
(2018) 02 J&K CK 0021
In the Jammu And Kashmir High Court
Case No : 2135 of 2017

Prof. (Dr.) Khurshid Iqbal Andrabi

APPELLANT

Vs

State of J&K & ors.

RESPONDENT

Date of Decision : 16-02-2018

Acts Referred:

Constitution of India, Article 14, Article 16 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Dissolution of a Distr

Citation : (2018) 02 J&K CK 0021

Hon'ble Judges : Dhiraj Singh Thakur

Bench : Single Bench

Advocate : Z.A. Shah, I. Sofi, Jahangir Iqbal Ganai, Sheikh Umar Farooq, D.C. Raina, Tufail Qadiri,?Mohammad Shoeb Alam

Final Decision : Dismissed

Judgement

1. The present petition has been filed by the petitioner inter alia seeking a writ of prohibition, restraining the respondents to give effect to the order

dated 8th of September, 2017 passed by the Chancellor and also prays for a writ of mandamus to the respondents to permit him to continue as

Vice Chancellor for a period of five years from the date he took charge as such.

2. With a view to understand the background on which the present controversy has arisen, it is necessary to give a few material facts in brief:

3. The petitioner came to be appointed as the Vice-Chancellor of the Kashmir University by virtue of order dated 17th of October, 2014 passed

by the Chancellor of the University of Kashmir in terms of the powers vested in him under Section 12 of the Kashmir and Jammu Universities Act,

1969 (for short, Act of 1969). The appointment was for a period of three years

with effect from the date the petitioner would take over charge on such terms and conditions, which were to be notified separately. It appears that subsequently that the terms and conditions came to be notified by virtue of order dated 21.1.2015 issued under orders of the Chancellor.

4. Section 12(5) of the Act of 1969 envisages the tenure of the Vice Chancellor and prescribes as under:

The Vice-Chancellor of a University shall hold office for three years:

Provided that on the expiry of the term of his office, the Vice- Chancellor shall be eligible for re-appointment for such term as the Chancellor may

in consultation with the Pro- Chancellor, determine:

.....
.....

Amendment of Section 12(5) of the Act of 1969.

5. By virtue of the Jammu and Kashmir Universities (Amendment Act), 2015 (for short, Act of 2015), which came to be notified in the Govt.

Gazette on 20.4.2015, Section 12(5) of the Act of 2015 was amended as under:

In sub-section (5) of section 12 of the Kashmir and Jammu Universities Act, 1969, for the words ""three years"", the words ""five years"" shall be substituted.

Needless to say that the amendment was incorporated at a time when the petitioner was still serving as the Vice-Chancellor of the Kashmir

University and his tenure had not yet expired, which was otherwise to expire on 17th of October, 2017.

6. The Chancellor of the University by virtue of order dated 8th of September, 2017 constituted a search committee for the post of Vice

Chancellor for the university of Kashmir in anticipation of the expiry of the three years tenure of the petitioner on 17.10.2017. The petitioner

believing that he has a right to continue for a further period upto a maximum of five years in view of the amendment incorporated in Section 12(5)

of the Act of 2015 has filed the present petition inter alia seeking a writ of prohibition, restraining the respondents to give effect to the order dated

8th of September, 2017 passed by the Chancellor and also prays for a writ of mandamus to the respondents to permit him to continue as Vice-

Chancellor for a period of five years from the date he took charge as such.

7. In order to support and buttress the case of the petitioner, learned counsel for the petitioner, Mr. Shah, urged that the benefit of the amendment

brought about in Section 12(5) of the Act of 2015 could not be denied to the petitioner inasmuch as the amending act had altered the tenure of the

Vice-Chancellor from three years to five years by way of substitution.

8. It was further urged that when an amendment is incorporated by way of substitution, the substituted provision stands repealed and the amended

provision is substituted in the place of the earlier provision as if the same was there since inception in the earlier Act. It was urged that the repealed

provision and the substituted provision would not in law co-exist as that would lead to inconsistency and absurdity. Referring to the statement of

objects and reasons of the Amendment Act of 2015, learned counsel for the petitioner highlighted the reasons why such an amendment as

incorporated through the amending Act was felt necessary. It was urged that the reason why the tenure was extended from 3 years to 5 years was

to enable the Vice Chancellor to formulate effectively and implement the policies and plans.

9. It was next urged that while considering the effect of the amending Act, the focus should not be so much on whether it operates prospectively or

retrospectively as is required to be seen whether it has any retroactive effect, especially in view of the clear background in which the amending Act

was necessitated as seen from the statement of objects and reasons as also the fact that the petitioner was very much in place as a Vice Chancellor

on the date when the amending came into effect. It was also urged that the fact that the Chancellor had earlier in the order of appointment fixed a

tenure of 3 years was inconsequential as the Chancellor did not have any discretion in that regard as the tenure could be fixed only in accordance

with the provision of Sec. 12(5) of the Act of 1969. It was, thus, urged that after the amendment the petitioner was legally entitled to claim a right

to serve through the entire tenure of five years.

10. The respondents, on the other hand, took a stand that the petitioner was not legally justified in claiming to serve for a tenure more than what

was earlier fixed in his order of appointment dated 17th of October, 2014. It was stated that the amendment which had the effect of increasing the

tenure of the Vice-Chancellor from three years to five years was prospective in

its operation and thus did not have the effect of creating new rights

in favour of the petitioner much less did they affect any of the accrued or vested rights of the petitioner.

11. A Plethora of judgments were cited by the learned counsel appearing for the parties.

12. I have considered the rival submissions made by learned counsel for the parties.

13. From the facts as noticed hereinabove, it is clear that the nature of the petitioner's appointment was on tenure basis for a period of three years

which period had to expire on 17.10.2017.

14. It is no longer *res integra* as was held in *Dr. L.P. Aggarwal vs. Union of India*, AIR 1992 SC 1872 that a tenure means a term during which an

office is held and that once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end

on the completion of the tenure unless curtailed on justifiable reasons. Such a person does not superannuate, he only goes out of the office on

completion of his tenure.

15. In *P. Venugopal Vs. Union of India*, (2008) 5 SCC 1, the Apex court was considering the case of the Director of All India Institute of Medical

Sciences, New Delhi, who despite having been appointed to undergo a tenure of five years had been removed prematurely. Considering the

removal in the light of the tenure fixed, the Apex Court observed as under:

32.Service conditions make the post of Director a tenure post and as such the question of superannuating or prematurely retiring the

incumbent of the said post does not arise at all. Even an outsider (not an existing employee of the AIIMS) can be selected and appointed to the

post of Director. The appointment is for a tenure to which principle of superannuation does not apply. "Tenure" means a term during which the

office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said post begins when he

joins and it comes to an end on the completion of tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes

out of the office on completion of his tenure.

16. As to what is the scope of the word "justification" and "justifiable grounds" was dealt with in *Raj Kapoor Vs. Laxman*, AIR 1980 SC 605

where the court held as under:

6..... "Justified" according to Black's Legal Dictionary means:

Done on adequate reasons sufficiently supported by credible evidence, when weighed by unprejudiced mind, guided by common sense and by correct rules of law.

The Shorter Oxford English Dictionary assigns this meaning for "justification":

The showing in court that one had sufficient reason for doing that which i.e. is called to answer; the ground for such a plea. Lexically, the sense is

clear. An act is justified by law if it is warranted, validated and made blameless by law. Is a legal sanction permitting a thing a legal justification for

doing it? May be, there is a fine semantic shade between mere legal sanction, which is passive, and clear legal justification which is active. For the

work-a-day world of meanings, between "permissive" and "justificative" "thin partition do their bounds divide". It is an antinomy to say that under

section 5A (1A) of the Act the Board certifies a film as suitable for public exhibition and for S. 292 I.P.C. to punish such exhibition unless the

ground covered by the two laws be different. Although it may be plausible to say that what is merely certified as suitable for show by a law may

not go the length of holding that it is justified by law. Such niceties need not deter us once we grasp the sweep of the Cinematograph Act.

17. The next question that arises for consideration is as to what is the scope and extent of the vested rights, which the petitioner can claim are

inviolable and cannot be taken away from him. In this context, it is first necessary to determine as to what are vested rights.

18. Black Law's Dictionary, Ninth Edition, defines "vested" as under:

Having become a completed, consummated right for present or future enjoyment; not contingent; unconditional; absolute...

19. The Oxford dictionary defines "vested" as:

..secured or settled in the possession of or assigned to a person ..

20. In J.S. Yadav vs. State of Uttar Pradesh & anr, (2011) 6 SCC 570, the Apex Court while defining the word "vest" and "vested rights" has

held as under:

21. The word "'vest'" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the

long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right". It had a "legitimate" or "settled expectation" to obtain right to enjoy the property, etc. Such "settled expectation" can be rendered impossible of fulfilment due to change in law by the Legislature.

Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law. (Vide: *Howrah Municipal Corpn. & Ors. v. Ganges Rope Co. Ltd. & Ors.*, (2004) 1 SCC 663).

22. Thus, "vested right" is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provide for such a course.

21. In *P.D. Aggarwal & ors vs. State of U.P & ors*, (1987) 3 SCC 622, the Apex Court was dealing with the issue of retrospective amendments to rules, having the effect of taking away vested rights and held thus:

18.....
.....the Government has power to make retrospective amendments to the Rules but if the Rules purport to take away the vested rights and are arbitrary and not reasonable then such retrospective amendments are subject to judicial scrutiny if they have infringed Articles 14 and 16 of the Constitution.

22. In *Chairman Railway Board & ors vs. C.R. Rangadhamaiah & ors*, AIR 1997 SC 3828, the Apex Court held that a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.

23. From the aforementioned, it thus becomes clear that any amendment, which has the effect of altering the rule retrospectively from an anterior date, which has the effect of taking away the benefits from an employee, which were available under the said rule can successfully be challenged as being arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution on the principle that vested/accrued rights cannot be taken away retrospectively in an arbitrary manner.

24. Equally settled is the principle of law that where vested/accrued rights are sought to be taken away retrospectively from an anterior date, the

law must provide for taking away such rights expressly or by necessary implication and unless and until the law specifically provides so, the same

shall be deemed to be prospective. In *Sangam Spinners vs. Regional Provident Fund Commissioner I*, (2008) 1 SCC 391, the Apex Court held as

under:

It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have

retrospective operation. The absence of a saving clause in a new enactment preserving the rights and liabilities under the repealed law is neither

material nor decisive of the question. In terms of Section 6(c) of the General Clauses Act 1897 unless a different intention appears, the repeal shall

not affect any right, privilege or liability acquired, accrued or incurred under the enactment repealed.

25. In the backdrop of the judgments discussed hereinabove and testing the ratio of the same on the touchstone of the facts of the present case, it

can be seen that the tenure to which the petitioner could have legitimately claimed a vested right in was the tenure for a period of three years fixed

in accordance with the letter of his appointment dated 17.10.2014, which is in accord with the tenure fixed in terms of Section 12(5) of the Act of

1969. The petitioner cannot at all claim that by virtue of the amendment Act of 2015, any of his vested rights in the tenure already fixed are sought

to be taken away, nor is it the case of the petitioner before this court that the three years tenure is sought to be reduced in any manner and thus it

could never be the case of the petitioner that any of his vested rights were affected by the amendment in question.

26. If that be so, the next question that arises for consideration is as to whether the petitioner in addition to the rights to which he could claim are

vested in him, can also legitimately lay a claim to a period of tenure which falls beyond the purview of vested rights.

27. As discussed in the preceding paragraphs of this judgment, the petitioner's claim is that because the amendment act of 2015 had substituted

the tenure of three years with tenure of five years, it must always be deemed to be retroactive in operation. At this stage, it, therefore, becomes

necessary to understand the difference between amendment, repeal and substitution and the effect thereof in the background of the facts of the

present case as also the concept of retroactivity of a statute.

28. In *Government of India & ors vs. Indian Tobacco Association*, (2005) 7 SCC 396, the Apex court considered the meaning of the word

"substitute" and held as under:

15. The word "substitute" ordinarily would mean "to put (one) in place of another"; or "to replace". In Black's Law Dictionary, Fifth Edition, at

page 1281, the word "substitute" has been defined to mean "To put in the place of another person or thing". or "to exchange". In Collins English

Dictionary, the word "substitute" has been defined to mean "to serve or cause to serve in place of another person or thing"; "to replace (an atom or

group in a molecule) with (another atom or group)"; or "a person or thing that serves in place of another, such as a player in a game who takes the

place of an injured colleague".

29. In the aforementioned judgment, reliance was placed upon *Ramkanali Colliery of BCCL vs. Workmen by Secy., Rashtriya Colliery Mazdoor*

Sangh and another, (2001) 4 SCC 236 in which the Apex Court has held as under:

8..... If there is both repeal and introduction of another provision in place thereof by a

single exercise, the expression substituted is used. Such deletion has the effect of the repeal of the existing provision and also provide for

introduction of a new provision. In our view there is thus no real distinction between repeal and amendment or substitution in such cases. If that

aspect is borne in mind, we have to apply the usual principles of finding out the rights of the parties flowing from an amendment of a provision. If

there is a vested right and that right is to be taken away, necessarily the law will have to be retrospective in effect and if such a law retrospectively

takes away such a right, it can no longer be contended that the right should be enforced.....

30. While dealing with the issue of substitution, repeal and amendment in *Bhagat Ram Sharma vs. Union of India & ors*, AIR 1988 SC 740, the

apex Court held that it was a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and

a new provision substituted. It was further held that such deletion had the effect of repeal of the existing provision and that there was no real

distinction between "repeal" and an "amendment". Reliance was placed on

Sutherland's Statutory Construction, 3rd Edn., Vol. 1 at p. 477, on the following statement of law:

The distinction between repeal and amendment as these terms are used by the Courts, is arbitrary. Naturally the use of these terms by the Court is

based largely on how the Legislatures have developed and applied these terms in labelling their enactments. When a section is being added to an

Act or a provision added to a section, the Legislatures commonly entitle the Act as an amendment..... When a provision is withdrawn from a

section, the Legislatures call the Act an amendment, particularly when a provision is added to replace the one withdrawn. However, when an entire

Act or section is abrogated and no new section is added to replace it, Legislatures label the Act accomplishing this result a repeal. Thus as used by

the Legislatures, amendment and repeal may differ in kind-addition as opposed to withdrawal or only in degree-abrogation of part of a section as

opposed to abrogation of a whole section or Act; or more commonly, in both kind and degree-addition of a provision to a section to replace a

provision being abrogated as opposed by abrogation of a whole section of an Act. This arbitrary distinction has been followed by the Courts, and

they have developed separate rules of construction for each. However, they have recognised that frequently an Act purporting to be an amendment

has the same qualitative effect as a repeal-the abrogation of an existing statutory provision-and have therefore applied the term "implied repeal"

and the rules of construction applicable to repeals to such amendments.

Amendment is, in fact, a wider term and it includes abrogation or deletion of a provision in an existing statute. If the amendment of an existing law is

small, the Act professes to amend; if it is extensive, it repeals a law and re-enacts it. An amendment of substantive law is not retrospective unless

expressly laid down or by necessary implication inferred.

31. It was thus held that amendment was a wider term and that if the amendment was small, the term "amend" is used and if the same is extensive, the law is said to be repealed.

32. It was further held in the judgment supra that mere use of the word substitution would not make the amendment retrospective. What was held

by the lordships was as under:

19. For the sake of completeness, we wish to add that the mere use of the word "substitution" does not imply that Regulation 8(3) must relate

back to November 1, 1956, the appointed day.....

33. In *Zile Singh vs. State of Haryana & ors*, (2004) 8 SCC 1, the Apex Court while dealing with the effect of substitution held as under:

25. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (See Principles of Statutory

Interpretation, *ibid*, p.565). If any authority is needed in support of the proposition, it is to be found in *West U.P. Sugar Mill s Assn. and Ors. Vs.*

State of U.P. (2002) 2 SCC 645, *State of Rajasthan Vs. Mangilal Pindwal*, (1996) 5 SCC 60, *Koteswar Vittal Kamath Vs. K. Rangappa Baliga*

and *Co.*, (1969) 1 SCC 255 and *A.L.V.R.S.T. Veerappa Chettiar Vs. S. Michael & Ors.*, AIR 1963 SC 933 . In *West U.P. Sugar Mills*

Association and Ors.'s case (*supra*) a three-Judges Bench of this Court held that the State Government by substituting the new rule in place of the

old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centering around the issue the Court held that

the substitution had the effect of just deleting the old rule and making the new rule operative. In *Mangilal Pindwal*'s case, this Court upheld the

legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the

substitution would have the effect of amending the operation of law during the period in which it was in force. In *Koteswar* case a three-Judge

Bench of this Court emphasized the distinction between "supersession" of a rule and "substitution" of a rule and held that the process of substitution

consists of two steps : first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place.

34. If an amendment by substitution is not retrospective by implication, then the issue arises whether it is to operate retrospectively or

prospectively. Certain tests have been crystallized by the apex court in *Hitendra Vishnu Thakur & ors vs. State of Maharashtra & ors*, (1994) 4

SCC 602 and held as under:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary

intendment, whereas a statute which merely affects procedure, unless such a

construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.

35. At this stage, it may also be apt to refer to Maxwell on the Interpretation of statutes, 12th Edition, wherein it is stated thus:

Perhaps no rule of construction is more firmly established than thus - that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only." The rule has, in fact, two aspects, for it, "involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary.

36. In *Zile Singh vs. State of Haryana*, the apex court was considering a case where the Haryana Municipal (Amendment) Act, 19 94 inserted section 13-A in the Principal Act prescribing the disqualification from being chosen as a member of the municipality if he had more than two children living. The proviso appended to the said section provided as under:

Provided that a person having more than two children on or after the expiry of one year of the commencement of this Act, shall not be deemed to be disqualified".

37. The amendment came into force on 5th of April, 1994. The amendment however proved to be defeating the purpose of the enactment

inasmuch as while a person with more than two children as on 5th April, 1994 would stand disqualified upto a period of one year from the said

date, yet the disqualification would cease upon expiry of one year. With a view, thus, to take corrective action by virtue of an amendment Act,

which came into effect from 4.10.1994 in the proviso, the word ""after"" was substituted with the word ""upto"". In the meantime, Zile Singh had

fathered his fifth child on 13.8.1995. Since he was holding the office as a member of the municipality, the issue regarding his incurring a

disqualification arose and subsequently his disqualification was notified. On the issue as to whether the second amendment in October, 1995 was

retrospective in operation, it was held that the same was declaratory in nature and intended to remove the absurdity and to bring it in conformity

with what the legislature had really intended to provide. It was held that while there was a presumption against retrospectivity, presumption against

retrospective operation was not applicable to declaratory statutes. What was stated by the Apex court in Zile Singh's case (supra) in paragraph 14

is reproduced hereunder:

14. The presumption against retrospective operation is not applicable to declaratory statute....In determining, therefore, the nature of the Act,

regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed

retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act.

It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.. An amending

Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this

nature will have retrospective effect.

38. Reliance was also placed on the constitution bench judgment in Shyam Sunder & Ors. Vs. Ram Kumar & Anr., (2001) 8 SCC 24, wherein it

was held, ""Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is

to supply an omission or explain previous statute and when such an Act is

passed, it comes into effect when the previous enactment was passed.

The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed invariably

it has been held to be retrospective. Mere absence of use of word "declaration" in an Act explaining what was the law before may not appear to

be a declaratory Act but if the Court finds an Act as declaratory or explanatory it has to be construed as retrospective.

39. Reliance was placed on Zile Singh's case by both the counsel for the petitioner as also those of the respondents. Insofar as counsel for the

petitioner is concerned, the argument was that in Zile Singh's case, amendment by substitution affected at a later date was held to be retroactive in

operation necessitated on account of giving to effect to the intent and purpose which the enactment intended to achieve. Drawing an analogy from

Zile Singh's case, it was urged that in the present case also, the effect of amendment by substitution ought to be given retroactive effect keeping in

view the statement of "objects and reasons" which had necessitated such an amendment. At this stage, it may be pertinent to reproduce the

statement of "objects and reasons" accompanying the amendment act of 2015 as under:

The Kashmir and Jammu Universities Act, 1969 provides that the Vice-Chancellor of a University shall hold office for three years. In Universities

across the country, generally duration of the term of Vice-Chancellor varies from three to five years. The tenure of Vice-Chancellor is for five years

in most of the Central Universities, as well as Delhi University, for year in Calcutta University, and three years in University of Bombay and

University of Madras. In Uttar Pradesh the term of office is for three years, but extension is given for one year. There is a broader consensus

among academicians that a three year term is too brief a period for a Vice-Chancellor to formulate and implement policies and plans. It is difficult

or rather improbable to make an impact administratively or academically, in this short period. A five year time will definitely help Vice-Chancellors

to fully experiment with the ideas they conceive and fine tune them. In a three year term, the successor Vice-Chancellor may not exhibit the patient

to see the full implications of the schemes initiated by predecessors. Their own agendas may affect the stability and cumulative progress of the

system. It is, therefore, imperative to increase the tenure of the Vice-Chancellor for State Universities from 3 years to 5 years. The proposed

Kashmir and Jammu Universities (Amendment) Bill, 2015 seeks to achieve the said objective..

40. On the other hand, Zile Singh's case was relied upon by the learned counsel for the respondents to bring home the point that the present case

was not one, which could be said to be declaratory in character and therefore, required not to be construed as a retrospective legislation.

41. According to the cardinal principles of interpretation of statutes, a reference to the statement of "objects and reasons" is simply for

understanding the enactment and for ascertaining the objects sought to be achieved by the proposed amendment and is ordinarily not used to

determine the true meaning of the substantive provisions of the statutes. [(2011) 10 SCC 794], Principal Chief Conservator of Forests and anr vs.

J.K. Johnson and ors.

42. In Zile Singh's case, the court held the amendment act to be declaratory on the premise that the same was intended to remove the absurdity

therefrom and to bring it in conformity with what the Legislature had really intended to provide. In the present case, there is no apparent absurdity

nor were the provisions of Section 12 (5) of the Act of 1969 in any manner working contrary to the purpose and intent of the legislative enactment.

On the other hand, the intention of the amendment act appears to have been to permit more time to the Vice-Chancellor to execute his plans and

policies. The amendment Act, therefore, aimed at further improving the functioning of the Vice-Chancellor's office by enabling him to frame and

execute policies more effectively. Therefore, the purposive test with reference to the "statement and objects" of the amendment act cannot be

adoped in the present case to declare the same as declaratory.

43. The other point which was sought to be emphasized by the counsel for the petitioner was with regard to the amendment having a retroactive

effect. It was urged that retroactivity was different from retrospectivity inasmuch as in a retrospective legislation, vested or accrued rights are

sought to be taken away whereas, in a retroactive legislation, the legislation does not operate backwards neither does it take away vested rights

but is brought into operation by a characteristic or status that arose before it was

enacted. Reliance in this regard was placed upon a full bench

judgment of the Bombay High Court in *Badrinarayan Shankar Bhandari & ors vs. Omprakash Shankar Bhandari*, AIR 2014 Bombay 151. The

full bench in the said judgment drew the distinction as follows:

38. (i) A prospective statute operates forwards from the date of its enactment conferring new rights on parties without reference to any anterior

event, status or characteristic;

(ii) Retrospective statute, on the other hand, operates backwards, attaches new consequences, though for the future, but to an event that took

place before the statute was enacted. It takes away vested rights. Substantive benefits which were already obtained by a party are sought to be

taken away because of legislation being given effect to from a date prior to its enactment. The rules of interpretation of statute raise a presumption

against such retrospective effect to a legislation. In other words, if the Legislature has not expressly or by necessary implication given effect to a

statute from a date prior to its enactment, the Court will not allow retrospective effect being given to a legislation so as to take away the vested

rights. Statutes enacted for regulating succession are ordinarily not applicable to successions which had already opened, as otherwise the effect will

be to divest the estate from persons in whom it had vested prior to coming into force of the new statutes.

(iii) There is the intermediate category called ""Retroactive Statute"" which does not operate backwards and does not take away vested rights.

Though it operates forwards, it is brought into operation by a characteristic or status that arose before it was enacted. For example, a provision of

an Act brought into force on 1 January 2014, the Act applies to a person who was employed on 1 January 2014 has two elements:

(a) that the person concerned took employment on 1 January 2014 - an event;

(b) that the person referred to was an employee on that day - a characteristic or status which he had acquired before 1 January 2014. Insofar as

the Act applies to a person who took employment on 1 January 2014, the Act is prospective. Insofar as the Act applies to a person who had

taken employment before 1 January 2014, the Act is retroactive.

44. With a view to test the principles of retroactivity, it may be necessary to refer to a few judgments on the point.

45. In *R v. Inhabitants of St. Mary, Whitechapel*, 1848 (12) QB 120, the court was considering Section 2 of the Poor Removal Act, 1846, which

envisaged that "no woman residing in any parish with her husband at the time of his death would be removed from such parish, for twelve calendar

months next after his death, if she so long continues a widow". In the said case, the widow was sought to be removed within twelve months from

the date of the death of her husband, who had died prior to the Act came into force. The eviction was sought to be justified on the ground that the

act was prospective in nature as the death of the husband had occurred before the act was passed. The court in the said judgment held as under: ;

It was said that the operation of the statute was confined to persons who had become widows after the Act was passed, and that the presumption

against a retrospective statute being intended supported this construction: but we have before shown that the statute is in its direct operation

prospective, as it relates to future removals only, and that it is not properly called a retrospective statute because a part of the requisites for its

action is drawn from time antecedent to its passing.

46. In *Boucher Pierre Andre vs. Superintendent Central Jail Tihar, New Delhi & anr* AIR 1975 SC 164 the issue that arose before the court was

as to whether the benefit to set-off pre-conviction detention period against the term of imprisonment conferred by section 428 of the CrPC 1974,

where an accused person has on conviction been sentenced to imprisonment for a term was also available where the sentence was imposed before

the commencement of the code to reduce the unserved portion of the sentence. It was held that the benefit of set-off was available inasmuch as in

so construing the section, no retrospective effect would be given for it would not affect the sentence already undergone but would affect only that

part of the sentence which remained to be served in future. It was held that words "has been sentenced" were neutral and could take in conviction

prior to the coming into force of the code.

47. The Apex Court in *State of Maharashtra vs. Vishnu Ramchandra*, AIR 1961 SC 307 relied upon *Rex vs. Birthwhistle* (1889) 58 LJ M.C 158.

The issue that fell for consideration before the court in that case was whether the Act i.e., *Married Women (Maintenance in case of Desertion)*

Act, 1886, would cover even those desertions, which occurred prior to the

promulgation of the Act. It was held to be so applicable as it intended to curb an existing evil and afforded to the married woman a remedy for desertion, whether such desertion took place before the passing of the act or not.

48. In *Weldon vs. Winslow*, 1884 Vol. 13 QBD page 784, the statutory provision envisaged to the effect that "a married woman shall be capable of suing and being sued either in contract or otherwise as if she was a feme sole and her husband need not be joined with her as plaintiff for defendant..." It was held that a married woman was competent to file an action in tort in her own name although the cause of action arose before the statutory provision came into operation.

49. On a reading of the aforementioned judgments, it thus becomes clear that with a view to apply the principle of retroactivity, a statute may not take away the vested rights may, in its direct operation, be prospective yet, cannot be called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing as was held in *R vs. Inhabitants of St. Mary, Whitechapel*.

50. Whether in the facts and circumstances of the present case, the amendment act of 2015 can be said to have any retroactive effect so as to grant to the petitioner the benefit of an extending tenure. In my opinion, the answer is in the negative inasmuch as in its direct operation, while the act is prospective, it does not have the requisite element for its action which can be said to be drawn from time antecedent to its passing. In the case of *R vs. Inhabitants of St. Mary, Whitechapel*, by the time, the Poor Removal Act, 1846 came into operation, the lady had already become a widow. The event of becoming a widow had infact preceded the passing of the act and it was in those circumstances that the court had related that event for purposes of extending the protection against an eviction in future.

51. In my opinion, in the case of *Rex vs. Birthwhistle*, even when the court held the Act to be applicable to past desertions on the ground that it intended to cure an existing evil, yet if one were to test the facts of that case on the touchstone of the test as laid down in *Whitechapel's* case, one could say that the statute in that case even though in its direct operation was prospective, yet the event of desertion was a part of the requisite for action in future and hence would apply to desertions even before the passing of

the Act. In the present case, however, this important link is conspicuously missing and therefore, the amendment Act of 2015 can only be said to be prospective in operation without any retroactive effect

notwithstanding the fact that the petitioner was already in service on the date when the amendment came into force.

52. The argument that the amendment act of 2015 be given retroactive effect in the present case, is therefore, without any legal basis and is

accordingly rejected. As a sequel to the above, the petition along with connected MP is found to be without any merit and is accordingly

dismissed.