

Supreme Court of India

Dr. B.K. Khanna vs State Of U.P. And Another on 30 April, 1993

Equivalent citations: 1994 SCC, Supl. (1) 571

Author: S Agrawal

Bench: Agrawal, S.C. (J)

PETITIONER:

DR. B.K. KHANNA

Vs.

RESPONDENT:

STATE OF U.P. AND ANOTHER

DATE OF JUDGMENT 30/04/1993

BENCH:

AGRAWAL, S.C. (J)

BENCH:

AGRAWAL, S.C. (J)

RAY, G.N. (J)

CITATION:

1994 SCC Supl. (1) 571

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Leave granted.

2. We have heard learned counsel for the parties on the appeal.

3. The appellant was appointed as Professor in the Department of Tuberculosis of the King George's Medical College, Lucknow on May 1, 1967. At that time the said college was being run by the Lucknow University. The control and management of the College was taken over by the State Government of Uttar Pradesh by U.P. Ordinance No. 10 of 1981. The said Ordinance was followed by King George's Medical College and Gandhi Memorial and Associated Hospitals (Taking Over) Act, 1983 (U.P. Act No. 10 of 1983). While the college was under the control and management of the State Government, the appellant was appointed as Acting Principal of the College by the State Government and subsequently he was appointed as Principal of the College on regular basis by the

State Government. While he was working as Principal of the College, he was compulsorily retired by order of the Government of U.P. dated March 6, 1991. The appellant filed a writ petition in the Lucknow Bench of the Allahabad High Court challenging the said order of + Arising out of SLP (C) No. 10545 of 1992 compulsory retirement. The said writ petition was dismissed by the High Court by its judgment dated April 29, 1992. Feeling aggrieved by the said judgment, the appellant has filed this appeal.

4.It may be stated that the constitutional validity of the U.P. Act No. 10 of 1983 whereby the control and management of the college was taken over by the State Government of U.P., was challenged before the Lucknow Bench of the Allahabad High Court and by its judgment and orders dated March 29, 1991 and April 8, 1991, the said Act was declared as unconstitutional and was struck down by the High Court. C.A. Nos. 2084-86 of 1991 filed in this Court by the State of Uttar Pradesh against the said decision of the High Court was withdrawn with the leave of the Court on July 27, 1992. The said judgment of High Court has become final.

5.The effect of striking down of U.P. Act No. 10 of 1983 whereby the control and management of the College was taken over by the State Government of U.P. is that, in law, the College was not taken over by the State Government of U.P. and it continued under the control of the Lucknow University. This would mean that State Government had no legal authority to pass any order in the matter of administration of the affairs of the College including the members of the staff employed. Consequently, the orders that were passed by the State Government with regard to the appointment of the appellant as Principal of the College as well as the order for his compulsory retirement from service were passed by an authority who had no legal competence to pass the said orders. Along with the counter-affidavit filed on behalf of the Lucknow University, a letter dated August 22, 1992 addressed by the Vice-Chancellor of the University to the Chief Secretary to the Government of U.P. has been filed wherein it has been stated :

"3. All the actions including administrative, financial, legal taken by the Government during July 18, 1981 to August 1, 1992 will be deemed to be taken by the Lucknow University."

6.The said letter, whereby the University has chosen to adopt all the actions (administrative, financial and legal) taken by the Government of U.P. during the period July 18, 1981 to August 1, 1992 cannot be of any help in sustaining the impugned order of compulsory retirement because it is not disputed that in the Lucknow University there is no statutory provision or regulation governing the service conditions of the teaching staff similar to that contained in Fundamental Rule 56 providing for compulsory retirement on attaining a particular age or after completion of a particular period of service. Since the University, itself could not have passed the impugned order of compulsory retirement, it could not also approve the action of the State Government of U.P. in passing the said order for compulsory retirement of the appellant dated March 6, 1991. In these circumstances, the order dated March 6, 1991 cannot be upheld and must be set aside. The orders with regard to the appointment of the appellant on the post of Principal of the College cannot also be upheld because it was also passed by the State Government which was not competent to pass the said orders. As a result, the appellant must be deemed to be holding the post of Professor in the Department of Tuberculosis in the College all along. Since the appellant has actually discharged

duties as Principal of the College during the period from the date of his appointment as Principal till his compulsory retirement under the order dated March 6, 1991, he cannot be required to refund the additional emoluments drawn by him for the post of Principal actually held by him. The appellant will, however, be entitled to payment of salary and emoluments for the post of Professor with effect from the date of his compulsory retirement, i.e., March 6, 1991. The College was under the control and management of the State Government till July 31, 1992 and thereafter it is under the control and management of the Lucknow University. The emoluments from March 6, 1991 till July 31, 1992 when the college was under the administrative control of the State Government of U.P. will have to be paid by the State Government after adjusting the amount paid to the appellant in lieu of notice under the order of compulsory retirement. The emoluments for the period subsequent to July 31, 1992 will be paid by the Lucknow University. The said payments may be made by both the authorities within a period of three months.

7.The appeal is allowed, the judgment of the High Court dated April 29, 1992 is set aside and writ petition filed by the appellant in the High Court will stand disposed of in terms of the directions given above. No orders to costs.