

Dr. Pradeep Kumar Verma And 2 Others vs Union Of India And 5 Others on 5 October, 2018

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Author: Sudhir Agarwal

Bench: Sudhir Agarwal

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Reserved on 09.05.2018

Delivered on 05.10.2018

Court No. - 34

1. Case :- WRIT - A No. - 567 of 2018

Petitioner :- Dr. Pradeep Kumar Verma And 2 Others

Respondent :- Union Of India And 5 Others

Counsel for Petitioner :- Roopesh Tewari, Shailendra

Counsel for Respondent :- A.S.G.I., Neeraj Tripathi, Shesh Kumar Srivastava, Vaibhav Tiripati

2. Case :- WRIT - A No. - 58234 of 2017

Petitioner :- Dr. Santosh Kumar Khare

Respondent :- Union Of India And 6 Others

Counsel for Petitioner :- Siddharth Nandan, T.P. Singh

Counsel for Respondent :- A.S.G.I., Ajay Kumar Sharma, Neeraj Tripathi, Vinod Kumar Shukla

Hon'ble Sudhir Agarwal, J.

Hon'ble Ifaqt Ali Khan,J.

(Deliveed by Hon'ble Sudhir Agarwal,J.)

1. In both writ petitions re-employment / re-appointment of Dr. Anand Kumar Srivastava as Principal of Chaudhary Mahadev Prasad Degree College, Allahabad (hereinafter referred to as "College") has been challenged. With the consent of parties we propose to consider the pleadings and facts stated in Writ Petition No. 567 of 2018 and deal the entire issue with reference to above writ petition.
2. Heard Sri Shailendra, learned counsel for petitioners, Sri Ashok Khare, learned Senior Advocate assisted by Sri Shesh Kumar Srivastava, learned counsel for respondent 6 and Sri Sachin Kumar, Advocate holding brief of Sri Manoj Nigam, learned counsel for respondents 3 and 4.
3. In Writ Petition No. 58234 of 2017, Sri T.P. Singh, learned Senior Advocate assisted by Sri Siddharth Nandan, Advocate has appeared and adopted the argument advanced in Writ Petition No. 567 of 2018.
4. Counter affidavit has been filed only by respondent 6 and rejoinder affidavit thereto has also been filed. Other respondents have not filed any counter affidavit. Learned counsel for parties requested that writ petition may be heard and decided on the basis of pleadings available on record and relevant statutory provisions which would be placed before Court during course of the arguments, hence we proceed to hear and decide this writ petition.
5. By means of this writ petition, petitioners have prayed for issue of a writ of quo-warranto to respondent 6 restraining him from working as Principal of College and to declare aforesaid office vacant and authorities be directed to make a fresh appointment on the post, in accordance with law. A further prayer has been made to issue a writ of certiorari for quashing resolution dated 10.10.2017 of Governing Body of the College, decision dated 28.10.2017 of the Executive Council of University of Allahabad (hereinafter referred to as "University") and letter of appointment dated 8.11.2017 issued by Dean of College Development, University to respondent 6 and letter dated 8/16.11.2017 issued by Chairman, Governing Body of the College. Lastly petitioners have prayed for a writ of mandamus directing Vice Chancellor, University and Chairperson, Governing Body of College, not to allow respondent 6 to work as Principal of College, not to pay salary to him and restrain him from functioning as Member, Selection Committee in interview scheduled for Selection of Teachers in the College.
6. Petitioners are retired teachers in different disciplines of College, after having worked in Department of Economics and Zoology, respectively.
7. Respondent 6 was appointed as Lecturer on 03.9.1974. He was appointed on the post of Principal on 08.11.2016 on regular basis and after attaining age of 65 years, he was to retire on 08.11.2017.

8. Prior to retirement of respondent 6, Management of College published an advertisement dated 05.9.2017, inviting applications for making appointment on the posts of Principal, Assistant Professors and College Librarian.

9. An emergent meeting of Governing Body of College was convened vide agenda dated 10.10.2017, wherein, sole agenda was as under :-

"To consider the continuance/appointment on the post of Principal of the college under the relevant provision contained in letter No. 1-11/2007-UII dated 7th November, 2008 issued by Ministry of Human Resource Development followed by circular no. F-31/94(PS) (Vol9) dated 8th December 2008 issued by U.G.C. as endorsed by the Registrar Vis-a-vis Allahabad University Ordinance."

10. A meeting of Governing Body of the College was held on 10.10.2017, wherein besides Chairman, one special invitee and eight members were present. Nine members could not attend meeting. In aforesaid meeting, it was recommended that respondent 6 be allowed to continue as Principal for full term of five years despite attaining age of 65 years on 9th November, 2017 and reasons given therefor are as under :-

i. He has completed only 13 months as Principal in his full term of five years.

ii. He has been doing tremendous job as Principal in uplifting the academic, disciplinary as well as infrastructural standards of the College.

iii. At present nearly 151 post of Assistant Professor are vacant and it was because of his hard sincere and continuous work that now fulfilling these vacancies seems a possibility.

iv. The UGC also has issued special orders that a Principal can continue as Principal up to age of 70 years provided he also continues to teach the subject in which he has been employed (Annexure-I) and Dr. Anand Kumar Srivastava has excelled in teaching and research work despite his immense work load as Principal."

11. Resolution dated 10.10.2017 further mentions that Governing Body unanimously decided that tenure of Dr. Anand Kumar Srivastava (respondent 6) would continue up to full term as Principal and to get approval, recommended proposal to Vice Chancellor.

12. It is stated that two members of Governing Body sent a letter raising considerable objections against aforesaid recommendation. The objection dated 5.11.2017 is annexed as Annexure-10 to writ petition.

13. Recommendation of Governing Body of College was considered in 47th meeting of Executive Council of University, which was held on 28.10.2017 and agenda no. 27/47 reads as under :-

"To consider the extension of Dr. Anand Kumar Srivastava, Principal, C.M.P. Degree College, Allahabad after his superannuation on 08.11.2017."

Note: As per letter No. 1-11/2007-U.II dated 07.11.2008 of Deputy Secretary to the Government of India, Ministry of Human Resource Development, Department of Higher Education, New Delhi, "The question regarding the retirement age of Principals in such centrally funded institutions in higher and technical education under the purview of this Ministry has been considered. It has been decided with the approval of the competent authority that in such centrally funded institutions in higher and technical education under the purview of this Ministry, where principals are required to undertake teaching in accordance the provisions made in the relevant statutes/rules etc, the retirement age of such Principal shall be 65 years. They may also be considered for re-employment upto the age of 70 years, where necessary, if found suitable after a screening at the age of 65 years, in accordance with the guidelines, as may be prescribed by the University Grants Commission, subject to the condition that the principals would continue teaching during the period of such re-employment, in addition to the discharge of Principals' functions." (emphasis added)

14. Executive Council in its meeting dated 28.10.2017 resolved to grant re-employment to respondent 6 for a period of five years from the date of his superannuation at the age of 65 years. Subsequently, a letter was issued by Dean of College Development of the University, conveying above decision which is on record as Annexure-13 to writ petition. A subsequent letter dated 8/16.11.2017 was also issued by Governing Body of College informing respondent 6 that he is re-employed as Principal of College for a term of 5 years from the date of superannuation and shall also participate in teaching work of college in addition to his duties as Principal.

15. The aforesaid re-employment of respondent 6 has been assailed by petitioners on the following grounds, mentioned in paragraph 7 of writ petition which reads as under:

"(a) The aforesaid condition of re-employment only applies to the cases where vacancy not only existing but also continuously vacant for atleast one year and this provision would not apply in the present case for the reason that the incumbent respondent no. 6 retired on 3.11.2017 by completing the age of 65 years and before that the vacancy was already advertised by way of advertisement dated 5.9.2017 in which the post of Principal was also advertised. Meaning thereby, it was not the case where the vacancy remained unfilled for at least one year.

(b) Another objection is that for making such re-employment, incumbent requires to go for fresh selection through regular selection committee. In the present case, the re-employment was made only on the basis of recommendation by governing body C.M.P. Degree College, without facing any regular selection committee Allahabad hence, there is complete violation of procedure provided for re-employment.

(c) Another objection is that this benefit was available only to those who are teaching position but in the present case, respondent no. 5 never gone to teach except the administrative work as Principal. True copy of the document i.e. time table for the

Session 2017-2018 confirming the fact is being enclosed herewith and is marked as Annexure No.6. to this writ petition.

(d) Another objection is that respondent no. 6 was not actually allowed petitioners working as teacher but also the work as principal, which is absolutely contrary to the Ordinance 8(d)(ii) or Ordinance XLII of the Ordinance of Allahabad University.

(e) Another objection is that even as per procedure, governing body of the institute require to consider the matter after facing due selection committee for the post of Principal and governing body also requires to be in quorum on 10.10.2017. In the present case, admitted fact is that out of 17 members of the government body, one 8 valid members were present so the quorum was less than 50% as per bye-laws of governing body. To that extent, even the procedure of the college was absolutely illegal."

(emphasis added)

16. Respondents, on the contrary, contend that re-employment of respondent 6 is in accordance with Orders issued by Government of India and Regulations framed by University Grants Commission (hereinafter referred to as "UGC"). It is also said that petitioners have no locus-standi to maintain this writ petition and it is liable to be dismissed on this ground also.

17. We propose to deal with detailed pleadings and relevant documents while discussing the matter on merits.

18. The first question, which is directly involved in this petition is, "whether re-employment of respondent 6 for a term of five years is valid and in accordance with law or not."

19. It is not in dispute that College is presently governed by University of Allahabad Act, 2005 (hereinafter referred to as "Act 2005") and Statutes framed thereunder :-

20. Section 3(f) of Act 2005 defines "Constituent College" and reads as under :-

"(f) "Constituent College" means a college prescribed as such by the Statutes".
(Emphasis added)

21. Section 28 of Act, 2005 provides that First Statutes are those set out in the Schedule. Sub-section (2) of Section 28 of Act, 2005 confers power upon Executive Council to make new or additional Statutes, or may amend or repeal the Statutes referred to in sub-section (1).

22. Clause 31 of Schedule containing Statutes declares "Constituent Colleges" for the purpose of Act, 2005 and reads as under :-

"31. Constituent Colleges.--- (1) The following shall be the Constituent Colleges, namely--

- (i) Allahabad Degree College, Allahabad;
- (ii) Arya Kanya Degree College, Allahabad;
- (iii) Chaudhary Mahadev Prasad Degree College, Allahabad;
- (iv) Eving Christian College, Allahabad;
- (v) Iswar Saran Degree College, Allahabad;
- (vi) Hamidia Girls Degree College, Allahabad;
- (vii) Jagat Taran Girls Degree College, Allahabad;
- (viii) K.P. Training College, Allahabad;
- (ix) Rajarshi Tandon Girls Degree College, Allahabad;
- (x) Sanwal Dass Sadan Lal Khanna Girls Degree College, Allahabad;

and

(xi) Shyama Prasad Mukherji Government Degree College, Allahabad.

(2) Matters relating to the constitution of the management, the powers of the Vice-Chancellor to issue directions to, and to enforce his orders against, the management, the conditions for the continuance, enlargement and withdrawal of the privileges of Constituent Colleges and the grant to and withdrawal from them of the autonomous status shall be prescribed by the Ordinances :

Provided that every Constituent College shall be required to undergo the process of assessment by a visiting Peer Team of the National Assessment and Accreditation Council, set up under Section 12 (ccc) of the University Grants Commission Act, 1956 (3 of 1956), and accreditation by the said Council within a period of three years from the date of the commencement of the Act.

(3) Where under the provisions of the Uttar Pradesh State Universities Act, 1973 (President's Act 10 of 1973) a Constituent College had been granted permission by the predecessor University to impart instruction for a postgraduate degree other than the degree of Bachelor of Laws or to exercise the privileges of an Autonomous Colleges, such permission shall cease to have effect upon the expiry of the academic year immediately following the academic year during which the Act has commenced or of

the period for which such permission had been granted by the predecessor University, whichever is earlier, without prejudice to the right of the Constituent College concerned to apply afresh for such permission in accordance with the provisions of the Statutes and the Ordinances.

(4) There shall be constituted, by Ordinances, a College Development Council to monitor and promote the academic functioning and development of the Constituent Colleges.

(5) The College Development Council shall be headed by the Dean of College Development, who shall be appointed by the Executive Council from among the Professors of the University in the manner prescribed by the ordinances." (Emphasis added)

23. The College in present case, therefore, is a Constituent College as per Statute 31(1)(iii) of University and is accordingly, governed by Act, 2005 and Rules, Statutes and Ordinances issued thereunder.

24. Sub-clause 4 of Clause 31 of Statutes contemplates College Development Council (hereinafter referred to as "CDC") to monitor and promote academic functioning and development of Constituent Colleges. Clause 31(5) contemplates that CDC shall be headed by Dean of College Development, who shall be appointed by Executive Council from among the Professors of University in the manner prescribed by ordinances.

25. In respect of functioning and maintenance of Constituent Colleges, Ordinance XXXV, with reference to Statutes 31(1)(2) and (3) read with Section 27(k) has been issued. Clause 6 of Ordinance XXXV makes provisions for appointment, emoluments and other terms and conditions of service of the employees of the College and reads as under :

"6 (a) The provisions in respect of the manner of appointment, emoluments and other terms and conditions of service of the employees of the College, not being a college maintained by government, shall be prescribed by the Ordinances and Regulations in that behalf, and every such employee shall be appointed under a written contract prepared in triplicate, and one copy each thereof shall be forwarded to the Registrar, lodged with the College and furnished to the employee concerned :

Provided that in the case of a College maintained by Government, such appointments shall be made by Government, which shall also determine the said conditions of service, but the qualifications for the post of the Principal and other teachers of such College shall be as prescribed by the Ordinances and Regulations.

(b) On and from the date of the commencement of the Act, every person employed in the College immediately before the said date shall hold his service in the College 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, leave, gratuity, provident fund and other matters, as he would have held the same if the Act had not been passed 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 provisions of the Ordinances:

Provided that if the alteration so made is not acceptable to such employee, his employment may be terminated by the College 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 College 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 every person employed before the said date, pending the execution of a contract under sub-clause (a), shall be deemed to have been appointed in accordance with the provisions of a contract consistent with the provisions of this Ordinance and other Ordinances and the Regulations.

(c) Any dispute arising out of a contract between the College and any employee shall, at the request of the employee, be referred to a Tribunal of Arbitration consisting of one member appointed by the Governing Body, one member nominated by the employee concerned and an umpire appointed by the Vice-Chancellor.

(d) The decision of the Tribunal referred to in sub-clause (c) shall be final and not suit shall lie in any civil court in respect of the matters decided by the Tribunal.

(e) Every request made by the employee under sub-clause (c), shall be deemed to be a submission to arbitration upon the terms of this section within the meaning of the Arbitration and Conciliation Act, 1996.

(f) The procedure for regulating the work of the Tribunal referred to in sub-clause (c) shall be prescribed by the Ordinances.

(g) All employees of the College shall, in the absence of a contract to the contrary, be governed by the terms and conditions of service and code of conduct as specified in the Ordinances and Regulations.

(h) Where there is an allegation of misconduct against a teacher or other employee of the College, the Chairperson of the Governing Body, in the case of such teacher and the authority competent to appoint (hereafter in this clause referred to as "the appointing authority") in the case of such other employee, may, by order in writing, place such teacher or other employee, as the case may be, under suspension and shall forthwith report to the Governing Body the circumstances in which the order was made:

Provided that the Governing Body may, if it is of the opinion that the circumstances of the case do not warrant the suspension of such teacher, revoke such order.

(i) Notwithstanding anything contained in the terms of the contract of appointment, or of any other terms and conditions of service, of the employees of the College, the Governing Body in respect of the teachers, and the appointing authority in respect of other employees, shall have the power to remove such teacher or other employee, as the case may be, on grounds of misconduct.

(j) Save as specified in sub-clause (i), the Governing Body or the appointing authority, as the case may be, shall not be entitled to remove any teacher or other employee of the College except for a good cause and after giving three months' notice or on payment of three months' salary in lieu thereof.

(k) No teacher or other employee of the college shall be removed under sub-clause (i) or sub-clause (j) unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(l) The removal of a teacher or other employee of the College shall take effect from the date on which the order of removal is made:

Provided that where such teacher or other employee is under suspension at the time of his removal, such removal shall take effect from the date on which he was placed under suspension.

(m) Notwithstanding anything contained in the provisions of sub-clauses (h) to (l), a teacher or other employee of the College may resign---

(i) If he is a permanent employee, only after giving three months' notice in writing to the Governing Body or the appointing authority, as the case may be, or by paying three months' salary in lieu thereof:

(ii) If he is not a permanent employee, only after giving one month's notice in writing to the Governing Body or the appointing authority, as the case may be, or by paying one month's salary in lieu thereof.

Providing that such resignation shall take effect only on the date on which the resignation is accepted by the Governing Body or the appointing authority, as the case may be.

(n) The Principal shall have the power to take disciplinary action against the employees of whom he is the appointing authority and against such other employees, not being teachers, as may be specified by the order made, with the prior approval of the Vice-Chancellor, by the Governing Body, and to suspend any such employee pending enquiry and to administer warnings to, or to impose the penalty of censure or the withholding of increment on, any such employee:

Provided that no such penalty shall be imposed unless the employee concerned has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(o) In case the enquiry referred to in sub-clause (n) discloses that a punishment beyond the power of the Principal is called for, the Principal shall, upon the conclusion of the enquiry, make a report to the Governing Body along with his recommendations.

(p) The provisions in respect of appeal against any order made by the Principal or the Governing Body, under sub-clause (n) or sub-clause (o), as the case may be, shall be in accordance with the prescriptions in that regard in the University of Allahabad Non-Teaching Employees (Terms and Conditions of Service) Rules, as laid down under Ordinance L." (Emphasis added)

26. Functions of Principal of Constituent College are provided in Clause 7 of Ordinance XXXV and reads as under :

"7.(a) The Principal shall be the chief executive functionary of the College and shall, subject to the powers assigned to the Governing Body by provisions of this Ordinance, the Memorandum and the Rules, and to the provisions of the other instruments, exercise general supervision and control over the affairs of the University College, and be responsible for -

(i) the organisation of teaching, including supplementary instruction, and co-curricular activities of the College;

(ii) the receipt and realisation of all grants and other money due to the College from the Central Government of the University Grants Commission, the University and other authorities, bodies and persons;

(iii) keeping the Governing Body informed, through the Treasure thereof, of the progress of realisation of the grants, revenues and other money due to the College from different sources, and the state of expenditure therefrom, under different budgetary heads;

(iv) the discipline of the students and superintendent and control over the staff of the College; and

(v) the organisation and conduct of such Departmental Examination as may be provided for by the Executive Council for the non-teaching staff of the College for purposes of determining eligibility for movement to higher posts or pay scales.

(b) Subject to the provisions referred to in sub-clause (a), and such directions as may be issued, from time to time, by the University Grants Commission or the Executive Council, and such rules consistent therewith as may be made by the Governing Body, the Principal -

(i) shall sanction leave of all types, except Leave for purposes of further studies and Leave without pay (by whichever name such kinds of Leave may be called in the Ordinances and Regulations), to the teaching staff;

(ii) shall sanction leave of all types to the non-teaching staff:

Provided that where such leave is for a period of less than eight weeks, the work of the employee concerned shall be suitably reassigned to other employees:

Provided further that where such leave is for a period of eight weeks or more, the Principal may make officiating arrangements from amongst the other staff of the same category, and report the same to the Governing Body:

Provided also that where such leave is for a period of not less than four but less than eight weeks, and it is not possible to suitably reassign to other employees the work of the employee on leave, or where in consequence of the officiating arrangements referred to in the preceding proviso it is not possible to provide for the proper discharge of work of any employee who is officiating on a higher post, the Principal may, with the concurrences of the Chairperson and the Treasurer, make leave arrangement on the contractual basis on fixed remuneration amounting to the basic pay of the lowest pay scale of the concerned category, and report the same to the next meeting of the Governing Body;

(iii) shall appoint the Group D (Class IV) staff and report all such appointments to the Governing Body;

(iv) may suspend any member of the non-teaching staff, for good and sufficient cause, after recording the reasons for the same in writing and initiate disciplinary proceedings and on the basis of the findings in such proceedings -

(1) in the case of non-teaching staff, other than Group D (Class IV) staff, recommend disciplinary action, including dismissal, termination or removal, to the Governing Body for final decision; and (2) In the case of Group D (Class IV) staff, take disciplinary action, including dismissal, termination or removal, and report the same to the Governing Body;

(v) shall, in respect of the award of higher pay scales to the eligible non-teaching staff under any scheme approved by the Executive Council, on the basis of the Assured Career Progression Scheme of the Central Government, take decision in the case of

Group (Class IV) staff and make recommendations to the Governing Body in the case of other staff; and

(vi) shall sanction the concessions of tuition fees and the scholarships or other stipendiary assistance payable from the funds of the College, within the financial limits laid down in this behalf by the University Grants Commission or, in accordance with the rules of the University Grants Commission, by the competent authorities, on the basis of the recommendations of the Committee (or Committees) of teachers constituted for the purpose, and shall perform such other functions as may be assigned by the said provisions and, from time to time, by the competent authorities or the Governing Body.

(c) The Principal may, in addition to his duties as such, participate to the extent feasible in the teaching work of the College.

(d) Subject to the provisions of the Ordinances and Regulations governing the admission, enrolment and examinations of students, and the decisions of the competent officers, authorities and other bodies of the University, the Principal shall determine, after due consideration of the recommendations of the Staff Council, referred to in Clause 10, the procedure for admission and enrolment, the arrangements for the conduct of the University examination and the organisation and conduct of college level examinations and mid-term and other tests of the students.

(e) The Principal shall, by August 31 every year, submit to the Registrar a Certificate to the effect that the conditions for the admission of the college to the privileges of the University, as laid down by or under the Statutes, the Ordinances, the Regulations and the decisions of the competent authorities of the University, have continued to be fulfilled, and that the college has fully complied with the directions, if any, that may have been issued to the college under Clause 14 :

Provided that the Registrar may seek any clarification from the Principal regarding any matter relating to such Certificate and shall, after counter-signing the Certificate upon being satisfied that the Certificate (including any such clarification) is consistent with the record, forward an attested copy of the Certificate so counter-signed to the Principal.

(f) If the office of the Principal becomes vacant, due to death, resignation or otherwise, or the Principal is absent on leave or for any other cause for a period exceeding two months, the Governing Body may appoint any teacher, who fulfils the qualifications for the post, to officiate as Principal for a period of six months or until (as the case may be) a new Principal, appointed regularly, enters office or the Principal resumes the duties of his office, whichever is earlier :

Provided that in case the new Principal does not enter office, or the Principal does not resume his duties, by the expiry of such period of six months, the senior-most teacher of the College, who fulfils the qualifications for the post, shall officiate as the Principal :

Provided further that any such officiating arrangement shall be reported by the Principal forthwith to the Registrar, and shall be subject to the concurrence of the Vice-Chancellor :

Provided also that if the Principal is absent on leave, or for any other cause, for a period not exceeding two months, the senior-most teacher of the College, who fulfils the qualifications for the post of Principal, shall look after the duties of the post in addition to his own duties."

27. There are some other functions also required to be observed by Principal in different provisions of Ordinance XXXV, which we do not find relevant for the purpose of this writ petition.

28. The above provision shows clearly that basic duties and functions of Principal are administrative in nature and teaching work, he is supposed to discharge, is in addition to his duties as Principal which are broadly administrative and supervisory, as already said.

29. The terms and conditions of service of teachers of Constituents Colleges are governed by Ordinance XLII. For the purpose of present writ petition, we are concerned with Clause 8(c) which provides the age of superannuation and reads as under:-

"The age of superannuation of a teacher shall be as determined, from time to time, by the Central Government or, in pursuance of a decision of the Central Government, by the University Grants Commission, and the teacher shall retire by superannuation on the date immediately preceding the day on which he attains such age of superannuation:

Provided that where the said date does not fall on June 30 in a Calendar Year, the teacher shall continue on re-employment up to June 30 in the immediately ensuing Calendar Year:

Provided further that a teacher on re-employment under the provisions of the preceding proviso may, under the directions or rules issued by the University Grants Commission, and in accordance with the procedure and process of assessment prescribed in such directions or rules, be granted further re-employment for such period as may be provided therein."

(emphasis added)

30. It is not in dispute that earlier age of superannuation of Teacher was 62. By letter dated 23.3.2007, issued by Ministry of Human Resource (Department of Higher Education), age of superannuation of a Teacher was increased from 62 to 65 with a provision of re-employment upto the age of 70 years, subject to guidelines prescribed by UGC for the purpose.

31. Following Government of India's order dated 23.3.2007, UGC circulated Model guidelines for re-employment of superannuated teachers, applicable to Central/State and other Universities and Constituent/Affiliated Colleges in Indian University System and to any other Educational Institution engaged in higher/technical/professional education. Paragraph 3 of the said guidelines talks of eligibility and reads as under :

"3. Eligible Category:

The category of superannuated teachers eligible for re-employment shall be :

- a) Professor only, in the case of Universities; and
- b) Professors, Readers and Lecturers (Selection Grade) only, in the case of Colleges."

(emphasis added)

32. The above guidelines in Para 9 also give details of duties and responsibilities of re-employed superannuated teachers stating that it shall be at par with regular teacher with no additional liability to the institution and duties and responsibilities detailed in Para 9 of guidelines reads as under:

"9. Duties and Responsibilities:

I) A re-employed superannuated teacher shall be treated on a par with regular teachers at the institution and shall have the following duties and responsibilities, with no additional financial liability to the institution:

- a) Academic work, like teaching courses, conducting examinations and research guidance;
- b) Conducting research and/or taking up sponsored research projects;
- c) Launching continuing education programmers in new and emerging areas;
- d) Organizing / Attending national / international Conferences / Seminars / Symposia / Workshops;
- e) Undertaking knowledge-based advisory / consultancy assignments;
- f) Accepting invitations and delivering Guest Lectures at other institutions;

g) Participation in academic/research Committees at the Institution and elsewhere, when required.

(II) However, a re-employed superannuated teacher shall not be eligible for holding administrative or financial responsibilities at the Institution or elsewhere."

(emphasis added)

33. A perusal of Para 9 (ii) of above guidelines shows and makes clear that said guidelines are not applicable to a Principal for the reason that it clearly says that re-employed superannuated teachers shall not be eligible for holding administrative or financial responsibilities and if the same is applied to a Principal, he cannot function and discharge duties as noticed above, detailed in Ordinance XXXV "Clause 7" since basic duties of Principal are administrative and he also discharges financial responsibilities but if by virtue of Para 9 (ii) of guidelines prescribed by UGC those administrative and financial duties and responsibilities are taken away from Principal, no one will be able to function as Principal at all. Thus, evidently the above provisions/guidelines laid down by UGC were not applicable to Principal.

34. Government of India, Ministry of Human Resource Development, later on, by Government Order dated 07.11.2008, communicated its decision to enhance age of superannuation of Principals in Centrally Funded Institutions in Higher and Technical Education and said that it shall also be 65 years provided Principals would undertake to continue teaching in accordance with provisions made in the relevant statutes. It says that after attaining the age of 65, a Principal may also be considered for re-employment upto the age of 70 years, where necessary, if found suitable after screening at the age of 65 years, in accordance with the guidelines, as may be prescribed by UGC. Paragraph 2 of Government of India's order dated 07.11.2008 reads as under:-

"The question regarding the retirement age of Principals in such centrally funded institutions in higher and technical education under the purview of this Ministry has been considered. It has been decided with the approval of the competent authority that in such centrally funded institutions in higher and technical education under the purview of this Ministry, where Principals are required to undertake teaching in accordance with the provisions made in the relevant statutes/rules etc., the retirement age of such Principal shall be 65 years. They may also be considered for re-employment upto the age of 70 years, where necessary, if found suitable after a screening at the age of 65 years, in accordance with the guidelines, as may be prescribed by the University Grants Commission, subject to the condition that the Principals would continue teaching during the period of such re-employment, in addition to the discharge of Principals' functions." (Emphasis added)

35. Government of India's order dated 7.11.2008 was communicated by UGC to Registrar, Allahabad University vide letter dated 8.12.2008, directing for strict compliance thereof. This letter nowhere shows that guidelines, already issued in respect of Teachers in furtherance of Government of India's order dated 23.3.2007, shall also be applied to Principals for considering their cases for

re-employment upto the age of 70 years.

36. It is also not the case of petitioners or respondents that any other order has been issued by UGC making applicable above guidelines issued in respect of teachers, for re-employment of Principal also.

37. It is also neither stated before us nor placed for our perusal any other guidelines prescribed by UGC for the purpose of considering Principal for re-employment on attaining the age of superannuation of 65 years. It is common case of parties that in the present case, in absence of any other guidelines prescribed by UGC after Government of India's order dated 7.11.2008, the case of respondent 6 for re-employment / extension to function as Principal after attaining age of 65 years has been considered in accordance with guidelines already issued in respect of teachers pursuant to Government of India's order dated 23.3.2007. We have already observed and stated that guidelines issued by UGC in furtherance of Government of India's order dated 23.3.2007 were not applicable for Principals for considering them for re-employment after attaining age of superannuation.

38. We propose to consider some other provisions of said guidelines to strengthen and concretise the above view for the reason that if aforesaid guidelines are excluded then extension allowed to respondent 6 after considering his case in accordance with above guidelines will get vitiated in law and the issue will have to be decided against respondent 6. In this regard we refer to Para 9 of the guidelines prescribed by UGC pursuant to Government of India's order dated 23.3.2007 whereunder certain conditions have been mentioned which must exist before re-employment of a teacher, after attaining age of superannuation, is to be considered. Para 5 of guidelines reads as under :

"5. Principles to be Followed:

The institution shall follow the following principles, while taking up the cases of superannuated teachers for re-employment:

- a) There shall be vacancies of teachers at the University Department or at the College, remaining unfilled for at least one year.
- b) The number of teachers to be re-employed in a University Department and / or College at any given time shall be limited to 50% of the vacancies identified, as above.
- c) Re-employment of superannuated Teachers may be made only against regular sanctioned posts, which could not be filled up.
- d) Re-employment of superannuated teacher/s shall be in the best interest of the concerned University Department or the College.
- e) There shall be adequate work load for the re-employed teacher/s at the concerned University Department or the College, to justify the appointment.

f) Re-employment of superannuated teacher/s shall be possible either at the same University or College where the teacher had served before superannuating or at any other institution.

g) The expenditure towards re-employment shall be met by the institution from its budget allocation."

39. The above conditions very categorically show that aforesaid guidelines, by no stretch of imagination, can be applied for re-employment of a Principal upto the age of 70 years for the reason that case of re-employment can be taken up only when vacancy of teacher has continued unfilled for atleast one year. Further re-employment cannot be more than 55% of the vacancies. It is a matter of common knowledge that in every educational institution, there is only one post of Principal and allowing post of Principal to remain vacant upto one year would neither be in the interest of institution nor condition of limitation of 50% can be made applicable to a cadre, which consists of a single post.

40. Except above, since no other guideline has been brought to the notice of this Court, which has been issued by UGC and may be applied for re-employment of a Principal, it appears that though Government of India issued order on 07.11.2008 conveying its decision for re-employment of Principals also upto the age of 70 years, but, UGC, in its own wisdom, did not prescribe any guideline for such re-employment and therefore, such decision of Government of India remained unworkable and inoperative till such guidelines are prescribed by UGC

41. There is one more development. By Government of India's Gazette Notification dated 11.07.2016, UGC has notified Regulations in exercise of powers conferred under Section 26(1)(e) and (g) of University Grants Commission Act, 1956 (hereinafter referred to as "UGC Act, 1956") and it is titled as "University Grants Commission (Minimum qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) (4th Amendment), Regulation, 2016" (hereinafter referred to as "UGC (4th Amendment) Regulation, 2016") and it is made applicable from the date of publication in Official Gazette that is 11.7.2016. By aforesaid Regulations, UGC has amended "University Grants Commission (Minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges and other measures for the maintenance of standards in higher education) Regulation, 2010".

42. By Regulation 2 of UGC (4th Amendment) Regulation, 2016, existing Regulation 5.1.6 (d), which deals with term "Principal of a College" has been amended and existing provision has been substituted as under :-

Existing provisions	Amended provisions
The term of appointment of the College Principal shall be FIVE years with eligibility for reappointment for one more term only after a similar Selection Committee process.	

The term of appointment of the College Principal shall be five years with eligibility for reappointment for one more term only after similar Selection Committee process which shall take into account an external peer review, its recommendation and its outcomes. The framework of the external peer review shall be specified by the UGC.

43. The amended provisions also contemplate framework of external peer review to be specified by UGC.

44. In the light of above provisions, we have to examine, "whether re-employment of respondent 6 as Principal of College is valid in accordance with law or not?"

45. As is already stated, respondent 6 was going to attain age of superannuation of 65 years on 08.11.2017 and to retire on that date prior to which Management of the College had already advertised vacancy in anticipation vide advertisement dated 05.09.2017. Instead of completing recruitment pursuant to aforesaid advertisement, Governing Body of College convened an emergent meeting on 10.10.2017 to consider continuance / appointment of respondent 6 on the post of Principal in the light of Government of India's letter dated 7.11.2008 and consequential Circular dated 8.12.2008 issued by UGC, communicating Government of India's Circular dated 07.11.2008 to University to bring Government of India's order dated 07.11.2008 to the notice of all Colleges and to comply the same strictly. Thereafter, on 10.10.2017, Governing Body's meeting was held and resolved to re-employ respondent 6 to continue so as to complete his full term of five years as Principal. Meaning thereby, since respondent 6 had completed about 13 months till the date of his retirement, he was allowed to continue for about 47 months more after attaining the age of superannuation of 65 years on 08.11.2017. Aforesaid Governing Body's resolution did not refer to any guideline laid down by UGC for re-employment of a Principal upto age of 70 years or beyond retirement age of 65 years.

46. We may notice at this stage that Government of India's orders dated 23.3.2007 and 7.11.2008 providing extension of age of superannuation and re-employment after age of retirement are in the nature of policy decision taken by Government of India and referable to Section 20 of UGC Act, 1956. Section 20 of UGC Act, 1956 reads as under :

"20. Directions by the Central Government.- (1) In the discharge of its functions under this Act, the Commission shall be guided by such directions on questions of policy relating to national purposes as may be given to it by the Central Government.

(2) If any dispute arises between the Central Government and the Commission as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central government shall be final."

(emphasis added)

47. UGC has been conferred power to make Regulations under Section 26 and the said provision shows that such Regulations must be consistent with UGC Act, 1956 and Rules made there under.

48. Recently construing aforesaid two provisions, Supreme Court in *P. Suseela and Others vs. University Grants Commission and Others* 2015 (8) SCC 129 has observed that in the matter of policy, Government of India may issue directions and UGC shall be guided by such directions on the question of policy and therefore UGC, if framed any Regulation, the same must be consistent with directions, if any, issued by Government of India on the question of policy.

49. It cannot be doubted that the age of retirement and provision for re-employment after retirement in the Institutions of Higher and Technical Education, applicable across the country, are matters of policy. Government of India's orders dated 23.3.2007 and 7.11.2008, therefore, can be termed as statutory orders having their authority under Section 20 of UGC Act, 1956.

50. When Government of India's order dated 7.11.2008 states that guidelines may be prescribed by UGC, we have to read the term "prescribed" in the light of definition given in Section 2 (e) of UGC Act, 1956, which reads as under :

"(e) "prescribed" means prescribed by rules made under this Act."

51. The term "Rule" has been defined in Section 3 (51) of General Clauses Act, 1897, which read as under :

"(51) "rule" shall mean a rule made in exercise made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment."

52. When we consider all the aforesaid provisions collectively, we are clearly of the view that Government of India, when provides that re-employment shall be made in accordance with the guidelines, as may be prescribed by UGC, it means that consideration for re-employment has to follow guidelines of UGC but if no such guidelines have been framed for the time being, observance of Government of India's orders has to wait till guidelines are framed by UGC. In absence of any guidelines prescribed by UGC, any College or University, on its own, can not re-employ a Principal after attaining age of superannuation of 65 years, by resorting to the guidelines which are applicable to teachers and not to the Principals.

53. Respondent 6 working as Principal after attaining age of superannuation of 65 years could have been considered for re-employment only in accordance with guidelines prescribed by UGC as directed in Government of India's order dated 7.11.2008. Therefore, to apply and execute the decision of Government of India as conveyed by Government of India's order dated 7.11.2008, it was incumbent upon concerned educational institution to await for the guidelines to be prescribed by UGC and not to proceed on its own in absence of any such guidelines for the reason that law is well settled that when something is required to be done in a particular manner, anything done otherwise is illegal.

54. The principle was recognized in *Nazir Ahmad Vs. King-Emperor* AIR 1936 PC 253 and, thereafter it has been reiterated and followed consistently by the Apex Court in a catena of

judgements, which we do not propose to refer all but would like to refer a few recent one.

55. In *Dhananjaya Reddy Vs. State of Karnataka* 2001 (4) SCC 9, in para 23 of the judgment, Court held :

"It is a settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all."

56. In *Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala* 2002 (1) SCC 633, it was held :

"It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself."

57. The judgments in *Anjum M.H. Ghaswala* (supra) and *Dhananjaya Reddy* (supra) laying down the aforesaid principle have been followed in *Captain Sube Singh & others Vs. Lt. Governor of Delhi & others* 2004 (6) SCC 440.

58. In *Competent Authority Vs. Barangore Jute Factory & others* 2005 (13) SCC 477, it was held :

"It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has to be given its due meaning."

59. In *State of Jharkhand & others Vs. Ambay Cements & another* 2005 (1) SCC 368 in para 26 of the judgment, the Court held :

"It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way."

60. A similar question was considered by Division Bench of this Court in *Daya Shankar Singh Vs. State of U.P. and others*, 2008(2) ESC 1220 and Court observed:

"A modification, amendment etc., therefore, is permissible by exercising the power in the like manner and subject to like sanction and conditions in which the main provision was made initially. Since, Staff Regulations were framed admittedly with the previous sanction of the State Government and by publication in the official Gazette, same can be amended only following the same procedure and not otherwise. Therefore, the proposal/resolution passed by the Board of Directors, UPSWC by no stretch of imagination can be said to have the effect of either amending Regulation 12 of Staff Regulations or to bind UPSWC and its employees to be governed by such resolution/proposal which are inconsistent with the existing provisions contained in

Staff Regulations."

61. In the present case, it cannot be doubted that Government of India took a decision to allow re-employment of Principals of institutions of Higher Education upto the age of 70 years after attaining age of superannuation of 65 years, but, mode and manner for giving effect to such decision was required to be laid down by UGC and that is why Government of India's letter dated 07.11.2008 categorically states that such re-employment shall be in accordance with guidelines, as may be prescribed by UGC. Government of India's order nowhere confers right enforceable in a Court of law on Principal, retiring on attaining age of 65 years to claim re-employment but decision only enables College Management and Universities to continue a Principal upto age of 70 years as per Guidelines of UGC and said enabling power was also conferred upon UGC by authorising it to lay down guidelines for such re-employment.

62. The word "may" used in Government of India's order dated 07.11.2008 also shows that UGC if not inclined to allow re-employment of Principals of Colleges and institutions of Higher Education to continue beyond age of 65 years, in the interest of Educational institutions, they may not lay down any guidelines for re-employment, and, that is why, word "may" has been used repeatedly in Government of India's order dated 07.11.2008.

63. Even otherwise, so long as guidelines are not laid down by UGC, Management of College of Higher Education, merely on the basis of Government of India's order dated 07.11.2008, is not conferred any authority to re-employ a Principal of College after he attains age of 65 years for the reason that condition precedent is that such re-employment has to be in accordance with guidelines, as may be prescribed by UGC.

64. Respondent 6 for re-employment / continuance has not been considered in the light of guidelines issued by UGC in the matter of re-employment of Principal of College after he attains age of superannuation of 65 years for the reason that such guidelines have not been framed at all and guidelines, already framed, are applicable only to teachers and not to the Principals.

65. As we have already discussed, in the present case, for the purpose of re-employment of Principal, neither any guideline prescribed by UGC has been placed before us nor it is the case of parties that any such guidelines have been laid down. The only guideline placed before us are contained in Annexure-5 to writ petition which are clearly titled as "Model Guidelines For Re-employment of Superannuated Teachers", and, we have already referred the same to demonstrate that the same are applicable only to 'Teachers' and not 'Principals'. Clause-3 of said Guidelines clearly provides that teachers eligible for re-employment, to be considered in aforesaid Guidelines, would be only Professors of Universities; and, Professors, Readers and Lecturers (Selection Grade) of Colleges. The said guidelines are not applicable to 'Principals'. No other guidelines has been placed before us. Therefore, orders of re-employment issued to respondent 6, allowing him to continue after attaining the age of superannuation of 65 years on 08.11.2017 are clearly illegal and without any authority of law.

66. Further, even resolution passed by Executive Council is not an approval of proposal made by Governing Body of College but it is different than that. Though allegedly the resolution of Governing Body of College has been approved by Executive Council of University vide resolution dated 28.10.2017 but this resolution in effect modify resolution of Governing Body of College. Executive Council has allowed respondent 6 to continue for a period of five years from the date of superannuation at the age of 65 years, i.e. this period of five years will be computed after he attained the age of 65 years on 8.11.2017 and earlier period rendered as 'Principal' would be ignored. Governing Body of the College on the contrary has allowed respondent 6 to continue beyond the age of 65 years for remaining period so as to complete the term of five years from the date of his initial appointment on regular basis as Principal of College.

67. Apparently, resolution of Executive Council is different than what was resolved by Governing Body of College. It cannot be said that Executive Council has actually approved resolution of Governing Body of College as it is. We therefore, find that decision of respondent College and University to continue or re-employ respondent 6 as Principal of College after he attains age of superannuation of 65 years on 8.11.2017 by taking recourse to Government of India's order dated 7.11.2008 are at variance, and hence, suffers from patent illegality. The alleged approval granted by Executive Council is different than what has been resolved by Governing Body of College and therefore, it cannot be said that decision taken by management of College for re-employment / continuance of respondent 6 as Principal of College has been approved by Executive Council so as to result in a valid order of re-employment of respondent 6.

68. After the judgement was reserved, a copy of Division Bench judgement of this Court passed in Writ Petition No. 17114 of 2018 (Dr. M. Massey And Another vs. Union of India and Others) decided on 13.9.2018, was given to us by learned counsel for petitioners stating that this Court has already held that Government of India's order dated 7.11.2008 stands superseded by UGC (4th Amendment), Regulation, 2016.

69. Firstly, we do not find that without listing the matter for rehearing above aspect in the light of above judgement would have been properly taken note by this Court but even otherwise what we find is that the Division Bench following Supreme Court's Judgement in Kalyani Mathivanan Vs. K.V. Jeyaraj and Others, (2015)6 SCC 363 and Annamalai University vs. Secretary to Government, Information and Tourism Department and Ors, (2009)4 SCC 590 has held that Regulations framed by UGC under Section 26 shall prevail over orders of Government of India and therefore, Government of India's orders dated 23.3.2007 and 7.11.2008 stand superseded by UGC Regulation, 2010 and UGC (4th Amendment), Regulation, 2016. Unfortunately, it appears that Supreme Court's judgement in P. Suseela vs. University Grants Commission (supra) was not brought to the notice of Division Bench wherein Court has observed that orders issued by Ministry of Human Resources are referable to Section 20 of Act, 1956 and under Section 26, UGC is conferred power to make Regulations consistent with UGC Act, 1956 and the Rules made thereunder. Court has held that Regulations made under Section 26 must conform to the directions issued by Central Government under Section 20 of UGC Act, 1957 Act. Court also held:

"Regulation making power is subservient to directions issued Under Section 20 of the Act. The fact that the UGC is an expert body does not take the matter any further. The UGC Act contemplates that such expert body will have to act in accordance with directions issued by the Central Government." (emphasis added)

70. However, we need not go into further details of the issue for the reason that for the purpose of present writ petition, as per our discussion made above, we are clearly satisfied that respondent 6 has not been considered for re-employment in accordance with directions contained in Government of India's order dated 7.11.2008 in as much as such re-employment has to be provided in accordance with guidelines prescribed by UGC and since for the purpose of re-employment of Principals, guidelines are yet to be framed and prescribed by UGC, respondent 6 could not have been considered for re-employment after he attains age of 65 years. Moreso even proposal and resolution passed by Governing Body of College as such has not been approved by Executive Council of University. There is a clear variance. Hence re-employment / extension of respondent 6 after attaining age of 65 years is patently illegal, therefore, we need not to defer the matter by taking note of Division Bench Judgement in Dr. M. Massey And Another vs. Union of India (supra) and the same is left open to be considered in an appropriate matter.

71. Now, we come to preliminary objection raised on behalf of respondents that petitioners are not working in College and have already retired, therefore, they have no cause of action or locus-standi to maintain present writ petition.

72. Here, we find that writ of quo warranto has been prayed by petitioners. Therein grievance is that re-employment of respondent 6 on the post of Principal is patently illegal and without any authority of law. Learned counsel for respondents could not dispute, at the outset, that post of Principal of College is a "public office" and governed by statutory provisions of Act, 2005, UGC Act 1956 and Rules, Regulations and statutes framed thereunder. Therefore, appointment in a 'public office', if made, in utter violation of statutory provision, a writ of quo warranto would lie and in such a case, petitioners need not demonstrate that they have a personal grievance or cause of action.

73. In order to seek a writ of quo warranto, a person, who is approaching Court, is required to satisfy only that office in question is a "public office" and is held by a usurper without legal authority. The inevitable inquiry, in such a case, would be, whether appointment of alleged usurper has been made in accordance with law or not. This is what has been said by a Constitution Bench in The University of Mysore and Anr. v. C.D. Govinda Rao and Anr. AIR 1965 SC 491. Therein, Court said :

"...quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the Judiciary a weapon to control the Executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right."

74. The care, which Court must take while adjudicating a writ petition seeking an issue of quo warranto is that it indisputably leads to a single conclusion that incumbent holding public office was in fact or law, disqualified to occupy public office or has incurred disqualification to continue or has been appointed or brought in office in the teeth of requirement of law.

75. In Arun Singh alias Arun Kr. Singh Vs. State of Bihar and Ors. (2006) 9 SCC 375, Court categorically held that :

"13.issuance of a writ of quo warranto is discretionary and such a writ should be issued only upon a clear finding that the appointment to a public office was contrary to the statute." (emphasis added)

76. In B.R. Kapur Vs. State of Tamil Nadu and Anr. (2001) 7 SCC 231, a Constitution Bench observed that :

"79.A writ of quo warranto is a writ which lies against the person, who according to the relator is not entitled to hold an office of public nature and is only a usurper of the office. It is the person, against whom the writ of quo warranto is directed, who is required to show, by what authority that person is entitled to hold the office."

77. In High Court of Gujarat and Anr. v. Gujarat Kishan Mazdoor Panchayat and Ors. (2003) 4 SCC 712, Court said that writ of quo warrant can only be issued when appointment is contrary to the statutory Rules.

78. In Rajesh Awasthi v. Nand Lal Jaiswal and Ors. (2013) 1 SCC 501 again Court reiterated that writ of quo warranto will lie when the appointment is made contrary to statutory provisions and in this regard relied on its earlier decision in Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy. To Government of Haryana (2001) 6 SCC 269.

79. Similar was the exposition of law laid down in B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees Asson. (2006) 11 SCC 731 and Hari Bansh Lal Vs. Sahodar Prasad Mahto (2010) 9 SCC 655.

80. We may also remind ourselves with celebrated judgment in S.P.Gupta Vs. Union of India & Ors. 1981 Suppl. (1) SCC 87 where Court observed that strict rule of standing does not apply to a writ of quo warranto.

81. Therefore, petitioners cannot be non-suited on the ground of lack of personal injury or enforcement of personal right. A writ of quo-warranto can be issued against respondent 6, if his re-employment / re-appointment on the post of Principal of College is contrary to Statutes, patently illegal and confers no authority upon him to hold the office of Principal which is admittedly a public office. Preliminary objection, therefore, is rejected.

82. In the result, we allow Writ Petition No. 567 of 2018 and hold that re-employment of respondent 6 as Principal, C.M.P. Degree College, Allahabad for the period subsequent to the date he attained age of superannuation of 65 years, is patently illegal and contrary to law. Hence, resolution of Governing Body of College dated 10.10.2017, decision of Executive Council of University dated 28.10.2017, letter of appointment dated 08.11.2017 issued by Dean of College Development, University of Allahabad to respondent 6 and consequential letter dated 8/16.11.2017 issued by Chairman of Governing Body are set aside. Respondent 6 is forthwith restrained from functioning as Principal of College. University as well as College are directed to ensure compliance of above directions forthwith.

Writ Petition No. 58234 of 2017

83. Petitioner, Dr. Santosh Kumar Khare (in Writ Petition No. 58234 of 2017) working as Senior most teacher in College has filed this writ petition, praying for a writ of certiorari for quashing Resolution dated 28.10.2017 pursuant to Agenda No. 27/47 and communicated by University of Allahabad vide letter dated 7.11.2017 for re-employment of Dr. Anand Kumar Srivastava (respondent 7 in present writ petition) as Principal of College upto the age of 70 years from the date of his superannuation at the age of 65 years with the condition that he would continue to participate with teaching work of the College in addition to his duties as Principal of the College. Petitioner has also sought a writ of quo-warranto for restraining respondent 7 from functioning as Principal of College and has prayed for setting aside his appointment on the post of Principal after he attains age of superannuation at the age of 65 years. A further writ of certiorari has been prayed for quashing letter dated 7.11.2008 issued by Ministry of Human Resource Development, Department of Higher Education, Government of India and a writ of mandamus has been prayed directing respondents-authorities to allow petitioner to officiate on the post of Principal following the principle of seniority. In view of our reasons given above in respect of Writ Petition No. 567 of 2018, this Writ Petition No. 58234 of 2017 is also allowed to the extent that Resolution dated 28.10.2017 and letter dated 7.11.2017 of University are hereby set aside and we restrain Dr. Anand Kumar Srivastava from functioning as Principal of the College forthwith. All the directions issued in respect of Writ Petition No. 567 of 2018 shall mutatis mutandis apply for this writ petition also.

84. However, there shall be no order as to costs in both the writ petitions.

Order Date:-05.10.2018 Faridul