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CHANDRA MOHAN VARMA

v.

STATE OF UTTAR PRADESH & ORS.

(Civil Appeal Nos. 350-351 of 2020)

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JANUARY 21, 2020

**[DR. DHANANJAYA Y CHANDRACHUD AND  
AJAY RASTOGI, JJ.]**

C *Uttar Pradesh State Medical Colleges Teachers, Service Rules 1990 – r.26 – UP Fundamental Rules notified u/s.241 (2) (b) of the Government of India Act, 1935 – Benefit of the increase in the age of retirement from 60 to 65 years as a consequence of the notification dated 6 February 2015 – Entitlement to, sought by the appellant who retired on 13 August 2014 but was continuing in service in view of the ‘session benefit’ granted by the G.O dated 19 November 2012 – Held: The Notification enhancing the age of retirement is a special order within the meaning of Rule 26 – Notification dated 6 February 2015 not ultra vires Fundamental Rule 56 – ‘Session ending benefit’ granted to teachers ‘after retirement’ according to the G.O – Grant of deeming provision not automatic but conditional – The increase in the age of superannuation from 60 to 65 years was prospective and would apply to those medical teachers in Government Medical Colleges who had not attained the age of superannuation under the prevailing rules – It was clarified by the State that the said notification would not apply to teachers, such as appellant, who had already crossed the age of superannuation as it then stood prior to the notification dated 6 February 2015 – In the instant case, the appellant was continuing until the end of the session (30 June 2015) after retirement, in terms of the G.O. dated 19 November 2012 – The determination of the age of retirement is a matter of executive policy – The appellant attained the age of superannuation prior to the notification dated 6 February 2015 and was not entitled to the benefit of the enhancement of the age of retirement – Ram Vir Sharma v. State of UP distinguished – Regulation 21 of the Intermediate Education Act 1921 extended service after the attaining superannuation in view of a deeming provision – In contrast the 6 February 2015 notification*

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*conditionally grants session ending benefit – Therefore, appeals dismissed – Service Law – Superannuation.* A

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 350-351 of 2020.

From the Judgment and Order dated 02.02.2018 of the High Court of Judicature at Allahabad in Writ-A No. 35714 of 2015 and order dated 14.03.2019 in C.M. Review Petition No. 5 of 2018. B

P.S. Patwalia, Sunil Gupta, Sr. Advs., M. Shoeb Alam, Siddharth Buxy, Mojahid Karim Khan, Advs. for the Appellant.

Ankit Goel, Gaurav Singh, Advs. for the Respondents. C

The Judgment of the Court was delivered by

**DR. DHANANJAYA Y CHANDRACHUD, J.**

1. A Division Bench of the High Court of Judicature at Allahabad dismissed, by its judgment dated 2 February 2018, a Writ Petition instituted by the appellant under Article 226 of the Constitution. By his petition, the appellant sought a *mandamus* for his continuance in service as Professor and Head of the Department of Cardiology of the LPS Institute of Cardiology in GSVM Medical College, Kanpur until he attained the age of 65. He claimed this relief on the basis of a notification dated 6 February 2015 of the Government of Uttar Pradesh extending the age of retirement from 60 to 65 years. The appellant had before the issuance of the above government notification attained the age of superannuation of 60 years on 13 August 2014. But, in terms of a Government decision<sup>1</sup> dated 19 November 2012, he had been granted a ‘session benefit’ of an extension of service up to 30 June 2015. Based on this extension, the appellant’s case is that he is entitled to the extension in the age of retirement which has been brought about by the notification dated 6 February 2015. This claim has been repelled by the judgment and order of the Allahabad High Court which is questioned in appeal. D E F

2. On 1 April 1992, the UP Fundamental Rules<sup>2</sup> were notified under Section 241(2)(b) of the Government of India Act 1935. Rule 56 provides that: G

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<sup>1</sup> “GO”

<sup>2</sup> “Fundamental Rules”

A “Except as otherwise provided in this Rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

Provided ...”

B 3. On 21 December 1990, the Uttar Pradesh State Medical Colleges Teachers, Service Rules 1990<sup>3</sup> were notified by the Governor in exercise of powers conferred by the proviso to Article 309 of the Constitution. Rule 9 prescribed a maximum age for recruitment in medical colleges, by direct recruitment. For Professors, it was 45 years. Among other things, the Rules made a provision for constitution of cadres in C Part II, recruitment in Part III, quantifications for appointment in Part IV, procedure for recruitment in Part V and provisions for pay related matters in Part VII. The Rules did not prescribe the age of retirement. But, Rule 26 contained the following stipulation:

D “26. Regulation of other matters. – In regard to the matters not specifically provided in these rules or in special orders, persons appointed to the service shall be governed by the rules, regulations and orders applicable generally to Government servants in connection with the affairs of the State.”

E By virtue of Rule 26, the age of retirement of professors in medical colleges was governed by Rule 56 of the Fundamental Rules which stipulated it as 60 years.

F 4. On 16 March 2005, the Medical Council of India Minimum Qualifications for Teachers in Medical Institutions Regulations 1998<sup>4</sup> were amended in pursuance of powers conferred by the Indian Medical Council Act 1956 to incorporate an enabling provision in the following terms:

G “The maximum age limit upto which a person can be appointed or granted extension or re-employed in service against the posts of Teachers or Dean or Principal or Director, as the case may be, which are required to be filled up as per the norms of the Medical Council of India in any Medical College or Teaching Institution for imparting Graduate and Post-Graduate medical education, shall be 65 years.”

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<sup>3</sup> “the Rules of 1990”

H <sup>4</sup> “the MCI Regulations 1998”

This provision was made in view of the shortage of medical teachers. It was amended on 17 September 2010 so as to substitute 70 years for 65 years. A

5. By a decision notified on 19 November 2012, the State of Uttar Pradesh provided that Assistant Professors, Professors and Principals of Government Medical Colleges who were to retire after reaching the age of superannuation during the midst of an academic session would be granted an extension of service till the end of the session namely 30 June of the following year. This has been described as an ‘end of session benefit’. B

6. On 6 February 2015, a notification was issued by the State of Uttar Pradesh by which a decision was taken that in order to meet the continuous shortage of medical teachers in Government Medical Colleges, the age of superannuation for serving faculty members would stand enhanced from 60 to 65 years and the upper age limit prescribed for recruitment of medical teachers through the Uttar Pradesh Public Service Commission<sup>5</sup> would stand abolished. C D

7. The appellant whose date of birth is 13 August 1954 joined as an ad-hoc lecturer at GSVM Medical College, Kanpur on 17 April 1986. Over time he received promotions in service. In August 2014, he was working as a Professor in Cardiology and as Head of Department. In terms of Rule 56, he was due to retire on attaining the age of 60 years on 13 August 2014. E

8. On 6 August 2014, an order was issued by the Director General, Medical Education & Training, on an application moved by the appellant on 31 May 2014 granting the benefit of an extension of service until the end of the session subject to the fulfillment of the conditions stipulated in the GO dated 19 November 2012. Apprehending that his services would be discontinued on 30 June 2015 at the conclusion of the academic session, the appellant instituted a Writ Petition before the Allahabad High Court seeking to *interdict* his retirement before he attained the age of 65. F

9. On 30 June 2015, an Office Memorandum<sup>6</sup> was issued by the Chief Secretary to the State Government stating that upon the end of the session, the appellant would be demitting office on 30 June 2015. The OM is extracted below : G

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<sup>5</sup> “UPPSC”

<sup>6</sup> OM

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## “OFFICE MEMORANDUM

The undersigned has been directed to inform that after your completing the age of superannuation i.e. 60 years on the date mentioned against the name, the period of session ending benefit for the below named Medical Teacher will

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expire on 30.6.2015:-

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Sl No.	Medical Teacher	Date of Birth	Date of Retirement	Present place of posting	Date of expiry of session ending benefit
1.	Dr. C.M. Verma	13.06.1954	31.08.2014	Professor and Head of Department, Cardiology, Institute of Cardiology, Kanpur	30.06.2015

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2. In view of above, the services of above-named Medical Teacher, working under session ending benefit, will expire on 30.06.2015"

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10. On 1 July 2015, the appellant addressed a communication to the Principal Secretary, Medical Education seeking re-appointment stating that he was doing so in pursuance of the telephonic instructions of the DGME but without prejudice to his right to claim continuance in service until the age of 65 years for which he had instituted a Writ Petition before the High Court.

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11. On 2 July 2015, the appellant was re-appointed to the post of Professor of Cardiology until further orders or until the attainment of the age of 65 years whichever was earlier. The appellant initially furnished a letter of joining service on re-appointment without prejudice to his rights and contentions in the pending petition but subsequently withdrew it and submitted a fresh joining letter. He then proceeded to amend the Writ Petition in order to challenge the OM dated 30 June 2015. The State Government in its counter affidavit opposed the Petition stating that the appellant was not entitled to the benefit of the notification dated 6 February 2015 since he had already attained the age of superannuation on 13 August 2014 and retired on 31 August 2014. According to the

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State Government, the continuance of the appellant until 30 June 2015 was on the basis of the grant of the end of session benefit since the date of his retirement was in the midst of the session. The Division Bench of the High Court by its judgment dated 2 February 2018 dismissed the Writ Petition on the ground that the notification dated 6 February 2015 increasing the age of superannuation from 60 to 65 years “has to be ignored rather than to be enforced”. The reasoning which weighed with the High Court indicates that:

- (i) The petitioner is governed by the UP State Medical College Teachers Service Rules 1990. These rules do not provide for the age of superannuation of teachers of medical colleges. In such a situation, the Rules applicable to government servants, namely the UP Fundamental Rules would be applicable;
- (ii) Rule 56(a) of the Fundamental Rules prescribes the age of superannuation as 60 years. This Rule has not been amended by the State. Therefore, the notification dated 6 February 2015 increasing the age of superannuation to 65 years was contrary to Rule 56(a) of the Fundamental Rules; and
- (iii) The GO (‘simple order’) was subordinate to the Fundamental Rules (‘superior legislation’) and therefore, being contrary to it, would not have effect.

The appellant filed a petition seeking review of the judgment on the ground that (i) it was without considering and was contrary to a prior judgment of a coordinate bench of the High Court in **Dr Juhi Singhal v State of UP**<sup>7</sup>; and (ii) it had erroneously applied the Fundamental Rules when under Rule 26 of the Rules of 1990, the notification dated 06 February 2015 being a ‘special order’ would become applicable with effect from 6 February 2015.

The review was dismissed by a judgment dated 14 March 2019.

12. Assailing the judgment of the High Court, Mr PS Patwalia, learned Senior Counsel submitted that :

- (i) Though the appellant attained the age of superannuation stipulated in Rule 56 of the Fundamental Rules on 13 August

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<sup>7</sup> WP (S/B) No. 4292/2016

- A 2014 and would have retired from service on 31 August 2014, he was granted the benefit of the GO dated 19 November 2012 in terms of which his services were extended until the end of the session on 30 June 2015;
- B (ii) During the extended tenure of service, the State Government decided to increase the age of retirement on 6 February 2015. The benefit of the increase in the age of retirement must be granted to the appellant who was in service on the date on which the State Government decided to increase the age of superannuation to 65 years;
- C (iii) The High Court was in error in coming to the conclusion that the notification dated 6 February 2015 enhancing the age of retirement to 65 years is *ultra vires* the provisions of Rule 56 of the Fundamental Rules. In terms of Rule 26 of the Rules of 1990, matters which are not specifically provided in the rules or in special orders would be governed by the rules, regulations and orders generally applicable to State Government servants. The notification dated 6 February 2015 enhancing the age of superannuation to 65 years is a special order within the meaning of Rule 26. The MCI Regulations 1998 contain an enabling provision in terms of which the State Government was entitled to enhance the age of superannuation to 65 years;
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- F (iv) The appellant is entitled to the benefit of the notification dated 6 February 2015 issued during the pendency of his extended service on account of the end of session benefit given up to 30 June 2015. As a result of the end of sessional benefit the superannuation gets postponed and would be deemed to have taken place only at the end of the session namely on 30 June 2015. Hence, the appellant would be entitled to all benefits arising before that date including the enhancement in the age of superannuation to 65 years;
- G (v) The GO dated 19 November 2012 equally extended the end of session benefit to medical teachers like the teachers in the education department. In **Ram Vir Sharma v State of UP**<sup>8</sup> (“**Ram Vir Sharma**”), this Court held, while construing the

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H <sup>8</sup> Civil Appeal No. 2606 of 2009 , decided on 4 June 2014

provisions of Regulation 21 of Chapter III of the Regulations under the Uttar Pradesh Intermediate Education Act 1921<sup>9</sup>, that the employee must not be deemed to have been superannuated on the date of attaining the age of 60 years but would be deemed to have been superannuated only on 30 June following the date on which the age of 60 years was attained; and

- (vi) Besides the decision in **Ram Vir Sharma** rendered by this Court, the High Court has had occasion to deal with a similar issue in **Dr Juhi Singhal v State of UP through Principal Secretary Department of Medical Education and Training**<sup>10</sup> (“**Juhi Singhal**”); **State of Uttar Pradesh through Principal Secretary, Secondary Education Lucknow v Smt Hema Pathak**<sup>11</sup> (“**Hema Pathak**”); and **Dr Professor Rajendra Chaudhary v State of UP**<sup>12</sup> (“**Rajendra Chaudhary**”). The decision in **Rajendra Chaudhary**, though in the context of the abrogation of the upper age limit for retirement has been affirmed by this Court in its decision dated 28 August 2019<sup>13</sup>.

13. On the other hand, Mr Gaurav Singh, learned Counsel appearing on behalf of the respondents submitted that:

- (i) The appellant attained the age of superannuation, which at the relevant time was 60 years on 13 August 2014 and would have demitted office on 31 August 2014;
- (ii) His continuance until 30 June 2015 in terms of the GO dated 19 November 2012 until the end of the session (30 June 2015) did not alter the date of superannuation;
- (iii) The continuance of the appellant until 30 June 2015 was only to obviate a dislocation being caused as a result of the retirement falling in the midst of the session;

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<sup>9</sup> “the Intermediate Education Act 1921”

<sup>10</sup> Service Bench No 4292 of 2016, decided on 11 November 2016

<sup>11</sup> Special Appeal Defective No 477 of 2013, decided on 24 January 2017

<sup>12</sup> Writ-A. No. 17078 of 2016, decided on 6 April 2018

<sup>13</sup> **Dr Professor Rajendra Chaudhary v State of Uttar Pradesh**, Civil Appeal Nos. 6667-6668 of 2019



- A (iv) The notification dated 6 February 2015 extending the age of superannuation will not apply to the appellant who attained the age of retirement on 13 August 2014;
- (v) There is a distinction between the provisions of Regulation 21 contained in the regulations made under Chapter III of the Intermediate Education Act 1921 and the GO dated 19 November 2012. Under Regulation 21, there is a deeming provision for an extension of service as a result of which the retirement would take place at the end of the academic year following. Regulation 21 contains an opt-out provision. On the other hand in terms of the GO dated 19 November 2012, the extension of the end of session benefit in Government Medical Colleges is conditional on satisfactory performance in service. Consequently there is no deeming extension of the age of superannuation by the GO dated 19 November 2012; and
- D (vi) The date of superannuation does not stand postponed. The decision of this Court in **Ram Vir Sharma** as well as of the High Court in **Hema Pathak** is distinguishable. The decision in **Juhi Singhal** dealt with the abolition of the maximum age of recruitment and has no application. Similar is the case with the decision in **Dr Rajendra Chaudhary**<sup>14</sup> which came up for decision before this Court on 28 August 2019.
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14. While considering the rival submissions, it is necessary to clear the ground in regard to Rule 56 of the Fundamental Rules. Rule 56(a) stipulates that (except as otherwise provided in it) every government servant shall retire from service on the afternoon of the last day of the month in which the age of 60 years is attained. The High Court, while placing reliance on Rule 56(a), held that a ‘simple’ GO extending the age of retirement to 65 years would not alter or modify the age of retirement contained in the Fundamental Rules. Hence, the High Court held that the age of retirement of 60 years which was prescribed in Rule 56(a) could not be altered by the notification dated 6 February 2015. The High Court therefore held that:
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“Thus, even assuming that the aforesaid government order had come during the service of the petitioner it would not have the

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H <sup>14</sup> Civil Appeal Nos. 6667-6668 of 2019

effect of enhancing the age of superannuation prescribed under Rule 56(a) of the Rules which stands unamended.” A

The above extract indicates that the High Court noticed that:

- (i) The order extending the age of retirement had not come during the service of the petitioner; and
- (ii) Even if it had, it would not have the effect of enhancing the age of superannuation prescribed in Rule 56(a) which stands unamended. B

15. Rule 26 of the Rules of 1990 makes applicable the rules, regulations and orders applicable generally to government servants serving in connection with the affairs of the state in regard to matters which are not specifically provided in those Rules “or in special orders”. The notification dated 6 February 2015 enhancing the age of retirement to 65 years for serving members of the faculty working in Government Medical Colleges is a special order within the meaning of Rule 26. That being the position and in terms of the Rules of 1990 which have been framed under the proviso to Article 309, the increased age of superannuation as prescribed in the notification dated 6 February 2015 cannot be regarded as being *ultra vires*. C D

Indeed, as we have noticed, the regulations framed by the MCI contain an enabling provision in pursuance of which it was open to the State Government to provide for an increase in the age of superannuation for faculty working in the Government Medical Colleges. The view of the High Court that the notification dated 6 February 2015 is *ultra vires* Fundamental Rule 56 is hence erroneous. E

16. The issue however is whether the appellant was entitled to the benefit of the increase in the age of retirement from 60 to 65 years as a consequence of the notification dated 6 February 2015. Mr PS Patwalia’s arguments proceed on the basis of two hypotheses: F

- (i) The GO dated 19 November 2012 by which a facility of an extension of service is granted until the end of the session places the faculty of medical colleges on the same basis as teachers of the Education department; and
- (ii) A member of the faculty who was on an extension of service till the end of the academic session as on 6 February 2015 G

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A would be entitled to an extension of the age of superannuation brought about by the notification dated 6 February 2015.

17. In order to appreciate the submission, it is necessary to consider the terms on which it was decided by the Government on 19 November 2012 to grant a session ending benefit to medical teachers. The subject of the communication of the Chief Secretary to the Director General, Medical Education & Training is extracted below:

“Regarding **grant of session ending benefit** to the Medical Teachers working in the State Allopathic Medical Colleges **after retirement on attaining the age of superannuation.**”

C (Emphasis supplied)

The communication then states :

D “I am directed to say on the above-mentioned subject that as per Education Section -1’s Govt. Order No. 7022/15 (1)/83/83-31 (16)/77 dated 21.03.1984 facility of extension of service upto the end of session (i.e. 30<sup>th</sup> June) has been granted to the Teachers/Head Masters and Principals working in Govt. Schools and Colleges. Similarly, as per Technical Education Section -2’s Govt. Order No 934/TE-2-7 (E) ED-78 dated 27.06.1988, the facility of extension of service upto the end of academic session (i.e. 30<sup>th</sup> June) has been granted to the Instructors, Lectures Head of Departments and principals working on teaching posts in the Govt. Technical Education Department, who retire on attaining the age of superannuation in the middle of session i.e. from 01<sup>st</sup> July to 30<sup>th</sup> June.

F 2. **Facility of extension of service upto the end of academic session (i.e. upto 30<sup>th</sup> June), by approving the benefit of session ending, is granted** to the Lectures, Assistant Professors, Jr. Professors, Professors and Principals of Govt. Allopathic Medical Colleges like Education Department and Technical Education Department, **subject to the following conditions:-**

G (1) **He is teaching any subject regularly according to the recommendations of Medical Council of India.**

(2) **He is working on the post continuously for minimum 03 years and his work & conduct is satisfactory.**

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**(3) No departmental proceeding or vigilance enquiry is pending against him.** A

3. I am also directed to say that such officers, who are not doing teaching work, be not deputed for teaching work in the last year of their service without any specific reason, which may give them the benefit of retention in service upto 30<sup>th</sup> June unnecessarily.” B

(Emphasis supplied)

The above communication shows that the grant of a session ending benefit is for medical teachers working in the State Medical Colleges “after retirement on attaining the age of superannuation”. The effect is that a person who has retired on attaining the age of superannuation, may continue until the end of the academic session. In the case of the Education department, it was envisaged that a teacher who retired in the midst of the session (1 July to 30 June of the following year) would continue up to the end of the academic session (30 June). While extending this facility to the faculty of Government Medical Colleges, the communication dated 19 November 2012 made it abundantly clear that the extension of service was not automatic but was subject to the fulfillment of stipulated conditions. These were that: C D

- (i) The teacher should be teaching a subject regularly;
- (ii) The teacher should have been working on the post continuously for the period of three years; E
- (iii) The work and conduct of the teacher should have been satisfactory; and
- (iv) No departmental or vigilance enquiry should be pending against the teacher. F

The end of session benefit would not flow as a matter of right but only on fulfilling the above conditions.

18. The date on which the employee attains the age of superannuation is prescribed by the Fundamental Rules. The decision which was communicated by the State Government on 19 November 2012 does not alter the date of superannuation or retirement. However, what the decision effectuates is to allow the continuance of the employee, after retirement, upon the attainment of the age of superannuation with the salient purpose of preventing a disruption in education instruction G H

A prior to the end of the academic session. This view is fortified by the fact that the continuance of the employee until the end of the session is subject to the fulfillment of conditions stipulated, as noticed above.

19. The notification dated 6 February 2015 provided for:

- B (i) Enhancing the age of superannuation from 60 to 65 years; and
- C (ii) Abolition of the maximum age limit for appointment of medical teachers through the UPPSC. The increase in the age of superannuation from 60 to 65 years was prospective and would apply to those medical teachers in Government Medical Colleges who had not attained the age of superannuation under the prevailing rules. The State Government, in its counter affidavit, has clarified that it has consistently adopted the position that the notification dated 6 February 2015 increasing the age of retirement for medical teachers from
- D 60 to 65 years is prospective and would not apply to teachers, such as the appellant, who had already crossed the age of superannuation as it then stood prior to the notification dated 6 February 2015. A person who had crossed the age of 60 before the issuance of the notification and attained the age of superannuation but was on an extension until the end of
- E the session would not be entitled to benefit from the increase in the age of retirement. Moreover, the State Government has specifically stated in its counter affidavit that :
- F “...there is no medical teacher who had attained the age of 60 years prior to the issuance of G.O. on 6.2.2015, who has been given the benefit of increase in retirement age of 65 years,”

G The determination of the age of retirement is a matter of executive policy. The appellant attained the age of superannuation prior to the notification dated 6 February 2015 and was not entitled to the benefit of the enhancement of the age of retirement.

H 20. The appellant has pleaded a case of discrimination, relying upon the instances of Dr A K Mehrotra, Dr Mangal Singh and Dr Pradeep Bharti. However, it is evident from the details disclosed by the appellant in the Special Leave Petition that each of the three doctors attained the

age of 60 years after the date of the notification dated 6 February 2015. A  
The details which have been disclosed by the appellant in the SLP are as follows:

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1. Dr A K Mehrotra (Prof in S P M, Medical College, Jhansi) B  
- DOB 1.4.55 / 60 years completed on 31.3.15
2. Dr Mangal Singh (Prof in ENT, Medical College, Allahabad)  
- DOB 5.6.1955/ 60 years completed on 30.6.15
3. Dr Pradeep Bharti (Prof in Surgery, Meerut Medical College) C  
- DOB 26.3.55 / 60 years completed on 31.3.15.”

21. The appellant has placed reliance on a decision of this Court dated 4 June 2014 in the case of **Ram Vir Sharma v State of UP**<sup>15</sup>. In that case, the appellant was appointed as an ad-hoc Principal with effect from 1 July 2006 on a vacancy created by the retirement of the incumbent. He retired on attaining the age of superannuation on 6 August 2007. While he was permitted to discharge his duties until the end of the academic session on 30 June 2008, he was not allowed to discharge the duties of a Principal after 6 August 2007 nor was he granted his emoluments. The issue before this Court was whether upon attaining the age of superannuation on 6 August 2007, the appellant was disentitled to discharge the duties of the post of Principal or whether he could continue up to the end of the academic session. This Court, in that case, construed the provisions of Regulation 21 contained in Chapter III under the Intermediate Education Act 1921 which provided as follows: D  
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“21 Principal, Head Master, Teacher shall retire on attaining the age of sixty two years. .... In case date of superannuation of a Principal, Head Master, or teacher falls between 2nd July and 30th June, then in that case retirement date of Principal, Head Master or Teacher falls in the midst of academic year, except in such cases in which the person concerned do not desires to continue and issues a notice two month prior to date of retirement, shall retire at the end of the academic year and said extension shall be deemed to have been self-granted. Further extension in service shall only be granted in those special circumstances which are recommended by the State Government...” F  
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<sup>15</sup> Civil Appeal No 2606 of 2009

A           This Court held that in terms of Regulation 21, a person who was in service at the beginning of the academic session on 2 July was entitled to continue to serve until the end of the academic session (30 June) of the following year. In that context, dealing with the case of **Ram Vir Sharma**, this Court held:

B           “Thus, his age of superannuation under Regulation 21, would be deemed to have been extended till 30.06.2008. It is, therefore, clear that the appellant must not be deemed to have been superannuated on 6.8.2007, but he would be deemed to have been superannuated only on 30.06.2008, under Regulation 21, (extracted above). If he was to superannuate on 30.06.2008, naturally, his  
C           tenure of Principal would be co-terminus with the date of his superannuation.”

          The above observations of this Court were made specifically in the context of Regulation 21 which envisaged that where the date of superannuation of a principal or a teacher falls between 2 July and 30  
D           June of the following year, the incumbent shall retire at the end of the academic year and the extension shall be deemed to have been granted. The exception, in the nature of an opt-out provision, is where an employee does not desire to continue and issues a notice of two months prior to the date of retirement. The provisions contained in Regulation 21 are  
E           materially different from the conditions subject to which the session ending benefit was granted by the GO dated 19 November 2012 to the medical teachers in Government Medical Colleges. A comparison between the two provisions would indicate that Regulation 21 provided for an opt-out provision: in the absence of the exercise of the option, the teacher “shall retire at the end of the academic year” and an “extension would be  
F           deemed to be have been... granted”. In contrast, the notification dated 6 February 2015 postulates that the grant of a session ending benefit is subject to the fulfillment of stipulated conditions including of the work and conduct of the employee being satisfactory. There is no deeming provision extending the age of retirement. The decision in **Ram Vir**  
G           **Sharma** is hence distinguishable.

          22. The decision of the Division Bench of the Allahabad High Court in **Hema Pathak** considered whether the teacher was rightly promoted by the Committee of Management on 18 May 2013. The DIOS held that the teacher had already attained the age of superannuation  
H           before the date on which a resolution for promotion was passed and

was continuing till the end of the session and was hence not entitled to promotion. Dealing with the issue the Division Bench of the High Court held that the extension of service was for all purposes a part of service and the incumbent is treated to have retired at the end of the session. Hence, if before such retirement any benefit including promotion became due, it could not be denied in the absence of a provision to the contrary. The decision in the case of **Hema Pathak** is distinguishable and has no bearing on the construction of the GO dated 19 November 2012. Similarly, the decision of this Court in **Dr Rajendra Chaudhary (supra)** dealt with the validity of the deletion of the upper age limit for direct recruitment under the notification dated 6 February 2015. Dealing with this aspect, Mr Justice Nageswara Rao, speaking for this Court in the judgment dated 28 August 2019 observed:

“12...The High Court rejected the challenge to the enhancement of upper age limit for direct recruitment to the post of Professor in Dr. Juhi Singhal (*supra*) by holding that the Regulations framed by the MCI would prevail over the Service Rules. In the said judgment, the High Court was of the view that the Government Order dated 06.02.2015 only supplements the Rules and does not supplant them. The High Court further observed that the relaxation was done in view of the shortage of teachers in Medical Institutions who are qualified for appointment to the posts of Professors. The relaxation of the upper age limit was applicable only to those departments where 25 per cent or more posts were vacant and in respect of other departments, the State Government decided not to fill them up. In Navyug Abhiyan Samiti (*supra*), the Division Bench of the High Court followed the same logic and reasoning while considering the increase of upper age limit to the post of Principals in Government Medical Colleges. We see no reason to disagree with the said findings recorded by the High court. There can be no manner of doubt that the Regulations framed by the MCI relating to the conditions of service of Professors in Medical Colleges shall prevail over the Service Rules framed by the State of Uttar Pradesh. The Government Order dated 06.02.2015 has not been challenged by the Appellants for which reason they cannot make any grievance about the same.”

23. The issue in **Dr Rajendra Chaudhary’s** case was distinct from the central point in this case. In the present case the issue is whether



- A the appellant who had already attained the age of superannuation under the prevailing rules and was continuing until the end of the session would be entitled to the benefit of the enhancement of the age of retirement under the notification dated 6 February 2015. The decision in **Dr. Rajendra Chaudhary** is hence distinguishable.
- B 24. For the reasons that we have indicated, we hold that the appellant who attained the age of 60 years – the age of retirement which prevailed at the relevant time – was not entitled to the benefit of the notification dated 6 February 2015. The appellant was continuing until the end of the session (30 June 2015) after retirement, in terms of the decision dated 19 November 2012. He was not entitled to the enhanced age of retirement of 65 years. The terminal benefits which are due to the appellant shall be accordingly computed and released within a period of two months from the date of receipt of a certified copy of this order. For the reasons which we have indicated, we have come to the conclusion that there is no merit in the appeals. The appeals shall stand dismissed.
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- D There shall be no order as to costs.

Pending application(s), if any, stands disposed of.