

**(2000) 05 SC CK 0106**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 3455 of 2000 (Arising Out of SLP (C) No. 4821 of 2000)

S.K. Rathi

APPELLANT

Vs

Prem Hari Sharma and Others

RESPONDENT

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**Date of Decision :** 12-05-2000

**Acts Referred:**

**Citation :** (2000) 8 JT 267 : (2001) 9 SCC 377 : (2000) 3 UPLBEC 2433

**Hon'ble Judges :** Doraiswamy Raju, J;B. N. Kirpal, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## **Judgement**

1. Special leave granted.

2. The short question involved in the present case is whether respondent No. 1 is entitled to continue as an acting Principal of the College till 30th June, 2000 as has been ordered by the High Court.

3. It is not in dispute that respondent No. 1, who was a teacher, had been appointed as an acting Principal. He attained the age of 60 years sometime in December, 1999. With an effort to continue in office, he filed a writ petition (CM. Writ Petition No. 54640 of 1999) and in the impugned order dated 5th January, 2000, the Division Bench of the High Court observed that in view of the decision of another Division Bench in Udai Narain Pandey's case, respondent No. 1 could continue to function as Principal of the Institution till 30th June 2000. Hence this appeal.

4. On a query raised by us, learned Counsel for the respondent drew our attention to a decision of the Government contained in document dated 16th February, 1999, in which it was, inter alia, stated that for teachers like respondent No. 1 the age of superannuation was 60 years. The said decision further states that no extension in service shall be granted but "if the date of superannuation of a teacher does not fall on June 30, the teacher shall continue

in service till the end of the academic session i.e. June 30, following". This is the clause on which reliance is placed by the learned Counsel in support of the decision of the High Court.

5. There is no doubt that the said decision would enable respondent No. 1 to continue as a teacher, which is his substantive appointment, up to 30th June, following the day when he attained the age of 60 years, but this clause can not allow him to continue as an acting Principal which is a different post altogether. It cannot be disputed that the post of Principal and of the teacher is not the same. It is a teacher on promotion who is appointed as a Principal and there is no decision of the Government giving extension beyond the age of 60 years to a Principal. This being so, the appeal is allowed and the decision of the High Court permitting respondent No. 1 to function as Principal of the Institution till 30th June, 2000 is set aside.

6. However, we make it clear that the observations made in this order will not prejudice the petitioner's case in the disposal of the writ petition.