required to be passed."
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> Thus analyzed, the conclusion of the High Court which also rests on the interpretation of the regulations does not commend acceptation.

38. Consequently, the appeals are allowed and the orders passed by the High Court are set aside. However, if any amount has been paid on any count to any of the respondents in the appeals pursuant to the orders passed by the High Court, the same shall not be recovered on any count. There shall be no order as to costs.

[1] AIR 1977 SC 2051
[2] (1983) 1 SCC 305
[3] (2006) 4 SCC 1
[4] (1974) 3 SCC 546
[5] (1996) 9 SCC 59
[6] (2000) 8 SCC 4
[7] (2006) 6 SCC 430
[8] (1967) 1 SCR 128

[9] (1972) 1 SCC 409
[10] (1979) 4 SCC 507
[11] (2012) 4 SCC 793