

(1984) 09 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition No's. 10480/81 and 5974/84

R.K. Seth

APPELLANT

Vs

CBCI Society for Medical Education and Another

RESPONDENT

Date of Decision : 20-09-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 30, 311 (2)

Citation : (1984) ILR (Kar) 1320 : (1985) 1 KarLJ 12 : (1985) 2 LLJ 41

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Judgement

1. The petitioners who were members of the teaching staff of St. John's Medical Collage (hereinafter referred to as "the College"), Bangalore, have inter alia sought for a declaration that the termination of their services was illegal as being violative of the provisions of the Statutes regulation their conditions of services framed by the Bangalore University and for other incidental reliefs.

2. The facts of the case, in brief, as stated by the petitioners are as follows :

(i) In WP 10480/81 : The petitioner holds MBBS degree from the Lucknow University and D. Ch. from Conjoint Board of England and M.R.C.P. from the Royal College of Physicians, Edinborough. He was appointed as Member of the teaching staff of the College on 4th June, 1966. The appointment was a permanent one though it had been the practice of the Bangalore University and the constituent colleges of the said University, in view of the provisions contained in S. 48 of the Bangalore University Act, 1964, to make appointments by contract for a period of 5 years and renew the contract every five years for the same duration as of course though the age of superannuation had been fixed at 60 years. Accordingly, the appointment of the petitioner was made as per order dated 17th March, 1966 for a period of 5 years, but had been continued from time to time. However, after the petitioner had put in 15 years of service, his services came to be terminated with effect from 3rd June, 1981. Aggrieved by the said order, the petitioner has presented this petition.

(ii) In WP 5974/84 : The petitioner holds MBBS and FRCS degrees. He had experience of 10 years in Medical Profession in the United Kingdom. He was appointed as a full time Assistant Professor on the establishment of the College on 1st April, 1969. As in the case of the first petitioner, the appointment in the case of this petitioner also was made for a period of 5 years, but was being renewed from time to time. However, by order dated 24th March, 1984, the management of the College informed the petitioner that his services was not required on and after 31st March, 1984. Aggrieved by the said order, the petitioner has presented this petition.

3. The plea of both the petitioners may be summarised thus :

(i) According to the conditions of service of the Bangalore University, the age of superannuation of teachers in constituent college was 60 years as was the condition of service of teachers of the Colleges of the University. Section 48 of the Bangalore University Act, 1964, required that every appointment of a teacher of the University be made on contract basis. It is in view of this provision both the University and the constituent colleges have been making appointments and even permanent members of the teaching staff such as Lecturers, Readers and Professors were being appointed on contract basis, though the appointment was to continue till the age of superannuation fixed under the Statutes. Therefore, notwithstanding the fact that such contracts were being entered in view of S. 48 of the Act, it has always been the understanding of the University, the management of affiliated colleges and the teachers respectively of the University and of the constituent colleges that the age of superannuation was 60 years and therefore every member of the teaching staff appointed on permanent basis was entitled to continue till 60 years, unless his services were terminated as a measure of penalty by the imposition of penalty of dismissal or removal or compulsory retirement from service, after complying with the mandatory procedure prescribed for imposing such penalty.

(ii) Whatever that may be, the Bangalore University Act, 1964, was replaced by the Karnataka State Universities Act 1976. According to the said Act, the conditions of service of teachers in the colleges of the University as well as the college affiliated to the concerned University was required to be governed only by Statutes. A provision similar to S. 48 of the Bangalore University Act and the corresponding provision in the enactments under which the Mysore and Karnataka Universities had been established which had provided that every appointment should be made by a contract, was not incorporated in the Karnataka State Universities Act, 1976, clearly indicating thereby that the conditions of service of teachers appointed on permanent basis was to be governed only by statutes framed under the Karnataka State Universities Act, 1976. The Statute No. 20 framed by the Bangalore University Act provides that the age of superannuation of teachers in the affiliated college is 60 years. Statute No. 17 provided that no teacher shall be dismissed or removed without holding a proper inquiry. These two provisions read together confer a right on the

petitioners, who had been appointed against permanent posts, to continue in service till 60 years and therefore the premature termination of their services before they attained the age of 60 years was in plain violation of the statutory provisions and therefore liable to be declared as invalid.

4. In W.P. No. 10480 of 1981, the petitioner has raised an additional plea to the effect that the College is not a minority institution and therefore not entitled to invoke the provisions of Art. 30 of the Constitution. This plea has been raised in view of the stand taken by the management of the College in several other cases to the effect that the College being a minority institution was protected by Art. 30 of the Constitution, and, therefore, the statutes framed by the University prescribing the procedure for imposing the penalty of removal or dismissal of its servants as also prescribing the age of superannuation were invalid on the ground of being inconsistent with Art. 30 of the Constitution.

5. The plea of the management may be summarised thus :

(i) The College is an institution established by a religious minority, namely, Christians. It is therefore entitled to the protection of Art. 30 of the Constitution. Therefore, the statutes framed by the Bangalore University which prescribe the age of superannuation of teachers as also the provision prescribing the procedure for imposing penalty of dismissal or removal from service against members of the teaching staff was unenforceable against the college, as such provisions contravene Art. 30 of the Constitution.

(ii) Alternatively, even if the statutes prescribing the age of superannuation and the procedure for imposing the penalty are considered as valid and enforceable against the College, it did not deprive the management of the College from making appointments on contract basis in view of the right available to its management under Art. 30 of the Constitution and as the appointments of the two petitioners had been made on contract basis, the provisions of the statutes are not at all attracted. Their services stood automatically terminated by virtue of the contractual period coming to an end. Therefore, there was no question of the management of the College terminating the service of the petitioner, for the tenure of service of the petitioners came to an end by efflux of time.

(iii) In any event, even if the statutes are valid and even on the basis that the termination of services of the petitioners was in contravention of the statutes, no declaration to the effect that the termination of service was invalid could be granted against the management of the college in a petition under Art. 226 for the reason no petition under Art. 226 of the Constitution is maintainable against a private college.

6. In view of the pleas of the parties, the following important questions arises for consideration :

(1) Whether St. John's Medical College is a minority institution entitled to the rights conferred under Art. 30 of the Constitution ?

(2) Whether the petitioners were entitled to continue in service till the age of superannuation as prescribed in the Statute 20 framed by the Bangalore University and if so, whether the termination of their services was violative of the said Statute ?

(3) Whether a writ petition under Art. 226 of the Constitution, seeking for a declaration that, the termination of the services of the petitioners was invalid as being in contravention of law, namely, Statutes No. 20 read with Statute 17 of the Bangalore University Act, is maintainable against a college which is a private affiliated college ?

7. As far as the first question is concerned, it is covered by the decision rendered by me in the separate order pronounced today in W.P. No. 19657/1981 (C.P.C.I. Society for Medical Education v. Bangalore University). In the said writ petition, the management of the college questioned the constitutional validity of various provisions of the Statutes regulating the conditions of service of the teachers in the affiliated college of the University as being in contravention of Art. 30 of the Constitution. In the said writ petition, the Bangalore University contested the claim of the management of the College that the College was a minority institution. The University also defended the validity of the various statutes framed by it. The contention of the University that the College was not a minority institution has been repelled in the said order. Therefore, discussion of that question in this petition is unnecessary. Therefore, I shall proceed on the basis that the College is a minority institution entitled to the protection guaranteed under Art. 30 of the Constitution.

8. As regards the challenges to the various statutes framed by the Bangalore University, several of them have been held to be unenforceable against the college; the order made in the said writ petition on the ground of violation of Art. 30 of the Constitution. As far as the present two writ petitions are concerned, the two statutes on which the petitioners rely are (1) Statute 20 regulating the age of superannuation, and (2) Statutes 17 prescribing the procedure for imposition of penalty of dismissal or removal from service. The validity of both these statutes have been upheld. Therefore, I have to consider the two other questions arising in these petitions on the basis that the petitioners are entitled to the protection of the two statutes.

9. The two statutes, the validity of which has been upheld in W.P. No. 19067/1981, reads :

"17. The management, on the recommendation of the Governing Body, may dismiss a teacher or terminate his services, or impose other punishments for neglect of duty, misconduct, disobedience of orders, indiscipline, inefficiency. However, no order of dismissal, termination of services or other punishment shall be imposed on a teacher unless a charge has been framed and an enquiry into the matter is conducted by an impartial body and on the approval of the University.

"20(a). The age of retirement of a teacher shall be sixty years, provided however, that the management may retire a teacher on his attaining the age of superannuation as may be prescribed by the Government from time to time for Government aided College".

The Statute 20 fixes the age of superannuation of members of teaching staff at 60 years. If the petitioners were permanent members of the teaching staff of the College, there can be no doubt that they were entitled to continue in service till 60 years unless their services were terminated for misconduct by the imposition of penalty, but after following the mandatory procedure prescribed under Statute 17. It is also well settled that even if an order terminating the service of an employee who has a right to continue in service is innocuously worded, such an order which brings about the premature termination of the service of a person who has a right to continue, upto the age of superannuation, prematurely, would per-se amount to penalty. (See *Purushotamlal Dhingra v. Union of India* 1958 I Ij 644, and therefore invalid for not following the mandatory procedure prescribed under the law for imposing the penalty. (See also : *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, They were cases of civil servants governed by Art. 311(2). But they lay down the criteria to find out under what circumstances an innocuously worded order terminating the service could be regarded as penalty. The test is, had the employee the right to continue ? If the answer is "yes", it amounts to penalty. The crucial question therefore for consideration is : Whether the petitioners were, as claimed by them, permanent members of the teaching staff notwithstanding the fact that the appointments were made on contract basis for a period of 5 years and whether their tenure of service was governed by the statutes and therefore they had the right to continue in service ?

10. In this behalf, it is necessary to trace the scheme of appointments under the Bangalore University since 1964. Sections 47 and 48 of the Bangalore University Act read as follows :

"47. CONDITIONS OF SERVICE - Save as otherwise provided in any contract entered into under S. 48, the terms and conditions of service of officers and servants of the University shall be regulated by Ordinances made in this behalf.

48. CONTRACTS - Save as otherwise provided by or under this Act, every salaried officer or teacher of the University shall be appointed under a written contract. The contracts shall be lodged with the Registrar of the University and a copy thereof shall be furnished to the officer or teacher concerned, provided that the contract relating to the Registrar shall be lodged with the Vice-Chancellor."

Section 48 of the Act required that every appointment by direct recruitment should be made by a contract. At the same time, S. 47 of the Act required that conditions of service of teachers should be regulated by statutory ordinances. The Ordinance framed under the Bangalore University Act regulating the conditions of service read thus :

"89. AGE OF RETIREMENT - Subject to the terms of any contract entered into under S. 48 of the Act, a person appointed as a permanent teacher of the University shall be entitled to be in the service of the University until he completes the age of sixty years."

The Ordinance which regulated the conditions of service regulating superannuation in the constituent colleges of the University read thus :

"ORDINANCE 56 - The age of retirement of a teacher shall be sixty years. However, the Management may continue the services of a teacher till the age of sixty-five, if they consider it necessary, provided the teacher is physically fit. If a teacher is due to retire in the middle of an academic year, he/she may be retained till the end of the academic year"

In view of the S. 48, it has been the practice both in the University and in the constituent colleges of the Bangalore University to appoint members of the teaching staff on contract basis for a period of 5 years. The Bangalore University Act was repealed by the Karnataka State Universities Act, 1976. In the said Act, there is no provision corresponding to S. 48 of the Bangalore University Act. The 1976 Act was enacted as a uniform law for the whole State replacing the Bangalore University Act, 1964; the Mysore University Act, 1956 and Karnataka University Act, 1949. Section 35 of the 1976 Act provides for framing of statutes, regulating, the conditions of service of the members of the teaching staff of the colleges of the University and S. 72 therein provided for the continuance of Ordinances framed under the 1964 Act until replaced by the statutes framed under the 1976 Act.

11. Shortly after the commencement of the Act, the question as to whether the appointment of a teacher of the Bangalore University came to an end on the date on which the contractual period came to an end or whether he had a right to continue in service till 60 years came up for consideration before this Court in the case of Venkatagirigowda v. Bangalore University (2) W.P. No. 6077 of 1978 D.D. 4th September, 1978, On a detailed examination of the scheme of the Bangalore University Act and the Karnataka State Universities Act, the contention of the University that a member of the teaching staff had no right to continue till superannuation, but his appointment would come to an end on the expiry of contractual period, was rejected and a declaration was given to the effect that the petitioner therein had a right to continue till he attained the age of 60 years notwithstanding the fact that there was an earlier contract fixing his tenure at five years. Relevant part of the judgment reads :

"35. In the light of the above discussions, my conclusions are as follows" :

(1) The contractual tenure of the employees of the erstwhile Universities came to an end by operation of law by the repealing of the previous enactments and the consequent abolition of the erstwhile universities and the establishment of the new universities in their places.

(3) The service conditions of the employees of the new universities are required to be regulated by the statutes framed by the senate of the concerned university and till then by the statutes which are preserved by virtue of sub-s. (1) of S. 72 of the Act.

(4)(i) The first part of the Statute 89 which refers to a contract of service entered into with the erstwhile Bangalore University under S. 48 of the Bangalore University Act, 1964, ceased by operation of law on the promulgation of the Ordinance which repealed the Bangalore University Act, 1964, and re-established new Bangalore University in the place of erstwhile Bangalore University and also for the reason that it is inconsistent with the Ordinance and the Act, there being no provision corresponding to Ss. 47 and 48 of the Bangalore University Act, 1964, in the Ordinance and the Act.

(ii) On and after the commencement of the Ordinance and the Act, the petitioner is governed by the age of retirement fixed in Statute 89 which is sixty years.

(5) The impugned communication directing the relief of the petitioner with effect from the afternoon of 31st May, 1978 is contrary to law and is also violative of Art. 14 of the Constitution."

The ratio of the above judgment equally applies to the affiliated colleges in view of S. 67(3) of the 1976 Act, which reads thus :

"67 RELATIONS OF AFFILIATED COLLEGES WITH THE UNIVERSITY

- the relations of the affiliated colleges with the University shall be governed by the Statutes to be made in that behalf and such Statutes, shall provide in particular for the exercise by the University of the following powers in respect of the college affiliated to the University :

(1) to lay down minimum educational qualifications for the different classes of teachers and tutorial staff employed by such colleges;

(2) to co-ordinate and regulate the facilities provided and expenditure incurred by such colleges in regard to libraries, laboratories and other equipments for teaching and research;

(3) to regulate conditions of service teachers of such colleges including the grant of leave with or without allowances and the constitution of pension insurance and provident funds for the benefit of such teachers."

Thus it may be seen, S. 67(3) empowers the University to regulate the conditions of service of teachers of affiliated colleges. The validity of this provision has not and could not have been challenged by the petitioners for, the validity of a similar provision incorporated in clause 18 of statute 2(1)(a), made under Gurunanak University Act has been held to be not violative of Art. 30, by the Supreme Court in the case of D.A.V. College, Vs. State of Punjab and Others,

12. Learned counsel for the College, however, strenuously contended that the

decision in Venkatagirigowda's case, W.P. No. 6077 of 1978 D.D. 4th September, 1978, was in opposite to the case of the former was a member of a teaching staff on the establishment of the Bangalore University and the petitioners are employees in a private college.

13. In view of the above contention urged for the petitioners, it is necessary to consider as to whether the petitioners' tenure is governed by contract or by statutes.

14. In order to appreciate the above contention, I shall refer to the relevant clauses in the appointment orders and other documents on which the petitioners rely in support of their contention that they had a statutory tenure and not a contractual tenure. As the relevant conditions in the appointment orders and other documents are similar to both the petitioners, I shall refer to the relevant material produced by the petitioner in W.P. No. 10480/1981. The order of first appointment of the petitioner in W.P. No. 10480/1981 dated 17th March, 1966 (Annexure-1 to Statement of Objection) reads :

"Dear Dr. Seth,

I have pleasure in informing you that the Governing Body of the C.B.C.I. Society for Medical Education, Bangalore (hereinafter referred to as the Governing Body) has, on the recommendation of the Board of Appointments of the Bangalore University and the Governing Council of the College (hereinafter referred to as the "Governing Council") approved your appointment to the post of professor in the Dept. of Pediatrics of this College (hereinafter called "the Department") on the following terms and conditions :

(1) You will be required to join your appointment on the 1st June, 1966.

(2) The tenure of the post will be five years from the date of your joining the post.

At the expiration of such tenure, a further tenure will be considered, on application from you to the Governing Council. Provided that in the unlikely event of the Governing Body, after due enquiry, finding you guilty of misconduct, indiscipline, inefficiency or such other sufficient cause, your services may be terminated before the expiry of such tenure, or serving you with a calendar month's notice, or paying you a month's salary in lieu thereof.

(3) You will be a full-time employee of the College, and will not be entitled to engage yourself in any private medical practices; you will, however, receive in addition to your basic salary, a fixed non-private practice allowance of Rs. 400/- per month throughout your tenure of service.

2. The terms and conditions set out above may have to be revised in the event of any conflict arising hereafter between them and any compulsory regulations of the Bangalore University or of any other competent body.

3. If you are willing to accept the post offered on the terms and conditions set

out above, please return the duplicate of the letter, duly signed, in token of your acceptance."

It may be seen that while at paragraph 2 the tenure of appointment was fixed at 5 years, the penultimate paragraph in the order, extracted above, expressly stated that the terms and conditions set out above have to be revised in the event of any conflict arising thereafter between them and any compulsory regulations of the Bangalore University or of any other competent body. At the time when the above appointment order was given, the Bangalore University Act, 1964 was in force and as pointed out earlier, S. 48 of the said act required that every appointment should be made by contract. Therefore, the issue of the appointment order on contract basis was in conformity with S. 48. Section 47 of the said Act also provided that the conditions of service of teachers shall subject to terms of contract be those prescribed in the Ordinances and there is no dispute that even according to the Ordinances framed under the Bangalore University Act, 1964, extracted earlier, the age of superannuation of teachers was 60 years. However, there was a doubt as to whether the contractual tenure incorporated in the contract entered into as required under S. 48 of the Act would prevail or the age of superannuation prescribed in the Ordinance would prevail. That doubt no longer remained in view of the omission of the said provision in the 1976 Act, the intention of which, as held in the case of Dr. Venkatagirigowda - (2) W.P. No. 6077 of 1978 D.D. 4th September, 1978 was to ensure a security of tenure to the teachers which is so essential for efficient and unperturbed performance of their duties. In view of this practice which prevailed in the constituent or affiliated colleges of the Bangalore University, the question as to whether such appointment should be treated as permanent appointments or as tenure appointments had also come up for consideration before the Bangalore University, shortly after the commencement of the Karnataka State Universities Act, 1976. The Bangalore University in a letter addressed to the Dean of the College dated 27th May, 1977 placed the matter beyond any doubt. Copy of the said letter is produced as Annexure-F to the petition. It reads :

BANGALORE UNIVERSITY P. 553. 77-78 Jnana Bharathi Bangalore May 27, 1977. Dear Dr. Francis,

A representation from ten teachers of your college has been received in this office, requesting that the implementation of certain orders of their appointment on full time basis which is detrimental to their interests be stayed.

On careful examination of all aspects of the case, it becomes clear that all teachers in the constituent colleges now affiliated colleges are appointed only on permanent basis. If a constituent college/affiliated college, however, wants to appoint any teacher on contract basis, the prior approval of the University shall be obtained as regards the terms of college and the teacher/affiliated concerned as per Ordinance 38 of the Bangalore University Ordinances. No, such approval of the University has been obtained by your institution. It would therefore follow that the University recognises all those as permanent appointments only. Till the

university bodies are constituted and have an opportunity to examine the entire issue in detail, I am directed to request you to maintain status quo without disturbing the present incumbent. You will please note that this issue pertains to the service conditions of several teachers and as such is very sensitive.

I shall be happy if you will please acknowledge this letter.

With regards,

Yours Sincerely, Sd/Dr. A. Sheriff, "Registrar."

After the above letter was issued, the matter of regulating the conditions of service of teachers in the affiliated colleges was taken up by the Senate of the Bangalore University. They were framed and given effect to with effect from 15th December, 1980 as is evident from notifications dated, 13th January, 1981 (Annexure-A in W.P. No. 10480) 81. Therefore there can be no doubt that the petitioners, who were appointed on 4th June, 1966 and 1st April, 1969, who had by the date of Annexure-F itself put in 11 years and 8 years of service, respectively, were persons appointed against permanent posts, and, therefore, protected by the directions (Annexure - F) and statute 20 read with statute 17.

15. What is however stated in the statement of objection regarding Annexure-F is as follows :

"The commission in Annexure-F is inconsistent with the right to administer the College, guaranteed to the 1st respondent by Art. 30(1) of the Constitution of India. There is also no provision in the Karnataka University to issue such a communication to an affiliated college; hence the communication in Annexure-F, being an order made without jurisdiction is ultra vires, and void. The correct position in law as regards the application of Ordinances 38 and 42 of the Bangalore University in their application to a Minority Institution has been stated in paras 3 and 4 above. The view expressed in Annexure-F by 2nd respondent about the legal position is clearly wrong. The right to administer St. John's Medical College rests in the 1st respondent and not in the Bangalore University. The University has only powers to make statutes regulating the conditions service of teachers of the College in conformity with the provisions of the Constitution of India and the Act of 1956. The power to confirm a teacher of the college vests in the 1st respondent and when no confirmation has been made, the University cannot recognise the appointment of teachers made by the college as permanent appointments. In Pratap Singh Vs. Union Territory of Chandigarh, , it has been held that an employee shall not be deemed to be confirmed unless there is any rule which provides that in the absence of an order of confirmation at the end of probation, the employment be presumed to be confirmed. Since there is no such provision in the Ordinance, the petitioner cannot, in the circumstances, rely on Annexure-F as authority for his contention."

Even after the statutes were framed, the management of the college had issued a circular dated 6th December, 1982 reiterating that renewal of appointment at the

end of each period was not automatic (Annexure-4 to the statement of objection of respondent-3). Learned counsel for the college asserted that they were not bound either by Annexure-F or Statute 20.

16. The stand taken as above would have been unexceptionable if the state prescribing the age of superannuation was inconsistent with Art. 30 and, therefore unenforceable against the college. But the validity of the statutes is beyond question in view of the judgment of the Supreme Court in the case *D. A. V. College v. State of Punjab* (supra). Therefore, the University has the power to make and enforce rule of superannuation for teachers of the college. Annexure-F was issued by the University for the enforcement of Ordinance 56 framed under the Bangalore University Act, 1964, which was in force then which fixed the age of superannuation of teachers in affiliated colleges at 60 years and which was continuing in force by virtue of S. 72 of the 1976 Act. The said Ordinance has since been replaced by statute 20 framed by the University in exercise of its powers under S. 35 read with S. 67(3) of the Act. Enforceability of this statute against minority institution is upheld in the order made in W.P. No. 19067 of 1981. From this it follows, old Ordinance 56 was also valid and enforceable against the college. Once it is held that the Ordinance 56 was valid, the University in view of S. 67(3) of the Act, had the power to issue the direction which it gave in its letter (Annexure-F). In that letter, there was a clear direction by the University to the college that all teachers appointed on full time basis should be treated as on permanent employment. Even in terms of the contract of appointment of the petitioners, the compulsory regulation of the University in the order. This condition gives the clearest indication that persons like the petitioners who had been appointed as regular members of the teaching staff against permanent posts of lecturers or Readers or Professors, as the case may be, were to be governed by the age of superannuation prescribed in the Statute and not by the period specified in the contract as the latter must yield to the former which is a compulsory regulation framed by the University and enforceable against the College.

17. Learned counsel for the College, however, submitted that as according to the service regulations of the college there could be appointments on contract basis as also on permanent basis, the appointment of the petitioners which had been expressly made on contract basis could not be regarded as having been made on permanent basis. In support of this submission, learned counsel relied on the classification of appointments found in the service regulations framed by the College. They read :

"3. CLASSIFICATION OF APPOINTMENTS

Employees may be appointed to any one of the following types of appointments :

1. "On CONTRACT", which means the tenure of the post is limited to a specified period.
2. "PERMANENT", which means, the post is permanent, the term of probation has

been satisfactorily, completed, and confirmation of the employee in the post has been communicated to him in writing.

3. "On PROBATION", which means the employee while being appointed to a permanent post, is required to fulfill a term of probation before being confirmed in his appointment.

4. "TEMPORARY", which means the employee is engaged specifically for a fixed or limited period, on terms and conditions specified in his letter of appointment, and is not entitled to claim any rights or benefits which are not so specified.

5. "CASUAL" which means the employee is engaged on day-to-day basis on work of a casual nature, his wages are fixed on daily basis, and he is not entitled to leave or any other benefits of any kind as are available to employees falling under (1) to (3) above."

18. The provision of the service regulation of the College, far from supporting the stand taken by the College, fully supports the case of the petitioners. According to the above provisions, contract appointments, was contemplated only in respect of posts sanctioned for a limited or specified period. It is not the case of the College that the posts against which the petitioners were appointed were posts meant or sanctioned for a limited or specified time. These posts are sanctioned on the establishment of the College having due regard to the compulsory pattern of staffing prescribed by Ordinance 40 of the Bangalore University then in force which corresponds to Statute No. 4 made under the 1976 Act, which provides that number of posts and status of members of the teaching staff of each department of an affiliated college shall not be less than those prescribed by the University. Therefore, notwithstanding the fact that the management of the College chose to specify a contractual tenure in the first appointment order and chose to renew the appointment for the same period from time to time, the fact remains that having regard to the provisions of the University Act and the statutes framed thereunder, the appointment of the petitioners having been made against permanent posts would have to be regarded as permanent appointments. Therefore, in the matter of age of superannuation the College is bound by Statute 20 and that part of Annexure-F which is a direction to the College to comply with the old Ordinance 56 corresponding to Statute 20 now in force in respect of teachers employed against posts forming part of permanent staff. It may be that part of the direction to take permission of the University to make contract appointments which could be only against posts or vacancies of short duration, the direction is bad being inconsistent with Art, 30 of the Constitution.

19. Learned counsel for the College, however, strenuously maintained that even if statutes were valid, in view of the fundamental right guaranteed to the College under Art. 30 of the Constitution, it could make contractual appointments for a specified time even in respect of permanent posts and that the fact that the service regulations of the College which have no statutory force provided for

contract appointments against posts sanctioned for a limited period only and permanent appointment against permanent posts, could not constitute the basis for saying that the contractual tenure of appointment of the petitioners was not valid and that the appointees acquired a right to continue till superannuation. In support of the submission that the College had the right to make appointment on contract basis, which would exclude the applicability of the statutes, learned counsel relied on the judgment of the Supreme Court in *Satish Chandra Anand Vs. The Union of India (UOI)*, .

20. As stated earlier, the two statutes one prescribing the age of superannuation (Statute 20) and the other prescribing the mandatory procedure as condition precedent for terminating the service as a measure of penalty, are held valid on the ground that they do not in any way infringe the right guaranteed to a minority institution under Art. 30 of the Constitution. The acceptance of the contention urged for the respondent would mean that though the statutes prescribing the age of superannuation and prescribing the mandatory procedure to be complied with before terminating the service as a measure of penalty of a teacher is valid and applicable to teachers employed by a minority institution, the institution has the right to prescribe the tenure different from the one prescribed in the statute in every case and thereby exclude the application of statute to every member of the teaching staff, as in fact has been done, I asked the learned counsel for the College as to how many teachers had been appointed on permanent basis to whom age of superannuation prescribed in Statute 20 was applicable. The answer was, none.

21. Thus, it may be seen, the plea put forward for the management is that while the University might have the power to prescribe the age of superannuation of teachers on the establishment of a minority institution, a minority institution has the right to make all appointments by contract for a period, so as to ensure that to no case the valid statutory provision would apply. In my view, the right given to the minority institution under Art. 30 of the Constitution carries with it the duty to comply with the laws which are not inconsistent with Art, 30. Therefore, once it is found that the statute prescribing age of superannuation is valid, then it becomes the obligation and the duty of the minority institution to ensure security of tenure to its teachers. As pointed out by the Supreme Court in the case of *All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others*, , a minority institution has no right to hire and fire any member of teaching staff. From this enunciation it follows that a minority institution cannot deprive every member of the teaching staff the benefit of security of tenure flowing from a statute prescribing the age of superannuation, which is valid by making every appointment and renewal for any specified period. The decision in *Satishchandra Anand's* case (*supra*) is of no assistance, as it concerned temporary appointment under temporary service rules and not permanent appointment.

22. It is true that in order to attract the statute prescribing the age of

superannuation, a teacher should be a person appointed permanently against a permanent post. There would be absolutely no difficulty in distinguishing permanent appointment from the tenure appointments, appointments on probation, appointments on temporary basis or appointment as a casual employee. The criteria government decision on such tenures are so well settled. In fact the definition of these appointments prescribed in the service regulations of the college are very accurate. Even without such elucidation made in the service regulation of the college, the meaning of those tenures are well understood.

23. Applying the criteria, there can be no doubt that the two petitioners were appointed against permanent posts of teachers created having due regard to the minimum staffing pattern prescribed by the University. The very fact that the two petitioners were continued in service after five years and they were given periodical increment during the first five years and, thereafter, and they had been in service for 15 years is conclusive proof that their suitability was fully accepted by the college and they could no more be regarded as in the position of probationers who could be discharged on grounds of unsuitability. (See. Ajit Singh and Others Vs. State of Punjab and Another, The petitioners therefore do not under any category other than permanent. It is exactly this position which was pointed out to the institution by Annexure-F by the University and the institution was asked to maintain the said status of the petitioners and others.

24. In the circumstances, I am convinced that the petitioners were members of permanent teaching staff of the College. They were entitled to continue till the age of superannuation at 60 years unless their services were terminated for good reasons after complying with the mandatory requirement of Statute No. 17.

25. The next crucial point for consideration is : Whether, notwithstanding the fact that the termination of service of the petitioners has been brought into existence in contravention of the statutes of the University, this Court could entertain a petition under Art. 226 of the Constitution and grant a declaration to the effect that the termination of the petitioners' services was invalid and they are entitled to continue in service as if their services had not been terminated ?

26. Learned counsel for the respondents contended that the College being a private college, was not a statutory body having any public duty and therefore no petition under Art. 226 of the Constitution was maintainable for granting a declaration as sought for in the petitions. In support of the above submission, learned counsel relied on a Division Bench judgment of this Court in *Ila Devi v. The Management of Desai Valchand Vashram Gujarathi School* 1963 (1) Mys L.J. 356 Relevant portion of that judgment reads :

"In the case of a private school like the one with which we are now concerned in this case what requires to be therefore examined is whether there is any public duty appertaining to the office of the person against whom the mandamus is sought the performance of which may be compelled by the issue of mandamus.

The school in this case which is a private school is the recipient of a grant from the State Government and for the purpose of regulating that grant, certain provisions have been made in what may be regarded as mere administrative instructions issued by the State which are incorporate in the Mysore Educational Grant-in-Aid Code. Those instructions do not create an enforceable condition of service nor do they create any public duty to be performed by the management of the institution although it is the recipient of a grant from the State.

That being the position, this is not my opinion, a case, where we can properly issue any mandamus to the respondent.

The next decision on which he relied was Abraham T. K. v. The Academy of General Education, Manipal W.P. 22845/1980 D.D. 7th and 8th September, 1981. Relevant portion of the judgment reads :

"It is well settled principle of law where a duty is cast upon a public body, a writ will lie against that body to perform that duty in order to enforce a corresponding right in a citizen or other person. Here no statutory obligation required to be performed by the Trust or the Academy of General Education, Manipal, has been pointed out by the learned counsel. The entire case for the petitioner is based on the Circulars at Annexure-A and B to the petition. The Circulars at best are mere offers to its staff and alumni unilaterally made. If such offer confers any legal right enforceable at law it may be agitated in a properly framed civil suit."

Learned counsel also relied on the Judgment of this Court in Kum. Shailaja, D. v. The Management of St. John's Medical College W.P. No. 15291/81 D.D. 19th October, 1981. Relevant portion of that judgment reads :

"4. When an identical question came up in respect of admission to Kasturba Medical College, Manipal, which is run by the KMC Trust, relying on the ratio in the case of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, I reject the plea in W.P. No. 30009/81 for an identical relief. In this case the petitioner has not demonstrated that there is any statutory obligation on the part of first respondent college to admit the petitioner."

Relying on the above decisions, learned counsel submitted that the said decisions are binding on this Court and therefore no writ can issue against an affiliated college as sought for by the petitioners.

27. In each of the above decisions, it was held that in the absence of any statutory rule on which a claim is based, no writ can issue to a private institution. There can be no doubt that if the conditions of service regulating the petitioners had no statutory force the submission made by the learned counsel for the College, relying on the above decisions, is unexceptionable. But the question for consideration in this case is, Statute No. 20 on which the petitioners rely have undoubtedly statutory force. This position was not and could not be controverted even by the learned counsel for the College. He, however, maintained that it would make no difference, so long the respondent college was a private college.

28. Therefore, the real question for consideration is : Whether no writ petition is maintainable against an affiliated college for enforcement of a statutory provision. It should be pointed out in the first instance that a private college is not just like any private individual or establishment doing any business or carrying on any avocation. Education is an obligatory function of the State. Therefore, the State, in discharge of its constitutional obligation under Arts. 41 and 48 read with Entry 25 of List III of Schedule VII of the Constitution provides for the establishment of educational institutions by the Government directly or through any University established under an act of Legislature. It can also make provision in a Law enacted on the topic of education of grant of affiliation to an educational institution established by private bodies or individuals. The affiliation secured by a private institution under such Law constitutes the life breath of the institution. Without affiliation, institution has no real existence, for, no student desirous of securing University degree would join the institution. Therefore, the function of an educational institution which secured recognition or affiliation under public law, is quasi public in nature and is not just like any private individual doing his business or avocation. Such an institution should conform to the law through which it secures that privilege. While the service rendered to the Nation by the 3rd respondent through the College is laudable and has to be eulogised, it has to conform to the University Act and the statutes made thereunder, for the benefit of teachers, who form the backbone of the institution, which are not violative of Art. 30. If it violates such statutory provisions it would be amenable to the writ jurisdiction of this Court to that extent. It is a separate matter if the claim made in a writ petition is one not flowing from a provision having the force of law.

29. Thus the existence of a binding statutory provision makes the difference. This position in law is evident from the following authorities.

(1) In the case of Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another, , on this aspect of the matter, the Supreme Court said thus :

"It is not disputed on behalf of the respondents that the "College Code" has been made by the University the exercise of statutory power conferred by S. 32 and under S. 6(6) of the Act. It is also conceded on behalf of the respondents that the "College Code" is intra vires the powers of the University contained in S. 32 r/w S. 6(6) of the Act. In our opinion, the provisions of Ordinance 20, otherwise called the "College Code" have the force of law. It confers legal rights on the teachers of the affiliated colleges and it is not a correct proposition to say that the "College Code" merely regulates the legal relationship between the affiliated colleges and the University alone. We do not agree with the High Court that the provisions of the "College Code" constitute power of management. On the contrary we are of the view that the provisions of the "College Code" relating to the pay scale of teachers and their security of tenure properly fall within the statutory power of affiliation granted to the University under the Act. It is true that Clause 7 of the Ordinance provides that all teachers of affiliated colleges

shall be appointed on a written contract in the form prescribed in Schedule A, but that does not mean that teachers have merely a contractual remedy against the Governing Body of the College. On the other hand, we are of opinion that the provision of Clause 8 of the Ordinance relating to security of the tenure of teachers are part and parcel of the teachers' service conditions and, as we have already pointed out, the provisions of the "College Code" in this regard are validly made by the University in exercise of the statutory power and have, therefore the force and effect of law. It follows, therefore, that the "College Code" creates legal rights in favour of teachers of affiliated colleges and the view taken by the High Court is erroneous.

30. It was urged on behalf of the appellant in the next place that there was violation of the procedure prescribed in Clause 8(vi)(a) of the "College Code" and the order of the Governing Body dated 30th June, 1960 terminating the appellant's service was illegal and ultra vires and must be quashed by grant of writ in the nature of certiorari. Counsel for the respondents contended that there was no violation of the procedure prescribed under Clause 8(vi)(a) of the "College Code" and that the order of the Governing Body, dated 30th June, 1960 was not defective in Law. Since the question has not been investigated by the High Court, we consider that it is necessary that this case should go back on remand to the High Court for deciding the question whether there was a violation of the procedure prescribed under Clause 8(vi)(a) of the "College Code" and whether the order of the Governing Body, dated 30th June, 1960 is consequently illegal and ultra vires and whether the appellant is entitled to the grant of a writ under Art. 226 of the Constitution.

We should like to add that counsel for the respondent raised two preliminary objections in the course of argument. The argument was stressed in the first place that the appellant had an alternative remedy under Clause 8(vi)(c) of the "College Code" which provides that the aggrieved teacher may request for a reference of the dispute to a Tribunal of Arbitration consisting of the Vice-Chancellor and two other persons appointed by the Executive Council of the University. It was contended on behalf of the respondents in the second place that the Governing Body of the College was not a statutory body performing public duties and no writ in the nature of mandamus may, therefore, be issued to the Governing Body of the College. On behalf of the respondents it was conceded that these objections were not pressed before the High Court. We are therefore, unable to entertain these preliminary arguments at this stage and they must be overruled."

Form the above decision, the following aspects emerge :

- (1) The rules framed under the University Act regulating the conditions of service have statutory force.
- (2) It confers legal rights on the teachers.
- (3) Notwithstanding the fact that a contract of appointment was entered into, if

provisions relating to security of tenure which are part and parcel of conditions of service of teachers, have statutory force, they are enforceable.

(4) The only question which was left open in that decision was : Whether a writ of mandamus could issue to a governing body of a private college, as such a question had not been raised before the High Court.

30. The effect of the above judgment was considered by a Division Bench of this Court in *K. Seshachar v. Poornaprajna College* 1968(1) Mys. L.J. 167. That was a case which arose under the provisions of the Mysore University Act, 1956, which was then in force. In the Mysore University Act, there was no provision which provided that the conditions of service of teachers in an affiliated college would be governed by the Ordinance or statutes of the University. The provision which regulated the condition of service of teachers in an affiliated college were those which were set out as conditions of affiliation in respect of which there was to be an agreement between the concerned private college and the University. The Conditions for affiliation found in such agreement were similar to those found in the grant-in-aid code, considered by this Court in *Ila Devi's case* (supra), and, therefore, this Court held that they were unenforceable. The relevant portion of the said judgment reads :

"15. In view of our finding that Rule 14 made by the Syndicate of the University prescribing 60 years as the age of superannuation of teachers working in affiliated colleges, has not the force of law but that it is merely an instruction to the Colleges. The second point whether the Principal holds a public office does not survive for consideration."

From the above observations, it is clear that the Division Bench took the view that the writ petition was not maintainable and the conditions of service were unenforceable, only for the reason that the rules of affiliation had no statutory force. From the aforesaid observations, it follows that if the conditions of service have statutory force, then it would be enforceable in a petition under Art. 226 of the Constitution even against a private educational institution.

31. This position is also evident from the judgment of the Supreme Court in *Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College*, . The relevant portion of the judgment reads :

"11. On a plain reading of Statute 151, it is clear that it only provides that the terms and conditions mentioned therein must be incorporated in the contract to be entered into between the college and the teacher concerned. It does not say that the terms and conditions have any legal force, until and unless they are embodied in an agreement. To put it in other words, the terms and conditions of service mentioned in Statute 151 have *proprio vigore* no force of law. They become terms and conditions of service only by virtue of their being incorporated in the contract. Without the contract, they have no vitality and can confer no legal rights.

12. Whereas in the case of *Prabhakar Ramakrishna Joth v. A. L. Pande* (supra), the terms and conditions of service embodied in Clause 8(vi)(a) of the "College Code" had the force of law apart from the contract and conferred rights on the appellant there, here the terms and conditions mentioned in Statute 151 have no efficacy, unless they are incorporated in a contract. Therefore, appellant cannot found a cause of action on any breach of the law but only on the breach of the contract. As already indicated, Statute 151 does not lay down any procedure for removal of a teacher to be incorporated in the contract so Clause 5 of the contract can, in no event, have even a statutory flavour and for its breach, the appellant's remedy lay elsewhere.

13. Besides, in order that the third exception to the general rule that no writ will lie to quash an order terminating a contract of service, albeit illegally, as stated in *S.R. Tewari Vs. District Board Agra and Another*, , might apply, it is necessary that the order must be the order of a statutory body, acting in breach of a mandatory obligation imposed by a statute. The College, or the Managing Committee in question is not a statutory body and so the argument of Mr. Setalvad that the case in hand will fall under the third exception cannot be accepted. The contention of counsel that this Court has sub-silent sanctioned the issue of a writ under Art. 226 to quash an order terminating services of a teacher passed by a college similarly situate in *Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another*, and therefore, the fact that the college or the managing committee was not a statutory body was no hindrance to the High Court issuing the writ prayed for by the appellant has no merit as this Court expressly stated in the judgment that no such contention was raised in the High Court and so it cannot be allowed to be raised in this petition."

The question as to the right of a teacher in an affiliated college to seek a declaration that termination of his service made in violation of provision of law came up for consideration before the Supreme Court in *Vaish Degree College v. Lakshmi Narayan* (supra). On a review of various earlier decisions, the Supreme Court said thus at paragraphs 32 and 33 :

"It may be a possible view - and some day this Court may have to consider it - that where law, as distinct from contract, imposes a mandatory obligation prescribing the kind of contract which may be entered into by an employer and the manner in which alone the service of an employee may be terminated, any termination of service effected in breach of such statutory obligation would be invalid and ineffective and in such case the Court may treat it as null and void. But I do not think it necessary to pursue this line of discussion any further and come to a positive conclusion whether the appellant is or is not a statutory body or a public authority nor do I consider it necessary to go into the question whether the Statutes of the Agra University had the force of law and conferred rights on the Principal and teachers of affiliated colleges, as in *Prabhakar Ramakrishna v. A. L. Pande*, (supra), they only set out the terms and conditions which had no validity and conferred no legal rights, unless and until they were

embodied in the contract between the principal or teacher on the one hand and the affiliated college on the other as in *Vidya Ram Mishra v. Managing Committee, Shri Jai Narain College* (supra). I take the view that on the second part of the question the case of the first respondent is well founded.

When this section, which is a law made by the legislature, has enacted that the termination of service shall be ineffective or, in other words, it shall have no validity or force unless it has been approved by the Vice-Chancellor, it is difficult to see how it can be regarded as effectively terminating the service. To take such a view would be to refuse to give effect to the law enacted by the legislature. The law enacted in this section operates, irrespective whether the management is or is not a statutory body. Such a consideration is entirely irrelevant to the applicability of this section. When the section says that the termination of service shall not have any effect, the Court must refuse to recognise the termination as valid and effective, and when the Court does so, it merely enforces the law and there is no question of transgressing the principle that a contract of personal service cannot be enforced. There can, therefore, be no doubt that the termination of service of the first respondent by the appellant was ineffective and void and it did not operate to put an end to the employment even wrongfully, by reason of S. 28, sub-s. (3) of the Kanpur and Meerut Universities Act, 1965."

These decisions indicate the following aspects.

(i) If the conditions of service of a teacher in an affiliated college is regulated by statutes which confer rights on the teachers, it is enforceable.

(ii) If the condition is only a part of contract, it is unenforceable.

32. As is evident from the earlier discussions, in these petitions, the petitioners are not seeking enforcement of their contractual rights. The language of Statutes 17 and 20 are peremptory. The first prohibits the termination without inquiry and the second creates a right in a teacher to continue in service till 60 years. It however, empowers the college to retire earlier to 60 years but on and after the age of superannuation fixed for teachers in aided colleges, which was 55, then and now made 58. The petitioners are seeking to enforce the statutes which are binding on the college and such a right could be enforced in a petition under Art. 226 of the Constitution. It is pertinent to note that statutes apply to the teachers in affiliated colleges by their own force and do not depend upon the existence of any agreement between the college and teacher as was the position in *Vidya Ram Mishra's* case (supra). Therefore, Statutes 17 and 20 are enforceable. The view taken by K. B. Asthana, J. as he then was, in the case of *Indrapal Gupta v. The Managing Committee, Model Intermediate College* ILR 1973 (All) 886 is to the same effect.

That was also a case in which the petitioner therein was a teacher on the establishment of Model Intermediate College in the State of Uttar Pradesh which was private college recognised under the Intermediate Education Act of the State of U.P. His services were terminated in violation of the statutory provisions

regulating his conditions of service. The concerned Managing Committee contended that the writ petition was not maintainable. The said contention was rejected by his Lordship. The relevant paragraph of the judgment reads :

"3. Lastly it was urged on behalf of the opposite parties that the Managing Committee of the College not being a statutory body, no writ can be issued against its action under Art. 226 of the Constitution. Reliance was placed on the latest decision of the Supreme Court in the case of *Vidya Ram Misra v. The Managing Committee, Shri Jai Narain College and Another* (supra). In that case the learned Judges of the Supreme Court were dealing with the action taken by the Managing Committee of a College affiliated to Lucknow University. On a reading of the relevant provisions of the Lucknow University Act, statute and the Ordinance framed thereunder they arrived at the opinion that a Managing Committee of a College affiliated to the Lucknow University does not become a statutory body, but at the same time they did not disapprove, the previous decision of the Supreme Court in the case of *Prabhakar Ramakrishna Jodh v. A. L. Pandey* (supra), wherein the Supreme Court on a reading of the Saugar University Act, Statute and the Ordinance framed thereunder arrived at an opinion that the Managing Committee of a College affiliated to Saugar University would be a statutory body. On a careful consideration of the two cases decided by the Supreme Court, referred to above, and on a reading of the relevant provisions of the intermediate Education Act and the regulations governing the conditions of service of the Principals and the Teachers of a recognised Intermediate Colleges, I have no hesitation in holding that a Managing Committee of a recognised Intermediate College, exercises statutory functions when considering a question of termination, removal or dismissal of the Principal and the teachers. The law declared by the Supreme Court in the case of *Prabhakar Ramakrishna Jodh v. A. L. Pandey* (supra) applies to the instant case before me and not the law declared in *Vidya Ram Misra v. The Managing Committee, Shri Jai Narain College and Another* (supra). I, therefore, hold that this Court in the exercise of its jurisdiction under Art. 226 of the Constitution can in appropriate cases issue orders and directions by way of writs to the Managing Committees of the recognised Intermediate Colleges in regard to the action taken by them against the Principal, the teachers or other employees whose conditions of service are governed by the provisions of the Intermediate Education Act and the regulations framed thereunder."

The above judgment, however, it appears had been taken in appeal before a Division Bench of the Allahabad High Court and it was reversed. But the judgment of the Division Bench was taken up in Appeal before the Supreme Court in *Indra Pal Gupta Vs. Managing Committee, Model Inter College, Thora*, . The Supreme Court reversed the judgment of the Division Bench and affirmed the judgment of Asthana, J. The operative portion of the judgment at paragraph 12 reads.

"12. In the result, we allow this appeal, set aside the judgment of the Division

Bench of the High Court and restore the judgment of the learned single Judge, We hereby declare that the appellant continues to be in the service of the College. He is entitled to all the benefits flowing from this declaration including the salary and allowances as if there was no break in his service. The respondent-College shall also pay the costs of this appeal to the appellant."

In view of the above recent judgment of the Supreme Court confirming the judgment of the learned single Judge of the Allahabad High Court, there can be no doubt at all that a declaration to the effect that an order of termination made by a private college affiliated to a University in violation of the statutory provisions is invalid and further a declaration that the continues to be service, could be granted.

33. It is true that there is no express reference to any contention as to the maintainability of a petition under Art. 226 of the Constitution and its being negatived by the Supreme Court. However, the clear indication available from the judgment is that a petition under Art. 226 seeking a declaration that termination of service of a teacher in an affiliated college made in contravention of statutory provisions is invalid and he continues to be in service is entertainable. This is also conformity with the observations of the Supreme Court in P. R. Jhad's case (supra) and in the case of Vaish Degree College (supra).

34. As far as the view taken by the single Judge of the Allahabad High Court in the case of the Indrapal Gupta (supra), is concerned, it is very clear and that view had been taken after considering the clear implications flowing from the aforesaid judgment of the Supreme Court. I respectfully agree with the view taken by the Allahabad High Court. The fact that the said judgment has been confirmed by the Supreme Court and a declaratory relief is granted strengthens the contention of the petitioners that declaratory relief could granted in a petition under Art. 226 notwithstanding the fact that the point is not expressly considered by the Supreme Court. (See also Harijander Singh v. Kakatiya Medical College. It is also pertinent to point out that when the ratio of the judgments of the Supreme Court is that provisions conferring right to security of tenure are valid, it follows that violation must be actionable, for, where there is a right, there must be a remedy.

35. In the result, I make the following order :

In W.P. No. 10480/1981.

(i) The writ petition is allowed.

(ii) It is hereby declared that the petitioner continues to be in the service of the St. John's Medical College even on and after 3rd June, 1981 and that he is entitled to all the benefits flowing from this declaration including the salary and allowances as if there was no break in service.

In W.P. No. 5974/1984 :

(i) The writ petition is allowed.

(ii) It is hereby declared that the petitioner continues to be in service as a teacher on the establishment of St. John's Medical College, Bangalore, even on and after 31st March, 1984 and that he would be entitled to all the benefits flowing from this declaration including the salary and allowances as if there was no break in his service.