

(1989) 09 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No's. 1836 and 12317 of 1989

P. Maribasavaradhya

APPELLANT

Vs

University of Mysore

RESPONDENT

Date of Decision : 19-09-1989

Acts Referred:

Constitution of India, 1950 — Article 14

Karnataka State Universities Act, 1976 — Section 23 (2) (h), 35, 36, 49, 50

Citation : (1991) 62 FLR 376 : (1990) ILR (Kar) 550 : (1991) 2 LLJ 217

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Judgement

1. Both these petitions relate to the same subject matter. Therefore, they are heard together and are disposed of by this common order.

2. The petitioner in W.P. No. 1836/89 joined service under the 1st respondent on 7th September, 1957 as a Research Assistant in the Oriental Research Institute of the 1st respondent. Initially he was appointed temporarily but his services subsequently came to be terminated and he was appointed regularly as Research Assistant Class II with effect from 1st June 1965 and thereafter he was promoted as Research Assistant Class-I.

3. The petitioner in W.P. No. 12317/89 was appointed as Research Assistant Class II on 1st June, 1965, under the 1st respondent to work in the Oriental research Institute. Thereafter he was promoted as Research Assistant Class-I in the Institute of Kannada Studies as the Oriental Research Institute came to be bifurcated into two.

4. On 21st January, 1975 the Syndicate of the Mysore University passed a Resolution as per Annexure-A relating to age of superannuation and service conditions of teachers and academic staff. Till 21st January, 1975 the age of retirement of all was 55 years. With effect from 21st January, 1975, as per the Resolution produced as Annexure-A, the age of superannuation of the teaching staff and also of the academic staff came to be enhanced to 60 years.

5. Another official by name Sri B. V. Narasimhacharya working as Research Assistant Class I in the Oriental Research Institute of the 1st respondent came to be retired by the 1st respondent on his attaining the age of 55 years on the ground that he did not either belong to the teaching staff or the academic staff, therefore, he was liable to be retired on attaining the age of 55 years. Sri B. V. Narasimhacharya challenged the action of the 1st respondent before this Court in W.P. No. 2929/11981 (B. V. Narasimhacharya v. State of Karnataka & others DD 13th December, 1982) to which the respondents herein were also parties along with the State of Karnataka.

6. This Court held that a Research Assistant working in the Oriental Research Institute Belongs to Academic Staff and he cannot be classified as belonging to administrative staff. Accordingly, this Court held that the age of superannuation of the academic staff being 60 years, Sri B. V. Narasimhacharya was entitled to be continued in service as Research Assistant Class I until he attained the age of 60 years. At this stage, it is relevant to notice the relevant portion of the Judgment in W.P. No. 2929/81. This Court after referring to the meaning given in the several dictionaries to the words "academy", "academic", "academician" held thus :

"The English-Kannada dictionary published by the University also gives the same meanings. On the above meanings, a person engaged in the research though not actually doing the job of a teacher, would be a member of an academic staff or would be a person holding the post of an academician.

In deciding whether a person is holding the post of an academic staff or the post of an academician, the nature of the duties performed by him should primarily guide the decision rather than an inapt description of the post in the Recruitment Rules.

16. As seen earlier, the petitioner had been appointed as a Research Assistant and has been continued all along in the post. On the application of the above meanings and on any principle, the petitioner can only be treated as a member of an academic staff and not as a member of an administrative staff and not as a member of an administrative staff. In that view, the petitioner was undoubtedly entitled to continue in service till he completes 60 years in terms of the resolution of the Syndicate dated 21st January, 1975 and the decision of the University to retire him at 55 years was illegal and is, therefore, liable to be quashed.

The aforesaid decision was taken up in Writ appeal No. 165/1983 (University of Mysore v. State of Karnataka) by the University. The same was dismissed on 16th February, 1983 The order passed in the writ appeal reads thus :

"The common question involved in these appeals is whether the concerned respondents have a right to remain in service till they attain the age of 60 years.

It is not in dispute, and indeed cannot be disputed, that if they hold academic

post, they have got a right to remain in service till the completion of 60 years. That was the University Resolution dated 21st January, 1975.

The learned Single Judge after considering in detail the nature of duties of the post held by the said respondents has come to the conclusion that they hold academic post and therefore, entitled to remain in service till 60 years and not liable to be retired at the age of 55.

We have heard Sri Vasudeva Reddy. But we are unable to agree with any one of his submissions. We do not find any error in the Judgment regarding the application of the principles in determining the nature of duties of the post held by the said respondents.

The appeals, therefore, are rejected."

Thus, a Research Assistant Class I was a Member of the Academic staff, and it was also settled to remain in service till he attained the age of superannuation of 60 years.

7. Prior to coming to force of the Karnataka State Universities act, 1976 (hereinafter referred to as "the Act"), Mysore University was governed by the provisions of Mysore Karnataka State Universities Act, 1976. However as per the provisions contained in Section 35 of the Act, no statutes were framed. Therefore, the resolution dated 21st January, 1975 produced as Annexure-A to the writ petition continued to govern the teachers and the academic staff. The Senate of the Mysore University in exercise of its power conferred by clause (h) of sub-section (2) of Section 23 read with clause (m) of Section 35 of the Act has made the statutes known as "The Mysore University Employees (Conditions of Service) Statutes, 1984" (hereinafter referred to as "the Statutes"). The Statutes define the expression "Employee" and "Teachers of the University. The Statutes received the assent of the Chancellor on 18th February, 1988, and from that date, they have become effective. The definition of the expression "Teachers of the university" contained in the Statutes is in conformity with the definition of the same expression contained in the Act. The Statutes also define the word "Employee" as meaning any person appointed to any class of post in the University of Mysore. The expression "Teachers of the University" means persons appointed for the purpose of imparting instruction in the University or in any college maintained by the University. Even in the Mysore University Act, 1956, the expression "teacher" was defined as meaning a person appointed to give instruction in a University College or in an affiliated College. The act also defines the expression "teachers". According to the definition, the expression "teachers" includes Professors, Readers, Lecturers and other persons imparting instruction in any affiliated college. Statute No. 3 of the Statutes prescribes the age of superannuation. According to that, a person appointed as teacher and holding lien on a post of teacher 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 according to the

University, the petitioners do not fall within the category of "teachers of the University" and they fall within category of "other employees". Hence their age of superannuation is 58 years and as such they have to retire on attaining the age of 58 years. Therefore, the University has issued the impugned order dated 28th January, 1989 permitting the petitioners to retire on 31st January, 1989 and 31st August, 1989 respectively as on those dates, the respective petitioners attain the age of 58 years.

8. The case of the petitioners is that they were the members of the academic staff and they continue to be the members of the academic staff as they are working as Research Assistant Class I in the Oriental Research Institute and also Institute of Kannada Studies respectively and as such they cannot be classified as "other employees", that such a classification is discriminatory because "other employees" who are the administrative staff of the University cannot either be equated to the posts of Research Assistant Class I held by the petitioners nor the petitioners can be reduced to the level of "other employee"s. Therefore, it is the case of the petitioners that inclusion of the petitioners in the category of "other employees" is nothing but equating the petitioners with unequals and hence the interpretation placed by the University on rule 3(1) of the Statutes that the petitioners fall within the category of "other employees" is bad in law as they cannot be equated to or put in the category of "other employees" which is discriminatory. Therefore, the Rule to the extent it results in causing discrimination to the petitioners cannot be applied to the petitioners.

9. On the contrary, it is contended on behalf of the university by Sri N. Devadas V. C. Brahmarayappa, learned Counsels that under the Act, there are only two categories "Employees" and "Teachers of the University" and the mode of recruitment as provided under Sections 49 and 50 of the Act provides for recruitment to these two classes and there is no class or category recognised under the Act known as "academic staff". Therefore, the petitioners have to be necessarily grouped within the category of "Employee of the University" and not as "Teachers of the University" since they do not impart instructions either in the University or in any college maintained by the University; that there is no discrimination caused by such classification. Hence it is contended on behalf of the University that the implementation of the Statutes as made by the Senate of the University is in accordance with the provisions of the Act and the statutes.

9. 1. It is also further contended by the petitioners that the age of superannuation of non-teaching staff other than academic staff, by reason of the statutes, stands enhanced from 55 to 58 years whereas the age of superannuation of the petitioners by reason of putting them in the category of "other employees of the University", the age of superannuation stands reduced from 60 to 58 years. This, according to the petitioners, demonstrates that the classification made by the statutes has no nexus to the object sought to be achieved and it has no rationale behind it. It is also contended on behalf of the petitioners that the application of the statutes to the petitioners who joined the

service long prior to the coming into force of the statutes would amount to giving retrospective effect to the statutes which is not permissible inasmuch as the statutes state that they are operative prospectively and further when the vested right is affected by reason of application of the statutes, it should not be given effect to retrospectively.

10. On the contrary, it is contended on behalf of the University that the statutes are applicable to all those who were in the service of the University as on the date the statutes came into force. That there is a power vested in the Senate either to reduce or to enhance the age of superannuation because the conditions of service of an employee of the University can unilaterally be altered inasmuch as it is contended that service under the University is matter of status since the services are governed by the provisions of the Act and the Statutes made thereunder and the recruitment is also made according to the Act and the Statutes.

11. In the light of these contentions, the points that arise for consideration are as follows :

1) Whether the classification of the petitioners into the category of "employees" has resulted in discrimination ?

2) Whether the statutes are given effect to retrospectively ?

12. Before taking up the aforesaid points for determination, it may be noticed in brief that the Senate, having regard to the provisions contained in sub-section (1) and clause (h) of sub-Section (2) of Section 23 and clause (m) of Section 35 read with Section 36 of the Act, of the University has the power to review from time to time the policies of the University and to suggest measures for the improvement and development of the University and to consider the annual accounts and audit reports of the University including the subjects mentioned in sub-section (2) of Section 23 of the Act. Clause (m) of section 35 of the Act provides for framing statutes relating to conditions of service including emoluments of the employees of the University. The procedure for making the statutes is laid down in section 36 of the Act. It is not the case of the petitioners that the statutes are not made in accordance with the provisions contained in Section 36 of the Act. Therefore, the statutes in question are made by the Senate in accordance with the provisions contained in the Act.

13. POINT NO. 1 : The fact that the statutes are made in accordance with the provisions of the Act will not in any way place them above the attack based on the infringement of the Fundamental Rights guaranteed under Part-III of the Constitution. The statutes, even if they are framed in accordance with the Act, they are to be in conformity with and not opposed to, the provisions contained in Part-III of the Constitution Therefore, it is the case of the petitioners that the classification of the petitioners - Research Assistants Class-I - into the category of "other employee" is violative of Article 14 of the Constitution inasmuch as the "other employees" other than the "teaching staff" otherwise described as

"Teachers of the University" cannot be equated with the Research Assistants Class-I as it has been recognised that they form a definite and distinct group being the members of the academic staff, different from "other employees" of the University.

14. Rules of Recruitment relating to the Research Assistant's post prescribe different qualifications. In fact, Oriental Research Institute has a different Directorate. As per the records produced by the University, the staff pattern of Oriental Research Institute is as follows :

10 Director, (2) Deputy Director, (3) Research Assistant, Class-I; (4) Research Assistant Class-II etc.

Under the Rules of Recruitment, the post of Research Assistant Class-II is required to be filled up by direct recruitment whereas the post of Research Assistant Class-I has to be filled up by promotion by selection from among Research Assistants Class-II who have put in more than 2 years of service in that grade. The qualifications prescribed for the posts of Research Assistant Class-I and II are as follows :

"1. Research Assistant Class-I

Master's degree in Kannada or Sanskrit and experience in editing old Kannada works of atleast two Vidwan examinations with general education upto SSLC or a good knowledge of South Indian Scripts and experience in editing old works.

2 Research Assistant Class II

Master's degree in Sanskrit or Kannada, a good knowledge of South Indian Scripts and experience in the preservation of antiquities (Training in Archival keeping) or Two Vidwan Examinations of which atleast one shall be in Shastras, atleast Kannada Pandit Examinations and one Sanskrit Vidwan Examination or a good knowledge of the South Indian Scripts, preferably general education upto SSLC."

In the aforesaid category, none of the other employees of the University fall. Even though the recruitment to the staff of the University, Oriental Research Institute and the Institute of Kannada Studies may be made by the same recruitment Committee as per Section 50 of the act, but the conditions of service, qualifications for the post, the promotional avenue, the scale of pay and the duties performed by the academic staff of the aforesaid institutes are not in any way similar to the members of the other staff viz., administrative staff of the University. Taking into consideration these aspects, this Court in W.P. No. 2929/1981 (B. V. Nrasimhacharya v. State of Karnataka and others dated 13th, December, 1982) as already pointed out above, has held that the Research Assistant Class-I belongs to the academic staff and not to any other category. It is on that basis, this Court has held that the Research Assistant Class-I is entitled to remain in service until he attains the age of 60 years. The Resolution of the Syndicate dated 21st January, 1975 (Annexure-A) also establishes the fact that

the teaching staff and the academic staff from one class. It is because of that, the age of superannuation for both the classes was provided as 60 years. Thus when the Act was brought into force, the position of the petitioners was that they were put in the category of teaching staff. Thus they were placed in par as far as age of superannuation was concerned. This position continued even after the Act came into force on 25th September, 1975 and it continued till 18th February, 1988 the date on which the Statutes came into force. It is only on the framing of the Statutes with effect from 18th February, 1988, it is the case of the University, that the academic staff cannot at all be grouped in the category of "teacher of the University" or in the category of "teaching staff". In their statement of objections, they have specifically made it clear that it is because of the statutes that the petitioners are not entitled to remain in service till they attain the age of 60 years and they are liable to retire on attaining the age of 58 years because that is the age of superannuation prescribed for the category of other employees of the University to which category the petitioners belong. Thus according to the University the statutes classify the petitioners into the category of "other employees" and as such their age of superannuation is 58 years.

15. The classification made by the statutes cannot be held to be valid in law as it amounts to equating the petitioners with unequals viz., "employees". The Supreme Court in AIR India Vs. Nergesh Meerza and Others, considered the question as to when hostile discrimination will occur. In para 37 of the Judgment it laid down the following norms :

"37. Thus, from a detailed analysis and close examination of the cases of this Court, starting from 1952 till today, following proposition emerge :-

1) In considering the fundamental right of equality of opportunity, a technical, pedantic or doctrinaire approach should not be made and the doctrine should be invoked even if different scales of pay, service terms, leave etc. are introduced in different or dissimilar posts.

Thus where the class or categories of service are essentially different in purpose and spirit, Article 14 cannot be attracted.

2) Article 14 forbids hostile discrimination, but not reasonable classification. Thus where persons belonging to a particular class in view of their special attributes, qualities, mode of recruitment and the like, are differently treated in public interest to advance and boost members belonging to backward classes, such a classification would not amount to discrimination having a close nexus with the objects sought to be achieved so that in such, Article 14 will be completely out of the way.

3) Article 14 certainly applies where equals are treated differently without any reasonable basis.

4) Where equals and unequals are treated differently, Article 14 would have no application.

5) Even if there be one class of service having several categories with different attributes and incidents, such a category becomes a separate class by itself and no difference or discrimination between such category and the general members of the other class would amount to any discrimination or to denial of equality of opportunity.

6) in order to Judge whether a separate category has been carved out of a class of service, the following circumstances have generally to be examined.

a) the nature, the mode and the manner of recruitment of a particular category from the very start.

b) the classification of the particular category;

c) the terms and conditions of service of the members of the category;

d) the nature and character of the posts and promotional avenues;

e) the special attributes that the particular category possesses which are not to be found in other classes, and the like."

Applying the aforesaid propositions to the case on hand, and on taking into consideration the special attributes and mode of recruitment of Research Assistants, qualifications prescribed, promotional avenues provided for the post of Research Assistant and the duties to be performed by them, they cannot be classified into the category of "other employees" and they cannot be equated with other employees as they form a class by themselves under the category of academic staff as it was recognised prior to the coming into force of the Statutes in question. By reason of this, the equation of the petitioners with unequals, the age of superannuation of the petitioners has been reduced from 60 to 58 years. The classification so made is not based on an intelligible differential, and it has no rational relation to the object sought to be achieved by the statutes, because there is no comparison between the Research Assistants of Oriental Research Institute and the Institute of Kannada Studies and the administrative staff of the University.

In the *Railway Board Vs. A. Pitchumani*, the age of superannuation came to be provided on the basis of entry into service. But the Supreme Court held that such a classification was impermissible. The relevant portion of the Judgment is as follows : (p. 120)

"23. The question is whether the distinction made under the new Note to Clause (b) substituted on 23rd December, 1967 valid ? In our opinion, such a rule, 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.

24. 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 11th January, 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 satisfied one of the essential requisites of Article 14 of the Constitution, as interpreted by this Court."

16. Thus from the aforesaid Judgment it is clear that the classification of the petitioners into the category of "other employees" is not reasonable classification ... Upto 18th February, 1988, the petitioners were not put in the category of "other employees" and they were classified into the category of "academic staff" and considered on par with the teaching staff as far as age of superannuation was concerned. As such, they should not have been taken out of that category and put into the category of other employees. Such a classification is neither reasonable nor is it founded on an intelligible differential. It does not satisfy the essential requisites of Article 14 of the Constitution as it results in equating the unequals and subjects the petitioners to hostile discrimination. The object of the Statutes is to fix 58 years and 60 years as the age of superannuation for the administrative staff classified as "other employees" and Teaching Staff Classified as "Teachers of the University" respectively. Research Assistants Class-I or Class-II do not fall in the category of "other employees" as they are the academic staff distinct from the administrative staff upto 18th February, 1988 as the work they do or the duties they perform have close proximity to teaching i.e., imparting knowledge. Research means systematic investigation towards increasing the sum of knowledge. Therefore, the interpretation placed by the University that the academic staff viz., Research Assistants of the Oriental Research Institute fall within the category of "employees" as defined in the statute is violative of Article 14 of the Constitution" as it results in discrimination by equating the petitioners with unequals. As such the application of the statutes on the ground that the petitioners fall within the category of "other employees" cannot be upheld. Of course, as result of this conclusion, the statutes in so far they affect the, petitioners cannot be sustained or upheld as valid.

17. The next question that arises for consideration is whether the statutes in so far they affect the petitioners should be struck down or not. In this regard it may

be struck down or not. In this regard it may be noticed that upto the date of coming into force of the statutes, Research Assistants working in the Oriental Research Institute were classified as members of the academic staff and were equated with teaching staff as far as age of superannuation was concerned. The statutes do not specifically cover this category of academic staff of the University. Therefore, instead of striking down the statutes, if it is possible to hold that the academic staff of the university as contemplated in the Resolution of the Syndicate dated 21st January, 1975 does not fall within the category of "other employees" of the University as defined in the statutes and it falls in the category of "teacher" or "Teacher of the University", the age of superannuation as provided under the statutes and as applicable to the Teachers of the University will be applicable to Research Assistants of the Oriental Research Institute and the Institute of Kannada Studies of the Mysore University. In the light of this, the Senate has to take necessary steps to appropriately amend the statutes. Accordingly, point No. 1 is answered as follows :

"Classification of the petitioners - Research Assistants, otherwise known as academic staff into the category of "other employees" which is other than the category of "Teacher" or "Teacher of the University" is discriminatory; as such statute No. 3 of the Statutes to the extent it classifies the petitioner-academic staff-into the category of "other employees" is liable to be struck down. But instead of striking down the same, it can be read down and construed to spare the statute from the mischief of discrimination. Accordingly, Statute No. 3 of the Statutes is read as applying the age of superannuation of 60 years to the petitioner - Research Assistants Academic Staff of the Oriental Research Institute and the Institute of Kannada Studies of the Mysore University, as applicable to "Teacher" or "Teacher of the University."

POINT NO. 2

18. The contention of the petitioners that if the statutes are applied to them and they are made to retire on attaining the age of 58 years, it amounts to giving effect to the Statutes retrospectively, cannot at all be accepted. In *Bishun Narain Mishra Vs. State of Uttar Pradesh and Others*, the Supreme Court considered the question of retrospectivity of the Notification concerned therein relating to age of superannuation and held thus (p. 49) :

"The next contention on behalf of the appellant is that the Rule is retrospective and that no retrospective Rule can be made. As we read the Rule, we do not find any retrospectivity in it. All that the Rule provides is that from the date it comes into force, the age of retirement would be 55 years. It would, therefore, apply from that date to all Government servants, even though they may have been recruited before 25th May, 1961 in the same way as the Rule of 1957 which increased the age from 55 years to 58 years applied to all Government servants even though they were recruited before 1957."

It was further held that :

"... the new Rule reducing the age of retirement from 58 years to 55 years cannot be said to be retrospective. The proviso to the new Rule and the second notification are only methods to tide over the difficult situation which would arise in the public service if the new Rule was applied at once and also to meet any financial obligation arising out of the enforcement of the new Rule. The new rule, therefore cannot be struck down on the ground that it is retrospective in operation."

I have already pointed out that conditions of service can be modified and applied to those who have been in service even prior to the modification of the conditions of service because the service under the University is not a matter of contract but it is a matter of status as it is governed by the Act and the Statutes relating to service conditions. This aspect is also considered by the Supreme Court in *Roshan Lal Tandon Vs. Union of India (UOI)*,

19. The fact that the Statutes apply and are applicable to all those who have been in service of the University on the date the statutes come into force would not make them retrospective. Thus Point No. 2 is answered in the negative.

20. In the light of the aforesaid conclusions reached by me, it is not necessary to consider the several decisions pressed into service by the learned Counsel for the University. They are : (1) *N. Lakshmana Rao and Others Vs. State of Karnataka and Others*, (2) *B.S. Vadera Vs. Union of India (UOI) and Others*, (3) *V. Balasubramaniam and Others Vs. Tamil Nadu Housing Board and Others*, (4) *Madurai Kamaraj University v. Dr. K. Rajayyan* 1988 SCC 97 , and (5) *Challa Ramkonda Reddy and Others Vs. State of Andhra Pradesh by District Collector, Kurnool*,

21. For reasons stated above, these writ petitions are allowed in the following terms :

(i) The petitioners being the Research Assistants of the Oriental Research Institute and Institute of Kannada Studies of the Mysore University, belong to the academic staff of the University and they do not belong to the category of "other employee" as contemplated in Statute No. 3 of the Statutes; and they fall in the category of "Teacher" or "Teacher of the University" under the Mysore University.

(ii) The age of superannuation of the petitioners as per the resolution of the Syndicate dated 21st January, 1975, produced as Annexure-A, continues to be 60 years as applicable to "Teachers" or "Teachers of the University" under the Statutes as they do not fall under the category of "other employee" of the University being the academic staff are placed in the category of "Teachers of the University".

(iii) The order bearing No. ETA(A4)/990/87-88 dated 28th January, 1989 issued by the Registrar of the University of Mysore, Produced as Annexure-E, relating to both the petitioners is hereby quashed.

(iv) The petitioners shall be allowed to continue in service subject to other

service conditions until they attain the age of superannuation of 60 years.

(v) The Senate of the University, having regard to the Judgment of this Court in W.P. No. 2929/1981 (B. V. Narasimhacharya v. The State of Karnataka and others DD 13-12-1982) and W.A. No. 165/1983 - The University of Mysore v. State of Karnataka and others dated 16th February, 1983) and in the light of this decision, shall take appropriate steps to amend the statutes so as to remove the discrimination caused by placing Research Assistants in the category of "other employees" different from the category of "Teachers of the University" and the age of superannuation provided pursuant there to in the Statutes and classify the Research Assistants Academic Staff - working in the Oriental Research Institute and Institute of Kannada Studies of Mysore University so as to be in par with and to fall in the category of the members of the teaching staff otherwise described as "teaching" or "teachers of the University" in so far it relates to the age of superannuation.

(vi) In the facts and circumstances of the case, there will be no order as to costs.