

SOMESH THAPLIYAL & ANR. ETC.

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v.

VICE CHANCELLOR,
H.N.B. GARHWAL UNIVERSITY & ANR.

(Civil Appeal Nos. 3922-3925 of 2017)

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SEPTEMBER 03, 2021

[UDAY UMESH LALIT AND AJAY RASTOGI, JJ.]

Service Law – Public employment – Terms and conditions – Appellants were appointed as teachers in the years 2004-2007 in Department of Pharmaceutical Sciences of a State University governed by the 1973 Act – Their services were extended from time to time – The University was converted into a Central University under the 2009 Act and subsequently, an advertisement was notified by it in 2011 inviting applications for appointment to teaching posts inter alia in Department of Pharmaceutical Sciences – Writ petition filed by appellants-teachers questioning the process of selection pursuant to the advertisement of 2011; and also the conditions incorporated in the letter of their appointment restricting it to be on contract basis for three years – Dismissal of, by High Court – Held: Not justified – It is not open for a person appointed in public employment to ordinarily choose the terms and conditions of which he is required to serve – The bargaining power is vested with the employer itself and the employee is left with no option but to accept the conditions dictated by the authority – If that being the reason, it is open for the employee to challenge the conditions if it is not in conformity with the statutory requirement under the law and he is not estopped from questioning at a stage where he finds himself aggrieved – Once the appellants have gone through the process of selection provided under the scheme of the 1973 Act regardless of the fact whether the post is temporary or permanent in nature, at least their appointment is substantive in character and could be made permanent as and when the post is permanently sanctioned by the competent authority – Appellants to be treated as substantively appointed teachers (Associate Professor/Assistant Professor) and members of service of the Central University, for all practical purposes, entitled for a pay scale and notional consequential benefits admissible to a regularly

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- A appointed teacher in the service of the Central University under the 2009 Act – Uttar Pradesh State Universities Act, 1973 – Central Universities Act, 2009.

Words and Phrases – Appointment – Substantive appointment – Meaning of – Service Law.

- B Disposing of the appeals, the Court

HELD:1. The appellants were appointed after going through the process of selection as contemplated under Part VI of the Uttar Pradesh State Universities Act, 1973 which indeed was an appointment on substantive basis and since the appellants

- C were not in an equal bargaining position and were in the need of employment when the offer of appointment was made, left with no option but to accept such arbitrary conditions incorporated in the letter of appointment in treating it to be contractual for a limited period still recorded their protest while joining but no heed was paid. When they were allowed to continue by extending their services, they remained under the bonafide belief that as their appointment is being substantive in character, they will be made permanent/confirmed immediately after the permanent posts are sanctioned in the Department of Pharmaceutical Sciences but to their dismay, after an advertisement dated 29th E August, 2011 came to be notified by the respondent Central University, no option was left with them but to approach the High Court by filing of a writ petition. [Para 37][70-H; 71-A-C]

2.1. It is not open for a person appointed in public employment to ordinarily choose the terms and conditions of

- F which he is required to serve. It goes without saying that employer is always in a dominating position and it is open to the employer to dictate the terms of employment. The employee who is at the receiving end can hardly complain of arbitrariness in the terms and conditions of employment. This Court can take G judicial notice of the fact that if an employee takes initiation in questioning the terms and conditions of employment, that would cost his/her job itself. [Para 42][74-D-F]

2.2. The bargaining power is vested with the employer itself and the employee is left with no option but to accept the conditions dictated by the authority. If that being the reason, it

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is open for the employee to challenge the conditions if it is not being in conformity with the statutory requirement under the law and he is not estopped from questioning at a stage where he finds himself aggrieved. [Para 43][74-F-G] A

3. The term ‘substantive appointment’ is not so defined in the legal dictionary but has been referred in the service jurisprudence by the recruiting authority while framing Rules under Article 309 of the Constitution and what being termed as “substantive appointment” can be gathered from U.P. Sales tax Officers (Grade II) Service Rules, 1983. The definition of substantive appointment can further be noticed under Rajasthan Administrative Service Rules, 1954. Almost similar nature of rule is available in the services where the recruiting authority has defined what is held as “substantive appointment” under the Recruitment Rules framed under Article 309 of the Constitution and this clearly defines that an appointment made in accordance with the scheme of Rules are held to be substantive appointment. [Paras 45, 46 and 47] [75-A-B; 75-C, E] B

4.1. Once the appellants have gone through the process of selection provided under the scheme of the Act 1973 regardless of the fact whether the post is temporary or permanent in nature, at least their appointment is substantive in character and could be made permanent as and when the post is permanently sanctioned by the competent authority. [Para 49] [75-G-H; 76-A] C

4.2. In the instant case, after the teaching posts in the Department of Pharmaceutical Sciences have been duly sanctioned and approved by the University Grants Commission of which a detailed reference has been made, supported by the letter sent to the University Grants Commission dated 14th August, 2020 indicating the fact that the present appellants are working against the teaching posts of Associate Professor/ Assistant Professor sanctioned in compliance of the norms of the AICTE/PCI and are appointed as per the requirements, qualifications and selection procedure in accordance with the Act 1973 and proposed by the University, such incumbents shall be treated to be appointed against the sanctioned posts for all practical purposes. [Para 50][76-B-C] D

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- A **4.3. The appellants became entitled to claim their appointment to be in substantive capacity against the permanent sanctioned post and become a member of the teaching faculty of the Central University under the Central Universities Act, 2009. The appellants shall be treated to be substantively appointed teachers (Associate Professor/Assistant Professor) and members of service of the Central University, namely, HNB Garhwal University for all practical purposes, entitled for a pay scale and notional consequential benefits admissible to a regularly appointed teacher in the service of the Central University under the Central Universities Act, 2009. [Paras 51, 52][76-D-E]**
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Arjun Singh and Others v. State of Himachal Pradesh and Others, (2015) 15 SCC 713 and Abdul Hakeem M.A. and Others v. Mahatma Gandhi University and Others, (2019) 16 SCC 328 : [2019] 3 SCR 382 – referred to.

Case Law Reference

(2015) 15 SCC 713	referred to	Para 23
[2019] 3 SCR 382	referred to	Para 23
E CIVIL APPELLATE/INHERENT JURISDICTION : Civil Appeal Nos. 3922-3925 of 2017.		
F From the Judgment and Order dated 19.08.2013 of the High Court of Uttarakhand at Nainital in Writ Petition [SB] Nos.275, 276 and 277 of 2011 and Writ Petition [SB] No.97 of 2012.		
With		
G Contempt Petition (Civil) Nos. 291-294 of 2021 in Civil Appeal Nos. 3922-3925 of 2017.		
H Neeraj Kishan Kaul, Ms. Vibha Dutta Makhija, Amit Kumar, Sr. Advs., Rajesh Pathak, Pankaj Purohit, Sumit Kumar, Ms. Kumari Supriya, Toshiv Goyal, Prabodha Kumar Agrawal, Anil Bhatt, Praveen Gaur, Karan Mamgain, Kashish Aneja, Advs. for the Appellants.		
I Ashwani Kumar Dubey, Sanjeev Kumar Balian, Rudra Vikram Singh, Manish Kumar, Advs. for the Respondents.		

The Judgment of the Court was delivered by A

RASTOGI, J.

1. The present batch of appeals have been filed by the teachers (Associate Professor/Assistant Professor) who were substantively appointed after going through the process of selection provided under the Uttar Pradesh State Universities Act, 1973(hereinafter being referred to as the “Act 1973”) between the year 2004-2007 and after serving for more than 15-17 years, they are under fear as to whether their right of continuation in service could still be retained in the light of the judgment and order passed by the Division Bench of the High Court of Uttarakhand dated 19th August, 2013 which is impugned in the instant appeals. C

2. In order to decide the controversy raised in the instant batch of appeals, it may be apposite to take note of the seminal facts relevant for our consideration. D

3. The dispute relates to the appointment of teachers in the Department of Pharmaceutical Sciences which was a constituent teaching department at one stage under the self-financing scheme of HNB Garhwal University. At the time of appointment of the appellants, University was a State University governed by the Act 1973 established under Section 4(1) of the Act. On 15th January, 2009, the University was converted into a Central University and is governed by Central Universities Act, 2009(hereinafter being referred to as the “Act 2009”). E

4. B. Pharma course which was offered by the Department of Pharmacy falls under the regulations of Pharmacy Council of India(PCI) which is a statutory body constituted under the Pharmacy Act, 1948. It was initially established as a self-financing course in terms of Section 2(18) of the Act 1973. All its financial liabilities were borne by the University at that time. F

5. As it reveals from the record, the teaching posts(Lecturer/Reader) later on re-designated as Associate Professor/Assistant Professor were created by the executive council which is the statutory authority of the University as per Section 19(a) of the Act 1973 from the year 1997 to 2006. G

6. That under the Act 1973, substantive appointments are made of teachers and officers in terms of the procedure prescribed under H

- A Chapter VI of the Act 1973. The recommendations initially made by the selection committee constituted under Section 31(4) are to be placed before the executive council which is one of the statutory and a principal executive body of the university as referred to under Section 19(a) and is also the appointing authority of teachers of the University in terms of Section 21(1)(vii) and recommendations made by the executive council are to be implemented by the Vice Chancellor as an officer of the University defined under Section 9(c) of the Act 1973. The relevant provisions are reproduced hereunder:-
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- 9. Officers of the University.** - The following shall be the officers of the University -
 - (a) the Chancellor;
 - (b) in the case of Sampurnanand Sanskrit Vishvavidyalaya only, the Pro-Chancellor;
 - (c) **the Vice-Chancellor;**
- D

- 13. Powers and duties of the Vice-Chancellor.** - (1) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall -
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 - (b) **give effect to the decisions of the authorities of the University;**
 - (c) in the absence of the Chancellor, preside at meetings of the Court and at any convocation of the University;
- F

- 19. Authorities of the University.** - The following shall be the authorities of the University -
 - G **(a) the Executive Council;**
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- 20. Constitution of the Executive Council.** - (1) The Executive Council shall consist of -
 - H (a) the Vice-Chancellor, who shall be the Chairman thereof;

(b) the Pro-Vice-Chancellor, if any; A

(c) the Deans of two Faculties, by rotation in the manner prescribed;

[cc) two members from amongst the Professor or Readers belonging to the Scheduled Castes or Scheduled Tribes and two members from amongst the Professors or Readers belonging to other backward classes of citizen;]

(d) in the case of University of Bundelkhand and the Doctor Bhimrao Ambedkar University, Agra, the Chhatrapati Shahu Ji Maharaj University, Kanpur, the Hemvati Nandan Bahuguna Garhwal University, the Chaudhary Charan Singh University, Meerut, the Doctor Ram Manohar Lohia Avadh University, Faizabad and the Mahatma Jyotiba Phule Rohilkhand University, Bareilly, - C

(i) one Professor other than the Pro-Vice-Chancellor or a Dean referred to in clause (c) above, one Reader and one Lecturer of the University to be selected in the manner prescribed; D

(ii) three Principals and two other teachers of affiliated colleges, to be selected in the manner prescribed; E

and in the case of any other University notified under sub-section (1) of Section 37, four Principals and four other teachers of affiliated colleges to be selected in the manner prescribed; F

21. Powers and duties of Executive Council. - (1) The Executive Council shall be the principal executive body of the University and subject to the provisions of this Act, have the following powers, namely - G

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(vii) to appoint officers, teachers and other employees of the University and to define their duties and the conditions of their service, and to provide for the filling of temporary casual vacancies in their posts; H

- A **31. Appointment of Teachers.** - (1) Subject to the provisions of this Act, the teachers of the University and the teacher of an affiliated or associated college (other than a college maintained exclusively by the State Government shall be appointed by the Executive Council or the management of the affiliated or associated college, as the case may be, on the recommendation of a Selection Committee in the manner hereinafter provided. [The Selection Committee shall meet as often as necessary.]
- B (2) The appointment of every such teacher, Director and Principal not being an appointment under sub-section (3), shall in the first instance be on probation for one year which may be extended for a period not exceeding one year :
- C Provided that no order of termination of service during or on the expiry of the period of probation shall be passed -
- D (a) in the case of a teacher of the University, except by order of the Executive Council made after considering the report of the Vice-Chancellor and (unless the teacher is himself the Head of the Department), the Head of the Department concerned;
- E (b) in the case of Principal of an affiliated or associated college, except by order of the Management; and
- F (c) in the case of any other teacher of an affiliated or associated college, except by order of the Management made after considering the report of the Principal and (unless such teacher is the senior most teacher of the subject), also of the senior most teacher of the subject:
- F Provided further that no such order of termination shall be passed except after notice to the teacher concerned giving him an opportunity of explanation in respect of the grounds on which his services are proposed to be terminated :
- G Provided also that if a notice is given before the expiry of the period of probation or the extended period of probation, as the case may be the period of probation shall stand extended until the final order of the Executive Council under clause (a) of the first proviso or, as the case may be, until the approval of the Vice-Chancellor under Section 35 is communicated to the teacher concerned.
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(4) (a) the Selection Committee for the appointment of a teacher of the University (other than the Director of an Institute and the Principal of a constituent college), shall consist of – A

(i) the Vice-Chancellor who shall be the Chairman thereof,

(i-a) the Dean of the faculty, wherever applicable; B

(ii) the Head of the Department concerned :

Provided that the Head of the Department shall not sit in the Selection Committee, when he is himself a candidate for appointment or when the post concerned is of a higher rank than his substantive post and in that event his office shall be filled by the Professor in the Department and if there is no Professor by the Dean of the Faculty : C

Provided further that where the Chancellor is satisfied that in the special circumstances of the case, a Selection Committee cannot be constituted in accordance with the preceding proviso, he may direct the constitution of the Selection Committee in such manner as he thinks fit. D

(iii) in the case of a Professor or Reader, three experts, and in any other case, two experts be nominated by the Chancellor; E

(iii-a) academicians one each belonging to the Scheduled Castes or the Scheduled Tribes and Other Backward Classes of Citizens to be nominated by the Vice-Chancellor, if any of the above members of the selection committee does not belong to the respective category. F

(iv) in the case of appointment of teachers in a department of a constituent medical college upgraded under any scheme sanctioned by the Central Government, one nominee each of the Central Government and the State Government; G

(v) in the case of appointment of teachers of an Institute or constituent college, the Director of the Institute or the Principal of the constituent college, as the case may be.” H

- A 7. Prior to 2004, the appointments were made in the Faculty of Pharmaceutical Sciences after inviting applications through walk-in interview on purely contractual basis. At a later stage in the year 2004, by an advertisement no. 34 dated 4th February, 2004, process was initiated holding regular selection of teaching posts of various departments including the Department of Pharmaceutical Sciences with a stipulation that regular pay scale to lecturers is subject to approval of State Government and number of posts may be increased or decreased by the University.
- B 8. The present batch of appellants submitted their applications pursuant to the afore-stated advertisement of the year 2004 and after scrutiny of their academic excellence/performance, they were called for an interview by a letter dated 30th September 2004.
- C 9. In all, 76 candidates applied for the post of Assistant Professor and after scrutiny of the records, 29 were called for an interview. However, 14 candidates appeared for an interview before the selection committee which was constituted in terms of Section 31(4) of the Act 1973. Those who were found to be suitable were recommended by the selection committee for appointment as per their order of merit held in its meeting dated 17th October 2004. Such recommendations made by the selection committee were placed before the executive council
- D E in its 69th meeting held on 30th December, 2004 and after approval of the recommendations made by the selection committee, constituted under the Section 31(1) read with Section 31(4) of Act 1973, the batch of appellants were appointed by separate orders in the year 2004.
- F 10. Same was the procedure followed by the respondents with the fresh process of selection initiated by an advertisement no. 39 dated 19th May 2006 inviting applications for holding regular selection of teaching posts by the respondent University for various faculties including faculty of Pharmaceutical Sciences to which we are presently concerned in the present batch of appeals. Pursuant thereto, the interested applicants submitted their application. After the applications
- G H were scrutinized, taking note of their academic excellence, they were called for interview to be held on 20.04.2007 before the selection Committee constituted under Section 31(1) read with Section 31(4) of the Act 1973 and the recommendations made by the selection committee for the post of Lecturer/Reader were placed before the meeting of the executive council held on 19th May 2007 and after approval of the

recommendations made by the selection committee, appointments were A made by an Order dated 6th July, 2007.

11. The advertisement dated 19th May, 2006 followed with the letter of appointment of one of the appellant, namely, Somesh Thapliyal are reproduced hereunder:-

“Hemwati Nandan Bahuguna Garhwal University, Srinagar B

246174

(Garhwal) Uttarakhand

Appointment Notification

Advertisement No.39 C

(TIMES OF INDIA)

19.5.2006

Application on prescribed form are invited for the various teaching positions as per the details given below. The application form can be purchased from the cash counter of the University main officer on the payment of Rs. 200/- (Rs.100/- only for Uttarakhand SC candidates). It can also be downloaded from University website www.Uttara.in However, such form shall only be entertained if the same is accompanied with demand draft of Rs.200/- (Rs.100/- only for Uttarakhand SC candidates) in favour of Finance Officer HNB Garhwal University. The application completed in all respects along with attested testimonials in support of qualification, experience etc. should reach the Registrar H.N.B. Garhwal University Srinagar, Garhwal, by registered post on or before 30-06-2006. D

(P-Professor, R-Reader, L-Lecturer, L V-Leave Vacancy, ER-unreserved, SC-Scheduled Caste, OBC-Other backward classes).

Anthropology: P-OI(UR), R-OI(UR); Botany: P-02(1SC; UR), G L-04 (1-SC; 2 UR-LV; 1 UR*); Chemistry: L ** 03 (ISC; IUR; IUR*); Commerce: R-OI(SC), L-02 (ISC; 1 UR-LV); Computer Science: L-01 (SC); Defence Studies: R-02 (ISC; IUR), 1-02 (ISC; IUR); Economics: P-01 (UR-LV), L-0 1(SC); Education: P-01 (UR), R-0 1(SC), L-04 (ISC; 3UR); English: R-02 (ISC; IUR); L-01 (SC); Environmental Science: L-02 (ISC; IUR); H

- A Forestry: R-02(1SC, IUR), L-03 (1SC, 2UR); Geography P-OI(UR); L-02(1SC; IUR); Geology: P-OI(UR); L-02 (lSC; IUR-LV); High Altitude Plant Physiology Research Center: P-01 (UR); Hindi: R-01 (SC), L-02 (1SC;IUR-LV); History_ & Archeaology:P-OI(SC History of Medieval India), R-02 (IUR*); Maths: P-OI(UR) L-(lSC; IUR); **Pharm, Science; P-01 (SC), R-04 (1 Sc, 3 UR), L-05 (3 02SC, 1 OBC, 1 UR)**; Philosophy : L-01 (SC);Physics: P-01 (UR), R-01 (SC); Political Science: R-01 (SC), Sanskrit: L-02 (lSC; IUR); Sociology: R-01 (UR), L-03 (lSC; 2UR);Tourism: L-OI(UR); Zoology: R-02 (lSC; IUR-LV), 1-04 (lSC; 1 UR;2UR-LV)
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- C Qualifications: As per UG, CSIR, ICAR, AICTE/PCI norms & as per statutes of the University. For detailed information regarding eligibility and other conditions vish university website www.uttara.in. The same are also available with application forms.
- D NOTE: -
1. Most of the vacancies to be filled are for the Tehri & Pauri Campuses of the University.
 2. University reserves the right to fill or not to fill up the advertised post(s). Number of posts may be increased or decreased and position of reservation may vary accordingly.
 3. Those who have already applied to our earlier advertisement (JanFeb-2004) need not to apply again. However, they can update their bio-data.
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4. (a) The posts marked with (*) are sanctioned under UG 10th plan program, and are subject to the approval of State Govt.
(b) In case of chemistry for the post marked(**) candidates from division inorganic and physical would be given preference.
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5. Reservation would apply only to Uttarakhand candidates. All other candidates outsider to Uttarakhand will be treated in general category.
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Registrar”

“OFFICE ORDER

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(APPOINTMENT LETTER)

Sri Somesh Thapliyal, H. No. D-1129 Shastri Nagar Street No. 01 P.O. Nehru Gram, Dehradun has been appointed on basic pay of Rs 8000 in the pay scale of Rs 8000-275-13500 pursuant to the recommendation of duly constituted Selection Committee meeting dated 20.4.2007 and its approval in Executive Council meeting dated 19.5.2007, in its Resolution no. 2(2)(B), on sanctioned post of Lecturer under Self finance Scheme of department of Pharmaceutical Sciences. The post was sanctioned vide item no. 4 of Finance Committee meeting dated 25.2.2006. Apart from this, other allowances approved by the Government will be payable which will be borne by the income of B. Pharma. course. Above appointment is being given with following conditions

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1. Sri. Somesh Thapliyal is appointed in B. Pharma department Srinagar campus and according to requirement in future can be transferred to any campus transfer.
2. **Sri Somesh Thapliyal is appointed on contract, which can be ended by giving one month notice by the university. If Somesh Thapliyal wants to give resignation from service then he will have to give notice one month before.**
3. The concerned teacher will be paid government approved salary and allowances, no other financial benefits like pension, family pension, gratuity will be paid.
4. **Above appointment is initially for three years and which can be renewed/extended time to time according to departmental necessity.**
5. **This post is not at par to the post created by the government and to the post filled under University Statutes.**
6. Concerned candidate will produce medical certificate issued by chief medical officer at the time of assumption of charge.

- A This appointment will be automatically be deemed cancelled in event of not taking charge in above mentioned campus within one month from receiving this appointment letter; unless an application for extension of the time will be received. For assumption of charge no any travel allowance will be given.

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Sd/- illegible
Prof. S.P. Singh
Vice Chancellor”

12. It may be relevant to note that from the very inception of the advertisement, until the final recommendations made by the executive council, undisputedly, a regular mode of recruitment was followed by the respondent University making substantive appointment but to the dismay of the appellants, as they are not in the equal bargaining position were shocked to notice the arbitrary conditions of the letter of appointment restricting it to be on contract basis limited for a period of three years which either of the appellant was never been made aware of at any stage and for the first time, such conditions were incorporated in the offer of appointment in contravention to the statutory scheme of the Act 1973.

13. The appellants raised dispute by filing a protest petition but as already observed that they not being in the equal bargaining position were in the need of employment, left with no option but to sign on the dotted lines offered by the University at the time of employment.

14. The appellants undisputedly were appointed after going through the process of selection, as prescribed under the Act 1973 and their services were extended from time to time from their initial appointment since the year 2004-2007 respectively and after the University is converted into the Central University governed by the Act 2009, the Department of Pharmaceutical Sciences became one of the regular teaching department of the central university.

15. That 58 teaching posts were created by executive council prior to conversion into central university. In addition to 58 posts, UGC also approved 110 new posts in various departments of the university vide its letter dated 27th April, 2011 including the teaching post of department of Pharmaceutical Sciences.

16. It may be relevant to note that out of 58 teaching posts, 22 teaching posts(Assistant Professor 13, Associate Professor 06, Professor

03) belongs to the pharmacy department. The nomenclature of the teaching post was redesignated after implementation of 6th Pay Commission whereby Lecturer was re-designated as Assistant Professor and Reader as Associate Professor. A

17. After the University was converted into Central University under the Act 2009, it came out with an advertisement dated 29th August, 2011 inviting applications for appointment to the teaching posts of various departments including the Department of Pharmaceutical Sciences. That was the stage of grievance of the appellants who were shocked to note that if such appointments are now being made pursuant to an advertisement dated 29th August, 2011, undisputedly, it will be at the peril of the present appellants and they have to bear its brunt, left with no choice, the teachers of the Department of Pharmaceutical Sciences approached the High Court by filing a writ petition under Article 226 of the Constitution questioning the process holding open selection pursuant to an advertisement dated 29th August 2011. At the same time, also questioned the arbitrary conditions which were incorporated in the order of their appointment and prayed that they may be treated to be substantively appointed as a teacher in the Department of Pharmaceutical Sciences in the respondent University. The Division Bench of the High Court after taking note of the submissions made dismissed the writ petition under judgment and order impugned dated 19th August 2013 which is the subject matter of challenge at the instance of the appellants collectively in the present batch of appeals. B C D E

18. While issuing notice, by an interim order dated 5th September, 2013, this Court restrained the respondents from taking any prejudicial action. The order is reproduced hereunder:- F

“Taken on board.

Heard Mr. T.R. Andhyarujina, learned senior counsel appearing in support of the petitioners.

Issue notice to the respondents returnable in four weeks.

In the meanwhile, there shall be ad-interim order in terms of the prayer 8(a) of the special leave petitions.” G

19. The later correspondence between the respondent University(Central University) and University Grants Commission reveals that the teaching posts held by the appellants are being duly H

- A sanctioned and approved by the University Grants Commission and the status of the present appellants as informed by the University to the UGC with a clarification that the posts were sanctioned by the Finance Committee/Executive Council of the University totaling 22 teaching posts (03 Professor, 08 Associate Professor and 13 Assistant Professor)
- B to ensure compliance as per the norms of AICTE/PCI which include the name of the present appellants who were appointed as per the required qualifications and have gone through the rigors of the selection procedure prescribed under the Act 1973 and such teachers which include the present appellants after conversion of HNB Garhwal University into the Central University w.e.f. 15th January, 2009 by its
- C letter dated 14th August, 2020.

20. The University has proposed that all these teaching posts (including the post held by the appellants) may be treated as the filled up posts with the aforesaid incumbents. The communication made by the Central university to the UGC is reproduced hereunder:-

- D "Hemvati Nandan Bahuguna Garhwal University, Srinagar Garhwal Uttarakhand) -246174
 (A Central University)
 Telephone: (01346)- 252143, 252167, 252170
 Fax : (01346)-252247
 Website : www.hnbgu.ac.in

Ref No.HNBU/ADMIN (T)/2020/732 Date: 14-08-2020

To,

- F The Deputy Secretary (CU)
 University Grants Commission
 Bahadur Shah Zafar Marg,
 New Delhi-110002

- G **Sub.: Consideration of representation submitted by faculty members of Department of Pharmaceutical Sciences of the University - reg.**

Ref.:F.No.52-9/2018 (CU), dated 09th March 2020 - reg.

Madam/Sir,

- H With reference to above mentioned letter of UGC, desired information are furnished as below-

1. Department of Pharmaceutical Sciences was established in the year 1996 in Hemvati Nandan Bahuguna Garhwal University. A
2. State Government and Finance Committee/ Executive Council of the University sanctioned total 22 teaching posts (03 Professor, 06 Associate Professor and 13 Assistant Professor) from time to time to ensure the compliance to the norms of the AICTE/PCI. B
3. The following teachers were appointed as per the required qualification and selection procedure in accordance to the then UP State University Act 1973, in the following manner - (Annexure-01) C

Sl. No.	Name of teacher	Position appointment	Advertisement	Selection Committee Date/Selection Process	Details of Approval of Recommendations of Selection Committee	Date of Joining
1.	Dr. Vijay Jyoti Kumar	Lecturer	Advertisement no.34/2004	17.10.2004/As per section 31(1) & (4) of UP State University Act, 1973	69 th General Meeting of Executive Council Dt.30.12.2004	31-12-2004
		Reader	Advertisement no.39/2006	20.04.2007/ As per section 31(1) & (4) of UP State University Act, 1973	80 th General Meeting of Executive Council Dt. 19.05.2007	19.05.2007
2.	Mr. Puneet Barmola	Lecturer	Advertisement no.34/2004	17.10.2004/As per section 31(1) & (4) of UP State University Act, 1973	69 th General Meeting of Executive Council Dt.30.12.2004	31-12-2004
3.	Mr. Lalatendu Mohanty	Lecturer	Advertisement no.34/2004	17.10.2004/ As per section 31(1) & (4) of UP State University Act, 1973	69 th General Meeting of Executive Council Dt.30.12.2004	31-12-2004
4.	Mr. Arun Kumar Bishoyl	Lecturer	Advertisement no.34/2004	17.10.2004/ As per section 31(1) & (4) of UP State University Act, 1973	69 th General Meeting of Executive Council Dt.30.12.2004	31-12-2004
5.	Dr. Ajay Semalty	Lecturer	Advertisement no.34/2004W	17.10.2004/ As per section 31(1) & (4) of UP State University Act, 1973	69 th General Meeting of Executive Council Dt.30.12.2004	01-01-2005

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A	6.	Dr. Nitin Sati	Lecturer	Advertisement no.34/2004	17.10.2004/ As per section 31(1) & (4) of UP State University Act, 1973	69 th General Meeting of Executive Council Dt.30.12.2004	31-12-2004
B	7.	Dr. Mona Bhojwani Semalty	Lecturer	Advertisement no.34/2004	17.10.2004/ As per section 31(1) & (4) of UP State University Act, 1973	69 th General Meeting of Executive Council Dt.30.12.2004	22-01-2005
C	8.	Dr. Hemlata Bhatt Sati	Lecturer	Advertisement no.39/2006	20.04.2007/ As per Section 31(1) and (4) of the UP State University Act, 1973	80 th General Meeting of Executive Council Dt. 19.05.2007	31.07.2007
C	9.	Dr. Somesh Thapliyal	Lecturer	Advertisement no.39/2006	20.04.2007/ As per section 31(1) & (4) of UP State University Act, 1973	80 th General Meeting of Executive Council Dt. 19.05.2007	04.08.2007

D 4. After conversion of the HNB Garhwal University into a Central University w.e.f. 15-01-2009, the UGC vide its letter No. D. O. No. F.39- 1/2009, dated 25/27th April,2011, taken over 22 teaching posts as mentioned at S.No. 02. (Annexure-02)

Therefore, the University proposes that these 09 teaching posts may be treated as the filled up positions with the aforesaid incumbents.

E Desired information as above is being submitted for kind perusal and consideration.

Encl.: As above.

F Prof. (N.S. Panwar)
Registrar”

G 21. The main thrust of submission of learned counsel for the appellants is that the process was initiated to hold regular selection pursuant to an advertisement notified by the respondents in the years 2004 and 2006 and after going through the rigors of regular selection, arbitrary conditions were incorporated in their offer of appointment, left with no choice but to accept on the dotted lines being in the need of employment and further submits that the scheme of the Act, 1973, postulates of making regular selections on the recommendations made by the selection committee constituted in terms of Sec. 31(1) read with Sec. 31(4) of the Act, 1973, and that being the procedure prescribed

under Chapter VI of the Act, 1973, incorporating arbitrary conditions A at this stage in their letter of appointment was violative of Article 14 of the Constitution and of Section 23 of the Indian Contract Act, 1872 and of the scheme of the Act 1973.

22. Learned counsel further submits that the appellants were not B in the equal bargaining position with no option left other than to accept the terms and conditions offered to them in the letter of appointment, still recorded their protest but no one paid attention to their grievance and they were granted extensions by the respondents from time to time and the appellants remained under bonafide belief that once they are substantively appointed as per the procedure prescribed known to law, as and when the permanent posts became available in the Department C of Pharmaceutical Sciences, they will be made permanent against the sanctioned posts but they were shocked when after conversion to the central university, the respondents initiated the fresh process of selection of teachers pursuant to an advertisement dated 29th August 2011. Calling at this stage for open competition after having served for 5-7 years D down the line, it was unfair on the part of the respondents, more so, when their service conditions stand protected under Section 4(d) of the Act 2009.

23. In support of submission, learned counsel has placed reliance E on the judgment of this Court in Arjun Singh and Others Vs. State of Himachal Pradesh and Others¹ and Abdul Hakeem M.A. and Others Vs. Mahatma Gandhi University and Others² and further submits that the High Court has committed a serious error in appreciation of the question of law and deserves to be interfered by F this Court.

24. In the alternative, learned counsel submits that each of the G appellant is now working as a member of the teaching faculty for the last 15 to 17 years, apart from Vijay Kumar Jyoti who is working as Associate Professor, rest all of them are working as Assistant Professor and if at this point of time, they are being asked to undergo fresh process of selection, it will be too harsh and may jeopardize their service conditions, more so, when it is not the case of the respondents that the teacher/appellant is either not qualified to hold the post in terms of the existing qualifications or has not gone through the procedure of selection

¹ 2015(15) SCC 713

² 2019(16) SCC 328

- A prescribed under the Act 2009, at the given point of time, when they were initially appointed in the year 2004-2007 respectively, it will be in the interest of justice to consider the appellants to be substantively appointed against the regular sanctioned post under the Central University for all practical purposes.
- B 25. Per contra, counter affidavit has been filed by the respondents and while supporting the impugned judgment of the High Court, learned counsel for the respondents submits that Department of Pharmaceutical Sciences was under the self-financing scheme referred to under Section 2(18) of the Act 1973 which was introduced in the year 1996 and the State Government sanctioned the teaching post of Professor/Reader/Lecturer in the Department of Pharmacy under the self-finance scheme at a given point of time in April 1997/March 1998, appointments were made on contractual basis and later on, the Government vide its order dated 4th February 2000 issued certain norms and guidelines for the self-financing courses to be adopted by the University pursuant to which the selection process was initiated by the University.
- C 26. Learned counsel further submits that merely because the procedure prescribed under Part VI has been followed, it does not give the indefeasible right to the appellants in seeking their appointment to be substantive in character, more so, when the post itself was temporary/contractual under the self-financing scheme and its finances/expenses are borne by the University itself and by mere continuation in the University on the strength of the interim order passed by this Court under self-finance scheme, no right could be conferred to seek regularisation of their service.
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- F 27. Learned counsel further submits that after the respondent University was converted into Central University under the Act 2009, appointments are to be made against the sanctioned posts in the Department of Pharmaceutical Sciences by the Central University in terms of the procedure prescribed under the Act 2009 and in furtherance thereof, the advertisement dated 29th August, 2011 was notified by the respondents inviting applications for the teaching posts of various departments including the Department of Pharmaceutical Sciences and it was open for the appellants to participate in the selection process and to become a member of service of the Central University but when they failed to participate in the selection process and lost their battle before the Division Bench of the High Court with their pay and
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allowances being borne by the University, no substantive right could be claimed by them merely because they are continuing in service under order of the Court for the last 15 to 17 years as prayed for and it is still open for the appellants to participate in the selection process as and when held, provided they qualify the terms and conditions prescribed by the Central University under the Act 2009.

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28. Learned counsel further submits that additional affidavit has been filed pursuant to the directions of this Court dated 5th August 2021 to clarify that pursuant to an advertisement dated 29th August 2011, selections of teachers were held of various departments including the departments which were earlier under the self-financing scheme and those who participated in the selection process, all were appointed on substantive basis in their respective department with letter of appointment placed on record to show that teachers who were appointed pursuant to an advertisement dated 29th August, 2011 against permanent vacancy were placed on probation in the first instance and on its satisfactory completion, appropriate orders will be passed by the competent authority.

29. Learned counsel submits that it is for the appellants to take their own decision and once they have missed the bus failing to participate in the selection process which was held by the respondents pursuant to an advertisement dated 29th August, 2011, they are not entitled for any relief as being prayed for in the instant appeals.

30. We have heard learned counsel for the parties and with their assistance perused the material available on record.

31. The Department of Pharmacy/Pharmaceutical Sciences was a constituent teaching department of HNB Garhwal University which was a State University governed by the Act, 1973 established under Section 4(1) of the Act. On 15th January, 2009, the University was converted into the Central University and since then, it is governed by the Act 2009.

32. B-Pharma course offered by the Department of Pharmacy comes under the Pharmacy Council of India(PCI) which is a statutory body constituted under the Pharmacy Act, 1948. PCI grants approval to B Pharma course in accordance with the procedure prescribed under the Pharmacy Act, 1948. At the given point of time, faculty of pharmaceutical sciences was under the self-finance scheme as

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- A contemplated under Section 2(18) of the Act with all financial liabilities were borne by the University.
 - 33. The teaching posts were created in the Department of Pharmacy to meet the requirements of AICTE and PCI by the University in exercise of its power conferred under 7(9) of the Act 1973,
- B the Finance Committee and Executive Council created teaching posts in the Department of Pharmaceutical Sciences from 1996 to 1999. The Executive Council of the University is a statutory authority as defined under Section 19(a) of the Act and is a principal executive body of the university in terms of Section 21(1) of the Act. It reveals from the record that the posts if created by the Executive Council in the Department of Pharmaceutical Sciences are on temporary or contractual basis was never disclosed to the appellants until served with the letter of appointment.
- C record that the posts if created by the Executive Council in the Department of Pharmaceutical Sciences are on temporary or contractual basis was never disclosed to the appellants until served with the letter of appointment.
- D 34. The appointments were made of the teaching faculty(Assistant Professor-Lecturer and Associate Professor-Reader) in accordance with the procedure prescribed under Chapter VI of the Act, 1973 pursuant to an advertisement no. 34 dated 4th February, 2004 and later by an advertisement no. 39 dated 19th May 2006 for holding regular selection of various faculties including the faculty of pharmaceutical sciences.
- E 35. The applications initially furnished pursuant to an advertisement, after scrutiny based on academic excellence, the deserving candidates were called for interview to appear before the selection committee constituted under Section 31(4) of the Act. The recommendations made by the selection Committee were placed before
- F the Executive Council which is a statutory authority and the principal executive body of the University in terms of Section 21(1) of the Act.
- G 36. After the recommendations were finally approved by the executive council, appointments were made by the Vice Chancellor of the University and at this stage, for the first time, arbitrary conditions were incorporated in the letter of appointment making appointment to be contractual for a period of three years in the first instance which came to be extended at the later stage.
- H 37. From the narration of facts as being referred to supra, it clearly manifests that the appellants were appointed after going through the process of selection as contemplated under Part VI of the Act 1973

which indeed was an appointment on substantive basis and since the appellants were not in an equal bargaining position and were in the need of employment when the offer of appointment was made, left with no option but to accept such arbitrary conditions incorporated in the letter of appointment in treating it to be contractual for a limited period still recorded their protest while joining but no heed was paid. When they were allowed to continue by extending their services, they remained under the bonafide belief that as their appointment is being substantive in character, they will be made permanent/confirmed immediately after the permanent posts are sanctioned in the Department of Pharmaceutical Sciences but to their dismay, after an advertisement dated 29th August, 2011 came to be notified by the respondent Central University, no option was left with them but to approach the High Court by filing of a writ petition.

38. If we look at the scheme of the Act 2009 which came into force from 15th January, 2009, HNB Garhwal University is converted to a Central University under the Act 2009 and it took over the assets and liabilities of the University created under the Act 1973, protecting the rights and interests of the persons employed in the University before the creation of a Central University in terms of Section 4(d) of the Act. According to the scheme of the Act 2009, selections are to be made of teachers on the recommendations of the selection committee to be constituted in terms of clause 18 of the Statute, framed in exercise of powers under Section 27 of the Act, to be placed before the principal executive body of the University in terms of Section 21 and on its final approval, appointments are made.

“4. Effect of establishment of Universities.—On and from the dated of commencement of this Act,—

.....

(d) every person employed by Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, immediately before the commencement of this Act shall hold his office or service in Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, respectively, established under this Act by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension,

- A leave, gratuity, provident fund and other matters as he would have held the same if this Act had not been enacted and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Statutes: Provided that if the alteration so made is not acceptable to such employee, his employment may be terminated by the University in accordance with the terms of the contract with the employee or, if no provision is made therein in this behalf, on payment, to him by the University, of compensation equivalent to three months' remuneration in case of permanent employees and one month's remuneration in the case of other employees: Provided further that every person employed before the commencement of this Act, pending the execution of a contract under section 33, shall be deemed to have been appointed in accordance with the provisions of a contract consistent with the provisions of this Act and the Statutes: Provided also that any reference, by whatever form of words, to the Vice-Chancellor and Pro-Vice-Chancellor of Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya or Hemvati Nandan Bahuguna Garhwal University, in any law for the time being in force, or in any instrument or other document, shall be Construed as a reference to the Vice-Chancellor and the Pro-Vice-Chancellor of Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya or Hemvati Nandan Bahuguna Garhwal University, as the case may be, established under this Act.
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- F **18. Selection Committees.**—(1) There shall be Selection Committees for making recommendations to the Executive Council for appointment to the post of Professor, Associate Professor, Assistant Professor, Registrar, Finance Officer, Controller of Examinations, Librarian and Principals of Colleges and Institutions maintained by the University.
- H (2) The Selection Committee for appointment to the posts specified in Column 1 of the Table below shall consist of the Vice-Chancellor, a nominee of the Visitor and the persons specified in the corresponding entry in Column 2 of the said Table:

TABLE

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Associate Professor/Assistant Professor	(i) The Head of the Department.	B
	(ii) One Professor nominated by the Vice-Chancellor.	
	(iii) Two persons not in the service of the University, nominated by the Executive Council, out of a panel of names recommended by the Academic Council for their special knowledge of, or interest in, the subject with which the Associate Professor or Assistant Professor will be concerned.	C
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39. It is not the case of the respondents that the appellants who were appointed pursuant to an advertisement dated 4th February, 2004/ 19th May, 2006 have not gone through the procedure prescribed under Chapter VI of the Act or the appointments were made in contravention to the provisions of the Act, 1973. At the same time, it is also not the case of the respondents that any of the appellant either do not fulfil the conditions of eligibility as being prescribed for holding the teaching post in the Central University created under the Act 2009 or the conditions which have been prescribed by the PCI are not being fulfilled or the procedure of selection contemplated under the Act 2009 vary from the provision of the Act 1973 or either of them is ineligible in holding the teaching post.

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40. The solitary objection of the learned counsel for the respondents throughout is that the Department of Pharmaceutical Sciences in the first instance was a self-finance scheme as provided

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- A under Section 2(18) of the Act 1973 and all the teaching posts although being created with the approval of the Government but was financed by the University and that being so, no right could be conferred to the appellants and that was the reason the appointments were made on contractual basis for a limited period.
 - B 41. It counters by a recent communication made by the respondent University by its letter dated 14th August, 2020, University Grants Commission has been informed that the faculty members of the Department of Pharmaceutical Sciences are working against the sanctioned posts from time to time in compliance to the norms of
 - C AICTE/PCI and are appointed as per the required qualification and procedure of selection as provided under the Act 1973 have recommended that they may be treated as the filled up positions with the aforesaid incumbents not only in accordance with the provisions of the Act 1973 but also as per the Act 2009.
 - D 42. The submissions of the learned counsel for the respondents that the appellants have accepted the terms and conditions contained in the letter of appointment deserves rejection for the reason that it is not open for a person appointed in public employment to ordinary choose the terms and conditions of which he is required to serve. It goes without saying that employer is always in a dominating position and it
 - E is open to the employer to dictate the terms of employment. The employee who is at the receiving end can hardly complain of arbitrariness in the terms and conditions of employment. This Court can take judicial notice of the fact that if an employee takes initiation in questioning the terms and conditions of employment, that would cost
 - F his/her job itself.
43. The bargaining power is vested with the employer itself and the employee is left with no option but to accept the conditions dictated by the authority. If that being the reason, it is open for the employee to challenge the conditions if it is not being in conformity with the statutory
- G requirement under the law and he is not estopped from questioning at a stage where he finds himself aggrieved.
44. In the instant case, they lodged the protest petition and brought their grievance to the notice of the respondents but were unable to question except to pray the almighty to consider their grievance
- H sympathetically.

45. The term ‘substantive appointment’ is not so defined in the legal dictionary but has been referred in the service jurisprudence by the recruiting authority while framing Rules under Article 309 of the Constitution and what being termed as “substantive appointment” can be gathered from U.P. Sales tax Officers (Grade II) Service Rules, 1983. The relevant extract is as under:- A

‘Substantive appointment’ means an appointment, not being an ad hoc appointment, on a post in the cadre of the service made after selection in accordance with the rules and, if there are no rules in accordance with the procedure prescribed for the time being by executive instructions, issued by the Government.” B

46. The definition of substantive appointment can further be noticed under Rajasthan Administrative Service Rules, 1954 as under:- C

4(n)- “Substantive Appointment” means an appointment made under the provisions of these Rules to a substantive vacancy after due selection by any of the methods of recruitment prescribed under these Rules and includes an appointment on probation or as a probationer followed by confirmation on the completion of the probationary period.” D

47. Almost similar nature of rule is available in the services where the recruiting authority has defined what is held as “substantive appointment” under the Recruitment Rules framed under Article 309 of the Constitution and this clearly defines that an appointment made in accordance with the scheme of Rules are held to be substantive appointment. E

48. Adverting to the facts of the case, undisputedly, the appellants were appointed pursuant to an advertisement dated 4th February, 2004 and 19th May, 2006 held for regular selection and after going through the process of selection as being provided under Chapter VI of the Act 1973 and on the recommendations been made by the statutory selection committee, constituted under Section 31(1) and (4) of the Act and approved by the executive council, which is a statutory authority, appointments were made in the year 2004 and 2007 respectively. F G

49. In our considered view, once the appellants have gone through the process of selection provided under the scheme of the Act 1973 regardless of the fact whether the post is temporary or permanent in nature, at least their appointment is substantive in character and could H

- A be made permanent as and when the post is permanently sanctioned by the competent authority.

50. In the instant case, after the teaching posts in the Department of Pharmaceutical Sciences have been duly sanctioned and approved by the University Grants Commission of which a detailed reference has

- B been made, supported by the letter sent to the University Grants Commission dated 14th August, 2020 indicating the fact that the present appellants are working against the teaching posts of Associate Professor/Assistant Professor sanctioned in compliance of the norms of the AICTE/PCI and are appointed as per the requirements, C qualifications and selection procedure in accordance with the Act 1973 and proposed by the University, such incumbents shall be treated to be appointed against the sanctioned posts for all practical purposes.

51. Thus, it can safely be held that the appellants became entitled to claim their appointment to be in substantive capacity against the permanent sanctioned post and become a member of the teaching

- D faculty of the Central University under the Act 2009.

52. Consequently, the appeals succeed and are accordingly allowed. The judgment of the Division Bench of the High Court dated 19th August, 2013 is hereby quashed and set aside. The appellants shall be treated to be substantively appointed teachers(Associate Professor/

- E Assistant Professor) and members of service of the Central University, namely, HNB Garhwal University for all practical purposes, entitled for a pay scale and notional consequential benefits admissible to a regularly appointed teacher in the service of the Central University under the Act 2009. No costs.

- F 53. In view of the disposal of the appeals, the contempt petitions stand closed.

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