

HARISH CHANDRA SHRIVASTAVA

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v.

THE STATE OF BIHAR AND OTHERS

(Civil Appeal No(S). 2943 of 2022)

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APRIL 13, 2022

[AJAY RASTOGI AND ABHAY S. OKA, JJ.]

Bihar Private Medical (Indian System of Medicine) College (Taking Over) Act, 1985: Termination – Appellants were appointed as Lecturers in private Ayurvedic Colleges between the period from 14 March 1978 to 10 May 1979 – The State by the Act of 1985 took over the management of the Private Medical Colleges and upon the recommendation of the Screening Committee constituted by it, the appellants, amongst others were absorbed in service – Upon the batch of writ petition, High Court directed constitution of fresh Screening Committee, upon the recommendation of which the services of appellants were terminated – Appellants filed writ petitions before High Court against the termination, as result of which Review Screening Committee was constituted pursuant to the order of the High Court – Review Screening Committee recommended that the appellants, amongst others, were found unfit for absorption – Appellants approached High Court against the recommendation and the same was dismissed upon the grounds that the appellants though had academic qualification but lacked three years post qualification teaching experience from a recognised Ayurvedic College as required by the Statute – Hence instant appeal – Held: The very premise on which the High Court proceeded to examine the eligibility of the teachers as on the date they initially entered into service in the year 1978-1979 and arrived to the conclusion that the teachers who were not holding the post-qualification teaching experience of three years from recognized Ayurvedic college as referred to under the Statute would not be eligible for absorption is a clear misconception of law – State was not able to justify as to how the person on the basis of academic qualification, if not being permitted to teach, may acquire post qualification teaching experience as referred to under the Statute

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- A *of the Bihar University Act or by CCIM Act, 1970 for entry into service – Therefore, the academic qualification and post qualification teaching experience of three years at the entry level post i.e. Lecturer in the instant case, are two different ends which are not possible to meet – It is a proven fact that the appellants were holding required academic qualification and teaching experience of more than three year as on cut-off date prescribed by the Notification, the contention of State that the appellants lacked three years post qualification teaching experience at the time of their initial appointment as per the mandate of Act of 1985, is unsustainable.*
- B *Allowing the appeals, the Court*

- C **HELD:** 1. **The very premise on which the High Court has proceeded to examine the eligibility of the teachers as on the date they initially entered into service in the year 1978-1979 and arriving to the conclusion that the teachers who were not holding the post-qualification teaching experience of three years from recognized Ayurvedic college as referred to under the Statute would not be eligible for absorption in terms of the notification dated 09th December, 1986, is a clear misconception of law and deserves rejection. [Para 24][1076-E-G]**
- E 2. **The respondents were unable to justify as to how the person on the basis of academic qualification, if not being permitted to teach, may acquire post qualification teaching experience as referred to under the Statute of the Bihar University Act or by CCIM Act, 1970 for entry into service and, therefore, the academic qualification and post qualification teaching experience of three years at the entry level post i.e. Lecturer in the instant case, are two different ends which are not possible to meet. [Para 26][1077-B-C]**
- G 3. **In the instant case, each of the appellants before this Court was holding the academic qualification while entered into service in the year 1978-1979 in the private Ayurvedic College and holding teaching experience of more than three years as on**

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the cut-off date 01st June, 1986 in terms of notification dated 09th December 1986, when the Screening Committee was called upon to adjudge the overall suitability of the appellants for absorption and once the appellants were indeed eligible as on the cut-off date i.e. 01st June, 1986, the justification tendered by the Committee, in the first instance, that the appellants were not holding the post qualification teaching experience of three years on the date when they were initially appointed in the private Ayurvedic College in the year 1978-1979, is not in conformity with the mandate of the Act 1985 read with notification dated 09th December, 1986. [Para 28][1077-F-H]

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4. The High Court under the impugned judgment has completely overlooked the scheme of the Act 1985 read with notification dated 09th December, 1986 pursuant to which the exercise was to be undertaken by the State Government for absorbing teaching/non-teaching employees of private Ayurvedic College and this was the apparent error committed by the High Court which is not sustainable in law and deserves to be set aside. [Para 29][1078-A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2943 of 2022.

From the Judgment and Order dated 30.10.2017 of the High Court of Judicature at Patna in LPA No.1497 of 2018.

With

Civil Appeal No.2944 of 2022.

V. N. Sinha, Sr, Adv., Sandeep Jha, Ram Ekbal Roy, Shiv Nath Tripathi, Binay Kumar Das, Kanhaiya Priyadarshi, Advs. for the Appellant.

Ms. Madhvi Divan, ASG, Ms. V. Mohana, Sr. Adv., Samir Ali Khan, Saket Singh, Ms. Sangeeta Singh, Ms. Somyashree, Mrs. Niranjana Singh, Abhishek Kumar, Venkatesh, Ms. Vimla Sinha, Ms. Aakansha Kaul, Chetan Joshi, Raj Bahadur Yadav, Advs. for the Respondents.

- A The Judgment of the Court was delivered by
AJAY RASTOGI, J.
1. Leave granted.
2. Since common question has been raised in both the appeals,
- B however, decided by the separate impugned judgments by the High Court of Judicature at Patna on 18th September, 2017 and 30th October, 2017 respectively, with the consent of parties, both the appeals are disposed of by the present judgment.
3. In the present batch of appeals, all the five appellants have
- C approached this Court with the self-same grievance that they were holders of degree in Ayurveda and were appointed as Lecturers in between the period from 14th March, 1978 to 10th May, 1979 in the respective private Ayurvedic Colleges and by passage of time, they were promoted as Reader/Professor. Admittedly, their appointment as a Lecturer was much prior to 25th March, 1984.
- D 4. The State of Bihar in exercise of its legislative power enacted the Act called “The Bihar Private Medical (Indian System of Medicine) College (Taking over) Act, 1985” (hereinafter referred to as the “Act 1985”) for taking over of Private Medical (Indian System of Medicine) Colleges of the State of Bihar, which received assent on 07th August, 1985 and published in Bihar Gazette, Extraordinary No.687, dated 04th December, 1985.
- E 5. The State Government in exercise of its power under Section 3 of the Act 1985 took over the management of Sri Dhanwantri Ayurved College, Buxar Post Ahirauli, District Bhojpur and the hospitals attached to it w.e.f. 01st June, 1986 on certain terms and conditions in terms of the notification dated 09th December, 1986.
- F 6. The State Government thereafter constituted a Screening Committee vide its notification dated 09th October, 1990 to submit its report to the State Government. The Screening Committee constituted, G after scrutiny of records of the individual teachers submitted its report, which was published in the Bihar Gazette on 15th January, 1992 and in terms of the recommendation made by the Screening Committee, the State Government took a decision to absorb the services of 103 teaching and non-teaching employees, including the present appellants vide order dated 24th November, 1992.
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7. It reveals from the record that the teaching/non-teaching employees who were dissatisfied with the recommendation made by the Screening Committee report dated 15th January, 1992 challenged the recommendation by filing of various writ petitions before the High Court under Article 226 of the Constitution and while deciding the batch of writ petitions, the High Court directed that a fresh Screening Committee be constituted by the State Government consisting of Secretary cum Health Commissioner, Department of Health and one more IAS officer holding a responsible post under different department of State Government and also any member of Central Council of Indigenous Medicine (CCIM) and this Committee was directed to examine the cases of the employees of the college as on the cut-off date, i.e. 01st June, 1986 and to submit a report to the State Government.

8. Although at one stage, the grievance was raised by the other set of employees who were aggrieved by the directions of the High Court in constituting a fresh Screening Committee but finally the second Screening Committee constituted by the Government pursuant to the judgment of the High Court dated 12th May, 1995 submitted its report dated 18th June, 1999 and in terms of the recommendation of the second Screening Committee report dated 18th June, 1999, the State Government accepted the recommendations and absorbed 23 teaching employees out of 84 and no non-teaching employee out of 167 was considered fit for absorption.

9. The State Government, in consequence thereof, issued order of termination in terms of the recommendations made by the second Screening Committee by order dated 29th August, 2003 containing a list of 229 persons including the present appellants whose services were not found fit for absorption and accordingly their services were terminated.

10. The recommendation of the second Screening Committee dated 18th June, 1999, followed with the order of termination passed by the State Government dated 29th August, 2003 became the subject matter of challenge by filing writ petitions before the High Court under Article 226 of the Constitution and after the Division Bench decided the batch of LPAs by judgment dated 01st November, 2006, a fresh Review Screening Committee was constituted to examine the qualifications of the teaching/non-teaching employees.

11. The Review Screening Committee in its report recommended for absorption of 24 teaching employees and 42 non-teaching employees

- A and rest of 99 found to be unfit for absorption and the appellants unfortunately fall in the category of teachers who were found unfit for absorption amongst 99 persons and that again became the subject matter of grievance before the High Court by filing of writ petitions under Article 226 of the Constitution and in the third round of litigation, they were finally non-suited under the impugned judgment of the Division Bench
- B on the premise that in terms of the qualifications prescribed by Central Council of Indian Indigenous Act, 1970 (hereinafter being referred to as the “CCIM Act, 1970”) for teaching staff in Ayurvedic degree Colleges apart from academic qualification, one is supposed to hold post qualification teaching experience in any institution of three years for the post of
- C Lecturer and that being also the requirement under Chapter XVI-B of the Statutes of Bihar University regarding minimum qualification of teacher and officer in the faculty of Ayurveda for the post of Lecturer, one is supposed to have a degree of Ayurveda from University established by law with at least three years of post qualification teaching experience from a recognised Ayurvedic College and since none of the appellants
- D were holding three years of post qualification teaching experience on the date they were initially appointed as a teacher/lecturer in private Ayurvedic College in the year 1978-1979, were ineligible for absorption in terms of notification dated 09th December, 1986 and that became the subject matter of challenge at the instance of the appellants by filing of
- E appeals in this Court.

12. We have heard the learned counsel for the parties at length and perused the material on record with their assistance.

13. Before we proceed to examine the grievance made by the appellants, it will be apposite to take note of the scheme of the Statute of the Bihar University and provisions relevant for the purpose.

14. Chapter XVI-B of the Statutes of the Bihar University which prescribes the essential qualifications for appointment of teachers in faculty of Ayurveda and for the post of Lecturer in particular, with which we are concerned, is reproduced hereunder:-

G “1. The following shall be grades, pay scales and minimum qualifications of teachers and officers in the faculty of Ayurveda:-

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(d) Lecturer

H Pay Scale- 610-20-670-30-940-EB-35-1155.

Qualifications:- Degree in Ayurveda from a University or a Board/ Council Established by a State or Central Government and recognized by the University with at least 3 years of teaching experience in a recognized Ayurvedic College, or with at least 3 years experience as a Medical Officer in Government/ University Dispensary.

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Provided further that a holder of M.B.B.S. degree University from any recognized shall also be eligible for appointment in Anatomy Physiology and Bio-Chemistry, Pathology, Jurisprudence, Health and Hygiene and holder of M.Sc. degree will be eligible for Basic Science in the subject concerned.”

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15. It may be relevant to note that CCIM Act, 1970 also laid down the self-same teaching qualification for teaching staff in Ayurvedic degree colleges. The relevant clause of the CCIM Act, 1970 reads as follows:-

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“13. Qualifications prescribed for Teaching Staff Essential:

- (a) Degree (diploma in Ayurved from a University established by law or a statutory Board/ Faculty/ Examining Body of Indian Medicine or equivalent

OR

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Ayurvedacharya of All India Ayurved Vidyapeeth.

OR

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Other eminent Ayurvedic Scholars of established repute though not having any degree/ diploma, but fit for teaching Ayurvedic subjects.

- (b) Teaching experience in any institution for ten years, five years and three years for the post of Professor, Reader and Lecturer respectively.
(c) Knowledge of Sanskrit.

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Desirable:

- (a) Post/graduate qualification in Ayurved from a recognized institution/ university established by law.
(b) Original published papers/ books as the subject.”

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- A 16. Section 3 of the Act, 1985 postulates that the State Government, by a notification and from the date mentioned therein, is competent to take over the college and management of the private Ayurvedic College. However, in terms of Section 6 of the Act 1985, the State Government is vested with the power to lay down the terms and conditions of the teaching staff and other employees of the college. Section 3 and Section 6 of the Act 1985 relevant for the purpose are reproduced hereunder:-

“3. Taking over of Private Medical (Indian System of Medicine) Colleges.-

- C (1) The State Government may, by a notified order and from the date mentioned therein, take over a College and the management and control thereof shall thereupon be exercised by the State Government in such manner as specified in the said order.
- D (2) All the assets and properties of the college and the college body whether movable or immovable including land, building, library, laboratory and dispensary workshop, store, instruments, machinery, vehicles, cash balance, reserve fund, investments, taxes, furniture and others shall, on the date of take over stand transferred to and vested in, and be deemed to have come into possession of the State Government.
- E (3) All the liabilities and obligations of the College under any agreement or contract entered into *bona fide* before the date of taking over shall devolve and shall be deemed to have devolved on the State Government.

- F **6. Determination of terms of the teaching staff and other employees of the College.** – (1) From the date of the notified order, all the staff employed in the College shall cease to be the employees of the College body :

G Provided that they shall continue to serve the College on *ad hoc* basis till a decision under sub-sections (3) and (4) of this Section is taken by the state Government.

- H (2) The State Government will set up one or more committees of experts and knowledgeable persons which will examine the bio-data of each member of the teaching staff and ascertain whether

appointment, promotion or confirmation was made in accordance with the Act, Statue or Regulations of the University concerned and in keeping with the guidelines laid down by the Indian Medical Council of India and take into consideration all other relevant materials including length of his service in the College; and submit its report to the State Government.

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(3) The State Government on receipt of the report of the Committee or committees, as the case may be, will decide in respect of each member of teaching staff on the merits of each case whether to absorb him in government service or to terminate his service or to allow him to continue on an *ad hoc* basis for a fixed term on contract and shall, where necessary, redetermine the rank, pay allowances and other conditions of service.

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(4) The State Government shall similarly determine the terms of appointment and other conditions of service of other categories of staff of the college on the basis of facts ascertained either by a committee or by an officer entrusted with the task and the provisions of sub-sections (2) and (3) of this Section shall apply *mutatis mutandis* to such cases."

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17. The Government later issued a Notification dated 09th December, 1986 of taking over of private medical colleges issued in exercise of power under Section 3 of the Act 1985, the extract of which relevant for the purpose is reproduced hereunder:-

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“BIHAR GAZETTE, 24 DECEMBER 1986
Medical Education and Family Welfare Department
NOTIFICATION
09/12/1986

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No. Indem (H)M-2-186/84-940(DM)-M. E. - under Section 3 of Bihar Private (India System of Medicine) College (taking over) Act 1985 (Bihar Act, 10, 1985) and the powers provided therein the Bihar Government takes over Sri Dhanwantri Ayurved College, Buxar, Post Ahirauli District Bhojpur and the Hospitals attached to it with effect from 01/06/1986 with the following terms and conditions:-

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(a) As a result of Nationalization (Sarkarikaran), all the movable and Immovable properties of the institution will vest in the

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- A State Government from the date of Nationalization. The verification of the certified list of the entire assets and liabilities of the said college would be done by the Department and from the date of the nationalization (take over). No responsibility of any liabilities would be on the Government except the salary of the teaching and non teaching employees of the said college.
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 - (b) That no dues of any kind is owed by the said college as per the no dues certificate produced by the governing body of the college to the Department nor there is any dues on its land and the entire land of the college is in its peaceful possession.
 - (c) That the verification of the list of Teaching and Non Teaching employees working in the said college on the cut off date of 01/03/1983 would be done by a Screening Committee duly constituted by the Department and it would be seen that whether on the said date the employees and teachers were having minimum qualification and teaching skill or not for the post which they held on the said date.
 - (d) As per the Norms of Indian Medical Council the sanction/ creation of approved posts of Gazetted and non gazetted would be done as per the approved pay by the State Government along with all the allowances and till then the employees working in the said institution would get their present pay.
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By the order of the Governor
Banshidhar Singh, Deputy Secretary”

- G 18. It may be relevant to note that the cut-off date which has been referred to as 01st March, 1983 in the aforementioned notification dated 09th December, 1986 got replaced to 01st June, 1986 in terms of the judgment of the High Court dated 12th July, 1988 passed in C.W.J.C. No.992/1987.
- H 19. It is not disputed that each of the appellants was holding the essential academic qualifications prescribed for teaching staff as on the date of their initial appointment in the year 1978-1979 in the private Ayurvedic College and were serving the institution when the Act, 1985 came into force on 07th August, 1985.

20. The State Government in exercise of its power under Section 3 of the Act 1985 vide its notification dated 09th December, 1986 w.e.f. 01st June, 1986 took over the college and management of the private Ayurvedic College on certain terms and conditions and Clause (c) of the notification of 09th December, 1986 of which reference has been made above clearly manifest that the verification of the list of teaching and non-teaching employees working in the said college on the cut-off date i.e. 01st June, 1986 would be considered by the Screening Committee duly constituted by the department and it will be seen by the Committee whether on the said date, the employees and teachers were having minimum qualifications and teaching skills for the post that they held on the cut-off date and not on the date of appointment.

21. Clause (c) of the notification dated 09th December, 1986 leaves no manner of doubt that the Screening Committee constituted by the State Government has to look into the eligibility and other minimum qualifications and teaching skills as on the said date i.e. 01st June, 1986. At this stage, we would like to take note of the submission made by learned counsel for the respondent State that the notification dated 09th December, 1986 has to be read alongwith Section 6(2) of the Act which casts an obligation on the Committee of experts to examine the bio-data of each of the members of the teaching staff and to ascertain whether appointment, promotion and confirmation was made in accordance with the Act, Statute or Regulations of the University concerned keeping in view the guidelines of statutory authority and the recommendation made under sub-Section (2) of Section 6 was to be considered by the State Government for taking a final decision under sub-Section (3) of Section 6 of the Act 1985.

22. We find a complete fallacy in the submission made by the State Counsel for the reason that Section 6(2) authored the Committee constituted by the State Government to examine the bio-data of each of the member of the teaching staff in reference to appointment, promotion and confirmation made in accordance with the relevant Statute and the State Government in terms of Section 6(3) of the Act will take a call in respect of each member of teaching staff on merits of each case whether to absorb him in the Government service or terminate his service or allow him to continue on *ad hoc* basis on a fixed term, as the case may be, but once a State Government in its wisdom has come out with the statutory notification issued in exercise of power under Section 3 of the

- A Act dated 09th December, 1986 while taking assets of private Ayurvedic College and the hospitals attached thereto, at the same time, under Clause (c), a specific mandate has been authored to the Screening Committee to consider the minimum qualifications and teaching skills of the teachers as on the cut-off date i.e. 01st June, 1986 and on the conjoint reading of Section 6(2) of the Act 1985 read with notification dated 09th December, 1986, the State Government made its intention clear that as the decision has been taken to absorb the employee/teacher of the private Ayurvedic college as on 01st June, 1986, his bio-data is to be examined for various purposes, but while considering him for absorption, the Screening Committee constituted has to consider the eligibility of the employees/teachers regarding minimum qualifications and teaching skills as on the cut-off date i.e. 01st June, 1986 and the recommendation made by the Screening Committee will be considered by the State Government for absorption or for continuance in service or for termination, as the case may be, on case to case basis in terms of sub-Section (3) of Section 6 of the Act 1985.
- D 23. The additional reason appears to be since the service of the teacher will be reckoned from the date of absorption in the Government, the past service rendered in the private Ayurvedic college in terms of the affidavit filed by the State Government stands obliterated for all practical purposes. This further supports the eligibility of the teacher to be looked into as on the cut-off date, i.e. 01st June, 1986.
- F 24. Thus, the very premise on which the High Court has proceeded to examine the eligibility of the teachers as on the date they initially entered into service in the year 1978-1979 and arriving to the conclusion that the teachers who were not holding the post-qualification teaching experience of three years from recognized Ayurvedic college as referred to under the Statute would not be eligible for absorption in terms of the notification dated 09th December, 1986, in our considered view, is a clear misconception of law and deserves rejection.
- G 25. We proceed to further examine as to whether the requirement of eligibility of the teaching staff of holding post qualification teaching experience of three years as a teacher/lecturer referred to under the Statute is possible for the incumbent to meet out on which the State counsel has put much emphasis. Our question to him was how far it is practically possible that when you don't permit a person to be recruited into service as a teacher on the basis of his academic qualification, how

he will gain post-qualification teaching experience of three years as the condition of eligibility and how both these twin conditions would meet together.

26. Leaned counsel for the respondents even after seeking instructions from the department has come with the explanation that this being the statutory requirement, one is supposed to comply with at the time of initial appointment but he was unable to justify as to how the person on the basis of academic qualification, if not being permitted to teach, may acquire post qualification teaching experience as referred to under the Statute of the Bihar University Act or by CCIM Act, 1970 for entry into service and, in our considered view, the academic qualification and post qualification teaching experience of three years at the entry level post i.e. Lecturer in the instant case, are two different ends which are not possible to meet.

27. We are not going into this controversy any more and leave it at this stage for the reason that the requirement in terms of the notification dated 09th December, 1986 was never the subject matter of challenge and clause (c), in particular, clearly manifests that the verification of the list of eligible teaching employees working in the college would be considered by the Screening Committee duly constituted by the department as on the cut-off date i.e. 01st June, 1986 and it is the said date on which the minimum qualification and teaching skills of the individual has to be looked into by the Committee while adjudging his overall suitability for absorption.

28. Indisputedly, in the instant case, each of the appellants before this Court was holding the academic qualification while entered into service in the year 1978-1979 in the private Ayurvedic College and holding teaching experience of more than three years as on the cut-off date 01st June, 1986 in terms of notification dated 09th December 1986, when the Screening Committee was called upon to adjudge the overall suitability of the appellants for absorption and once the appellants were indeed eligible as on the cut-off date i.e. 01st June, 1986, the justification tendered by the Committee, in the first instance, that the appellants were not holding the post qualification teaching experience of three years on the date when they were initially appointed in the private Ayurvedic College in the year 1978-1979, is not in conformity with the mandate of the Act 1985 read with notification dated 09th December, 1986.

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- A 29. In our considered view, the High Court under the impugned judgment has completely overlooked the scheme of the Act 1985 read with notification dated 09th December, 1986 pursuant to which the exercise was to be undertaken by the State Government for absorbing teaching/non-teaching employees of private Ayurvedic College and this was the apparent error committed by the High Court which, in our view, is not sustainable in law and deserves to be set aside.
- B 30. Before parting with the order, it has been informed to this Court that in terms of the Government notification no. 6745 dated 30th July 2015, the age of superannuation of teachers has been extended upto 67 years and out of 5 teachers, 4 of them had attained the age of superannuation and one Dr. Mod Nath Mishra has time to serve the institution and may retire in the month of March, 2023.
- C 31. Once we arrive at the conclusion that the finding of unfitness recorded by the Review Screening Committee was not sustainable in law which was the foundation for the Government to terminate the services of the appellants in consequence thereof, each one of them deserves to be reinstated in service with all consequential benefits.
- D 32. So far as Dr. Mod Nath Mishra is concerned, since he has not attained the age of superannuation, we direct the respondents to pass necessary order regarding his reinstatement within a period of one month and he shall be entitled for all notional benefits including pay, seniority and other consequential benefits to which he is entitled for under the rules but shall not be entitled for salary during the period he has not served the institution.
- E 33. The other four appellants who have attained the age of superannuation shall be treated to be in continuous service and their service shall be treated as a qualifying service for all practical purposes, including for pension and other retiral benefits, which each of the appellants is legitimately entitled for under the rules. However, we make it clear that the appellants shall not be entitled for salary for the intervening period during which they have not served the institution.
- F 34. These appeals succeed and are accordingly allowed and the impugned judgments of the High Court dated 18th September, 2017 and 30th October, 2017 respectively are hereby quashed and set aside in the observations made above.

35. We direct the respondents to pass necessary order regarding release of their pension and other retiral dues to which the individual appellant/teacher is entitled for within one month and arrears of retiral dues shall be paid to each of them within three months after due computation, failing which it shall carry interest @ 12% per annum until actual payment. No costs. A

36. Pending application(s), if any, stand disposed of. B

Devika Gujral

Appeals allowed.