

(2003) 06 SC CK 0003
In the Supreme Court Of India
Case No : Civil Appeal No. 4325 Of 2003

B.M. Agarwal

APPELLANT

Vs

Chancellor, University of Allahabad and Others

RESPONDENT

Date of Decision : 30-06-2003

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2003) 6 SCC 500 : (2003) SCC(L&S) 926 : (2003) 3 UPLBEC 2511

Hon'ble Judges : R. C. Lahoti, J;Brijesh Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Leave granted.
2. With the consent of the learned counsel for the parties, the appeal is heard finally.
3. A dispute arose as to continuance in the Office of Vice-Chancellor of University of Allahabad in view of the incumbent holding the office having crossed the age of 65 years. Respondent 3 herein filed a writ of quo warranto which was dismissed by the High Court. The SLP under Article 136 of the Constitution preferred by Respondent 3 has also been dismissed.
4. The provisions of the U.P. State Universities Act, 1973 govern the universities in the State of U.P. and the Act makes provisions relating to the Office of Vice-Chancellor also. Section 12 of the Act, which deals with the Vice-Chancellor, provides, inter alia, as under:

" 12. The Vice-chancellor.--(1)-(6) * * *

(7) The Vice-Chancellor shall hold office for a term of three years from the date on which he enters upon his office:

Provided that the Vice-Chancellor may by writing under his hand addressed to

the Chancellor resign his office, and shall cease to hold his office on the acceptance by the Chancellor of such resignation.

(8) Subject to the provisions of this Act, the emoluments and other conditions of service of the Vice-Chancellor shall be such as may be determined by the State Government by general or special order in that behalf."

5. GO No. 2216/Sattar-1-98-15-11-1995 issued on 18-6-1999 under the hand of Special Secretary, Higher Education, U.P. Government provided, amongst others, that "the maximum age of appointment and superannuation of a Vice-Chancellor would be 65 years".

6. The appellant herein is a resident of Kanpur. He claims to be an aspirant for appointment to the Office of Vice-Chancellor in Chattrapati Sahuji Maharaj University, Kanpur and other universities wherein the Office of Vice-Chancellor is lying vacant. He has nothing to do with Allahabad University as such and as the Vice-Chancellor whereof the controversy stands set at rest by the impugned judgment of the High Court. He has filed this SLP seeking leave to file an appeal as he was not a party before the Allahabad High Court which rendered the impugned judgment dated 28-1-2003. The limited grievance of the appellant is that the judgment of the High Court contains an observation that no one can be appointed as Vice-Chancellor after crossing the age of 65 years.

7. It is submitted by the appellant that the GO dated 18-6-1999 has been amended by GO No. 43/Sattar-1-200-15(1)/1995, dated 24-2-2000 whereby the provision as to the maximum age of appointment as 65 years, as contained in the GO dated 18-6-1999, has been deleted. It seems that the subsequent amendment was not brought to the notice of the High Court and that is why the High Court proceeded to make the abovesaid observation in its judgment dated 28-1-2003. The apprehension of the appellant is that in spite of the GO dated 18-6-1999 having been amended by the subsequent GO dated 24-2-2000, the observation made by the High Court in its decision dated 28-1-2003 shall continue to hold the field and shall come in the way of anyone who has crossed the age of 65 years being considered for appointment on the post of Vice-Chancellor. This is the limited purpose sought to be achieved by this appeal.

8. In the counter-affidavit filed on behalf of the Chancellor, University of Allahabad, it is conceded that the subsequent GO dated 24-2-2000 has amended the GO dated 18-6-1999 and, as such, presently there is no ceiling of maximum age for consideration for appointment on the post of Vice-Chancellor.

9. The learned counsel for Respondent 3 has questioned the locus standi of the appellant to file this appeal. On merits, he has submitted that the GO dated 18-6-1999 is based on the directions issued by the Governor of the State while the GO dated 24-2-2000 is issued by the State Government and not by the Governor and, therefore, the subsequent GO cannot validly amend the earlier GO.

10. So far as the locus standi is concerned, we cannot agree with the learned

counsel for Respondent 3. The impugned observation contained in the judgment of the High Court does have an adverse bearing on otherwise eligible persons who have crossed the age of 65 years and, therefore, the appellant has justification for filing this appeal. So far as the second question is concerned, it is premature to express any final opinion on the validity of the GO dated 24-2-2000. Prima facie, in view of the provisions contained in Sub-section (8) of Section 12 of the Act which speaks of the conditions of service being determined by the State Government by general or special order in that behalf, we are of the opinion that both the impugned orders i.e. GOs, ought to be read together and given effect to. This observation is only prima facie and subject to the decision by the High Court or this Court in an appropriate case where the vires of the GO dated 24-2-2000 are expressly put in issue.

11. The appeal is disposed of by clarifying that the Chancellor of any university, while considering any case for appointment to the post of Vice-Chancellor, shall go by the correct position of law, uninfluenced by the observation made by the High Court in its judgment dated 28-1-2003 as regards ceiling on the age of appointment as Vice-Chancellor. So far as the validity of the GO is concerned, that shall be examined by the High Court as and when an occasion arises for the purpose.

12. The appeal stands disposed of.