

(1992) 09 KAR CK 0036

In the Karnataka High Court

Case No : Writ Petition No's. 12349 of 1984, 6968 of 1988, 20790 of 1990, 5746 and 18435 of 1992

M.R. Sannaramgowda

APPELLANT

Vs

University of Mysore

RESPONDENT

Date of Decision : 17-09-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Karnataka State Universities Act, 1976 — Section 2 (7), 2 (8), 2 (9)

Citation : (1993) ILR (Kar) 454

Hon'ble Judges : Hanumanthappa, J

Bench : Single Bench

Advocate : A.G. Holla and T.N. Raghupathy, for the Appellant; H.K. Vasudeva Reddy, N. Devadas, Nanjunda Reddy and V.C. Brahmarayappa, for the Respondent

Final Decision : Dismissed

Judgement

Hanumanthappa, J.—The Question of Law involved in all these Petitions are common. As such all the Petitions are clubbed together and a common Order is passed.

2. A few facts which are necessary to dispose of these Petitions are as follows:

The petitioners in all these Petitions either were or are working as Assistant Librarians, Deputy Librarians or Librarians in the University of Mysore, Mysore, (hereinafter referred to as the University). The University apart from other subjects is also imparting education in Library Science under the auspices of Department of Library Science which has got Professors, Readers and Lecturers. The University has also got a Library Section and its staff consists of Library Assistants, Assistant Librarians, Deputy Librarians and Librarian. The Librarian is the Head of the Section.

Petitioners are all officers of Library Section. As on the date of filing the petitions

the petitioners in W.P.Nos. 12349 of 1984 and 6968 of 1988 were working as Deputy Librarians, the petitioners in W.P.Nos. 20790 of 1990 and 5746 of 1992 were working as Assistant Librarians and the petitioner in W.P.No. 18435 of 1992 was working as Library Assistant. The petitioner in W.P.No.5746 of 1992 was appointed as Assistant Librarian and now he is working as such. His qualifications are Master's Degree in Political Science and Bachelor's Degree in Library Science. The petitioner in W.P.No. 18435 of 1992 was appointed as Library Assistant on 13.2.1973. His qualification is S.S.L.C. The petitioner in W.P.No.20790 of 1990 was appointed as Assistant Librarian on 1.8.1966, He is a holder of Master's Degree in Arts and Bachelor's Degree in Library Science. The petitioner in W.P.No. 6968 of 1988 was appointed as Assistant Librarian Grade I on 1.12.1966. His qualifications are Master's Degree in Sociology and Master's Degree in Library Science. The petitioner in W.P.No.12349 of 1984 was appointed to act as Librarian on 6.8.1960. His qualifications are Master's Degree in Arts and Master's Degree in Library Science.

3. In the year 1975 the University Syndicate fixed the age of superannuation of the Library Assistants, Assistant Librarians, Deputy Librarians and the Librarian on par with the teachers of the University, i.e., at the age of 60 years. The service conditions of the staff members of the University are governed by the Statute called "The Mysore University Employees Conditions of Service Statutes 1984" (hereinafter referred to as the Statutes) which came to be promulgated by the University under the Karnataka State Universities Act, 1976 (hereinafter referred to as the Act). u/s 23 of the Act, the Senate has got power to make, amend or repeal statutes governing the conditions of the University employees. The Statute came into force with effect from 28.3.1988. The important Sections under the Act which deal with Teachers" are:

Section 2(7) of the Act defines who is a teacher and it reads as follows:

""Teacher" includes Professors, Readers, Lecturers and other persons imparting instruction in any affiliated college."

Section 2(8) of the Act reads as under:

"Teachers of the University" means persons appointed for the purpose of imparting instruction in the University or in any college maintained by the University."

Likewise the Statute defines under Clause 2(c) who is an employee and it reads thus:

""Employee" means any person appointed to any class of post in the University of Mysore."

Clause 2(d) of the Statute defines who is the Teacher of the University and it reads as follows:

""Teachers of the University" means persons appointed for the purpose of

imparting instruction in the University or in any college maintained by the University."

For the purpose of retirement, the Statute fixed the age at 60 years for teachers and for other employees at 58 years. Clause 3(1) of the Statutes reads as under:

"A person appointed as Teacher and holding Hen on a post of teaching of the University, shall retire on superannuation on attaining the age of sixty years and any other employee shall retire on superannuation on attaining the age of fifty eight years."

Thus the service conditions of the petitioners are governed both by the Act and the Statutes.

4. The case of the petitioners is that for the purpose of appointment as Assistant Librarian one should possess I or II Class B.A./B.Sc/B.Com Degree and I or II Class Masters Degree in Library Science. For the post of Deputy Librarian the required qualification is I or II Class M.A./M.Sc./M.Com. Degree and I or II Class Degree in Library Science. However, for Deputy Librarian Ph.D. Degree is also insisted on. According to them, the nature of work, whether it is Assistant Librarian, Deputy Librarian or Librarian is one of imparting education. The qualifications prescribed for these posts are higher than those of Lecturers, Readers and Professors respectively. As such, Assistant Librarians deserve to be treated on par with Lecturers, Deputy Librarians on par with Readers and Librarians on par with Professors.

5. The functions of Librarians among other things include imparting education and instructing teachers, research scholars and students in different faculties. Librarians also guide and impart instructions to the teachers in the matter of selection of books for their lecture and on the latest development in the field. Research scholar preparing for his Doctoral thesis will have to invariably look to the Librarians for guidance and assistance who in turn will guide the research scholars on the books to be referred, on the research papers to be published, on the topic chosen by the research scholars etc.

6. Further, according to the petitioners Library Science is one of the subjects taught in the University and it is post-graduate course. To seek admission to Degree course in Library Science one should have Bachelor's Degree either in Arts or Science. The Department of Library Science is housed in the University Library at Manasagangotri. The Library Science includes practicals which are Classification, Cataloguing and Reference Service. For the practical subjects the students will have to necessarily take the guidance and instructions from the Librarians. The syllabus for Library Science includes subjects like Library Management, Cataloguing and information sources. Thus, Librarians are also actively engaged in imparting knowledge and information to the teachers, research scholars and students.

7. The petitioners further submit that the role of a Librarian is superior to that of

a Teacher. The General Conference of UNESCO at its 16th Session held in Paris from 12th October to 14th October, 1970, adopted certain recommendations and defined "Library" that irrespective of its title, any organised collection of printed books and periodicals or of any other graphic or audio-visual materials, and the services of a staff to provide and facilitate the use of such materials as are required to meet the informational, research, educational or recreational needs of its users.

8. According to the petitioners, Library Orientation Programme is one of the important activities and essential means of imparting knowledge. The said Library Orientation Programme consists of "Orientation Programme" which includes "purpose", "functions" and "Methodology". Further, the orientation is followed by guidance and instructions to the individual user at every section of the library and such type of individual guidance is technically known as "User Education". Lecture-cum-demonstration is also arranged for postgraduate students, etc. The methodologies are Library Tour, Exhibits/Displays, Transparencies and slides and Bibliographic tools. Biological Abstracts are the list of research publications covering the entire world in Biological Sciences. Bibliographic instructions in particular is the introduction of the user to the available resources in his particular disciplines and the techniques of making use of those resources in the best possible manner.

9. On the basis of the above, an Assistant Librarian also does the work of imparting instructions by taking active part in the Orientation Programme.

10. Further case of the petitioners is that apart from the recommendations of the General Conference of the UNESCO held in the year 1970, even the University Grants Commission recommended the extension of pay-scales to the staff of Department of Library on par with University teachers. It also recommended that the age of retirement of the staff of Library shall be at 60 years on par with the age of University teachers, physical education staff. On the basis of the said recommendation of the University Grants Commission, the Central Government wrote a letter to the Education Secretaries of all the States to equate Librarians on par with teachers. Likewise Mehrotra Committee which was appointed to go into the revision of pay-scales of teachers of Universities and Colleges also explained the role of Librarians and it recommended that Librarians should be treated on par with teaching staff and the age of superannuation of Librarians also shall be at 60 years.

11. In addition to the above facts narrated by Sri. T.N. Raghupathy, learned Counsel for the petitioners in W.Ps.Nos. 20790 of 1990, 5746 of 1992 and 18435 of 1992, Sri. A.G. Holla, learned Counsel for the petitioners in W.P.Nos. 12349 of 1984 and 6968 of 1988, also relied upon the recommendations of Dr. Radhakrishnan's Report and other correspondence. On the importance of Library and the role of Librarians both the learned Counsel for the petitioners placed reliance on some of the observations made by the authors, viz., (1) Girja Kumar Krishan Kumar in his book "Philosophy of User Education", (2) Sri. N. Datta in

the book "Academic Status for University and College Librarians in India" and (3) Sri. B.L. Gupta in the book "Library Service". According to them, in view of the recommendations and opinions the petitioners come within the definition of "Teaching staff of the University" as per Section 2(9) of the Act and, as such, they are entitled to be retired at the age of 60 years only. They contended that the nature of work of the Assistant Librarians and above is almost similar to the one of the Lecturers and above, viz., imparting knowledge. Throughout the petitioners were under the belief that they would also be entitled to continue in service till the age of 60 years and they would not be asked to retire at the age of 58 years. Also stated that necessary amendments to the Act were felt essential in order to treat the staff of Library Department on par with the Teachers and thus to fix the age of retirement at the age of 60 years. In this connection, the petitioners and their colleagues gave representations to the authorities of the University requesting that their age of superannuation should be fixed on par with the Teachers as they come under the definition of Teachers of the University and they thus be allowed to retire only at the age of 60 years and not at the age of 58 years. Their further case is that inspite of the said representations, they received notices from the University informing that the petitioners should retire on their attaining the age of 58 years. Against the action of the authorities in issuing notices informing that the petitioners have to retire at the age of 58 years and not at the age of 60 years, the petitioners filed these Petitions seeking for the reliefs (i) to declare that they are entitled to continue in service till they attain the age of 60 years and (ii) to quash the retirement notices on the following grounds:

1. The Statutes fixing the age of retirement of the University Teachers at 60 years while the age of retirement of the petitioners and others at the age of 58 years is quite arbitrary and illegal.
2. The orders of retirement of the petitioners at the age of 58 years are contrary to the provisions of the Act and the Statutes and the said action of the University is contrary to Section 49 of the Act which envisages the age of retirement at 60 years. Therefore, the present action of the respondent to retire the petitioners at 58 years amounts to depriving the petitioners' right to continue in service till they attain the age of 60 years and thus is violative of Articles 14 and 16 of the Constitution of India.
3. Retiring the petitioners at the age of 58 years, when Section 2(9) of the Act fixes the age of retirement for Teachers and Teaching staff at 60 years amounts to clear case of removal of the petitioners from service without due process of law.
4. When the University accepted the recommendations of the University Grants Commission, Mehrotra Committee and Dr. Radhakrishnan Committee, it is not now open to the University to say that the petitioners are not entitled to continue in service till the age of 60 years.

5. When the pay-scales of the petitioners and other Teaching staff are the same, they shall be treated on par with the Teachers" and permitted to retire only at the age of 60 years and not at the age of 58 years.

6. Further, the appointment of Professors, Librarians, etc. is by a Board of Appointment as per Section 49 of the Act which reads thus:

"49. Appointments of Teachers, etc.-

(1) There shall be a Board of appointment for selecting persons for appointment as Professors, Librarian, Readers and Lecturers in the University."

Therefore, the appointments of Librarians and the Teachers are by the Board of Appointments. As such there is no reason to retire the staff of the Library at the age of 58 years.

7. When Physical Education staff has been treated on par with the Teachers, it is proper to extend the same benefit to the staff of the Library.

8. In view of the recommendations made by the University Grants Commission and the report of the Committees referred to above, the University allowed others including on Balasundra Gupta to retire at the age of 60 years.

9. The University treated the staff of the Library Section as academic staff. As such, now the University cannot turn down the request of the petitioners to allow them in service till they attain the age of 60 years.

12. In support of their contentions, the learned Counsel for the petitioners placed reliance on the following Decisions:

For the proposition that once the age of the staff of Library is fixed on par with the University Teachers and allowed to serve as such, the same should not have been altered to 58 years as has been done in the instant case, learned Counsel for the petitioners relied on the Decision of the Supreme Court in V.T. Khanzode and Others Vs. Reserve Bank of India and Another, Learned Counsel for the petitioners also placed reliance on the Decision of the Division Bench of this Court reported in 1982(1) Kar.LJ Short Note No. 8, Bangalore University v. Belgaumi which reads thus:

"A person imparting instruction in physical education in Bangalore University College is a person imparting instruction in the University and as such is a teacher within Section 2(8) and (9) of the Bangalore University Act.

Sections 7 and 25 of the Bangalore University Act, Statute 139 and Ordinance 14(vii) make it obvious that physical education is a subject of study required to be taught in the university and persons who impart instruction in physical education are teachers. If so, he continued to be a teacher under the provisions of the State Universities Act which replaced the Bangalore Act. Such teacher is entitled to continue in service till he completes the age of 60 years."

According to the learned Counsel for the petitioners, when physical education

teacher is treated on par with Teachers of the University, the same benefit shall be given to the staff of the Library.

The contention of the learned Counsel is that when the functions of staff of Library and the Teacher of the University are similar, treating them in different category fixing the age of superannuation at 58 years and 60 years is quite illegal. For this proposition the learned Counsel for the petitioners relied on the Decision of the Supreme Court in *Railway Board Vs. A. Pitchumani*, The relevant discussion is at Paras 23 and 24 of its order which reads as follows:

"The question is whether the distinction made under the new Note to Clause(b) substituted on December 23, 1967 valid? In our opinion, such a rule, which makes a distinction between the employees working under the same Indian Railway Administration is not valid. The position, after the new Note was added, is that the employee who had throughout been under the Indian Railway Administration is entitled to continue in service till he attains the age of 60 years; whereas the persons, like the respondent, who are also the employees of the Indian Railway Administration, but whose previous services were with the Company, will have to retire at the age of 58 years, because a provision similar to Clause (b) did not exist in the service conditions of the Company. Discrimination, on the face of it, is writ large in the new Note, which is under challenge:

Mr. Setalvad, no doubt, urged that the ministerial railway servant, who was originally employee of a Company, Ex-State Railway or a former Provincial Government dealt with under the new Note are a class by themselves, and, therefore, there is a reasonable classification. Once the employees dealt with under the new Note, have taken up service under the Indian Railway Administration and have been treated alike upto January 11, 1967, it follows, in our opinion that they cannot again be classified separately from the other employees of the Indian Railway Administration. Therefore, we are not inclined to accept the contention that the classification of these officers, under the new Note, is a reasonable classification and satisfies one of the essential requisites of Article 14 of the Constitution, as interpreted by this Court."

The Library staff is carrying on the duties of imparting education to the Teachers, Research Scholars and the students. Thus, they take active part in building up their careers. According to them, they are carrying on the work of teaching. As such they deserve to be grouped under the definition of "University Teachers" and not separately. For this proposition, the learned Counsel for the petitioners placed reliance on the observations made by the Supreme Court in *Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others*, wherein it is held thus:

"The Court held that the employee Mukerjee involved in that case was not a workman u/s 2(s) of the Act because he was not mainly employed to do any skilled or unskilled manual or clerical work for hire or reward, which were the

only two classes of employees who qualified for being treated as "workman" under the definition of the expression "workman" in the Act, as it stood then. As a result of the above decision, in order to give protection regarding security of employment and other benefits to sales representatives, Parliament passed a separate law entitled the Sales Promotion Employees (Conditions of Service) Act, 1976. It is no doubt true that after the events leading to the above decision took place Section 2(s) of the Act was amended by including persons doing technical work as well as supervisory work. The question for consideration is whether even after the inclusion of the above two "classes of employees in the definition of the expression "workman" in the Act a teacher in a school can be called a workman. We are of the view that the teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or postgraduate education cannot be called as "workmen" within the meaning of Section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching. We agree with the reasons given by the High Court for taking the view that teachers cannot be treated as "workmen" as defined under the Act, It is not possible to accept the suggestion that having regard to the object of the Act, all employees in an industry except those falling under the four exceptions (i) to (iv) in Section 2(s) of the Act should be treated as workmen. The acceptance of this argument will render the words "to do any skilled or unskilled manual, supervisory, technical or clerical work" meaningless. A liberal construction as suggested would have been possible only in the absence of these words. The decision in *Management of May and Baker (India) Ltd. Vs. Their Workmen*, precludes us from taking such a view. We, therefore, hold that the High Court was right in holding that the appellant was not a "workman" though the school was an industry in view of the definition of "workman" as it now stands."

When such being the case the order of retirement issued and under challenge in these Writ Petitions is quite arbitrary and against the provisions of the Act and the Statutes. The petitioners also contended that the duties of the Librarians are more important and wider than the duties of Teachers in that the Librarians will have acquaintance with different subjects, while the Teachers will have knowledge only in the particular subject. Further, the University has given the status of Teacher to Librarians, Deputy Librarians and Assistant Librarians. Hence, there is no justification for the University to ignore the case of the petitioners and direct them to retire at the age of 58 years.

For the above reasons, the petitioners contended that the orders of retirement be declared as void and in view of the nature of duties of the Assistant Librarians, Deputy Librarians and the Librarians, they shall be treated on par with the

Teachers of the University and thus they be allowed to retire only on completion of 60 years.

13. The respondents have filed their Objections in all the Petitions except in Writ Petition No. 18435 of 1990. However, they adopted the Objections filed in the other Writ Petitions.

14. The case of the respondents is one of clear denial of the contentions of the petitioners and the reliefs sought. In the Statement of Objections, the respondent/University has taken a stand that the nature of duties carried on by the Librarians and the Teachers are quite different. For example, the nature of duties of Librarian are of cataloguing and classification of books, whereas the duties of teachers are teaching students. He could be a Member of the Board of Studies and Member of Departmental Council and also a Member of the Board of appointments. It is averred that the incidental or small fraction of duties of a teacher carried on by the Librarians, Deputy Librarians or Assistant Librarians cannot be aground to consider the staff of Library Section as University Teacher. It is said in the Statement of Objections that the recommendations, report or the opinion of Committees will have no statutory force to equate the position of Librarians to the University Teachers. According to the University/respondent, Department of Library is different from Department of Library Science. The method of recruitment of the Library staff and Library Science staff is altogether different. For example, as per the Statute the staff of Library Department will be recruited 50% by promotion and 50% by direct recruitment. The Library Assistants are promoted from the cadre of Typists-cum-clerk whose required qualification is only S.S.L.C. Next higher post of Library Assistant is Assistant Librarian. The classification of University Teachers and the staff of Library Department is quite valid and reasonable so also fixing the age of retirement at 60 years and 58 years respectively.

15. The respondent also contended that the Statutes will not confer any right on the petitioners to continue in service upto the age of 60 years as the said Statute relates only to revision of pay scale and not to the age of retirement. The extension of University Grants Commission pay scale to the staff of library has no relevancy to equate the petitioners to the University teachers. In fact the University Grants Commission scale has been extended to the teachers of Government Colleges, whereas the age of retirement has been limited to 58 years for them and not 60 years. Unless the recommendations made by the University Grants Commission are brought in the form of a Statute, the same will not confer any right on the petitioners to assert that the staff of Library should be treated on par with the University Teachers. When the Act itself fixes the age of retirement of the staff of Library department at 58 years and that of the University Teachers at 60 years, it is not open to the petitioners that too at the fag end of their service to approach this Court for the relief that a declaration be made that they are entitled to continue tilt they attain the age of 60 years and also to quash the orders of retirement issued.

16. The respondent also contended that in some Writ Petitions there is long delay of 6 to 8 years to approach this Court and on this ground also the petitions deserve to be dismissed.

17. Learned Counsel for the respondents, viz., M/S. V.C. Brahmarayappa, N. Devadas and Nanjunda Reddy, argued as follows:

1. The source and method of appointment of "University Teachers" and staff of Department of Library is quite different, namely, the appointments of those two categories as required under Sections 49 and 50 of the Act respectively. The Teachers are appointed by the Syndicate, whereas the staff of the University, viz., other employees, by 50% by promotion and 50% by direct recruitment. The statute also speaks of the same. There is no violation of Article 14 or 16 of the Constitution of India in making a provision for separate mode of recruitment to two types of posts. Provision can be made providing different ages of retirement for different classes of people.

2. Petitioners do not come under the definition of a Teacher as defined u/s 2(7) or University Teachers as defined u/s 2(8) of the Act. They fall under a separate category, viz., "other employees of the University".

3. Library staff and University Teachers are different and distinguishable positions:

Teacher not only teaches his students, but also participates in other academic activities like Examiner, Evaluator, contesting to Academic Council and Member of Board of Appointments. They are voters to Teachers' Constituency, Senate, Syndicate and Academic Council. They get vacation.

18. Whereas the duty of a Library Assistant or Deputy Librarian or Librarian is only to classify and catalogue the books. Incidentally, he may guide the concerned to refer to certain books, magazines or reports. They get half-pay and commuted leave. But they do not participate in other activities referred as against that of Teachers. In case of promotion even a Typist or a Clerk whose qualification is S.S.L.C, is entitled for promotion to the post of Library Assistant then to Assistant Librarian, etc. Neither they are associated with the Department of Library Science nor they have a legal sanction to teach students of Library Science. Thus the staff of Department of Library cannot be equated to the Academic staff of the University. The Act also never intended it.

19. Qualifications for appointment of Teachers and staff are quite different. In view of Recruitment Rules even an attender can go upto the higher post like Assistant Librarian. In case of University teachers acquiring Ph.D within 5 years is a must. But it is not so in the case of Library staff.

20. Equal pay or a little higher pay is not the criteria to treat Library staff on par with University teachers. No doubt the University Grants Commission and various other Committees recommended that scale of pay of Library staff shall be on par with University teachers. But they are only recommendations and have no legal

force unless these recommendations are later turned into Government order or Section 2(8) of the Act approved it. It is true that on 21.1.1975, Syndicate resolved that superannuation of the staff be on par with teachers, namely, at the age of 60 years. But, this resolution later obliterated by virtue of coming into force of the Act and the statute fixing the age of retirement of University teachers at 60 years and that of the staff at 58 years.

21. Extending of University Grants Commission pay scales under a scheme to the petitioners have no relevancy to determine the parity in age. Because University Grants Commission pay scale was only to rationalise the pay structure. In fact, University Grants Commission pay scales extended even to lecturers in Government Colleges whose retirement is at the age of 58 years. Further, the University Grants Commission grant is given by grants, i.e., it is ex gratia payment. If the petitioners' contention is accepted, it amounts to creating a group within the group which is impermissible.

22. The contention that, when one Balasundra Gupta who was also a staff member was allowed to retire at the age of 60 years, to retire the petitioners at the age of 58 years who are also similarly placed is quite arbitrary and discriminatory have no force, as retirement of Balasundra Gupta at the age of 60 years was by mistake.

23. In support of their case, the learned Counsel for the respondents placed reliance on some of the Decisions of this Court and of the Supreme Court. According to them, under similar circumstances, this Court in University of Mysore Vs. P. Maribasavaradya, held that Research Assistant cannot be treated on par with University Teachers and thus they are liable to be retired at the age of 58 years and not at 60 years. The observations made by this Court are as follows:

"in view of the clear definition contained in Section 2(7) and 2(8) of the Act and Statute No. 3 of 1984 Statutes, there is no scope to construe the respondents (Research Assistants) as Teachers of the University...The respondents stood excluded from the definition of the University Teachers and fit in the category of other employees....The qualifications prescribed for the post of Research Assistants Class I and II also indicate that they are not intended for the purpose of teaching. They were not assigned any teaching work and as a matter of fact they have never taught any subject as such in the University. Thus, even on facts they were never considered as Teachers of the University. Further, the respondents were not the persons appointed for the purpose of imparting instructions within the meaning of "Teachers of the University" as defined in Section 2(8) of the Act. The respondents were also not appointed as Teachers u/s 49 of the Act. The method of recruitment of teaching staff is entirely different from the non-teaching staff. The post of Research Assistants are filled up as per the provisions of Section 50 of the Act. Having regard to the nature of work, mode and the manner of recruitment, classification of their category and conditions of service, the respondents cannot be placed on par with the Teachers.

When the respondents constitute separate class, they cannot complain of any discrimination. The Research Assistants who are unequals to the Teachers of the University cannot contend that they are discriminated as such. They cannot be considered as equals in the matter of attaining the age of superannuation."

According to them, the reliance placed by the learned Counsel for the petitioners on the Decision in Pitchumani's case, has no application to the present cases.

24. The case of the respondents is that retirement of the employees on the basis of classification is neither arbitrary nor discriminatory in view of the Decision of the Supreme Court in Bishun Narain Mishra Vs. State of Uttar Pradesh and Others, herein it has been held thus:

"Article 311 had no application to the termination of A's service. The termination of his service resulting from change in the age of superannuation did not amount to removal within the meaning of Article 311."

They also placed reliance on the Decision of the Supreme Court in Madurai Kamaraj University Vs. Dr. K. Rajayyan, wherein it is said that teachers are to be retired at the age of 60 years.

25. Learned Counsel for the respondents agreed on the principle that once the University accepted the age of Library staff to retire at 60 years and subsequently changing the same to 58 years after coming into force the Act, it is permissible. When the University agreed to abide by the recommendations and the Statute, it is "estopped from taking a different stand. But, on facts, according to them for the law laid down by the Supreme Court on the question of promissory estoppel, the following Decisions are to be taken note of:

In Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., the relevant paras are 12 and 14 which read as follows:

"There can therefore be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. We must concede that the subsequent decision of this Court in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, takes a slightly different view and holds that the doctrine of promissory estoppel is not available against the exercise of executive functions of the State and the State cannot be prevented from exercising its functions under the law. This decision also expresses its disagreement with the observations made in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, that the doctrine of promissory estoppel cannot be defeated by invoking the defence of executive necessity, suggesting by necessary implication that the doctrine of executive necessity is available to the Government to escape its obligation under the doctrine of promissory estoppel. We find it difficult to understand how a Bench of two Judges in Jeet Ram's case could possibly overturn or disagree with what was

said by another Bench of two Judges in Motilal Sugar Mills case. If the Bench of two Judges in Jeet Ram's case found themselves unable to agree with law laid down in Motilal Sugar Mills case, they could have referred Jeet Ram's case to a larger Bench, but we do not think it was right on their part to express, their disagreement with the enunciation of the law by a co-ordinate Bench of the same Court in Motilal Sugar Mills.

.. . . .

Of course we must make it clear, and that is also laid down in Motilal Sugar Mills case AIR 1978 SC 621(supra), that there can be no promissory estoppel against the legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires, if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with fully in Motilal Sugar Mills case (supra) and we find ourselves wholly in agreement with what has been said in that decision on this point."

For the same proposition, learned Counsel for the respondents also relied on a Decision of the Rajasthan High Court in Union of India (UOI) Vs. J.K. Industries Ltd., wherein it has been held thus:

"It is true that doctrine of promissory estoppel is not available against the legislature. But for that it is not enough that legislative functions are being carried out; it is only if the legislative functions are being carried out by the legislature itself that the doctrine is not available. The Government while discharging its legislative functions is bound by promissory estoppel. It is true that the promissory estoppel is not available against a statute does not mean that promissory estoppel is not available when Government or some public authority does something in the exercise of powers conferred on it by statute. Any Government in exercise of its powers conferred on it by a statute or the powers of subordinate legislation cannot act contrary to the terms of representation it had earlier made. It can only do so in the following well-recognized and exceptional cases: (1) that there can be no promissory estoppel against the Legislature in the exercise of its Legislative functions; (2) that the

Government or public authority cannot be debarred by promissory estoppel from enforcing a statutory prohibition; (3) that the doctrine of promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law; (4) that the doctrine of promissory estoppel is not applicable in cases where the authority or power of the Officer of the Government or of the public authority is outside the authority or the power to make that; and (5) that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have subsequently transpired it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. Except these exceptions, the Law is now well-settled that the doctrine of promissory estoppel is applicable against the Government in exercise of its Governmental, public or executive functions."

For the above reasons, the learned Counsel for the respondents requested to dismiss the Writ Petitions.

26. Having perused the narration of facts, heard the parties on various contentions and considered the legal position on such contentions, now the Points that arise for Consideration in all these Petitions are as follows:

(i) Whether the Assistant Librarians, Deputy Librarians and the Librarians of the University be equated to the position of "Teachers of the University", viz., Lecturers, Readers and Professors?

(ii) Whether similar pay-scales, experience and qualifications or a little more will equate different classes of posts and whether they are entitled for similar relief in the matter of retirement?

(iii) Whether the recommendations, reports and opinions of Commissions and Authorities or Authors will have any statutory force?

(iv) Whether the petitioners are entitled to continue in service till they attain the age of 60 years as in the case of University Teachers?

OR

Whether their retirement at the age of 58 years amounts to removal from service?

27. In order to decide the first Point, viz., whether the Assistant Librarians, Deputy Librarians and the Librarians can be equated to the positions of Teachers of the University, viz., Lecturers, Readers and Professors, one has to take into consideration the nature of duties both the categories are discharging. The duties of Assistant Librarians and above are mainly of cataloguing and classifying the books; to guide teachers, research assistants and students in selecting books; conducting orientation programmes, etc. They are not the academic staff. Their

appointments are not to teach. Nowhere in the conditions of appointment it is said that though a person has been appointed as Assistant Librarian etc., he is entitled to teach. In the Department of Library Science itself for purpose of imparting education, separate teaching staff is appointed.

The sources and mode of appointment to both classes are quite different. If Section 2(7) and 2(8) of the Act and Clauses 2(c), 2(d) and 3(1) of the Statutes are properly understood, a person to be brought within the definition of teacher" he shall be a person appointed for the purpose of imparting instructions in the University or in any college maintained by the University. Whereas "employee" (including other staff) is a person appointed to a class of post. Appointment of a teacher of the University is made by the Syndicate. Whereas, the appointment of staff of other sections is made by the Board. The duty of a teacher is to teach pupils. The teacher gets vacation whereas the staff gets half-pay and commuted leave. The teacher will be on the panel of Education Council. The teachers can seek election to Syndicate, Senate, etc. and also as Board of Members for appointment. They are the voters in connection with the election to Syndicate, Senate and Teachers Constituencies, Teachers also undertake the work of setting of papers for different examinations and act as examiners or valuers. They do not get earned leave, half-pay leave or commuted leave. The staff of the University does not perform any of these functions. Qualifications of both classes are quite different. In the case of University Teacher, for the post of Lecturer in Library Science the basic qualification is Master's Degree in Library Science with a condition that he shall get Ph.D. within 5 years. For the post of Assistant Librarian such requirement is not required. Even a non-graduate can reach the post of Assistant Librarian or above as it had happened in the case of one of the petitioners who started his career as an attender and later became a Typist-cum-clerk and then as Library Assistant and Assistant Librarian. If the contention is accepted that Teachers and Library Staff are to be treated on par, viz., Assistant Librarian be treated as equivalent to Lecturer, Deputy Librarian be treated as equivalent to Junior Professor and the Librarian to Senior Professor, then a person who is a non-graduate and promoted as Assistant Librarian can very well assert that he be permitted to teach. In order to avoid such a contingency and also taking into consideration the qualification fixed for 2 different posts the Legislature thought it fit to classify both the positions as separate. Further, merely because in the case of some petitioners, the qualifications they possessed are equivalent to the qualification possessed by some of the teachers of the University in the Department of Library Science or in some cases they possessed additional qualification, that does not mean that they will be treated on par with University teachers. When the Act and the Statute fix separate method for the purpose of selection, merely because the pay scales of some of the petitioners are equivalent to University Teachers or the University Grants Commission and the Vice Chancellor recommended for equal pay to both the same does not help the petitioner to contend that they be treated on par with the "University Teachers". It may be true that in some cases equal pay or

equal qualification may be helpful to equate two positions. But, in the instant case, the nature of duties both the classes are discharging taken into consideration, it has to be said that both the categories are different. Further, appointment to the post of University Teachers and to the staff was not on the basis of the Resolution that was passed in the year 1975 which said that superannuation of Assistant Librarians and above shall be at the age of 60 years on par with University Teachers. But the same came to be obliterated by virtue of coming into force the Act and the Statute. Recommendations of the University Grants Commission or authorities like the Merhotra Commission, Dr. Radhakrishna Commission or opinions of various authors on the subject to extend equal pay will not bind the University to treat the staff on par with the University Teacher. Since the petitioners were not appointed to impart education, it is difficult to bring them within the definition of "University Teacher". No doubt, the petitioners, in order to bring them within the definition of University Teacher, they based their claim on the ground that they are also instructing teachers, research assistants and students, learned Counsel for the petitioners also took me through the meaning of "Instruction" as given in the Random House Dictionary of the English Language, Unabridged Edition, page 737, as under:

"1. act or practice of instructing or teaching; education. 2. Knowledge or information imparted. 3. an item of such knowledge or information. 4. Usually, instructions, orders or directions: The instructions are on the back of the box. 5. act of furnishing with authoritative directions. 6. Computer Technol. a character or set of characters which together with one or more operands defines an operation and which, when taken as a unit, causes a computer to operate on the indicated quantities."

But the same is not helpful to the petitioners as they were not appointed to instruct or to impart education. Moreover, a fraction of duties of instructing students will not convert them to be the teachers. The recommendations of other authorities and the reference made by the petitioners including the letters of the Government and the Vice Chancellor recommending to extend the pay scale of teachers to some of the officers of the staff have no statutory force to contend that the staff of the Library Department is entitled to serve till they attain the age of 60 years.

The reliance placed by the petitioners on the Decision of the Supreme Court in V.T. Khanzode's case, on fact is distinguishable and in no way helps the petitioner. Again the reliance placed by the petitioners on the Decision of the Division Bench of this Court reported as Item No.8 in 1982(1)Kar.L.J 42 wherein it has been held that Physical Education Instructor is a teacher and he is entitled to retire at the age of 60 years again is not helpful to the petitioners for the simple reason that Physical Education Instructor is one of the teachers and physical education is one of the curriculums to be taught in the schools and the colleges. As such, Physical Education Instructors approached this Court to treat them on par with the University Teachers which was rightly accepted by this

Court. Thus, the said decision also is not helpful to the petitioners. On the other hand, the Decision of this Court in Maribasavaradhya's case, is a complete answer to all the contentions raised by the petitioners wherein turned down the contention that research assistants are equal to University Teachers and therefore they deserve to retire at the age of 60 years and not at the age of 58 years, the relevant portion of which has been extracted above. No doubt, the petitioners thought that the principles laid down by the Supreme Court in Miss. Sundarambal's case at para 10 supports their case, which has been extracted above. But in the same para the Court while explaining the role of teachers observed that their main duty is to teach students and, if they do any clerical work occasionally the same will not take away the position of a teacher. Likewise some casual or occasional work of imparting instructions by Library staff will not take them in any way nearer to the definition of. University Teacher. Thus the said Decision is also not helpful to the petitioners.

From the nature of duties and the mode of appointment, it is clear that Assistant Librarians, Deputy Librarians and Librarians of the University are different from the position of Teacher of the University, viz., Lecturer, Reader or Professor. Thus these two classes are quite different and separate.

28. Regarding the second Point whether similar pay-scales, experience and qualifications will equate both the categories as equal, the answer is as observed earlier as this point is overlapping with the first point. It has to be further said that the Statute does not equate two posts as equal. Similar qualification or equal pay or a little more or similar experience will not make the petitioners as teachers of the University. It has to be borne in mind that similarity has nothing to do with the same.

29. Regarding the third contention whether the recommendations, reports and opinion of Commissions or Committees will have any statutory force, the answer is that unless recommendations have later become Order of the Government, the same will not be binding on the authorities, as such recommendations, etc. have no legal sanction. Any recommendation made or any grant is given, it has to be said that the same has been made to encourage a particular class and such payment is only an ex gratia payment. Thus, unless the said recommendations or opinions are translated into an Act, Rule or Order, they remain as recommendation and will not confer any right on those who like to take shelter on such recommendations, reports or opinions. In fact, under similar circumstances, the Supreme Court in Madurai Kamaraj University's case observed that any recommendations will not bind and as per the Statutes the teacher has to retire at the age of 60 years.

It was canvassed by the petitioner that the action of the University in directing that the petitioners have to retire on attaining the age of 58 years is quite arbitrary and discriminatory, as the University allowed one Balasundra Gupta who was similarly placed to retire at the age of 60 years. Further, some of the acts of the Vice Chancellor gave impression to the petitioners that they will be allowed

to retire only at the age of 60 years and not at the age of 58 years and having done so the University is now estoppel from retiring the petitioners at the age of 58 years, for this proposition, the petitioners relied on 2 Decisions, viz., in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., and in Union of India (UOI) Vs. J.K. Industries Ltd., The relevant portions have been extracted above. It is true that promissory estoppel can be made applicable to Government actions also when Government does public or executive functions. But, if any action to be taken is controlled by a Statute, merely because by mistake some concession was shown to others or some benefits had been given to others, the same shall not be meant that the same mistake shall be continued and the same benefit be continued to others as held by the Supreme Court in Coromandel Fertilizers Ltd. Vs. Union of India (UOI) and Others, while observing that an error committed by an authority shall not be a ground for a person to request to perpetuate the same. The Supreme Court held thus:

"Mr. Setalwad made a grievance that the authorities concerned had allowed the benefit of the Notification under similar circumstances to a rival company. If the grievance of the appellant is true, the appellant may no doubt have reasons to feel sore about it. We have, however, to point out that the grievance of the appellant even if it is well founded, does not entitle the appellant to claim the benefit of the notification. A wrong decision in favour of any particular party does not entitle any other party to claim the benefit on the basis of the wrong decision."

Thus the above Point is answered against the petitioners.

30. The next Point to be considered is whether the petitioners are entitled to continue in service till they attain the age of 60 years as in the case of University Teachers or they are liable to retire at the age of 58 years and such retirement amounts to termination from service. The answer is that the Statute itself has made two posts as quite different and distinct. The duties of these two categories are different. Qualifications are also altogether different. When the statute itself stipulates two positions as different and when the mode of selection is by different methods, fixing 2 different ages for retirement, any action on basis of such statute does not amount to arbitrariness or discrimination so as to attract Articles 14 and 16 of the Constitution of India.

31. Once the authority has "got a power, it can alter the same provided that they are neither arbitrary and unreasonable nor it leads to civil consequences. For valid reasons and in the interest of effective functioning of administration the Statute or the Act classifies 2 types of age groups for retirement, the same is not in violation of Article 14 of the Constitution of India as held by the Supreme Court in Tejinder Singh and Another Vs. Bharat Petroleum Corpn. Ltd. and Another, wherein the Supreme Court observed that fixing of retirement age to different categories, viz., 60 years and 58 years, is permissible. The relevant portion reads thus:

"Classification on the basis of reasonable differentia is a well-known basis and we are of the view that the petitioners are not entitled in the facts of the case to seek support from Article 14 for their claim."

In addition to this, the petitioners were promoted subsequent to coming into force of the Act and the Statutes and they were quite aware of the legal position about their retirement age. But they did not choose to challenge the validity or otherwise of the provisions of the Act and the Statutes creating 2 separate categories. They chose to challenge only the order of retirement only at the fag end of their service. Under similar circumstances, the Supreme Court in *Life Insurance Corporation of India and Others Vs. S.S. Srivastava and Others*, while dealing with the position of transferred employees of the Corporation from other insurance companies held as follows:

"Having regard to the lower emoluments and other benefits which the employee belonging to Class II and Class IV are entitled to get from the Corporation and the higher emoluments and other benefits to which officers belonging to Class I and Class II are entitled and also the nature of their work and the powers enjoyed by them, fixation of different ages of retirement for Class III and IV employees on one hand and Officers on the other would not by itself be violative of Articles 14 and 16 of the Constitution.

The fact that the pay, allowances and other conditions of service have been made the same in respect of both the transferred employees and the employees of the Corporation recruited after 1st September, 1956 has not brought about the integration of the two classes of employees into one single cadre. It appears to be the intention of Parliament that even as late as in 1981 that the two categories of employees, namely, the transferred employees and employees recruited after 1st September, 1956 in the Corporation should be kept separate."

Similar is the view of the Supreme Court in another Decision in *B.S. Yadav and Another Vs. Chief Manager, Central Bank of India and Others*, wherein the Supreme Court while considering Rules 1, 2 and 3 of the Central Bank of India (Officers) Service Regulations, 1979, held that Rule 3 prescribing 58 years of age for retirement of Officers recruited subsequent to 19.7.1969, i.e., after the nationalisation of Banks, and Rules 1 and 2 prescribing 60 years of age for retirement of other officers are not unconstitutional and not violative of Articles 14 and 16 of the Constitution. The same is the view of Supreme Court in the subsequent Decision in *Municipal Corporation of Delhi Vs. Sheila Puri*,

32. When creation or classifying of certain posts into 2 different categories is permissible, if any alterations or amendment made to such a rule, the same cannot be said that such action as illegal, arbitrary or discriminatory in nature as observed by the Supreme Court in *Bishun Narain Misra's* case wherein while dealing with scope of Article 311 held that the same is not applicable to the case of the petitioners therein, as termination of service of the petitioners therein was on account of the change in the superannuation age and the same did not

amount to removal from service within the meaning of Article 311 of the Constitution of India. When appointment is pursuant to a Rule, then whatever that is envisaged in the Rules of appointment shall prevail. In considering the act of an employer in altering the service conditions in the matter of promotion from various Classes on the basis of seniority, the Supreme Court held that termination of service resulting from change in the age of superannuation did not amount to removal within the meaning of Article 311. Similar is the view of the Supreme Court in UNION OF INDIA v. LT.COLKOMAL CHARAN AND ORS AIR 1992 SCW 1568

33. Thus the respondent ordering the petitioners to retire at the age of 58 years is neither arbitrary nor discriminatory. Classifying the positions of teachers and staff for retirement as two separate groups is quite valid. Further, retiring the petitioners at the age of 58 years does not amount to removal.

34. In view of the above discussion, it has to be said that respondent ordering the petitioners to retire at the age of 58 years is valid and not violative of Articles 14 and 16 of the Constitution. Since the position of the petitioners and the University teachers is altogether different, the petitioners are not entitled to seek for a declaration that they shall be allowed to continue in service till they attain the age of 60 years. Apart from this, even the conduct of the petitioners also does not entitle them to seek for any relief, as they were aware of the provisions of the Act and the Statutes fixing the age of retirement. But, they never attempted to challenge the validity or otherwise of the said provisions. On the other hand, they acquiesced in the rights and the obligations created under the Statutes. But only at the fag end of their age of retirement they approached this Court for the reliefs mentioned above that too without challenging the validity of the provisions of the Act and the Statute.

For the above reasons and in view of settled legal position on various Points raised, the petitioners are not entitled for any relief.

Hence, all these Petitions are dismissed. No costs.