

(2014) 01 MAD CK 0114

In the Madras High Court

Case No : Writ Petition No. 18450 of 2010

Dr. T. Gnanasambanthan

APPELLANT

Vs

The Board of Governors and Dr. S. Mohan

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 3, Order 39 Rule 3A
Constitution of India, 1950 — Article 226 226(3) 226(3)(i)

Citation : (2014) 2 CTC 549 : (2014) LabIC 3072 : (2014) 1 LW 612 : (2014) 3 MLJ 1

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : L. Chandrakumar, for the Appellant; A. Mohan, for the Respondent

Judgement

V. Ramasubramanian, J.—The petitioner is a Graduate in Civil Engineering and was a rank holder in the University of Madras in B.E. Civil Engineering. He completed a Post Graduate Degree in Engineering with distinction from the Indian Institute of Science at Bangalore in 1977 and thereafter, obtained a Doctorate Degree from the Indian Institute of Technology at Madras in 1981. He holds a PG Diploma in Project Management from the Punjabi University at Patiala. He is a Member and Fellow of various Professional Bodies, such as Indian Society of Technical Education, Computer Society of India and the Institution of Engineers. The petitioner started his career in a company at New Delhi in 1980. After a stint for five years in that company, the petitioner worked in Saudi Arabia for seven years. He was instrumental in improving major applications in software, using "C, X Windows, X Lib and Fortran 77 on Unix Platform and AED Graphics Workstation.

2. For a brief period, the petitioner worked as a Professor of Computer Science and Engineering in Arulmigu Kalasalingam College of Engineering at Krishnankoil (Srivilliputhur) and as a Senior Scientific Officer in Tamil Nadu State Council for Science and Technology.

3. When the petitioner was working as Senior Scientific Officer in Tamil Nadu State Council for Science and Technology, he came across an advertisement bearing Advertisement No. 1/94 issued by the Technical Teachers Training Institute, which was part of the Ministry of Human Resources Development of the Government of India. The advertisement invited applications in the prescribed form for various posts. All posts were actually classified into three different categories, namely (i) Professors, (ii) Assistant Professors, and (iii) Lecturers. Under the category of Professors, seven posts, all in the scale of pay of Rs. 4500-7300 were advertised. They were (i) Policy Planning, (ii) EDP Manager, (iii) Educational Management, (iv) Extension Centre, Kerala, (v) Extension Centre, Karnataka, (vi) Correspondence Course, and (vii) Civil Engineering.

4. The petitioner applied for the post of Professor (EDP Manager) in the scale of Rs. 4500-7300. He was selected, after a process of selection by the Staff Selection Committee and by a memorandum dated 24.02.1995, the petitioner was appointed to the post of EDP Manager in the scale of pay of Rs. 4500-7300. The Memorandum contained an annexure, which listed out the terms and conditions of appointment. Clause 9 of the terms and conditions of appointment stipulated that the age of retirement on superannuation was 60 years. This was due to the fact that the age of retirement on superannuation of Professors was stipulated in the year 1995 uniformly at 60. The terms and conditions also stipulated that he was liable to be transferred to any one of the extension centers at Kerala, Hyderabad, Bangalore and Madurai and that the services would be governed by the Recruitment and Service Rules of the Institute as well as by the Central Civil Services (Conduct) Rules and Central Civil Services (Classification, Control and Appeal) Rules.

5. Ever since the date of appointment, till the year 2000, there was no confusion about the category of post held by the petitioner and the terms and conditions of his service. But, as destiny induces many people to make suicidal moves in life at some point of time, the petitioner made a representation to the Board of Governors of the Technical Teachers Training Institute, in November 2000, requesting them to re-designate his post as "Professor of Computer Centre". The petitioner need not have made such a request at all, as he was not only paid salary in the category of Professor, but was also granted the benefit of availing vacations every year. He was treated on par with other Professors and there was no occasion for him to make a request for re-designation.

6. In a meeting held on 25.11.2000, the Board of Governors of the Institute rejected the request of the petitioner, along with the request of another person by name S. Dhanapal, who was working as Senior System Analyst, for changing his designation as Assistant Professor.

7. The petitioner filed a writ petition challenging the said communication in W.P. No. 7105 of 2001. But, after two years, the petitioner withdrew the said writ petition on 26.9.2003 and hence, the writ petition was dismissed as withdrawn.

8. Despite the fact that the request of the petitioner for change of designation was rejected, it appears that the petitioner has been rendering teaching and research services in the Institute. According to the petitioner, he designed and implemented 10 courses for overseas teachers during this period and the same was attended by persons from over 25 countries. He has acted as a regular Member and Convener of AICTE and visited over 600 Engineering Colleges in 14 States. He was sponsored by the Government of India to UK for Curriculum Development in 1998 and was nominated to Colombo Plan Staff College, Manila in 2000. The petitioner claims to have guided seven persons for the award of Ph.Ds. and two persons appear to have submitted thesis. The petitioner also claims to have authored and published over 100 research papers and acted as examiner for M.S. and Ph.Ds. in IIT Madras, Anna University, Bharathidasan University, etc. As a matter of fact, the petitioner was invited for interview to the post of Principal on one occasion and for the post of Director on two occasions earlier.

9. But, when the question of revision of scales of pay of the employees was taken up in the year 2010, a Committee was constituted by the Board of Governors. On the basis of the report of the Committee, an Office Order was passed on 08.4.2010, revising the pay band of the petitioner as Rs. 37400-67000 with effect from 01.01.2006. In the said order, a distinction was sought to be made between Academic Grade Pay and Ordinary Grade Pay, applicable to teaching and non teaching staff respectively. Since the pay of the petitioner was fixed in Ordinary Grade Pay and not Academic Grade Pay, the petitioner made a representation dated 15.4.2010. The petitioner also sent representations to the Committee, on whose recommendations the revision was implemented. The petitioner pointed out that one of the Members of the Committee, had been accused of committing a forgery and the same was being investigated by the petitioner as the Chief Vigilance Officer.

10. Thereafter, an office order was passed on 05.5.2010, purportedly on the basis of audit objections, indicating that the pay of the petitioner should have been fixed only at Rs. 38,830, instead of Rs. 47,440 in the pay band of Rs. 37400-67000. Consequently, by the same office order, a direction was issued to re-fix the pay and recover the excess payment.

11. Challenging the said order and the consequential order of recovery, the petitioner filed the first writ petition W.P. No. 18450 of 2010. He also filed an application for interim stay of recovery.

12. On 12.8.2010, the writ petition was admitted and an interim stay of recovery alone was granted.

13. Though the said order was given effect to for sometime, it appears that the respondents stopped payment of salary from the month of May 2012 onwards. Therefore, when salary was not paid for the months of May, June, July and August 2012, the petitioner came up with the contempt petition in Cont. P. No.

1384 of 2012, alleging willful disobedience. After the issue of statutory notice on 26.9.2012 and only after an order was passed on 31.10.2012, the Director of the Institute chose to make payment of at least the admitted arrears of salary from 18.6.2012. On the question as to whether the petitioner was entitled to salary for the vacation period in May 2012, the contempt petition was adjourned for detailed enquiry.

14. In the meantime, the Director issued another memorandum dated 08.8.2013, informing the petitioner that he would retire on superannuation on 30.9.2013, as he was not holding a teaching post. Therefore, challenging the said order, the petitioner came up with the second writ petition in W.P. No. 26549 of 2013 along with a stay petition in M.P. No. 1 of 2013. In the said writ petition, N. Kirubakaran, J., passed an order on 24.9.2013 directing the issue of notice to the respondents returnable by 06.11.2013. By the same order, the learned Judge also granted an interim stay of the impugned order dated 08.8.2013.

15. On 04.10.2013, the respondents filed a miscellaneous petition in M.P. No. 2 of 2013 in W.P. No. 26549 of 2013, for vacating the interim stay granted on 24.9.2013. It appears that the vacate stay petition came up for hearing on 09.10.2013 and it was adjourned by the learned Judge to 22.10.2013. On 22.10.2013, it was adjourned to 23.10.2013. On 23.10.2013, the learned Judge directed the matter to be placed before the Hon'ble Chief Justice for posting it along with the first writ petition and the contempt petition.

16. But, in the meantime, the respondents relieved the petitioner on 30.10.2013, on the ground that by virtue of Article 226(3) of the Constitution, the interim stay automatically stood vacated. In other words, the respondents took a stand that since the vacate stay petition filed by them on 04.10.2013 was not disposed of by this Court within two weeks, the petitioner had to pay the penalty of having the stay automatically vacated.

17. Therefore, the writ petitioner filed a miscellaneous petition in M.P. No. 3 of 2013 on 5.11.2013 for a direction to the respondents to continue to engage him. Thereafter, by a note order of the Hon'ble Chief Justice dated 07.11.2013, the second writ petition was also posted before me along with the first writ petition and the contempt petition. However, since the respondents have filed a counter affidavit in the first writ petition W.P. No. 18450 of 2010, but have not filed a counter affidavit in the second writ petition W.P. No. 26549 of 2013, I took up for hearing (i) the main writ petition W.P. No. 18450 of 2010, (ii) M.P. Nos. 1 to 3 of 2013 in W.P. No. 26549 of 2013, and (iii) the main Cont. P. No. 1384 of 2012.

18. I have heard Mr. L. Chandra Kumar, learned counsel for the petitioner and Mr. A. Mohan, learned counsel for the respondents 1 and 2. W.P. No. 18450 of 2010

19. As pointed out in the first part of this order, a short question that arises for consideration in this writ petition is as to whether the pay of the petitioner was wrongly fixed, so as to enable the respondents to order re-fixation of pay and recovery of excess amount. But, an answer to this question depends upon the

most fundamental question as to whether the petitioner was appointed to an academic post or not. If the petitioner had been appointed to an academic post, his pay had been correctly fixed and the impugned order dated 05.5.2010 directing the re-fixation of pay and the consequential order dated 19.7.2010 directing recovery, are all illegal. But, if the petitioner was not appointed to an academic post, the fixation of pay in Academic Grade Pay was wrong. Even then, the question as to whether there could be a recovery is a matter of debate. Therefore, I would divide my discussion on this writ petition into two portions, namely, (i) whether the petitioner was entitled to the scale of pay of the post of Professor? and (ii) whether re-fixation of pay and recovery ordered by the respondents could be sustained, even if it is found that the petitioner did not hold a post on par with the category of Professor.

20. On the question as to whether the post held by the petitioner is an academic post or not, there are lot of materials produced and lot of contentions raised. Therefore, it is necessary to go back in point of time to see as to how the petitioner was appointed and the terms and conditions of his appointment.

21. As stated earlier, an advertisement was issued in Advertisement No. 1/94 by the respondents, way back in February 1994, inviting applications for appointments to various categories of posts. It will be useful to extract the advertisement itself, since an outsider who applied for appointment, could have gone only by the enticement or inducement contained in the advertisement. Hence, the relevant portion of the advertisement is extracted as follows:

Applications are invited in the prescribed form for the following posts:

Professors:

Scale of Pay

1.

Policy Planning

Rs. 4500-7300

2.

EDP Manager

"

3.

Educational Management

"

4.

Extn. Centre Kerala

"

5.

Extn. Centre Karnataka

"

6.

Correspondence Course

"

7.

Civil Engineering

"

Assistant Professors:

1.

Centre for Rural Development

Rs. 3700-5700

2.

Senior System Analyst

"

3.

CD & Extn. Centre Activities

"

4.

Educational Management

"

5.

Civil Engineering

"

6.

Electrical Engineering

"

Lecturers:

Reserved for

1.

Educational Management

SC

Rs. 2200-400

2.

Production Asst. (ETV Software)

Open

"

3.

Communication

ST

"

4.

Computer Science

Open

"

The posts are transferable to any of the Extension Centers of the Institute in South India.

22. There is no dispute about the fact that the petitioner applied and he was selected for appointment to the post of EDP Manager in the scale of pay of Rs. 4500-7300. There is also no dispute about the fact that at the time of appointment on 24.02.1995, the age of retirement of the academic staff was 60 and the non academic staff was 58. Clause 9 of the terms and conditions of appointment listed in the Annexure to the appointment order indicated that the age of retirement on superannuation for the petitioner would be 60 years.

23. Therefore, three things are very clear, namely, (i) that there was an indication in the advertisement that the post of EDP Manager was in the category of Professor, (ii) that the post carried the same scale of pay as that of Professor, and (iii) that the age of retirement of the post was also the same as that of Professors. In other words, there was an enticement or inducement in the form of advertisement issued by the respondents, inviting applications from people, to a particular category of post with a particular tenure of appointment and a scale of pay. This enticement further developed into a promise, in the form of the terms and conditions listed in the Annexure to the appointment order that fixed

the age of retirement at 60. This promise was also kept alive for a period of about five years until the year 2000, by allowing the petitioner to avail full vacation, during May-June of every year, treating the post as a vacation post. It is only for academics that vacation is allowed and there is no dispute that for non academics, vacation is not allowed. Therefore, both by the initial advertisement which formed the representation of the respondents and by the subsequent conduct, the respondents clearly held out to the petitioner as though he was appointed to a post in the category of Professor with all terms and conditions identical to that of a Professor.

24. It is true that the petitioner unnecessarily made a representation in November 2000 asking for re-designation as Professor of Computer Centre. It is also true that the said request was turned down by a resolution dated 25.11.2000 and the same attained finality with the withdrawal of the writ petition filed by the petitioner in W.P. No. 7105 of 2001.

25. But, the respondents are not entitled to take advantage of the dismissal of the writ petition, in view of their subsequent conduct in allowing vacations for the petitioner and also allowing him to draw the same salary in the category of Professor. What is worse is that in the Academic Council of the Institute, the petitioner was included in the category of Professors. In the Board of Studies for the Post Graduate Diploma Courses, the petitioner was actually nominated as the Chairman. A non teaching staff has no business to be included in the Academic Council or even in the Board of Studies.

26. Even the roll of staff maintained by the respondents, a copy of which is produced before me, shows the inclusion of the name of the petitioner, in the "List of Teaching and Group "A" Staff", as on 01.10.2007. Interestingly, the name of the petitioner is included therein in the first list containing the names of teaching staff. It is not included in the second list containing the names of Group "A" staff.

27. What is more interesting is that there is a separate list of non teaching staff maintained by the respondents. In that list, the names of about 121 persons, are included. The name of the petitioner is not there. Therefore, both by a positive act and by a negative act, namely that of including the name of the petitioner in the list of teaching staff and by not including his name in the list of non teaching staff even till October 2007, the respondents have made it clear that the petitioner was in the category of Professor.

28. It is important to note that even after taking a stand in November 2000 not to re-designate him as Professor and even after withdrawal of the writ petition filed by the petitioner in 2003, the respondents continued to treat him only as belonging to the category of Professors. He continued to enjoy the same scale of pay, vacations and the inclusion of his name in the list of teaching staff. Even in the circular issued by the first respondent, indicating the details of appointing authorities for various posts in the Institute, the post held by the petitioner was

placed only along with that of the Professor.

29. But, all of a sudden, it was only when the question of revision of pay scales came up for consideration in April 2010 that the petitioner was given a jolt. In the office order dated 08.4.2010, the pay band of the petitioner was revised from Rs. 16400-22400 to Rs. 37400-67000 (GP 10000). This revision was with effect from 01.01.2006. Contending that his pay should be in the Academic Grade Pay and not in the Ordinary Grade Pay, the petitioner gave representations. In response to the representations, the Director of the Institute passed an order dated 05.5.2010 stating that there was an audit objection from the Office of the Accountant General, to the effect that the pay of the petitioner should have been fixed at Rs. 38830 + GP Rs. 8900, instead of Rs. 47440 + GP Rs. 10000, as the post of EDP Manager is not a faculty post. This office order dated 05.5.2010 was followed by another order dated 19.7.2010, directing the recovery of a sum of Rs. 7,10,370/- from the pay of the petitioner, on the ground of excess payment.

30. Therefore, challenging the re-fixation and recovery and the stand taken by the respondents, the petitioner has come up with the above writ petition. Apart from contending on merits that the post to which he was appointed, was in the category of Professor with all attendant benefits, the petitioner has also made allegations of mala fides against the Director. He has impleaded the Director as a party respondent by name.

31. In paragraph 19 of the affidavit in support of the writ petition, the petitioner has stated that in his capacity as Chief Vigilance Officer, he raised several questions against the Director, on certain allegations made in the past six months. According to the petitioner, this infuriated the Director and he took vengeful action.

32. Unfortunately, the petitioner did not give complete details of the action initiated by him in his capacity as Chief Vigilance Officer. Therefore, in the normal course, I would have rejected these allegations of mala fides as vague and unsubstantiated.

33. But, unfortunately, the Director who has filed a counter affidavit both in his official capacity and his personal capacity, has chosen to make certain averments in paragraph 23 of the counter affidavit. First of all, he could have filed a separate counter affidavit in his individual capacity, touching only upon the allegations of mala fides, so that they are segregated from the counter required to be filed in his official capacity. I am prepared to condone that. But, what he has stated in paragraph 23 of his counter affidavit is very interesting. Therefore, paragraph 23 of the counter affidavit is extracted.

The contention made in Para No. 18 and 19 are not true but put to the strict proof of the petitioner. As already contended since the petitioner become unsuccessful in his efforts in getting elevated to the post of Director he entertained malicious and prejudicial feelings as against me personally and against the other staff who never went to help him to achieve his personal ends.

Against each and every officer and staff he has attributed some motive which is not at all relevant for the purpose of ventilating the grievances of the petitioner. For example his comments in Para No. 16 that the Administrative Officer has been brought in by me personally from the parental organization; this Chairman also new to the Institute who took his position only in 2009 (in Para No. 17 of the petition); and his allegations in Para No. 12 that the committee was constituted with the three members out of which one member was an internal official namely Dr. B.G. Bagri while the rest of the members were from outside NITTTR and were new to the system of the functioning of NITTTR. Thus the Petitioner has approached this Hon'ble Court with irrelevant, baseless, malicious and frivolous allegations as against the Institution itself boasting that only the petitioner is qualified to hold the entire institution.

34. Again, in paragraph 21 of his counter affidavit, the Director has chosen to avoid directly answering an averment of the petitioner that the Administrative Officer was brought in by him from his earlier parent organization. Apart from that, this respondent has admitted in paragraph 21 that the petitioner competed with the present Director for the post of Director. The relevant portion of paragraph 21 of the counter affidavit reads as follows:

The averment that the administrative officer also is a newly appointed staff in the Institute who has been personally brought in by the present Director from his earlier parent organization is not at all relevant for the case of the petitioner. It shall be noted that since the petitioner has not become successful in getting selected to the post of the Director of the Institute when there was a competition between myself and that of the petitioner he got entertained prejudices and malicious attitude not only against me but also against other staffs who never went to help the petitioner to achieve his personal goals. Therefore being unable to achieve his personal ends, the petitioner is always in the habit of leveling allegations personally against each and every person he encounters.

35. Therefore, the contention of the petitioner that the third respondent was inimically opposed to him and that he acted maliciously, cannot be swept under the carpet as imaginary and unsubstantiated. But, I would, for the present, keep the allegation of mala fides at the background and test the case of the petitioner on merits also.

36. Two points are raised against the petitioner to say that he did not belong to the academic side. The first is that the post is not a teaching post and the second is that the issue got settled with the dismissal of the writ petition W.P. No. 7105 of 2001. Let me first clear the cloud of doubt over the resolution dated 25.11.2000 and dismissal of the writ petition W.P. No. 7105 of 2001.

37. The entire sequence of events that happened before 25.11.2000 and the events that happened after the dismissal of the writ petition are as follows:

(i) The advertisement issued in February/March 1994 showed about seven posts in the category of Professors. The post of EDP Manager was shown as serial No.

2 among those seven posts listed in the category of Professors;

(ii) The scale of pay indicated in the advertisement was in respect of the category of Professors and the age of retirement was also stipulated as 60 in the Annexure to the appointment order, making it clear that the terms and conditions of service are same as that of the post of Professors;

(iii) The petitioner was granted vacations during May and June of every year, as the academic staff used to be granted;

(iv) Even after the dismissal of the writ petition, the petitioner's name found a place only among the list of teaching staff as late as on 01.10.2007;

(v) The respondents did not take care to refuse to grant all vacations, after the dismissal of the writ petition and they did not also include his name in the list of non teaching staff. There is no whisper in the counter affidavit as to how the petitioner's name found a place in the list of teaching staff even as late as in October 2007;

(vi) In paragraph 7 of the affidavit in support of the writ petition, the petitioner made a specific averment that he was invited for interview for the post of Principal once and for the post of Director twice. Interestingly, the counter affidavit of the respondents does not deal with this averment in paragraph 7 of the affidavit. As a matter of fact, in paragraph 14 of the counter affidavit, the respondents have answered the allegations made by the petitioner in paragraph 6 of his affidavit. In paragraph 16 of the counter affidavit, the respondents have dealt with the averments in paragraph 8. But, in paragraph 15 of the counter affidavit, the respondents have deliberately omitted to deal with the averments of the petitioner in paragraph 7 of his affidavit. Therefore, the averment that the petitioner was invited for interview to the post of Principal once and to the post of Director thrice is deemed to have been accepted. Unless a person had been a teaching staff, he could not have been invited for appointment to the post of Principal;

(vii) In paragraph 7 of the affidavit, the petitioner has indicated that he had guided and produced seven Ph.Ds. and that two scholars have submitted thesis. He has also mentioned that he acted as an Examiner for M.S. and Ph.Ds. in IIT Madras, Anna University, Bharathidasan University and Annamalai University. These averments in paragraph 7 of the affidavit in support of the writ petition have also not been denied by the respondents, either generally or specifically.

(viii) Therefore, it must be taken that these averments in paragraph 7 of the affidavit of the writ petition are true. If they are true, the one and only inference that could be drawn is that the petitioner was on the academic side. I do not think that any one who is in the non teaching side could actually guide students for the award of Ph.Ds. I also do not think that any one who is on the non teaching side could be invited to act as Examiner for M.S. and Ph.Ds., especially in IIT Madras, Anna University, Bharathidasan University and Annamalai

University.

38. Therefore, both before the Board resolution dated 25.11.2000 as well as after the dismissal of the writ petition in 2003, the respondents have always treated the petitioner as an academic and extracted the work of an academician. What is important is that not only did the petitioner serve the respondent Institution in the academic side, but he was also allowed to go as Examiner in other premier institutions. Therefore, it is too late in the day for the respondents to say that the petitioner is not on the academic side. The fact that the third respondent Director has branded the petitioner deliberately as a non academician with malicious intentions, is borne out from the counter affidavit. The way in which the third respondent has made some scathing remarks in paragraph 15 of the counter affidavit, demonstrates the bias and motive that the third respondent has against the petitioner. Before proceeding further, I think it is necessary for me to deal with the same.

39. The averments made by the petitioner in paragraph 7 of his affidavit and the response of the third respondent to those averments, in paragraph 15 of the counter affidavit, if presented in a tabular column, would demonstrate the malicious intentions of the third respondent. Therefore, they are presented in a tabular column as follows:

Averments of the petitioner in paragraph 7 of his affidavit
Averments of the respondents in paragraph 15 of the counter affidavit
I submit that during the course of my employment in NITTTR, I have been rendering teaching services both as a resource person as well as coordinator for over 200 short courses. I also designed and implemented 10 courses for Overseas Teachers (OTC) during this period. This OTC courses were attended by participants from over 25 countries completely supported by the Government of India. The contention that the petitioner during the course of his employment in NITTTR, he has been rendering teaching services both as a resource person as coordinator for over 200 short courses is hereby denied. The skill he possess or the know-how to the students and the mere fact a technician is required to take the classes to the students cannot make him to claim as a teacher and in that way, the petitioner cannot stake any claim that he can be classified as a teacher or professor or much less teaching staff.

I have acted as a regular member and convener of AICTE and visited over 600 Engineering Colleges in 14 States of India and I have visited over 100 Engineering Colleges and rendered special lectures for students as well as Teachers on Computer Science content as well as Teaching Methodologies during this period.

The claim of the petitioner that he has acted as a regular member and convener of AICTE and visited over 600 Engineering Colleges in 14 States of India and visited over 100 Engineering Colleges and rendered special lectures for students as well as Computer Science contents as well as Teaching Methodologies during

the period is not at all accepted by the respondents herein. Even according to the claim of the petitioner, he was not at all given permission or assigned any job for the above said purposes, i.e. to visit Engineering Colleges and teach the methodologies in the subject of Computer Science. The respondents 1 and 2 have never recognized or assigned on him any job in this regard and might have visited on his own interest which will never make him entitle to claim himself as a teacher or a Professor or as a teaching staff. It is reliably understood that the petitioner had charged Rs. 10,000/- from each and every institute or engineering college he visited by using the name of the institute of the 1st and 2nd respondents. If the first and second respondents sponsored a teaching staff or a Professor to give lecture, the Institute would have charged Rs. 40,000/- per visit and totally, a sum of Rs. 2,40,00,000/- would have been mobilized by the Institute of respondents 1 and 2 whereas the petitioner has earned to the tune of Rs. 60,00,000/- by using the name of the Institute and thereby, has caused a wrongful loss to the Institute for which the respondents 1 and 2 reserve their right to initiate criminal action against the petitioner.

I was sponsored by the Government of India to United Kingdom on Curriculum Development in 1998 and nominated (representing India) to Colombo Plan Staff College, Manila, Philippines in 2000.

I have already guided and produced 7 Ph.Ds. and 2 more Ph.Ds. have submitted their Ph.Ds. out of 7 Ph.Ds. scholars doing their research work under my direct supervision. During this period I have authored and published over 100 research papers.

I have acted as Examiner for M.S. and Ph.Ds. in IIT Madras, Anna University, Chennai, Bharathidasan University, Annamalai University, etc.

It is appropriate to mention herein that based on the minimum eligibility criteria (of Professor's cadre) I was invited once for the interview for the post of Principal, TTTI and twice for the post of Director, NITTTR in 2000, 2008 and 2009 respectively.

40. The petitioner has filed a rejoinder enclosing certain documents. One of the documents is the office order dated 17.9.2007 increasing the age of superannuation from 62 to 65 for all teaching posts. The copy of the said office order is marked only to all faculty members. It was marked to the petitioner, thereby indicating that he was treated as a faculty member even in 2007. As a matter of fact, the Director himself has released on 15.6.2010, the particulars of vacancy position for Ph.D. program as on 01.6.2010. Even there, the name of the petitioner is included along with that of ten other persons. In the said statement, signed by the Director himself, it is indicated that the petitioner's date of retirement is 16.9.2018 and that the number of candidates currently undergoing Ph.D. program under him were four in number (one full time and three part time) and that the number of candidates needed in the year were four in number (two full time and two part time). Therefore, even in 2010, the

petitioner has been treated as a person holding a teaching position and also guiding Ph.D. students.

41. In view of the above, I have no doubt in my mind (i) that the petitioner was induced to apply way back in 1994, to a post in the category of Professor; (ii) that the petitioner was appointed to a post carrying the same scale of pay as that of Professor on the same terms and conditions as those of the post of Professor; (iii) that the petitioner was permitted to guide Ph.D. students; (iv) that the petitioner was considered for the post of Principal and the post of Director; (v) that the petitioner was sent as Examiner for Post Graduate Courses and Ph.D. courses in the Anna University as well as in other Universities and IIT Madras; and (vi) that therefore, he was certainly only on the academic side. Today, the respondents, particularly, the third respondent is attempting to take advantage of the nomenclature given to the post of the petitioner, for the purpose of settling scores with the petitioner. Hence, the re-fixation of pay and recovery, are not only motivated, but also unjustified.

42. Once it is found that the petitioner was actually serving the institution on the academic side, the pay fixation originally done in April 2010 cannot be said to be wrong. Therefore, the attempt to re-fix the pay and recover the excess, is wholly illegal.

43. Relying upon the decision of the Supreme Court in Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, , which distinguished all earlier decisions of the Supreme Court, it is contended by the learned counsel for the respondents that any amount paid without the authority of law can always be recovered.

44. But unfortunately, the case on hand does not fall under the category of wrong and unlawful fixation of pay. I have found that the fixation of pay for the petitioner as on the academic side, was perfectly lawful. Therefore, the question as to whether a payment wrongly made could be recovered or not, does not arise for consideration in this case. Hence, the writ petition W.P. No. 18450 of 2010 deserves to be allowed. Cont. P. No. 1384 of 2012:

45. This contempt petition arises out of the alleged willful disobedience of the interim order passed in M.P. No. 1 of 2010 in W.P. No. 18450 of 2010 dated 12.8.2010. The interim order was in the nature of stay of recovery alone. It appears that after the issue of the statutory notice dated 26.9.2012, the respondents paid the salary for the period from June 2012 onwards. Though the non payment of the salary till the passing of another order on 31.10.2012 in the contempt petition, was a clear case of willful disobedience, I do not wish to pass any further order on this contempt petition. This is in view of the fact that the main writ petition W.P. No. 18450 of 2010 has been allowed by me now by this common order. Therefore, this contempt petition is closed with a direction to the respondents to pay to the petitioner, any amount that was recovered or withheld from the salary of the petitioner. It shall be done within four weeks from the date

of receipt of a copy of this order. M.P. Nos. 1, 2 and 3 of 2013 in W.P. No. 26549 of 2013:

46. W.P. No. 26549 of 2013 arises out of a memorandum issued by the respondents on 8.8.2013 indicating that the petitioner does not hold a faculty post and that therefore, he will retire on reaching the age of superannuation on 30.9.2013. In the said writ petition, an order was passed on 24.9.2013 by N. Kirubakaran, J., at the time when the case came up for admission, to the following effect:

The petitioner contends that he was appointed as Professor, EDP Manager in the respondents-institute. Though he is discharging his function as Professor and he is entitled to continue in service upto the age of 65, by virtue of the impugned order, the petitioner is sought to be superannuated and relieved from service on 30.9.2013 on reaching the age of 60.

2. A perusal of the circular dated 27.7.1998, issued by the Ministry of Human Resource Development (Department of Education), Government of India would disclose that after reaching 62 years, the University or College is entitled to re-employ the superannuated teacher upto the age of 65 years. By communication dated 17.9.2007, the respondents-institute in his tenth meeting held on 6.8.2007, approved the enhancement of superannuation from 62 to 65 years to those holding the teaching position on regular employment.

3. The list of teaching staff dated 1.7.2007 given by the respondents - institute shows that the petitioner is working as Professor, EDP Manager in the Computer Centre and the proceedings of the Director dated 15.6.2010 would also show that the petitioner is working as Professor and Guide and he was to retire on 16.9.2018. Prima facie, it is clear that the petitioner is working as Professor and by virtue of the decision taken by the respondents - institute, the petitioner is entitled to hold the post upto the age of 65 years and therefore, there shall be an order of interim stay of the impugned order as prayed for.

4. Notice to the respondents returnable by 06.11.2013. Private notice is also permitted.

47. The above order was passed both in the writ petition and in M.P. No. 1 of 2013 praying for the grant of interim stay of the impugned order.

48. Therefore, after service of notice, the Director of the respondent - Institute filed a petition in M.P. No. 2 of 2013 for vacating the interim stay. The vacate stay petition M.P. No. 2 of 2013 was actually filed on 4.10.2013, without serving a copy on the counsel for the writ petitioner. But, the copy of the vacate stay petition was later served on the counsel for the writ petitioner on 7.10.2013 and thereafter, proof of service was filed on 7.10.2013. Therefore, I have to take it that the vacate stay petition M.P. No. 2 of 2013 was actually filed on 7.10.2013.

49. The vacate stay petition was brought before this Court on 9.10.2013. On the said date, the learned Judge, who earlier granted the interim order, passed the

following order:

Post on 22.10.2013

50. On 22.10.2013, the matter was adjourned by the learned Judge to 23.10.2013. On 23.10.2013, the following order was passed by the learned Judge:

Since it is submitted by both the learned counsel that the connected matter in W.P. No. 18450 of 2010 is coming before the Hon"ble Mr. Justice V. Ramasubramanian on 7.11.2013, the Registry is directed to place this matter before the same Hon"ble Judge after getting appropriate orders.

51. When the writ petitioner was awaiting the orders of the Hon"ble The Chief Justice, the respondents issued an Office Order dated 30.10.2013 relieving the writ petitioner with effect from 30.10.2013 on the ground that by virtue of Article 226(3) of The Constitution, the interim stay automatically got vacated. Immediately, the writ petitioner filed a miscellaneous application in M.P. No. 3 of 2013, seeking an interim direction to the respondents to continue to engage the services of the petitioner pending disposal of the writ petition. This petition was filed on 5.11.2013. On 7.11.2013, the Hon"ble The Chief Justice signed the note order directing the writ petition W.P. No. 26549 of 2013 to be listed before me.

52. In these miscellaneous petitions, the questions that arise for consideration are (i) whether the stand taken by the respondents on the basis of Article 226(3) to the effect that the stay automatically got vacated is correct or not; and (ii) whether the petitioner is entitled to the reliefs sought in M.P. Nos. 1 and 3 of 2013 or not.

53. Article 226(3) of The Constitution reads as follows:

Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under Clause (1), without-

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

54. Therefore, based upon the following decisions of various Courts including

Rajasthan, Calcutta, Kerala, Gujarat, Allahabad and Gauhati High Courts, it is contended by the respondents that the stay automatically got vacated, by virtue of Article 226(3):-

- i. Gheesa Lal and Others Vs. State of Rajasthan and Others, ;
- ii. Krishan Kumar Agarwala Vs. Reserve Bank of India and others, ;
- iii. P. Raghunandanani Vs. Regional Transport Authority, Palakkad and Others,
- iv. C. Babu Vs. Jayakumar and Others, ;
- v. District Development Officer Vs. Maniben Virabhai, ;
- vi. Dr. R.C. Chaudhary Vs. Vice Chancellor, B.R. Ambedkar University and Others, ; and
- vii. Axis Bank Ltd. and Others Vs. Anupam Acharjee and Others, .

55. In Gheesa Lal, a learned Judge of the Rajasthan High Court held that the constitutional mandate under Article 226(3) did not admit of any exceptions and that therefore, even if a case could not be listed due to the mistake of the office, the stay will automatically stand vacated upon the expiry of 14 days.

56. In Krishan Kumar Agarwala, a learned Judge of the Calcutta High Court followed the decision of the Rajasthan High Court in Gheesa Lal and held the provisions of Article 226(3) to be mandatory and that the only alternative available in such cases is to pass a fresh interim order after hearing the parties, if there are sufficient grounds to pass such an order.

57. In P. Raghunandanani, a Division Bench of the Kerala High Court quoted with approval the decision of the Rajasthan High Court in Gheesa Lal and the decision of the Calcutta High Court in Krishan Kumar Agarwala and held that the operation of Article 226(3) does not result in the disposal of the application for interim relief itself and that it is open to the Court to pass fresh orders after hearing both parties.

58. Again in C. Babu, a Division Bench of the Kerala High Court reiterated the earlier view expressed in P. Raghunandanani.

59. In District Development Officer, a Full Bench of the Gujarat High Court took up for consideration the interpretation to be given to Article 226(3). The reference to the Full Bench was necessitated in that case, in view of a contra view expressed by H.L. Gokhale, J. (as he then was) in the decision reported in S.N. Pandor Vs. District Judge (1995 (2) G.L.H. 976). Eventually, the Full Bench of the Gujarat High Court overruled the contra view expressed by H.L. Gokhale, J. and held that action or inaction on the part of the parties or Registry shall not have the consequence of undoing what The Constitution contemplates as an automatic result.

60. In R.C. Chaudhary, a Division Bench of the Allahabad High Court quoted with

approval the earliest decision of the Rajasthan High Court in Gheesa Lal and held that Article 226(3) is mandatory. In paragraph 20 of the report, the Division Bench held that the real test to determine whether a provision is mandatory or directory is to find out whether the non compliance with the provisions would render the proceeding invalid or not. However, the Division Bench also added a note of caution by pointing out that a party, who seeks to vacate an interim order, should do so within a reasonable time from the date of service of notice and that if the vacate stay application is filed in a leisurely manner, the party cannot take advantage of Article 226(3). Echoing similar sentiments, a learned Judge of the Jharkhand High Court also held in D.A.V. High School vs. State of Jharkhand {STPL (LE-Civil) 461 JHAR}, that the benefit of Article 226(3) will not be available to a person who did not file an application for vacating the interim order at the earliest point of time. The learned Judge held that a party who wants the benefit of Article 226(3) should have taken recourse to the procedure prescribed therein at the earliest point of time and not at any stage of the proceedings.

61. In Axis Bank Limited, a learned Judge of the Gauhati High Court followed the view expressed by the Rajasthan High Court in Gheesa Lal.

62. Therefore, it appears that two Division Benches of the Kerala High Court, one Division Bench of the Allahabad High Court and a Full Bench of the Gujarat High Court have taken a view supporting the stand taken by the respondents. But unfortunately, this Court does not appear to have considered the import of Article 226(3) so far in any reported decision, to my knowledge. At least, nothing has been cited before me.

63. Before considering the impact of those decisions, it is necessary to take note of the fact that Clause (3) was inserted originally by The Constitution (42nd Amendment) Act, 1976. Later, it was substituted by the present Clause (3) by The Constitution (44th Amendment) Act, 1978. A careful look at Clause (3) would show that it comprises of two parts namely (1) a mandate to the High Court to dispose of the application for vacation of an ex parte interim order, within a period of two weeks from the date on which an application for vacating the interim order is received or furnished; and (2) a dicta that if the application is not so disposed of, the interim order would stand vacated on the expiry of that period. All the High Courts, which have taken the views indicated above, have approached the question of interpretation of Article 226(3)(i) from the point of view of rules relating to statutory interpretation; and (ii) from the angle as to whether it is mandatory or directory.

64. But unfortunately, none of the High Courts, whose decisions are relied upon by the respondents, has considered the question from the pedestal of the most fundamental principle of law namely that no one shall be prejudiced by an act of court (*actus curiae neminem gravabit*). An act can either be an act of omission or be an act of commission. The non listing of an application for vacation of an interim order, if not due to the fault of any of the parties, but due to the fault of

the Registry of the Court, would fall under the category of "act of omission". No law can be so absurd as to say that if the Court is at fault, the parties shall suffer. I do not think that any case law is required to support the proposition that an act of court shall not prejudice a party.

65. The question as to whether Clause (3) is directory or mandatory should have been approached by the Courts from the perspective as to whether a party can be prejudiced by an act of Court or not. All the Courts including the Division Bench of the Allahabad High Court came to the conclusion that Clause (3) is mandatory, only on the premise that the consequences of non compliance are also prescribed in the clause itself. But, such a view tantamounts to missing the tree for the wood.

66. In *Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur*, a Constitution Bench of the Supreme Court held that the question whether a particular provision is mandatory or directory, cannot be resolved by laying down any general rule and that it would depend upon the facts of each case. The Court has to consider the purpose for which the provision had been made, its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting therefrom whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject as well as other considerations which may arise on the fact of a particular case, including the language of the provision. The said decision of the Constitution Bench was followed by the Supreme Court in *Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI)*. While doing so, the Supreme Court pointed out therein that our laws on procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decision should not be reached behind their backs, that proceedings that affect their lives and properties should not continue in their absence and that they should not be precluded from participating in them. Therefore, we have to interpret Article 226(3), consistent with the interpretation given by the Constitution Bench. If the interpretation given to clause (3) of Article 226 would result in putting one of the parties to grave injustice, without any opportunity of hearing, the provision cannot be taken to be mandatory but can be taken only as directory.

67. In *Sharif-ud-din Vs. Abdul Gani Lone*, the Supreme Court indicated that the question whether a provision of law is mandatory or not depends upon its language, the context in which it is enacted and its object. The Court made an important observation, which will resolve the problem for us and hence it is extracted as follows:-

In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is to sub-serve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the

invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another, when such act is not done in that manner, the former has to be regarded as a mandatory one.

68. Therefore, it is clear that if the condition imposed by the provision of law to do a certain thing within a time frame is upon an institution and the consequences of that institution not complying with the condition is to fall upon someone else who have no control over the institution which is to perform the duty, then the provision of law cannot be construed as mandatory, but only directory.

69. It is true that if a statutory provision contains a prescription and also stipulates the consequences of non compliance with the condition, it would normally be taken to be mandatory. But, the direction as well as the consequences of non compliance with the direction should both fall upon the same person, if such an interpretation is to be given.

70. In other words, the statutory provision should contain a direction to a party to the proceeding. It should also prescribe the consequences that would fall upon the party, on whom, the obligation to comply with the condition is imposed by the provision. Take for instance, the provisions of Order XXXIX Rules 3 and 3A. If a person, in whose favour an interim order of injunction is granted ex parte, fails to comply with the obligation cast under Sub-Rule (a) of Rule 3 of Order XXXIX, the interim injunction granted can be vacated on the ground of failure to comply with the obligation. But, where a direction to do something is against one party, the consequences of that party not complying with the direction, cannot be made to fall upon another party. Article 226(3) imposes an obligation upon the High Courts to dispose of the application for vacating the stay within two weeks. The failure of the High Court to comply with this Constitutional mandate, cannot result in an adverse consequence upon the party. If an obligation is cast upon one party and the consequences of failure to fulfill the obligation are to be suffered by another party, the provision prescribing such an obligation and consequence, cannot be treated as mandatory, but can be treated as directory.

71. As a matter of fact, the Division Bench of the Allahabad High Court appears to have realized this problem in the decision in R.C. Chaudhary. That is why in paragraph 22 of the report, the Division Bench of the Allahabad High Court held that if a vacate stay application is filed in a leisurely manner, such a party will not be entitled to avail the benefit of Clause (3) of Article 226.

72. In other words, the Division Bench of the Allahabad High Court has created an exception to the rule enunciated under Article 226(3). But, it must be pointed

out that if a provision is mandatory, it is not permissible for a Court to carve out an exception not inbuilt in the statutory provision itself. Interpreting a statutory provision to be mandatory and at the same time, carving out an exception not found in the language of the provision, go contrary to each other. Therefore, the proper interpretation to be given to Clause (3) of Article 226 is to say that it is directory and not mandatory, so that no party is allowed to take advantage of the failure of the Court to dispose of an application for vacation of stay within 14 days.

73. As a matter of fact, the Division Bench of the Allahabad High Court took note of only one serious consequence namely that of a party approaching the Court with a vacate stay application in a leisurely manner and the Division Bench took such a situation out of the purview of Article 226(3). But, any number of such situations, which will prove to be disastrous, can be thought of. Take for instance a case, where an application for vacating the stay is taken up for hearing within two weeks of its presentation and the Court reserves orders. If orders were not pronounced on or before the expiry of the 14th day from the date of filing of the vacate stay application, could it be said that the party, who obtained an interim stay, should still suffer, despite ensuring that the application is heard within two weeks. It is not within the control of any party to have his application or the opposite party's application listed for hearing. Even if a party succeeds in getting the application listed within two weeks, it is not in his control to ensure that the application is heard before the expiry of two weeks. Even if a party succeeds in making the Court hear the application for vacation of the interim order within two weeks, it is not in his control (especially these days) to ensure that it is disposed of within two weeks from the date of filing of the vacate stay application.

74. Therefore, an interpretation that would put a party, who is not at fault, to disastrous consequences, for the failure of an institution or for the happening of something that is beyond his control, is wholly unjustified. If a statutory provision imposes an obligation upon one party and makes the opposite party suffer for the consequences of non fulfillment of the obligation cast therein, such a provision cannot be said to be mandatory. Unfortunately, none of the High Courts, whose decisions are relied upon by the respondents, has taken note of this basic difference between the person, on whom, an obligation is cast and the person, on whom, the consequences are made to fall under Article 226(3). Hence, with great respect, I am unable to agree with the views expressed by the other High Courts.

75. I can understand at least if the writ petitioner had contributed anything to the failure of this Court to dispose of the application for vacating the interim order within two weeks. As a matter of fact, the writ petitioner appears to have done everything that is possible, to ensure that the application is disposed of within two weeks. This can be seen from the following sequence of events:

(i) The application for vacating the interim stay was served on the counsel for the writ petitioner on 7.10.2013;

(ii) The application was listed for hearing on 9.10.2013 and the Court adjourned the hearing of the application to 22.10.2013;

(iii) It was again adjourned to 23.10.2013 and on 23.10.2013, the learned Judge directed the Registry to get appropriate orders of the Hon"ble Chief Justice to list it before me along with the connected writ petition;

(iv) It was only by a note order dated 7.11.2013 that the writ petition got posted before me; and

(v) But, the respondents relieved the petitioner on 30.10.2013, by falling back upon Article 226(3).

76. I do not know how the date namely 30.10.2013 was chosen by the respondents. If the respondents wanted to go strictly by the letter of the law, they should have relieved the petitioner on 22.10.2013 or on 23.10.2013. If the respondents had done this, the writ petitioner would have at least argued the petitions before the learned Judge on 22.10.2013 or 23.10.2013. The respondents have clearly taken the writ petitioner for a ride by not falling back upon Article 226(3), on 22nd October or 23rd October 2013, when the petitions were listed for hearing (these two dates happened to be the 15th and 16th day from the date of filing of the vacate stay petition). Therefore, it is clear that the respondents have acted mala fide.

77. Now, let me move over to the fundamental question as to whether there can be an interim order in cases of this nature. As stated earlier, the main writ petition concerns the age of retirement of the petitioner. If the petitioner is a non teaching faculty member, his age of retirement will only be 60 years and the respondents are right in relieving the petitioner on superannuation on 30.10.2013. But, if the petitioner holds a teaching post or a post, whose terms and conditions of appointment are same as that of a teaching post, then his age of retirement is 65 years and he cannot be relieved before the expiry of the said date.

78. I have already held in W.P. No. 18450 of 2010 that the writ petitioner holds only a teaching post. Therefore, by a necessary corollary, he is entitled to hold office till attaining the age of 65 years.

79. But, the contention of the respondents is that by interim order, a person cannot be allowed to work during the disputed period. In support of this contention, the learned counsel for the respondents relies upon the following decisions:

- i. Union of India (UOI) Vs. Tarit Ranjan Das, ;
- ii. Secretary, State of Karnataka and Others Vs. Umadevi and Others, ;
- iii. I.I.T. Kanpur Vs. Umesh Chandra and Others, ;
- iv. B. Bharat Kumar and Others Vs. Osmania University and Others, ;

- v. R. Rathakrishnan Vs. The Deputy Registrar of Co-operative Societies,
- vi. Kesoram Rayon and Kesoram Ind. Ltd. Vs. Pran Ballav Das (2010 STPL (LE) 43283 (SC));
- vii. Indian Institute of Technology Vs. Raja Ram Verma and Others, ;
- viii. Chief Officer, Nagar Parishad, Yavatmal and another Vs. Smt. Pratibha Pradip Gaikwad, ; and
- ix. Sec., U.P.S.C. and Another Vs. S. Krishna Chaitanya, .

80. In Union of India (UOI) Vs. Tarit Ranjan Das, , the Supreme Court pointed out that no person can claim equality on the basis of designation or the nature of work alone. There are several factors like responsibilities, reliabilities, experience, functional need etc., before a person can claim equality.

81. I do not know how the said decision is of any assistance to the respondents, since the said case arose out of a claim for parity of pay made by Stenographers with those working in Grade "C" in the Central Government. The case on hand has nothing to do with parity of pay.

82. In Secretary, State of Karnataka and Others Vs. Umadevi and Others, , a Constitution Bench of the Supreme Court was primarily concerned with the question of regularization of irregular appointments of temporary employees and the plea of legitimate expectation put forth by them. In the case on hand, we are not concerned with an ad hoc or temporary appointment made in violation of the statutory rules. The pure and simple question that has arisen for consideration in this case is as to whether the petitioner was appointed to an academic post or not. Therefore, the decision in Umadevi, is of no assistance.

83. In I.I.T. Kanpur Vs. Umesh Chandra and Others, , the Supreme Court was concerned with the question as to whether a person appointed as a Pilot Instructor under the category of technical staff for the purpose of providing informal recreational avenue to the members of certain sports, could claim his age of retirement as 62 years on par with academic staff or not. Considering the notification in pursuance of which the respondent in that case was appointed and the nature of the duties performed by him, the Supreme Court came to the conclusion that the Pilot Instructor did not belong to the academic category.

84. As a matter of fact, the decision in Umesh Chandra, virtually supports the case of the writ petitioner. As in the case of Umesh Chandra, we have to see the advertisement in pursuance of which the writ petitioner was appointed and the nature of the duties and responsibilities assigned to him. In my order in the first writ petition, I have dealt with in detail, the advertisement, the appointment order, the terms and conditions of appointment and the factors that indicate the petitioner to be on the academic side. Therefore, the said decision is of assistance only to the writ petitioner.

85. In B. Bharat Kumar and Others Vs. Osmania University and Others, , the

Lecturers working in Private Colleges that were receiving grant-in-aid from the Government, made a claim for enhancement of the age of retirement from 58/60 years to 62 years, on the basis of the scheme formulated by the Government. But the Supreme Court pointed out that the Central Government itself left it open to the State Governments to implement or not to implement the policy adopted by them. In the light of the discretion granted to the State Governments by the Central Government, the Supreme Court held that the Courts could not issue a Mandamus, directing the State Governments to exercise the discretion in a particular manner. In other words, the Supreme Court pointed out that once the State Governments take a policy decision not to follow the Central Government, especially in the light of the discretion granted to them, it was not open to any Court to interfere with the policy decision.

86. The decision of the Full Bench in *R. Rathakrishnan Vs. The Deputy Registrar of Co-operative Societies*, , also dealt only with the question as to whether the employees of Cooperative Societies appointed in contravention of statutory rules could be regularized or not. Therefore, the said case has no relevance to the case on hand.

87. In *Kesoram Rayon and Kesoram Ind. Ltd. Vs. Pran Ballav Das* (2010 STPL (LE) 43283 (SC)), the Supreme Court was concerned with the validity of an interim order of injunction granted by a Civil Court restraining the employer from superannuating the employee, pending a suit for alteration of date of birth. The said decision cannot be compared to the case on hand. In cases relating to alteration of date of birth, no right flows in favour of an employee till a decree of declaration relating to the correct date of birth is passed. Therefore, the said judgment is of no assistance.

88. In *Indian Institute of Technology Vs. Raja Ram Verma and Others*, , the Supreme Court again followed the decision in *B. Bharat Kumar*, and held that a person appointed as an Assistant Registrar in the I.I.T., was not actually a teaching staff. It was held in the said decision that the question whether a particular employee has to be treated on par with the teaching staff, is a decision of the management and that it is not possible for a Court to interfere. But the Court also added that it is not powerless in cases where it is found that the decision is *ex facie* perverse. In paragraph 32 of the Report, the Supreme Court recorded the rationale behind allowing teachers to serve upto 60 years.

89. As a matter of fact, I have found on facts that the petitioner has been guiding the Research Scholars for Ph.Ds. He was appointed as Examiner in several Universities, including the Indian Institute of Technology, Madras. Therefore, the decision in *Raja Ram Verma*, would also not support the respondents.

90. In *Chief Officer, Nagar Parishad, Yavatmal and another Vs. Smt. Pratibha Pradip Gaikwad*, , a learned Judge of the Mumbai High Court, held that no final relief can be granted by a Court under the guise of an interim relief. In *Sec.*,

U.P.S.C. and Another Vs. S. Krishna Chaitanya, , the Supreme Court reiterated that an interim order that is in the nature of allowing the writ petition or application finally, cannot be granted. The Supreme Court indicated that the High Courts should avoid passing such interim orders.

91. I do not think that the said proposition requires any decision, as it is too fundamental. There can also be no quarrel with the proposition that in cases of this nature, the Court would not normally grant an interim order, allowing a person to continue beyond the age of superannuation. This is for simple reason that once such an interim order is granted, but the writ petition is dismissed ultimately, the respondents may not be able to recover the amounts paid by way of salary during the interregnum period, after extracting work. On the contrary, if an interim order is not granted, but the petitioner succeeds in the writ petition, he can always be compensated even with full pay and allowances. This is why the Courts would normally refrain from granting an interim order.

92. But the case on hand stands on a different footing. In the first writ petition W.P. No. 18450 of 2010, I have recorded a finding to the effect that the petitioner belongs to the academic side. Therefore, if I refuse to grant an interim order in the second writ petition, the finding recorded in the first writ petition will be rendered otiose.

93. Moreover, as I have pointed out earlier, the petitioner has been guiding Ph.D., students, as indicated in the proceedings dated 15.6.2010. These proceedings issued in the name of the Director show the date of retirement of the petitioner only as 16.9.2018. If the petitioner is retired now, the number of candidates currently undergoing Ph.D., Programme, will be put to irreparable loss and hardship. Therefore, this is not a case which is of the normal variety or a run of the mill case, where the rights of the parties can be worked out at the stage of final hearing.

94. In view of the above, vacate stay petition M.P. No. 2 of 2013 is dismissed. M.P. Nos. 1 and 3 of 2013 are allowed. Since I have recorded a finding of mala fides on the part of the Director, I am constrained to award costs, quantified at Rs. 20,000/-. The Director, from out of his personal funds, shall pay costs of Rs. 20,000/- to the writ petitioner.