**Neutral Citation No. - 2024:AHC:25320-DB**

**AFR**
**Reserved**

**Court No.40**

**Case :-** SPECIAL APPEAL No. - 734 of 2023

**Appellant :-** State of U.P.
**Respondent :-** Javed Bahar And 3 Others
**Counsel for Appellant :-** C.S.C.,S.C.
**Counsel for Respondent :-** Rakesh Kumar

Connected with

**Case :-** SPECIAL APPEAL DEFECTIVE No. - 707 of 2023
**Appellant :-** Chandra Shekhar Azad Agricultural And Technical University And 2 Others
**Respondent :-** Dr. Rajendra Prakash Vyas And 6 Others
**Counsel for Appellant :-** Rakesh Kumar
**Counsel for Respondent :-** C.S.C.,Om Prakash Tripathi

With

**Case :-** SPECIAL APPEAL DEFECTIVE No. - 719 of 2023
**Appellant :-** Chandra Shekhar Azad Agricultural And Technical University And 2 Others
**Respondent :-** Dr. Javed Bahar And Another
**Counsel for Appellant :-** Rakesh Kumar
**Counsel for Respondent :-** C.S.C.,Om Prakash Tripathi

With

**Case :-** SPECIAL APPEAL DEFECTIVE No. - 720 of 2023
**Appellant :-** Chandra Shekhar Azad Uiversity And 2 Others
**Respondent :-** Sushil Dimree And Another
**Counsel for Appellant :-** Rakesh Kumar
**Counsel for Respondent :-** C.S.C.

With

**Case :-** SPECIAL APPEAL DEFECTIVE No. - 726 of 2023
**Appellant :-** Chandra Shekhar Azad University And 4 Others
**Respondent :-** Dr. Koshendra Pal Singh And 2 Others
**Counsel for Appellant :-** Rakesh Kumar
**Counsel for Respondent :-** C.S.C.,Arvind Kumar Upadhyay,Om Prakash Tripathi

With

**Case :-** SPECIAL APPEAL DEFECTIVE No. - 774 of 2023
**Appellant :-** State Of U.P. And Another
**Respondent :-** Sheshmani Tripathi And 6 Others
**Counsel for Appellant :-** Manoj Kumar Singh,Pradeep Singh Sisodia
**Counsel for Respondent :-** Arvind Kumar Upadhyay,Om Prakash Tripathi

With

**Case :-** SPECIAL APPEAL No. - 743 of 2023
**Appellant :-** State of U.P.
**Respondent :-** Rajendra Prakash Vyas And 8 Others
**Counsel for Appellant :-** C.S.C.,Ankit Gaur
**Counsel for Respondent :-** Om Prakash Tripathi

With

**Case :-** SPECIAL APPEAL No. - 766 of 2023
**Appellant :-** State of U.P.
**Respondent :-** Koshendra Pal Singh And 6 Others
**Counsel for Appellant :-** C.S.C.,S.C.
**Counsel for Respondent :-** Arvind Kumar Upadhyay,Om Prakash Tripathi,Rakesh Kumar

With

**Case :-** SPECIAL APPEAL No. - 727 of 2023
**Appellant :-** State of U.P.
**Respondent :-** Sushil Dimree And 3 Others
**Counsel for Appellant :-** C.S.C.,C.S.C.
**Counsel for Respondent :-** Varad Nath,Rakesh Kumar

**Hon'ble Ashwani Kumar Mishra,J.**
**Hon'ble Syed Qamar Hasan Rizvi,J.**

*(Delivered by Hon'ble Ashwani Kumar Mishra, J.)*

1. This bunch of special appeals are filed by the State of Uttar Pradesh as well as Chandra Shekhar Azad University of Agricultural and Technology, Kanpur, challenging the judgment and order dated 14.08.2023, passed by learned Single Judge in a batch of writ petitions with leading Writ-A No.10622 of

2022 filed by Dr. Rajendra Prakash Vyas and others.

2. The issue before learned Single Judge was as to what would be the age of superannuation of the respondents-petitioners. The respondents-petitioners contended before learned Single Judge that they are to be treated as faculty member of the Agricultural University at Kanpur, against teaching positions, and hence are entitled to continue in service till the age of superannuation i.e. 62 years. The case of the appellants-respondents before learned Single Judge, on the other hand, was that the respondents-petitioners were member of non-teaching staff and were to retire at the age of 60 years under the Statute. Learned Single Judge upon consideration of the cause has held that all the respondents-petitioners are members of teaching faculty and would be entitled to continue in service till they attain the age of superannuation of a teacher i.e. 62 years. All consequential benefits have been allowed to the respondents-petitioners. Thus aggrieved, the appellants-respondents have filed the present bunch of appeals.

3. Chandra Shekhar Azad University of Agricultural and Technology, Kanpur (hereinafter referred to as 'Agricultural University at Kanpur') is a university established under the provisions of the Uttar Pradesh (Krishi Evam Prodyogik Vishwavidyalaya Adhiniyam), 1958 (hereinafter referred to as 'Act of 1958'). Section 2(k) of the Act of 1958, as it stood prior to its amendment in 2019, defined 'Teacher' in following words:-

> *"2(k). "Teacher" means a person appointed or recognised by the University for the purpose of imparting instruction or conducting and guiding*

*research or extension programmes and includes a person who may be declared by the statutes to a teacher; and*

*1. (University means the Govind Ballabh Pant Evam Prodyogik Vishwavidyalaya or the Narendra Deva Krishi Evam Prodyogik Vishwavidyalaya or the Chandrashekhar Azad Krishi Evam Prodyogi Vishwavidyalaya, as the case may be).”*

4. Section 28 of the Act of 1958 provided for framing of statutes subject to the provisions of the Act which were to provide for:

*(a)……..*

*(b)……..*

*(c) The designation, manner of appointment, powers and duties of the officers of the University.*

5. The manner of making statutes is specified in Section 29. Statutes have been framed accordingly. Chapter XXI of the Statutes contain terms and conditions of service of employees of the University (Agricultural University at Kanpur) other than Vice Chancellor. Clause 7(i) of the Statutes provides the age of superannuation for all employees of the University to be 60 years. Clause 7(a)(ii) of the Statutes provides for the age of superannuation of the teachers/scientists as 62 years. The provisions, in that regard, are reproduced hereinafter:-

*“7. Age of Retirement*

*(i) The age of superannuation for all classes of employees of the University shall be 60(sixty) years. In no case extension or re-employment will be given to any of its employees.*

*7(a)(ii). The age of superannuation of teachers/scientists of the university shall be 62 years after 1.7.2003. In no case extension or re-employment will be given to any of its employees.”*

6. Section 2-A of the Act of 1958 provided for establishment of Agricultural Universities at Faizabad and Kanpur. We are concerned in this bunch of appeals with the Agricultural University at Kanpur. The other University established under the Act of 1958 was Narendra Dev Krishi Evam Prodyogik Vishwavidyalaya, Faizabad (hereinafter referred to as 'Agricultural University at Faizabad'). Before establishment of these two Universities there existed an earlier Agricultural University in the erstwhile State of Uttar Pradesh namely Govind Vallabh Pant Krishi Evam Pradyogik Vishwavidyalaya, Pantnagar (now in Nainital, Uttaranchal). A Government Order was issued by the State of U.P. on 06.06.1981 granting pay scale of UGC (University Grants Commission) to the Research Assistants of Agricultural University at Pantnagar. Admittedly, all the respondents-petitioners were initially appointed on the post of Research Assistant in the University.

7. It transpires that a Writ Petition No.1082 (SB) of 1995 came to be filed before Lucknow Bench of this Court by Rajitram Verma and others, who were the Senior Research Associates in the Agricultural University at Faizabad claiming salary of Teachers/Assistant Professors in the pay scale of Rs.2200-4000 on the ground that other Research Assistant are already getting such benefits. An ad-interim mandamus or show cause was issued in the writ on 07.05.1999. The State of Uttar Pradesh choose to abide by the interim mandamus and issued a Government Order on 22.07.1999 granting pay scale of Rs.2200-4000 to the Senior Research Associate of the Agricultural University at Faizabad. The aforesaid writ petition thereafter was dismissed as not pressed on 03.03.2000. The grant of benefit of UGC pay scale of Rs.2200-4000, admissible

to a teacher was, however, restricted to 19 petitioners of the aforesaid writ petition.

8. The Research Assistants of the Agricultural University at Kanpur, who had already filed a Writ Petition No.836 (SB) of 1994, claimed parity with the petitioners in whose favour the ad-interim mandamus or show cause was issued on 07.05.1999. The Writ Petition No.836 (SB) of 1994 was disposed of on 18.08.1999 with the observation that once the State has granted benefit of UGC pay scale of Rs.2200-4000 to the Senior Research Associates of the Agricultural University at Faizabad, there is no reason why such benefits be denied to the Research Assistants of Agricultural University at Kanpur.

9. The Executive Council of the Agricultural University at Kanpur in its 117$^{th}$ meeting held on 25.02.2000 took up the issue of declaration of Teacher to the 52 Research Assistants, and vide resolution no.6, the Executive Council resolved to declare the Research Assistants as a Teacher.

10. Minimum qualification for appointment to the post of Teacher in University and its colleges got prescribed by the UGC on 24.11.1998. Since the respondents-petitioners were working from much prior to such date, as such the University at Kanpur extended the UGC Regulations to direct recruitments only. Relaxation was given to the teachers working from before and had research experience for a period of five years.

11. A Government Order was issued on 04.01.2008 sanctioning pay scale of Assistant Professor to the respondents-petitioners. This Government Order also provided that Research Assistants be adjusted/absorbed against the posts created/existing of Assistant Professor or equivalent

posts. This decision of the State was reiterated vide Government Order dated 16.02.2010. The respondents-petitioners accordingly state that as they were initially appointed for conducting and guiding research and were also granted pay scale of the post of Assistant Professor by the Agricultural University at Kanpur, as such they are to be treated as member of the teaching staff and thus entitled to continue in service till the age of 62 years.

12. Learned Single Judge in the judgment under challenge, dated 14.08.2023, took note of the previous litigation and the passing of orders, therein, which resulted in the grant of declaration of 'Teacher' to the Research Assistants of the Agricultural University at Kanpur.

13. The issue of respondent-petitioners being teacher apparently would have been given a quietus but for an amendment introduced in the Act of 1958 vide U.P. Act No.9 of 2019. The definition of 'Teacher', contained Section 2(k) of the Act of 1958 was substituted vide Section 2(k) of the UP Act No.9 of 2019, which is reproduced hereinafter:-

> *"2(k). 'Teacher' means a person not below the rank of Assistant Professor duly appointed as per the norms and guidelines of UGC and ICAR in this regard by the University."*

14. The authorities took the view that as respondents-petitioners were not appointed as Assistant Professor as per the norms and guidelines of UGC and ICAR, as such they cannot be treated as 'Teacher" and, consequently, they are to superannuate at the age of 60 years treating them to be non-teaching staff. The Director (Administration and Monitoring) of the Agricultural University at Kanpur, however, sought

guidance from the State on 05.10.2020 in view of the fact that Research Assistants were already granted the status of Teacher/Assistant Professor. The State Government vide order dated 16.06.2022 opined that in view of the amended definition of 'Teacher', contained in Section 2(k) of the Act of 2019, the respondents-petitioners cannot be treated as 'Teacher'.

15. It may be worth noticing at this stage that the Agricultural University at Faizabad had also established various Krishi Vigyan Kendras. An issue arose as to what would be the age of superannuation of Research Assistants engaged in such Krishi Vigyan Kendra. The matter ultimately came before a Division Bench of this Court at Lucknow in Writ-A No.7847 of 2022, in the context of amended Section 2(k), substituted vide U.P. Act No.9 of 2019. Although the Amending Act was challenged in the writ but at the time of its hearing such challenge was given up. The amended definition of 'Teacher' in Section 2(k) was noticed in para 3 of the Division Bench judgment dated 17.05.2023. Taking aid of Section 6 of the General Clauses Act, the Co-ordinate Bench observed as under in paras 14 to 18:-

> *"(14) Thus prior to amendment, Section 2(k) provided that anyone appointed or recognized by the University for the purposes of imparting instructions or conducting and guiding research or extension programmes will be a teacher which will include any person who may be declared as such by the University. However, after the amendment, the teacher in the University is now a person not below the rank of Assistant Professor appointed as per the norms and guidelines of UGC and ICAR. Thus, the persons appointed for conducting and guiding research or extension programmes have been excluded from the purview of 'teacher'. The Government by means of the order dated 14.06.2022 directed that action be taken*

*in terms of the provisions contained therein in respect of the employees appointed in Krishi Vigyan Kendras treating them to be non-teaching staff and accordingly, the impugned orders have been issued retiring the petitioners on their completion of age of 60 years treating them to be non-teaching staff.*

*(15) It is to be noticed that U.P. Act No. 9 of 2019 does not make a mention as to from which date the said amendment shall take effect. It was published on 05.08.2019 and in absence of any specific date when the U.P. Act No. 9 of 2019 would come in operation, it will be deemed to have come in operation w.e.f. 05.08.2019. It is settled principle of law that any statutory prescription, which will include a legislation as well, will operate prospectively unless the statute itself provides for its retrospective application expressly or by implication. U.P. Act No. 9 of 2019 does not expressly provide its operation to be retrospective. There is no implied provision in U.P. Act No. 9 of 2019 which can be taken aid of to infer that the said amending Act will be operative retrospectively.*

*(16) In view of the provisions contained in the amending Act, namely, U.P. Act No. 9 of 2019, since there is no express provision of its applicability from a retrospective date, it will thus operate prospectively. In our considered opinion, since U.P. Act No.9 of 2019 has not been made applicable retrospectively, if a particular category of employees has already been classified or recognized as "Teachers", they will continue to be treated as "Teachers". We have already noticed that as per the powers vested in it in Chapter XII of the First Statutes of the University, the Board of Management in its 28th meeting held on 30.09.1980 has already recognized the Subject Matter Specialists as "Teachers" and thus by operation of U.P. Act No. 9 of 2019 their status as "Teacher", in our opinion, will not change for the reason that U.P. Act No. 9 of 2019 has not been made effective with effect from any retrospective date.*

*(17) At this juncture, we may refer to Section 6 of U.P. General Clauses Act, 1904 according to which if any U.P. Act repeals any enactment, then unless a different intention appears, the repeal shall not affect the previous operation of any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. Section 6 of U.P. General Clauses Act, 1904 is quoted hereunder:-*

*"6. Effect of repeal. Where any Uttar Pradesh Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not*

*(a) revive anything not in force or existing at the time at which the repeal takes effect; or*

*(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or*

*(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or*

*(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*

*(e) affect any remedy, or investigation or legal proceeding commenced before repealing Act shall have come into operation in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;*

*and any such remedy may be enforced and any such investigation or legal proceeding may be continued and concluded, and any such penalty, forfeiture or punishment imposed as if the repealing Act had not been passed."*

*(18) Thus, by substituting new definition of 'Teacher' in Section 2(k) in the Principal Act by way of Act No. 9 of 2019, the old definition of the word "Teacher" stands repealed, however, since there is no express or implied provision in U.P. Act No. 9 of 2019 for its retrospective operation, those employees who were already recognized as "Teachers" will continue to be "Teachers". In the unamended Section 2(k), the words occurring are a person "appointed" or "recognized". Thus before U.P. Act No. 9 of 2019, if a person was appointed as Teacher, he will be a "Teacher" and if any employee though not appointed as Teacher, but is recognized as "Teacher", he shall also be a "Teacher". At the cost of repetition, we may again refer to the decision of the Board of Management of the University taken in its 28th meeting held on 30.09.1980, wherein the Subject Matter Specialists have been recognized as "Teachers". Thus in the aforesaid view of the matter, the amendment in the definition of the word "Teacher" as occurring in Section 2(k) will not affect the status of*

*the petitioners as "Teachers". "*

16. Learned Single Judge in the impugned judgment has relied upon the aforesaid judgment to conclude that notwithstanding the amended definition of 'Teacher' the status and pay scale already granted to the respondents-petitioners cannot be withdrawn and they are entitled to continue in service at the age of 62 years.

17. The Division Bench Judgment of the Lucknow Bench dated 17.5.2023 was challenged before the Supreme Court in Special Leave Petition (Civil) Diary No(s). 32010 of 2023, which has been dismissed vide following orders on 2.2.2024:-

> *"Delay condoned.*
>
> *Heard learned counsel for the parties.*
>
> *We see no reason to interfere with the impugned orders.*
>
> *The Special Leave Petitions are, accordingly, dismissed.*
>
> *Pending applications stand disposed of."*

18. Sri Ashok Mehta, learned Senior Counsel for the appellants submits that the respondents-petitioners were not appointed as per the norms and guidelines of UGC and ICAR on the post of Assistant Professor and, as such, they cannot be treated as 'Teacher'. He further submits that the amendment incorporated vide Act No.9 of 2019 is not challenged and, therefore, the respondents-petitioners cannot claim themselves to be 'Teacher'. It is further submitted that Section 6 of the General Clauses Act will have no applicability in the facts of the present case, since it is not a case of repeal of statute but is a case of amendment introduced in the definition of 'Teacher'.

19. Sri Mehta has placed reliance upon the judgment of Supreme Court in Bishnu Narayan Mishra vs. State of U.P. and others, AIR 1965 SC 1567, to submit that employer has the right to reduce the age of superannuation. Reliance is also placed upon the judgment of Supreme Court in K. Nagraj and others vs. State of Andhra Pradesh and another, (1985) 1 SCC 523, for the similar proposition. It is further argued that change in the age of superannuation does not take away any vested right, inasmuch as the age of superannuation fixed at the time of initial appointment can always be changed by the employer. Submission is that though the pay scale of Rs.2200-4000 admissible to a teacher would continue to be available to Research Assistants, as per the scale of UGC, but they cannot claim continuation in service beyond the age of 60 years.

20. Per contra, Sri Ashok Khare, learned Senior Counsel for the respondents-petitioners submits that the effect of amendment in the definition of 'Teacher' would have the same consequence as that of repeal, inasmuch as the previous definition stood substituted by a new provision. The effect of amendment is thus similar to repeal and the spirit underlying Section 6 would clearly be applicable.

21. Sri Khare, has placed reliance upon judgment of the Supreme Court in State of Rajasthan vs. Trilok Ram, (2019) 10 SCC 383, wherein the effect of substitution of provision was examined. Reliance is also placed upon judgment of the Supreme Court in P.S. Rama Mohana Rao vs. A.P. Agricultural University and others, (1997) 8 SCC 350, in order to contend that a similar definition of 'Teacher', as it previously existed in the unamended section 2(n) fell for determination before the Supreme Court. The Court took the view that the definition is

in two parts. The first part included a Professor, Reader, Lecturer or other Professor appointed or recognized by the University for the purposes of imparting instructions or conducting any guiding research or extension programme. The second part included any person declared by the Statutes to be a Teacher. Learned Senior Counsel, accordingly, submits that the case of the respondents-petitioners fell in the first part and, therefore, they are covered by the definition of 'Teacher' even without a declaration granted under the Statutes.

22. Learned counsel further submits that the status of 'Teacher' since has already been granted to the respondents-petitioners, by the University, and the pay scale etc. is otherwise protected by the State, as is urged by Sri Mehta, the status of 'Teacher' cannot simultaneously be withdrawn for the age of superannuation and retained for the purposes of payment of salary. It is further argued that vested right since has been created in favour of respondents-petitioners on account of grant of declaration of 'Teacher', and the pay scale of Assistant Professor is granted to them, therefore, they cannot be treated as non-teaching staff in the matter of other service conditions. Sri Khare, submits that the right of the employer to change the age of superannuation is not doubted but that, in fact, is not the issue here. The issue rather is as to whether a vested right already created in favour of the respondents-petitioners to the status of 'Teacher' can be retrospectively withdrawn. Reliance is also been placed upon the judgment of the Supreme Court in State of Gujarat vs. Raman Lal Keshav Lal Soni, (1983) 2 SCC 33, as well as the judgment in Punjab State Agricultural Development Bank Ltd.

vs. Registrar, Cooperative Societies, (2022) 4 SCC 363.

23. We have heard Sri Ashok Mehta, learned Senior Counsel, assisted by Sri Rakesh Kumar, Sri M.P. Sahi, Sri Ankit Gaur, Sri C.P. Yadav and Sri Pradeep for the State and Agricultural University at Kanpur, and Sri Ashok Khare, learned Senior Counsel, assisted by Sri Om Prakash Tripathi for the respondents-petitioners and have perused the materials brought on record.

24. It is not in dispute that all the respondents-petitioners were initially appointed as Research Assistants. As per the unamended definition of 'Teacher' in Section 2(k) of the Act of 1958, it meant a person appointed or recognized by the University for the purposes of imparting instructions or conducting a guiding research or extension programme and included a person, who may be declared by the Statues to be a 'Teacher'. The term 'Teacher' has been employed in a wide sense to include a person appointed or recognized by the University for the purposes of imparting instructions or conducting a guiding research or extension programmes. It is undisputed that all the respondents-petitioners were appointed by the Agricultural University at Kanpur for the purposes of conducting and guiding research. We are, therefore, of the view that in the first part of the definition contained in Section 2(k) itself the respondents-petitioners would qualify to be a Teacher.

25. In P.S. Rama Mohana Rao (supra) a similar definition of 'Teacher' came up for interpretation before the Supreme Court. Para 5 of the judgment contains definition of Teacher in section 2(n), which is reproduced hereinafter:-

> *"5. For the purpose of deciding the above issue arising between the parties, it is necessary to refer to the relevant provisions of the Act and the Regulations. Clause (n) of Section 2 defines "teacher" as follows:*
>
> *"2. (n) 'teacher' includes a professor, reader, lecturer or other person appointed or recognised by the University for the purpose of imparting instruction or conducting and guiding research or extension programmes, and any person declared by the statutes to be a teacher;"*
>
> *The definition does not say what the word "teacher" means but includes certain categories within the meaning of the said word."*

While considering the status of Physical Director to be a Teacher or not, the Court clearly countenanced two distinct eventualities to subsist in the definition of 'Teacher' under Section 2(n). The first part of the term 'Teacher' included a Professor, Reader, Teacher or other person appointed or recognized for the purposes of imparting instructions or conducting and guiding research or extension programme , while the second part included a person to be declared as a 'Teacher' under the Statutes. In Para 16 and 17 of the judgment in P.S. Ram Mohan Rao (supra), the Supreme Court observed as under:-

> *"16. In the impugned judgment of the High Court it has been said that merely because Physical Directors are paid the same scales as the teaching staff that does not confer on them the status of a teacher. There is also no discrimination if Physical Directors are retired at the age of 58 years and other teachers are allowed to retire at the age of 60 years. The High Court further said that while it was true that Section 2(n) of the Act contained an inclusive definition of "teacher", the Physical Directors did not come within the categories mentioned in the inclusive definition. They are neither Professors nor Readers nor Lecturers nor were they persons appointed or recognised by the University for the purpose of imparting instruction or conducting and guiding research or extension programmes.*

> *17. In our view, the learned Judges did not go into the meaning of the word "teacher" in the main part of the clause nor assessed correctly the effect of the material evidence on record. The learned Judges observed that assuming Physical Directors imparted instructions to their students, unless the University recognised them as teachers they could not claim the benefit of Section 2(n) of the Act. Obviously the learned Judges were referring to the last part of Section 2(n) which includes persons other than those enumerated in the inclusive part if so recognised by the University. As we have held that the Physical Directors come within the main part of the definition of "teacher", it is in our opinion not necessary that they should be separately recognised as teachers by an order or statute of the University."*

26. In the facts of the present case, the State legislature had enacted the Act of 1958 for establishment of two agricultural universities in Uttar Pradesh at Faizabad and Kanpur. A similar University already existed from before at Pantnagar. Government Order was already issued on 06.06.1981 allowing UGC pay scale to Research Assistants of the Agricultural University at Pantnagar. Pursuant to an ad-interim mandamus issued on 07.05.1999 by the Lucknow Bench in Writ Petition No. 1082 (SB) of 1995, the State Government on 22.07.1999 granted the benefit of UGC pay scale of teacher to Senior Research Associate of the Agricultural University at Faizabad. They were also granted declaration of Teacher and were adjusted against such posts. We have already noticed that the Lucknow Bench of this Court in Writ Petition (SB) No.836 of 1994 had extended the benefit, granted to Senior Research Associate of Agricultural University at Faizabad, to the Research Assistants of Agricultural University at Kanpur. The Executive Council clearly granted declaration of Teacher to the Research Associate in its resolution dated 25.02.2000.

27. A Government Order dated 04.01.2008 has also been issued extending the pay scale of Assistant Professor to the

Research Assistants of the Agricultural University at Kanpur i.e. respondents-petitioners. These Research Assistants have already been absorbed on the vacant posts of Assistant Professor or equivalent post. Subsequent Government Order dated 16.02.2010 is also on record granting the benefit of post and pay scale of Teacher to the respondents-petitioners.

28. Sri Ashok Mehta, learned Senior Counsel for the State and Agricultural University at Kanpur has referred to and relied upon the Government Order dated 18.02.2000, whereby the previous Government Order dated 22.07.1999 has been modified. While granting the benefit of promotional pay scale of UGC to 19 petitioners, their post was re-designated as Senior Research Associate and no further post with such name was to be created henceforth. Relevant portion of the Government Order dated 18.02.2000 is extracted hereinafter:-

> *"मुझे यह कहने का निदेश हुआ है कि उपर्युक्त विषयक आपके अर्द्धशासकीय पत्र सं०-1914/स्था०/99, दिनांक 12 नवम्बर, 1999 के संदर्भ में तथा कृषि विश्वविद्यालय फैजाबाद के शौध सहायकों के वेतन पुनरीक्षण के संबंध में शासनादेश जारी होने के तिथि से यू०जी०सी० वेतनमान रू० 2200-4000 प्रदान करने के कारण शासनादेश जारी होने की तिथि व उच्चीकरण वेतनमान देने की समान नीति को दृष्टिगत रखते हुए। कृषि विश्वविद्यालय, फैजाबाद के 19 याची सीनियर रिसर्च एशोसियेट को भी यू०जी०सी० वेतनमान देने के संबंध में पुर्नविचार करते हुए शासनादेश सं०- 1138/12-8-99-400(157)/90, दिनांक 22 जुलाई, 1999 में आंशिक संशोधन करते हुए श्री राज्यपाल महोदय उक्त शासनादेश के प्रस्तर-4 को निम्नवत संशोधित करने की सहर्ष स्वीकृति प्रदान करते हैं:-*
>
> *"वर्णित तथ्यों के परिप्रेक्ष्य में एवं माननीय उच्च न्यायालय में दायर रिट याचिका सं०-1082(एसबी)/1995 में दिए गए निर्देश दिनांक 7-5-99 को दृष्टिगत रखते हुए सम्यक विचारोपरान्त री राज्यपाल कृषि विश्वविद्यालय फैजाबाद के उक्त रिट के 19 याचीगण से सीनियर रिसर्च एशोसियेट को शासनादेश जारी होने की तिथि 22-7-1991 से यू०जी०सी० का प्रोन्नत वेतनमान स्वीकृत किए जाने के आदेश प्रदान करते हैं। इनका पदनाम वरिष्ठ अनुसंधान सहायक कर दिया जाए तथा इस उद्देश्य और कार्य हेतु किसी भी नाम से कोई पद भविष्य में सृजित नहीं किया जाय।*
>
> *2- उक्त संशोधन के फलस्वरूप शासनादेश दिनांक 22.7.99 को पूर्व प्रस्तर-*

*4 निरस्त करने की भी राज्यपाल महोदय स्वीकृति प्रदान करते है।"*

29. The argument of Sri Mehta that initial benefit granted in 1999 was modified in the year 2000 cannot be accepted in view of the Subsequent Government Order issued on 04.01.2008, which categorically held as under:-

> *"अतः उक्त को दृष्टिगत रखते हुए शासनादेश दिनांक 7.8.2002 को संशोधित करते हुए दिनांक 8.1.2001 से याचीगण को सहायक प्राध्यापक का वेतनमान शासनादेश दिनांक 20.10.05 द्वारा प्रदान कर दिया गया है। इस संबंध में यह भी उल्लेखनीय है कि विश्वविद्यालय से प्राप्त सूचना के अनुसार विश्वविद्यालय में सृजित/रिक्त सहायक प्राध्यापक एवं समकक्षीय पदो पर याचीगण को समायोजित कर लिया गया है। "*

30. The Government Order dated 04.01.2008 has been reiterated vide Government Order dated 16.02.2010. Operative portion of the aforesaid Government Order is extracted hereinafter:-

> *"अतः उक्त को दृष्टिगत रखते हुए शासनादेश दिनांक 7.8.2002 को संशोधित करते हुए दिनांक 8.1.2001 से याचीगण को सहायक प्राध्यापक का वेतनमान शासनादेश दिनांक 20.10.05 द्वारा प्रदान कर दिया गया है। इस संबंध में यह भी उल्लेखनीय है कि विश्वविद्यालय से प्राप्त सूचना के अनुसार विश्वविद्यालय में सृजित/रिक्त सहायक प्राध्यापक एवं समकक्षीय पदो पर याचीगण को समायोजित कर लिया गया है।"*

31. In view of the specific stand taken by the State Government, by issuing the aforesaid Government Orders, various proceedings initiated before the Writ Court as also the contempt proceedings were dropped. The appellants-respondents clearly admit that the benefit of pay scale of 'Teacher' granted to the respondents-petitioners is not proposed to be withdrawn. It is admitted to the appellants-respondents that the pay scale admissible to an Assistant Professor under the UGC scale would continue to be paid to respondents-petitioners. Their entitlement, in that regard, is not doubted or disputed.

32. The only issue raised by the appellants-respondents is with regard to the age of superannuation of respondent-petitioners. According to the appellants-respondents, it is open for the employer to change the age of superannuation, and that age of superannuation is otherwise not a vested right and, therefore, the plea that it cannot be retrospectively amended is misconceived.

33. It is worth clarifying at this stage that there is no change in the age of superannuation under the Act or the Statutes. The age of superannuation has been fixed under clause 7 of the Statutes and there is no amendment in it. For the non-teaching staff the age of superannuation from the very beginning is 60 years and continues to remain the same. Similarly, in the case of teaching staff the age has remained at 62 years. We are, therefore, not required to answer the question as to whether any change in the age of superannuation is permissible or not.

34. In the facts of the present case, we are only concerned with the issue as to whether the amendment in Section 2(k) can be given a retrospective application, so as to deny the benefit of designation of 'Teacher' to the respondents-petitioners?

35. In State of Rajasthan vs. Trilok Ram (supra) the Supreme Court has considered the effect of amendment in a legislation. What exactly happens in a case of amendment and as to what extent the repeal would be applicable in such a case has been dealt with in para 18 and 19 of the judgment which are reproduced hereinafter:-

*"18. We are in this case concerned with the effect of*

*amending Act which brought about the substitution of a provision. An amendment which brings about substitution of a provision essentially does two things. In the first place, the provision which is substituted undergoes a repeal. At the same time, there is a re-enactment through the newly inserted provisions.*

*19. We may only refer to a decision of this Court in State of Rajasthan v. Mangilal Pindwal [State of Rajasthan v. Mangilal Pindwal, (1996) 5 SCC 60 : AIR 1996 SC 2181] , therein this Court inter alia held as follows: (SCC pp. 63-64, paras 9-12)*

*"9. As pointed out by this Court, the process of a substitution of statutory provision consists of two steps; first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. (See: Koteswar Vittal Kamath v. K. Rangappa Baliga & Co. [Koteswar Vittal Kamath v. K. Rangappa Baliga & Co., (1969) 1 SCC 255 : (1969) 3 SCR 40] , SCR at p. 48.) In other words, the substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. As regards repeal of a statute the law is thus stated in Sutherland on Statutory Construction:*

*'2042. The effect of the repeal of a statute where neither a saving clause nor a general saving statute exists to prescribe the governing rule for the effect of the repeal, is to destroy the effectiveness of the repealed act in futuro and to divest the right to proceed under the statute, which, except as to proceedings past and closed, is considered as if it had never existed.' (Vol. I, Para 2042, pp. 522-23.)10. Similarly in Crawford's Interpretation of Laws it has been said:*

*'316. Effect of Repeal, Generally.— In the first place, an outright repeal will destroy the effectiveness of the repealed act in futuro and operate to destroy inchoate rights dependent on it, as a general rule. In many cases, however, where statutes are repealed, they continue to be the law of the period during which they were in force with reference to numerous matters.' (Para 316 pp. 640-41.)*

*11. The observations of Lord Tenterden and Tindal, C.J. referred in the above-mentioned passages in Craies on Statute Law also indicate that the principle that on repeal a statute is obliterated is subject to the exception that it exists in respect of transactions past*

> *and closed. To the same effect is the law laid down by this Court. (See: Qudrat Ullah v. Municipal Board, Bareilly [Qudrat Ullah v. Municipal Board, Bareilly, (1974) 1 SCC 202 : (1974) 1 SCR 530] , SCR at p. 539.)*
>
> *12. This means that as a result of repeal of a statute the statute as repealed ceases to exist with effect from the date of such repeal but the repeal does not affect the previous operation of the law which has been repealed during the period it was operative prior to the date of such repeal."(emphasis supplied)"*

36. The import of amendment in an Act has been examined in the above case as a result of which a substitution is incorporated in the provision. The consequence is two fold. The first part indicates repeal of the earlier provision, whereas in the second part there is re-enactment of provision. Relying upon the previous judgments of the Court in State of Rajasthan vs. Mangilal Pindwal, (1996) 5 SCC 60, and Koteswar Vittal Kamath vs. K. Rangappa Baliga and Co. (1969) 1 SCC 255, the Court in Trilok Ram (supra) interpreted such amendment to result in repeal of the earlier provision and its replacement by the new provision. In a case where there was no saving clause or a general saving statute to prescribe the governing rule for the effect of repeal, is to destroy the effectiveness of the repealed act in futuro and to divest the right under the Statute, which, except as to proceedings past and closed, is considered as if it had never existed. In such eventuality, the repeal would not effect the previous operation of law for the period it operated prior to repeal.

37. In State of Gujarat vs. Raman Lal Keshav Lal Soni (supra) an issue arose with regard to status of ex-municipal employees, who had previously been granted status of government servant in view of amendment subsequently

introduced whereby such benefit was withdrawn. After referring to the legislation the Court recognized the vested right created in the employees to the grant of status of government servant to them and protected it notwithstanding the amendment introduced by the legislature. Para 52 of the judgment in State of Gujarat vs. Raman Lal Keshav Lal Soni (supra) is relevant and is reproduced hereinafter:-

> *"52. The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to a legislature-made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, 20 years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history. It was pointed out by a Constitution Bench of this Court in B.S. Yadav v. State of Haryana [1980 Supp SCC 524 : 1981 SCC (L&S) 343 : AIR 1981 SC 561 : (1981) 1 SCR 1024 : (1981) 2 SCJ 137 : 1981 Lab IC 104] . Chandrachud, C.J. speaking for the Court held: (SCC headnote)*
>
> *Since the Governor exercises the legislative power under the proviso to Article 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But the date from which the rules are made to operate must be shown to bear either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case.*

> *Today's equals cannot be made unequal by saying that they were unequal 20 years ago and we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations and constitutional consequences cannot be tampered with that way. A law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being made retrospective. Past virtue (constitutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws. We are, therefore, firmly of the view that the Gujarat Panchayats (Third Amendment) Act, 1978 is unconstitutional, as it offends Articles 311 and 14 and is arbitrary and unreasonable. We have considered the question whether any provision of the Gujarat Panchayats (Third Amendment) Act, 1978 might be salvaged. We are afraid that the provisions are so intertwined with one another that it is well nigh impossible to consider any life-saving surgery. The whole of the Third Amendment Act must go. In the result Writ Petitions Nos. 4266-4270 of 1978 are allowed with costs quantified at Rs 15,000. The directions given by the High Court, which we have confirmed, should be complied with before June 30, 1983. In the meanwhile, the employees of the panchayats covered by the appeal and the writ petitions will receive a sum of Rs. 200 per month over and above the emoluments they were receiving before February 1, 1978. This Order will be effective from February 1, 1983. The interim Order made on February 20, 1978 will be effective up to January 31, 1983. The amounts paid are to be adjusted later."*

38. The concept of vested and accrued right of an employee to be divested, with retrospective effect, by the rule making authority, has recently been examined by the Supreme Court in Punjab State Agricultural Development Bank Limited (supra). The issue was noticed in para 44, which is quoted hereinafter:-

> *"44. The question that emerges for consideration is as to what is the concept of vested or accrued rights of an employee and at the given time whether such vested or accrued rights can be divested with retrospective effect by the rule-making authority."*

39. After referring to a series of judgments including judgment of Supreme Court in Railway Board vs. C.R. Rangadhamaiah, (1997) 6 SCC 623, the principle of law has been culled out in paras 49 to 51 of the judgment in Punjab State Cooperation Agricultural Development Bank Ltd. (supra), which are extracted hereinafter:-

> *"49. The exposition of the legal principles culled out is that an amendment having retrospective operation which has the effect of taking away the benefit already available to the employee under the existing rule indeed would divest the employee from his vested or accrued rights and that being so, it would be held to be violative of the rights guaranteed under Articles 14 and 16 of the Constitution.*
>
> *50. In the instant case, the bank pension scheme was introduced from 1-4-1989 and options were called from the employees and those who had given their option became member of the pension scheme and accordingly pension was continuously paid to them without fail and only in the year 2010, when the Bank failed in discharging its obligations, the respondent employees approached the High Court by filing the writ petitions. The Bank later on withdrew the scheme of pension by deleting Rule 15(ii) by an amendment dated 11-3-2014 which was introduced with effect from 1-4-1989 and the employees who availed the benefit of pension under the scheme, indeed their rights stood vested and accrued to them and any amendment to the contrary, which has been made with retrospective operation to take away the right accrued to the retired employee under the existing rule certainly is not only violative of Article 14 but also of Article 21 of the Constitution.*
>
> *51. It may also be noticed that there is a distinction between the legitimate expectation and a vested/accrued right in favour of the employees. The rule which classifies such employees for promotional, seniority, age of retirement purposes undoubtedly operates on those who entered service before framing of the rules but it operates in futuro. In a sense, it governs the future right of seniority, promotion or age of retirement of those who are already in service."*

40. A close examination of the facts of this case would reveal

that all the respondents-petitioners were granted the benefit of Teacher as per the pre-amended definition. The status of Teacher carried with it the benefit of pay scale and other conditions of service. The State also does not dispute the entitlement of respondents-petitioners to the pay scale of a Teacher even as per amended Section 2(k) of the Act. A person under Section 2(k) can either be a teacher or can be a non-teaching staff. He cannot simultaneously be a teacher for the purposes of payment of salary and non-teaching staff for other purposes including the age of retirement.

41. In the present case also the definition of 'Teacher' as originally stood in the Act of 1958 has been amended vide U.P. Act No.9 of 2019. The amendment in the definition of 'Teacher' brings about two consequences i.e. repeal of the earlier definition and secondly its substitution by the later definition. Though it is a case of amendment in the Act of 1958, as rightly contended by Sri Mehta, but its consequences of repeal of previous definition with substitution of later are similar to a case of repeal covered under Section 6 of the General Clauses Act. In that view of the matter, the principles of repeal, contained in Section 6 of the General Clauses Act would get attracted. The vested right of grant of status of 'Teacher' would continue to remain protected notwithstanding the later amendment in the definition of 'Teacher'. It is also undisputed that all those Research Assistants, who retired prior to the amendment in section 2(k), worked upto the age of 62 years.

42. The status of 'Teacher' since is a vested right, it would continue to be protected notwithstanding the amendment introduced in section 2(k) of the Act. We are in respectful agreement with the view expressed by the Co-ordinate Bench

of this Court at Lucknow Bench in Writ-A No.7847 of 2022 that the status of 'Teacher' is a vested right and cannot be retrospectively taken away on account of Amending Act. Special Leave Petition filed against this judgment has also been dismissed by the Supreme Court on 02.02.2024. It is noticed that a Government Order was also issued on 24.06.2004 as per which teachers of Agricultural University were continued in service uptill the age of 62 years.

43. Sri Ashok Mehta, learned Senior Counsel for the appellants-respondents has lastly placed reliance upon the Division Bench judgment of Lucknow Bench in Special Appeal No.75 of 2022, decided on 21.03.2022, to submit that the Division Bench has set aside the judgment of learned Single Judge in Writ Petition No.327 (SB) of 2000, filed against the Government Order dated 18.02.2000, as a result of which the status of respondents-petitioners remained that of Research Assistant and not a Teacher.

44. We have considered the above submission of Sri Mehta but are not impressed by it. The Government Order dated 18.02.2000 has already been referred to above, whereby the Government Order dated 22.07.1999 has been modified. The appeal has been allowed by the Division Bench at Lucknow after noticing that the decision taken by the Board of Management in its 86$^{th}$ meeting, held on 30.01.1993, was ignored by learned Single Judge, inasmuch as the previous decision taken in the 85$^{th}$ decision was not noted. It was in the 85$^{th}$ meeting that the declaration of Teacher was granted to the respondents-petitioners.

45. Unlike the facts of Special Appeal No.75 of 2022, in the

facts of the present case, the benefit of post and pay scale has been granted to the Teachers of the Agricultural University at Kanpur vide Government Orders dated 04.01.2008 and 16.02.2010, which have neither been withdrawn nor have been modified. We have otherwise held that the claim of respondents-petitioners for grant of status of 'Teacher' in the pre-amended Section 2(k) was covered in the first part itself as they were engaged in research facility and did not require any specific declaration under the Statute. The judgment of the Division Bench in aforesaid special appeal is thus distinguishable, and would not come to the rescue of the appellants.

46. We have already held that the respondents-petitioners were granted the status of 'Teacher' under unamended Section 2(k) and were receiving salary of Teacher, which otherwise is protected and is not proposed to be withdrawn by the appellants-respondents. Once the status of 'Teacher' has been bestowed under the unamended provision, it constitutes a vested right in respondents-petitioners and cannot be withdrawn retrospectively on account of amendment in the definition of 'Teacher'.

47. In view of the deliberations and discussions held above, we find no error in the reasons contained in the impugned judgment and order of learned Single Judge. The special appeals, consequently, fail and are, accordingly, dismissed. No order is passed as to costs.

**Order Date :-** 15.02.2024
Ashok Kr./Ranjeet Sahu

Digitally signed by :-
ASHOK KUMAR
High Court of Judicature at Allahabad