

A ABDUL HAKEEM M.A. & ORS.

v.

MAHATMA GANDHI UNIVERSITY & ORS.

(Civil Appeal Nos. 2388-89 of 2019)

B FEBRUARY 28, 2019

[UDAY UMESH LALIT AND INDIRA BANERJEE, JJ.]

Service Law:

- Appointment – Whether temporary or were against substantive posts – Pay revision – Refusal of – To lecturers/professors appointed through selection process – On the ground that the posts were temporary – Writ petition challenging the order/Resolution whereby the appellants were treated as having been appointed temporarily – The University while contesting the petition stated that the Institution in question was a Self Financing Institution and therefore the concerned University statutes were not applicable to the teachers of such institutions – Single Judge of High Court allowed the petition – However, Division Bench of High Court allowed the writ appeal holding that the appellants were not the teachers of the University – Review petition challenging the order in writ appeal was dismissed – On appeal, held: The facts of the case indicate that the appointment of the appellants were not temporary and they were appointed against substantive posts – The University was also not correct in dissociating itself from the institution in question – Thus, there was no reason to limit the scope of extension of the benefit of pay revision to the appellants – Mahatma Gandhi University Act, 1985 – s. 2(30).*

Allowing the appeals and segregating the SLPs, the Court

HELD: Civil Appeal Nos.2388-89 of 2019:

- G 1.1 At no stage, the posts of teachers in engineering disciplines were referred to or described as contractual or on part time basis. Their appointment orders did not mention anything that the appointments were contractual or on part time basis. The appointment orders in fact stated that the appointment would be governed by the provisions of the University Statutes.
- H All the documents unequivocally suggest that the appointments

of the appellants were not on contractual basis or for a limited period of time. Whenever appointments were to be for limited duration or on contractual basis, a clear stipulation was always made in the concerned Resolution or Notification. The facts on record indicate that the appointments of the appellants were on permanent basis and that they were appointed through regular selection process. The appellants are right in submitting that their appointments were on substantive basis and not on contractual basis or for limited duration of time. [Para 8] [396-D-H; 397-A]

1.2 The Order issued by the University on 04.08.1999 extended the benefits of the Kerala Government Pay Revision, 1997 to the Non-Teaching (Technical) staff. The Order issued by the Government of Kerala on 18.05.2000 for implementing revised scales of pay for teachers in Engineering Colleges in the State contemplated extension of revision in line with the recommendations of AICTE as approved by the Government of India with effect from 01.01.1996. Though similar benefits were extended by the University to the teachers of University College of Engineering, the benefits were restricted and the effect was given from 01.01.2001 instead of 01.01.1996. No reason is available on record why such benefit was restricted and the only explanation offered is that the teachers of University College of Engineering were temporarily appointed for a period of three years or more. As the facts indicate that the appointments of the appellants were not temporary and that they were appointed against substantive posts, which were created pursuant to resolutions passed by the concerned authorities, there was no reason to limit the scope of extension of benefits. Even the Principal of the University College of Engineering in letter dated 18.04.2001 voiced a concern that the teachers in the College were not temporary and that they would otherwise be entitled to the extension of some financial benefits. The steps taken and the stand adopted thereafter by the University is on the premise that the University College of Engineering under the School of Technical and Applied Sciences was a Self Financing Institution which was not getting any grants from the Government/All India Council and that it was not part of 20 Departments listed under the Statutes of the University. There is nothing on record to

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- A indicate that when the School of Technical and Applied Sciences was set up there was any resolution or decision by the University or its competent bodies to set up such School of Technical and Applied Sciences as a separate Institution. The University had secured conditional approval from the AICTE on 31.05.1996 and had thereafter caused steps to be taken for creation of posts and appointment of teachers against said posts. The University cannot dissociate itself and claim said University college of Engineering under the School of Technical and Applied Sciences to be otherwise than part of the University. [Para 9] [397-B-H]
- B 1.3 At every stage the faculty position in the College of Engineering was always referred to and described as permanent faculty. Progress Profile of the existing Technical Institution prepared by AICTE which was referred to by the Single Judge is very clear that the appellants were shown to be part of permanent faculty and were projected to be permanent employees of the University. It would not therefore be proper on part of the University to brand the very same faculty to be on contractual basis or for a limited duration of time. It is also a matter of record that during the budget for financial years 2015-2016 and 2016-2017, the income and expenditure of Self Financing Institutions were included in the University Fund and thus the Self Financing Institutions were within the fold of the University. [Para 10] [398-A-C]
- C 1.4 Even after the Division Bench had ruled against the appellants in the present matter and while their review was pending before the Division Bench, in separately instituted proceedings, the Division Bench of the same High Court had accepted similar challenge raised by some other teachers from the same Self Financing Institution and by its order dated 07.12.2016 had ruled in their favour. The order dated 07.12.2016 was affirmed by this Court and Special Leave Petitions were therefrom dismissed. [Para 12] [399-B-C]
- D Special Leave Petition (Civil) Nos. 4251-4252 of 2018:
- E 2. Since the written submissions filed by the University in Special Leave Petition show that the appointment order of the petitioner had clearly stipulated the appointment to be temporary,
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this matter is segregated and it is directed that the same be listed before the appropriate court in due course. [Para 14] [399-F] A

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.2388-89 of 2019

WITH B

Special Leave Petition (Civil) Nos.4255-4256 of 2018.

From the Judgment and Order dated 20.11.2015 and 20.09.2017 of the High Court of Kerala at Ernakulam in WA No.442 of 2014 in O.P. No.3818 of 2003 and RP No.151 of 2016 respectively.

R. Basant, Sidharth Luthra, Sr. Advs., C.N. Sree Kumar, Ms. Priya Balakrishnan, Amit Sharma, Ms. Sakshi Kakkar, Shakti Singh, Karan Sharma, Arun Mewar, Krishan Kumar Singh, Priyush Dwivedi, Ms. Shreyali Kanwar, Ms. Praseena Elizabeth Joseph, G. Prakash, Jishnu M.L., Ms. Priyanka Prakash, Ms. Beena Prakash, Advs. for the appearing parties. C

The Judgment of the Court was delivered by D

UDAY UMESH LALIT, J.

Special Leave Petition (Civil) Nos. 4251-4252 of 2018

1. Leave granted.

2. The appellants question the judgment and orders passed by the Division Bench of the High Court of Kerala at Ernakulam (i) dated 20.11.2015 in Writ Appeal No.442 of 2014 arising from Original Petition No.3818 of 2003 and (ii) dated 20.09.2017 in Review Petition No.151 of 2016 in Writ Appeal No.442 of 2014. E

3. According to the appellants, they were appointed against substantive posts created by the Resolution of the Syndicate of Mahatma Gandhi University ('the University', for short) at AICTE¹ scales of pay, through selection processes which were in complete compliance of the provisions of the concerned University Statutes; and, on completion of one year of service, the University declared the appellants to have satisfactorily completed their probation. But the University refused to implement pay revision to the teachers so appointed including the appellants describing them as appointed temporarily. This led to the filing of O.P. No.3818 of 2003 which was allowed by the Single Judge of the High Court. The Division Bench in appeal preferred F

¹All India Council for Technical Education G

- A by the University however set aside the decision of the Single Judge and later, dismissed Review Petitions as well, leading to the filing of these appeals by special leave.

4. The facts in brief are as under:

- A. After having secured conditional approval from the AICTE on
 B 31.05.1996, the Syndicate of the University in its meeting dated 06.07.1996 resolved to start B.Tech courses in certain disciplines. It was further resolved to create posts of teachers at various levels in said disciplines. At the same time, teachers for some of the subjects namely Geometrical drawing, Physics, Chemistry, Mathematics and Humanities were to be engaged on contract/part-time basis. The relevant portion of the Resolution was as under:

“Further resolved to create the following posts at AICTE scales of pay with AICTE qualifications, to be filled up through advertisement.

	Sl. No.	Post	Number	Scale of Pay (in Rs.)
D	1.	Professor with specialization in any one of the following branches: (Electrical & Electronics Engineering, Electronics & Communication Engineering, Polymer Engineering & Computer Science & Engineering)	1	4500 - 7300/-
E	2.	Professor (One each in Electronics & Communication Engineering, Polymer Engineering & Computer Science & Engineering)	3	4500 - 7300/-
F	3.	Lecturers (Two each in Electronics & Communication Engineering, Polymer Engineering, Computer Science & Engineering)	6	2200 - 4000/-
G	4.	Lecturer in Mathematics	1	2200 - 4000/-
G	5.	Workshop Foreman	1	1640 - 2900/-
G	6.	Trade Instructors (One each in Foundry, Fitting, Carpentry, Sheet metal, Machine shop)	5	975 - 1660/-
H	7.	Tradesman	5	825 - 1250/-

Teachers in the following allied subjects shall be engaged on A contract/part-time basis.

1. Geometrical drawing
2. Physics
3. Chemistry
4. Mathematics
5. Humanities.”

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B. Accordingly, an order was issued by the University on 10.07.1996 creating posts in terms of said Resolution. The order also dealt with teachers to be appointed on contract/part-time basis in relation to 5 subjects mentioned hereinabove. A Notification was issued on 15.07.1996 inviting applications in prescribed form from qualified candidates *inter alia* for the posts of teachers under the School of Technology and Applied Sciences in the University. It mentioned that the qualifications for the posts would be same as for similar posts in the Government Aided Engineering Colleges and communal reservations as prescribed in the Statutes would be observed while filling up the posts. Thereafter sanction was accorded by the Vice Chancellor on 03.09.1996 for constituting various screening/scrutinizing committees for selection to the posts of Professors and Lecturers.

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C. On 25.08.1997 an Order was passed by the University which referred to the Resolution passed in the meeting of the Syndicate of the University held on 05.08.1997 about creation of Teaching and Non-Teaching (Technical) Posts for the University College of Engineering, Thodupuzha as under:

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“O R D E R

The Director, School of Technology and Applied Sciences has reported the requirement of teaching and technical staff in view of the commencement of Second batch of B. Tech Courses in the University College of Engineering. The Principal, University College of Engineering has put forth the proposal for creating Teaching & Technical posts as per the AICTE norms and workload for B. Tech. in Computer Science/ Electronics/Polymer Technology courses.

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The Syndicate at its meeting held on 05.08.1997 has resolved to create the following teaching and non-teaching (technical) posts for the University College of Engineering, Thodupuzha:

	S. No.	Name of Post	No. of Posts	Scale of Pay
B	1	Lecturers in Electronics & Communication Engineering	4	Rs.2200-4000
	2.	Lecturers in Computer Science & Engineering	2	Rs.2200-4000
C	3.	Lecturers in Polymer Engineering	2	Rs.2200-4000
	4.	Lecturers in Mechanical Engineering	2	Rs.2200-4000
D	5.	Lecturer in Mathematics	1	Rs.2200-4000
	6.	Lecturer in Chemical Engineering	1	Rs.2200-4000

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	S.No.	Name of Post Non-teaching posts	No. of Posts	Scale of Pay
F	1	Workshop Instructor Gr.II Electronics & Communication Engineering	1	Rs.1400-2300
	2.	Workshop Instructor Gr.II Computer Science & Engineering	1	Rs.1400-2300
G	3.	Lab Instructor Gr.II Polymer Engineering	1	Rs.1400-2300
	4.	Workshop Instructor Gr.II Mechanical Engineering	1	Rs.1400-2300
	5.	Lab Assistant/Tradesman Chemical Engineering	1	Rs.825-1250

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The expenditure for all the above posts shall be met from the self generated funds of the University College of Engineering, Thodupuzha under the School of Technology and Applied Sciences. A

The above teaching positions are inter-transferable among the three centres and the University College of Engineering, Thodupuzha depending upon the requirements fixed by the University. B

Orders are issued accordingly.”

D. Some of the appellants were appointed as Lecturers pursuant to the selection undertaken in terms of the Notification dated 15.07.1996, while some were selected against the additional posts created in terms of the Resolution dated 05.08.1997. By way of illustration, relevant portion of Order dated 17.12.1997 passed by the University in case of appellant no.1 was as under:- C

“O R D E R

Sanction has been accorded to the following appointment in the University College of Engineering, Thodupuzha. D

Sri. M.A. Abdul Hakeem
Manzilul Karam
Thalandu P.O.
Erattupetta – 686 580 E

Being appointed as Lecturer in Electronics and Communication Engineering in the Scale of pay of Rs.2200-4000/- w.e.f. 26.11.97 FN against one of the posts of lecturers created vide U.O. read above. F

The above appointment is governed by the provisions in the Mahatma Gandhi University Statues 1991.

Orders are issued accordingly.”

E. On 10.03.1998, the University issued another Notification inviting applications for appointment of Teaching/Technical posts under the School of Technology and Applied Sciences in the University. The posts were stated to be transferable among four units of School of Technology and Applied Sciences viz. University College of Engineering, Thodupuzha, Regional Centres of School of Technology and Applied Sciences at Edappally, Mannanam and Pathanamthitta. The G

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- A posts were of Lecturers in Mechanical Engineering, Chemical Engineering and Computer Science. In addition, applications were also invited for three posts of Lecturers in Mathematics which posts were on temporary basis for a period of three years but were likely to be made permanent. Again, a Screening Committee was appointed, after due sanction from the Vice Chancellor of the University, to short-list the applications received for the posts of Lecturers. The appellants 2 and 4 were selected in the selection process so undertaken as Lecturers in Computer Science and Engineering and Mechanical Engineering respectively. Thereafter, orders were issued by the University on 16.06.1999 in respect of appellants 1 and 5 that they had satisfactorily completed probation as Lecturers in University College of Engineering.

- F. On 04.08.1999 under an Order issued by the University, benefits of the Kerala Government Pay Revision, 1997 for non-teaching (Technical) staff were extended to those who were appointed along with the appellants. On 18.05.2000 Government of Kerala issued an Order implementing revised scales of pay for Teachers in Engineering Colleges in the State w.e.f. 01.01.1996 in accordance with the scheme recommended by the AICTE and approved by the Government of India. An Order was thereafter issued by the University on 23.03.2001 for implementing the UGC/AICTE pay revision to the Teachers including the Teachers of University College of Engineering. However, instead of making these pay revisions effective from 01.01.1996, the effect was given from 01.01.2001. This Order further described the Teachers of University College of Engineering as “Temporarily appointed for a period of 3 or more years”.
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- F Soon thereafter, the Principal of the University College of Engineering informed the Registrar of the University on 18.04.2001 that the Teachers appointed in the College were not temporary and their appointments were governed by the provisions of the statutes of the University. The relevant portion of the letter was as under:

- G “As per G.O. cited above as ref.(2) revised AICTE scales are implemented for the teachers of Engineering Colleges in the state with effect from 1.1.1996. In the U.O. cited above as ref(1) it is stated that AICTE pay revision is implemented for the teachers of University College of Engineering, Thodupuzha who are appointed temporarily for a period of three or more years, with effect from 01.01.2001.
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It may be noted that the teachers in the college are not temporary and it is stated in their appointment order that their appointment in the University is governed by the provisions in the 1991/1997 statutes of Mahatma Gandhi University. Hence revised AICTE scales of pay cannot be implemented in UCET based the U.O. cited above. It is therefore requested to consider the representation of teachers favourably and issue necessary orders at the earliest.”

H) The appellants represented to the Vice Chancellor of the University on 01.06.2001 followed by another representation on 06.05.2002 that they were regular teachers of the University and were entitled to AICTE pay revisions w.e.f. 01.01.1996. The appellants thereafter filed a Petition under Article 226 of the Constitution of India being O.P. (C)No.3818 of 2003 praying *inter alia* for quashing of the Order dated 23.03.2001 and Resolutions passed in the meeting of the Syndicate of the University insofar as the appellants were treated as having been appointed temporarily.

I) While contesting the petition, the University filed four affidavits in reply at different stages. The stand taken by the University was that the University College of Engineering under the School of Technical and Applied Sciences was a Self Financing Institution; for Self Financing Institution no grant was received from the Government/All India Council; the income generated from the Self Financing Institutions alone was utilized for infrastructure and remuneration of the teaching and non-teaching staff; that there were 20 departments listed under the Statutes of the University and that Self Financing Institutions were not part of that. It was further asserted that no service conditions for teaching staff of Self Financing Institutions were formulated by the Syndicate of the University and that the Statutes were applicable only in respect of teachers of the University and not to the teachers of Self Financing Institutions. In the affidavit filed in January 2007, it was asserted in paragraph 19 as under:-

“19. The definition clause “teachers of the University” contained in the Mahatma Gandhi University Act 1985 only means teachers of departments maintained by the University under Chapter 42 of the Mahatma Gandhi University Statutes 1997. It cannot be interpreted to mean as a teacher of Self-Financing Institution. These institutions are not included in the Statute. It is pertinent to

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- A note that at the framing of Act, the Self Financing Institutions were not started by the Government of Kerala and Universities. The State Legislature has amended the Act 1985 (Vide Act 9 of 1995) and certain provisions were included in the case of unaided Colleges.”
- B In its affidavit filed in November, 2011, the University asserted that on 05.08.1997 a meeting of the Statutory Finance Committee of the University was held. In this meeting, while approving Budget estimates an additional item was also considered, which was regarding creation of teaching/non-teaching posts in University College of Engineering, Thodupuzha. In said meeting, the recommendation was to create said posts for a period of three years. However, the Resolution was not referred to in the Order dated 25.08.1997 passed by the University and what was referred to was the Resolution of the Syndicate of the University passed on 05.08.1997.
- C J) In affidavit in reply by State of Kerala, it was submitted that the Government order issued in respect of pay revision was not applicable to teachers by Self Financing Institutions; that no directions were issued by the State regarding appointment of faculty in such Self Financing Institutions and that the Government had no control over the management and fixation of staff.
- D K) The aforesaid Writ Petition was allowed by Single Judge of the High Court by judgment and order dated 08.01.2014. It was held that the Statutes of the University contemplated only regular appointments; and that whenever any appointments were supposed to be temporary the notifications made specific reference in that behalf, whereas all the vacancies notified under Notifications dated 15.07.1996 and 10.03.1998 were not stated to be temporary. The Single Judge referred to Ext. P-26 which was copy of the progress profile of the existing Technical Institution prepared by AICTE in respect of the faculty including the appellants as:-
- E “13. Ext. P26 is the copy of the progress profile of the existing approved technical institutions. The same was prepared by AICTE. Ext.P26 contains Annexure-II, which gives the details of teaching faculties. There, all the petitioners were shown as permanent faculties. This would indicate that for the purpose of getting affiliation to AICTE, the respondent University has projected the petitioners as permanent employees.”

Allowing the writ petition the Single Judge directed:- A

"It is hereby declared that the petitioners are regularly appointed permanent teachers of the University appointed against substantive posts created by the University. Needless to say that the petitioners shall be entitled to the subsequent pay revision benefits also. The concerned authority shall issue formal orders extending the pay revision benefits to the petitioners within a period of three months." B

L) Aggrieved by the view taken by the Single Judge, the University filed Writ Appeal No.442 of 2014 before the Division Bench of the High Court. During the pendency of the appeal, in terms of the directives issued vide order dated 01.02.2014, the University in its budget for the financial year 2015-2016 included the income and expenditure of Self Financing Institutions in the University fund. Same position was repeated for the next financial year 2016-2017. C

M) The Writ Appeal was allowed by the Division Bench on 20.11.2015. It was concluded that the appellants were not teachers of the University within the meaning of Section 2(30) of Mahatma Gandhi University Act, 1985; that they were not governed by Chapter III of the University Statutes and the source of funds to meet the entire expenditure of the Self Financing Institutions was the funds generated by such Financial Institutions out of the fees collected from the students. The Division Bench observed that mere statement that the appellants would be governed by the University Statutes would not confer any benefit upon the appellants and that the University could not be compelled to treat the appellants on par with teachers of the University. The Division Bench however recorded the statement of the Counsel for the University that the University was prepared to grant benefits of pay revision to the appellants with effect from 01.01.1996. D E F

N) The appellants filed Review Petition No.151 of 2016 in the High Court against aforesaid Order dated 20.11.2015. During the pendency of this review petition, while dealing with challenge on behalf of the University against the decision of a Single Judge of the High Court granting relief to some other teachers from the same Self Financing Institution, Writ Appeal No.727 of 2011 preferred by the University and other connected matters were dismissed by Division Bench of the High Court on 07.12.2016. It was observed:- G

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- A “19. It is the admitted case of the University, that an establishment of the Self Financing Institutions, it had issued notifications inviting applications for appointment of teaching staff. The first of such advertisement is Ext.P1 dated 20.12.1993 in W.A.727/11 and it was followed by several other notifications. Ext.P1, like all other notifications, contained the qualifications to be satisfied by the candidates. In pursuance to the notification, the eligible applicants were considered and subjected to a Selection process, which resulted in the select lists already referred to as Exts.P22(a) and (b). The Syndicate approved the select lists and recommended the candidates for appointment. It was on that basis the first respondent in W.A. 727/11 was appointed by Annexure-I order, dated 21.04.1995. Contesting respondents in the other writ appeals and the petitioners in W.P.(C)2148/11 also entered service.”
- O) The challenge to the decision of the Division Bench dated 07.12.2016 in Writ Appeal No.727 of 2011 and other connected matters
- D by the University in Special Leave Petitions (Diary No.10974 of 2017 and other connected matters) was rejected by this Court on 03.07.2017.
- P) Review petition No.151 of 2016 was thereafter taken up for consideration. The High Court did not find any error calling for interference and the Review Petition was dismissed by order dated
- E 20.09.2017.
5. The appellants, being aggrieved are challenging correctness of the aforesaid judgment and orders passed by the Division Bench on 20.11.2015 and 20.09.2017. In its affidavit in reply filed in this Court, the stand taken by the University is as under:
- F “It is submitted that just because some of the provisions have been made applicable, does not mean that Petitioners have been appointed as regular/permanent employees of University. Those provisions have been made applicable to maintain the transparency and efficiency as at that point of time there were no rules & regulations governing the self financing institutions. The post against which the Petitioners were appointed, were the post against which the Petitioners were appointed, were the post under “School of Technology Applied Sciences” which is the self financing institution. The post under those institutions are temporary in nature, as the same are not created after obtaining the consent from the Govt.
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which was must for the University. Applicability of the Rules and regulation of the university to the self financing institution which has been affiliated with the university by itself doesn't lead to the conclusion that the teachers appointed for the self financing institution are the permanent teachers of the University".

6. We have heard Dr. Gopakumaran Nair, learned Senior Advocate who led the arguments on behalf of the appellants and Mr. Siddharth Luthra, learned Senior Advocate for the University and Mr. G. Prakash, learned Advocate for the State of Kerala. It was submitted by the appellants that their appointments were against substantive posts which were created after requisite Resolutions were passed by the University; and that at no stage the appellants were intimated that their appointments were for a temporary period. Reliance was placed on the decision of the Division Bench of the High Court in Writ Appeal No.727 of 2011 which decision was affirmed by this Court, where a diametrically opposite view was accepted. On the other hand, the University reiterated its stand which was consistently taken all through, including in the reply filed in this Court. However, no explanation was offered in respect of the decision in Writ Appeal No.727 of 2011 and as to how both these lines of decisions could be reconciled. In the written submissions filed on behalf of the appellants, apart from reiterating the submissions advanced in the High Court, the document submitted by the University while seeking extension of approval granted by the AICTE for the college, for the academic year 2018-2019, was also placed on record. Written submissions were also filed by the University which *inter alia* placed minutes of the meeting of the Syndicate held on 22.12.1995 on record in which the decision to set-up Self Financing schools in various subjects was taken. According to the minutes, each school under the Self Financing scheme was to be a viable unit.

7. In the backdrop of the facts as aforesaid, the instant matter can broadly be classified under four segments: -

a) The stand taken by the University prior to the Order dated 23.03.2001 under which pay revisions to the teachers were given from 01.01.2001 instead of from 01.01.1996 and which described the teachers of University College of Engineering as "temporarily appointment for a period of three years or more",

b) The effect of the stand taken in the Order dated 23.03.2001.

- A c) The stand taken by the University before authorities like AICTE and later in submission of budget proposals, and
- d) The mutually inconsistent views held by two Division Benches in case of teachers of the same institution.
8. The first document on record is the Resolution of the Syndicate dated 06.07.1996 whereunder it was resolved to create posts of teachers at various levels in engineering disciplines for starting B. Tech courses. The Resolution clearly indicated that the posts of Professors and Lecturers in various branches of Engineering were without any qualification whereas by the same Resolution, posts of teachers in certain subjects like Geometrical drawing, Physics, Chemistry, Mathematics and Humanities were to be filled on contractual or part time basis. The Order issued by the University on 10.07.1996 was in tune with the Resolution dated 06.07.1996. The Notification issued thereafter inviting applications from qualified candidates for posts of teachers was also consistent with earlier Resolution and the Order issued by the University.
- B The sanction accorded by the Vice Chancellor for constituting screening or scrutinizing Committees for selection was also in same spirit. Thus, at no stage, the posts of teachers in engineering disciplines were referred to or described as contractual or on part time basis. Same thought was carried in Resolution passed by the Syndicate in the Meeting held on
- C 05.08.1997 for creating additional posts in engineering disciplines. The order dated 25.08.1997 passed by the University was again a reflection of the Resolution passed by the Syndicate on 05.08.1997. The appellants were appointed pursuant to selection undertaken in terms of Notification dated 15.07.1996 or Resolution dated 05.08.1997. Their appointment orders did not mention anything that the appointments were contractual or on part time basis. The appointment orders in fact stated that the appointment would be governed by the provisions of the University Statutes. The subsequent Notification dated 10.03.1998 inviting applications for further additional posts was also in the same light. All these documents unequivocally suggest that the appointments of the
- D appellants were not on contractual basis or for a limited period of time. Whenever appointments were to be for limited duration or on contractual basis, a clear stipulation was always made in the concerned Resolution or Notification. The facts on record indicate that the appointments of the appellants were on permanent basis and that they were appointed through regular selection process. The appellants are right in submitting
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that their appointments were on substantive basis and not on contractual basis or for limited duration of time. The facts in the first segment, therefore, are definitely in favour of the appellants.

9. The Order issued by the University on 04.08.1999 extended the benefits of the Kerala Government Pay Revision, 1997 to the Non-Teaching (Technical) staff. The Order issued by the Government of Kerala on 18.05.2000 for implementing revised scales of pay for teachers in Engineering Colleges in the State contemplated extension of revision in line with the recommendations of AICTE as approved by the Government of India with effect from 01.01.1996. Though similar benefits were extended by the University to the teachers of University College of Engineering, the benefits were restricted and the effect was given from 01.01.2001 instead of 01.01.1996. No reason is available on record why such benefit was restricted and the only explanation offered is that the teachers of University College of Engineering were temporarily appointed for a period of three years or more. As the facts in the first segment indicate that the appointments of the appellants were not temporary and that they were appointed against substantive posts, which were created pursuant to resolutions passed by the concerned authorities, there was no reason to limit the scope of extension of benefits. Even the Principal of the University College of Engineering in letter dated 18.04.2001 voiced a concern that the teachers in the College were not temporary and that they would otherwise be entitled to the extension of some financial benefits. His letter in that behalf is quite eloquent. The steps taken and the stand adopted thereafter by the University is on the premise that the University College of Engineering under the School of Technical and Applied Sciences was a Self Financing Institution which was not getting any grants from the Government/All India Council and that it was not part of 20 Departments listed under the Statutes of the University. There is nothing on record to indicate that when the School of Technical and Applied Sciences was set up there was any resolution or decision by the University or its competent bodies to set up such School of Technical and Applied Sciences as a separate Institution. The University had secured conditional approval from the AICTE on 31.05.1996 and had thereafter caused steps to be taken for creation of posts and appointment of teachers against said posts. The University cannot dissociate itself and claim said University college of Engineering under the School of Technical and Applied Sciences to be otherwise than part of the University.

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- A 10. We now move to the third segment. It is interesting to note that even after such stand was taken by the University in the year 2001, in its communications with AICTE, at every stage the faculty position in said College of Engineering was always referred to and described as permanent faculty. Progress Profile of the existing Technical Institution prepared by AICTE which was referred to by the Single Judge is very clear that the appellants were shown to be part of permanent faculty and were projected to be permanent employees of the University. It would not therefore be proper on part of the University to brand the very same faculty to be on contractual basis or for a limited duration of time. It is also a matter of record that during the budget for financial years 2015-2016 and 2016-2017, the income and expenditure of Self Financing Institutions were included in the University Fund and thus the Self Financing Institutions were within the fold of the University.

- B 11. The facts as culled out in these three segments, point only in one direction that the appellants were appointed against substantive posts and were always treated to be on permanent basis. At no stage were they informed either through any Resolution or through any individual communication that their appointments were temporary or contractual basis. The only document which purportedly supports the stand taken by the University is the Resolution of the statutory Finance Committee of the University held on 05.08.1997. This Resolution was brought on record only in the year 2011 through an affidavit of the University. According to this Resolution, the item was taken as an additional item on the Agenda while approving Budget Estimates and the Committee had recommended to create the posts “for a period of three years”. Ironically, on the same day a Resolution was passed by the Syndicate of the University about creation of teaching and non-teaching (technical) posts for the University College of Engineering. It is the Resolution of the Syndicate which is referred in the order passed by the University on 25.08.1997 and not the Resolution of the statutory Finance Committee. The Order dated 25.08.1997 also did not qualify the posts to be limited for three years. Similarly, the document placed on record through written submissions, i.e. the Resolution of the Syndicate of the University passed in the meeting dated 22.12.1995 would again have no bearing. That was a Resolution passed when the AICTE approval was not yet granted. What is material to consider are the steps taken by the University after the approval was granted, when the posts were created, applications
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from the concerned candidates were invited and individual appointments were made. Those steps do not indicate any qualification or restriction insofar as the terms of employment were concerned. We, therefore, do not find anything on record which could substantiate the stand taken by the University.

12. Lastly, we must notice a peculiar feature of the matter that even after the Division Bench had ruled against the appellants in the present matter and while their review was pending before the Division Bench, in separately instituted proceedings, the Division Bench of the same High Court had accepted similar challenge raised by some other teachers from the same Self Financing Institution and by its order dated 07.12.2016 had ruled in their favour. The order dated 07.12.2016 was affirmed by this Court and Special Leave Petitions were therefrom dismissed. We have not proceeded only on the fact that the decision of the Division Bench dated 07.12.2016 having stood affirmed by this Court, nothing more is required to be done in the matter. We have gone through the record in its entirety, which record, in our view, points completely in the direction of the appellants and in their favour. We have therefore no hesitation in accepting the contentions of the appellants.

13. We, therefore, allow these appeals set aside the judgment and orders under appeal and restore the order dated 08.01.2014 passed by the Single Judge in O.P.(Civil) No.3818 of 2003.

14. No costs.

Special Leave Petition (Civil) Nos. 4255-4256 of 2018

(Jacob K Daniel vs. Mahatma Gandhi University, Priyadarshini Hills & Anr.)

Since the written submissions filed by the University show that the appointment order of the petitioner had clearly stipulated the appointment to be temporary, we segregate this matter and direct that it be listed before the appropriate court in due course.

Kalpana K. Tripathy

Appeals allowed and Petitions segregated for listing.