



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 20th April, 2026.
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+ W.P.(C) 1386/2017 & CM APPLs. 6405/2017, 52156/2019,
53029/2022, 4293/2025

ASHA GUPTA

.....Petitioner

Through: Mr. Anil Nauriya, Ms. Sumita
Hazarika and Mr. Prakhar Gupta,
Advocates.

versus

UNIVERSITY OF DELHI & ANR

.....Respondents

Through: Mr. Mohinder J.S. Rupal, Advocate
for University of Delhi.
Mr. Ravinder Agarwal, Mr. Manish
Kumar Singh and Mr. Vasu Agarwal,
Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

1. Dr. Asha Gupta challenges the University of Delhi's retrospective withdrawal of the protection granted to her by Executive Council Resolution No. 126 dated 27th December, 2007. That Resolution treated the post of Director, Directorate of Hindi Medium Implementation, as a teaching post only for determining her retirement age. By Resolution No. 21 dated 28th February/7th March, 2017 and communication dated 28th March, 2017, the University treated her as having superannuated on 30th April, 2012, re-characterised her subsequent service, and proposed recovery or adjustment



of amounts already paid. She also assails the UGC communication dated 27th February, 2014 to the extent it was used for that action, and seeks consequential relief in relation to salary, increments, retiral dues and recovery.

The core controversy

2. The issue is narrow: after permitting the Petitioner to continue under Executive Council Resolution No. 126, could the University years later withdraw that protection, deem her retired from 30th April, 2012, and recover or adjust payments for service it had accepted?

Factual background

Petitioner's academic service and appointment to DHMI

3. The Petitioner was appointed as Lecturer in Political Science at Bharati College, University of Delhi, on 21st July, 1973. After undergoing the selection process, she was designated as Reader in Political Science with effect from 1st January, 1986. She also served, for a period, as Principal of Bharati College.

4. On 27th June, 2006, the University issued Advertisement No. Estab. IV/194/2006 for several faculty positions, including Director, DHMI. The qualifications were academic and administrative: a first or high second-class Master's degree with Ph.D. or equivalent published work, quality publications on technical subjects, at least ten years' teaching experience in University classes, proficiency in English and Hindi, experience in translation and vetting of scientific and technical texts, terminological and lexicographical work, and administrative experience in running an academic institution.

5. The Petitioner applied for the post. By letter dated 27th June, 2007, the



University informed her that she had been appointed as Director, DHMI, on the recommendation of the Selection Committee, which had been approved by the Executive Council in its meeting held on 8th June, 2007. The appointment carried the pay scale applicable to the post of Professor/Director, together with allowances admissible under the University rules.

Clarification on retirement age and grant of lien

6. Before joining DHMI, the Petitioner sought clarity on a critical service condition: her age of superannuation. By then, the retirement age for holders of regular sanctioned teaching posts had been enhanced from 62 to 65 years. As a Reader in Bharati College, she would have retained that benefit had she continued there. She therefore wrote to the University on 3rd July, 2007 and 12th July, 2007 seeking clarification on the retirement age applicable to her as Director.

7. On 3rd September, 2007, Bharati College granted the Petitioner lien for one year with effect from that date, enabling her to join as Director, DHMI. The University thereafter issued Office Order No. 213 dated 17th September, 2007, recording that she had joined as Director with effect from 3rd September, 2007.

Executive Council Resolution No. 126

8. The question of the Petitioner's retirement age was placed before the Executive Council. At its meeting held on 27th December, 2007, the Executive Council passed Resolution No. 126 in the following terms:

“Resolved that the post of Director, Hindi Medium Implementation (DHMI) be treated as a teaching post for the purpose of age of retirement, since the present incumbent is from teaching fraternity.”



9. Bharati College, by letter dated 23rd May, 2008, informed the Petitioner that its Governing Body had regularised the grant of extraordinary leave/lien to her for one year, up to 2nd September, 2008, and that the lien could not be extended thereafter. Four days later, on 27th May, 2008, the University conveyed to the Petitioner a copy of Executive Council Resolution No. 126.

Reference to the UGC and ensuing disapproval

10. On 12th September, 2013, the Registrar of the University wrote to the University Grants Commission seeking *ex post facto* approval for treating the post of Director, DHMI, as academic for the purpose of superannuation at the age of 65 years. The University recorded that the Petitioner had been a Reader in Bharati College before joining as Director, DHMI; that the Executive Council had passed Resolution No. 126 dated 27th December, 2007; and that, in terms of that Resolution, she had been allowed superannuation at the age of 65 years. The communication further recorded that the Petitioner's date of birth was 3rd April, 1952 and that she would retire on 30th April, 2017.

11. The UGC responded by communication dated 27th February, 2014. It referred to the Ministry of Human Resource Development communication dated 19th April, 2007, which stated that the enhancement of the age of superannuation from 62 to 65 years was intended to address the shortage of teachers and would apply only to teachers in centrally funded institutions of higher and technical education who were actually engaged in teaching classes, courses or programmes of study. Proceeding on that basis, the UGC conveyed its disapproval of the proposal to enhance the age of superannuation of the Director, DHMI, from 62 to 65 years.

***Impugned withdrawal and amendment of the writ petition***

12. The dispute sharpened after the Petitioner filed the present writ petition on 9th February, 2017 and notice was issued. The University then issued the impugned communication dated 28th March, 2017, informing the Petitioner that the Executive Council, at its meeting held on 28th February, 2017 and 7th March, 2017, had approved withdrawal of Executive Council Resolution No. 126 dated 27th December, 2007 in light of the UGC letter dated 27th February, 2014. The communication further stated that the Petitioner stood superannuated from 30th April, 2012; that her later period of service would be treated as contractual engagement as per applicable rules; and that she should submit a “No Dues Certificate” for settlement of terminal benefits.

13. The Petitioner thereafter sought amendment of the writ petition. By order dated 23rd August, 2017, the amendment was allowed, with liberty to the Respondents to raise all objections on facts and law, including to the challenge against the UGC communication dated 27th February, 2014. The amended petition accordingly impugned Executive Council Resolution No. 21 dated 28th February, 2017/7th March, 2017, the University’s communication dated 28th March, 2017, and the UGC communication dated 27th February, 2014.

University’s recovery claim and subsequent orders

14. The controversy did not end with the withdrawal communication. In January 2019, during the pendency of the proceedings, the University filed an additional affidavit stating that, in furtherance of Executive Council Resolution No. 21 dated 28th February, 2017/7th March, 2017, the Petitioner’s case had been processed for fixation of “contractual fee” for the



period from 2nd May, 2012 to 28th March, 2017. The contractual fee was fixed at INR 52,732/- per month from 2nd May, 2012 to 31st May, 2013 and INR 90,000/- per month from 1st June, 2013 to 28th March, 2017. On that basis, the University asserted that INR 38,90,648/- was recoverable as excess payment. After adjusting gratuity, provisional leave encashment and CPF subscription beyond 30th April, 2012 with interest, it claimed that INR 11,15,102/- remained recoverable. The Petitioner contests the entire exercise.

15. Certain orders passed by the Court may also be noticed, as they show how the controversy remains unresolved. On 12th July, 2022, this Court recorded the Petitioner's contention that she had given up her lien in Bharati College on the assurance contained in Executive Council Resolution No. 126, and that the University later sought to resile from that assurance on the purported advice of the UGC. Since the Petitioner had admittedly served against payment of salary till 30th November, 2016, and claimed to have continued till 30th April, 2017 without salary, the Court asked the University whether it would consider counting her service at least till 30th November, 2016 for all purposes, including retiral benefits. Time was granted to obtain instructions.

16. On 24th August, 2022, counsel for the University informed the Court that the University was not agreeable to treating the Petitioner's service after 30th April, 2012 as regular service, and that she could not be granted any benefit for that period other than what she had already received. The Court therefore directed that the matter be heard on merits. It was, however, clarified that if the Petitioner approached the University for release of terminal dues, the amount payable, including provident fund contributions



made by her, would be released as per the University's calculations, subject to the outcome of the writ petition and without waiver of her rights.

17. On 7th December, 2022, while dealing with the Petitioner's application alleging non-compliance of the order dated 24th August, 2022, the Court recorded the University's stand that excess amount had already been paid to the Petitioner and that such amount exceeded the terminal benefits payable to her. The Petitioner disputed the correctness of that position. The Court accordingly directed the University to furnish calculations of the dues paid to the Petitioner and a break-up of the alleged excess amount.

Contentions on behalf of the Petitioner

18. Mr. Anil Nauriya, counsel for the Petitioner, summarises his submissions as follows:

18.1. The case turns on an assurance given by the University through its Executive Council. The Petitioner had a long academic career within the University system and was serving as a Reader in Bharati College, where she was entitled to retire at the age of 65 years. Before joining DHMI, she sought clarification regarding the retirement age applicable to her and joined the Directorate only after obtaining lien from Bharati College. Thereafter, the Executive Council passed Resolution No. 126 dated 27th December, 2007, providing that the post of Director, DHMI, would be treated as a teaching post for the purpose of age of retirement, since the incumbent was from the teaching fraternity.

18.2. Resolution No. 126 was passed by the Executive Council, the competent authority in University administration, and was formally communicated to the Petitioner on 27th May, 2008, while her lien in Bharati



College was still alive. Acting on that assurance, she did not return to Bharati College and allowed the lien to lapse. The University, having induced that change of position, was estopped from withdrawing the protection to her detriment. The rule that there can be no estoppel against law is said to have no application because the Executive Council had power to extend the protection granted under Resolution No. 126. Reliance is placed on *Registrar, University of Delhi v. Ashok Kumar Chopra*¹ and *Somya Gupta & Ors. v. Guru Gobind Singh Indraprastha University & Anr.*²

18.3. The Petitioner does not seek a declaration that the post of Director, DHMI, is a teaching post for all purposes or for all future incumbents. Her claim is confined to the protection extended to her under Resolution No. 126. The words “since the present incumbent is from teaching fraternity” are relied upon to contend that the Resolution was intended specifically to address her circumstances.

18.4. Reliance is placed on University’s subsequent conduct. The identity card issued to her recorded her date of retirement as 30th April, 2017. Further, in its letter dated 12th September, 2013 addressed to the UGC, the University acknowledged that she had been allowed to superannuate at the age of 65 years pursuant to Resolution No. 126 and would retire on 30th April, 2017. These documents demonstrate the University’s own understanding of the Resolution.

18.5. The University’s reference to the UGC in 2013 came nearly six years after the Petitioner had joined DHMI and after her opportunity to return to

¹ 1967 SCC OnLine Del 154.

² 2019:DHC:12.



Bharati College had irrevocably lapsed. The University failed to disclose material facts, including that she had sought clarification before joining DHMI, held a lien in Bharati College, received the benefit of Resolution No. 126 before expiry of the lien, and had acted upon that assurance. The UGC's response, therefore, proceeded on an incomplete factual foundation.

18.6. The communication dated 27th February, 2014 is, in any event, not a decision of the UGC on the Petitioner's case. Reliance is placed on minutes obtained under the Right to Information Act to contend that the matter was never placed before the Commission. The Petitioner also refers to the UGC's RTI response dated 3rd April, 2017, stating that uniform service conditions for non-teaching staff of Central Universities had not been notified by the UGC and that service conditions are governed by the respective University's statutes, ordinances, rules and applicable Government norms.

18.7. The UGC communication could not have been used to visit her with adverse civil consequences without notice or opportunity of hearing. Neither before issuance of the UGC communication dated 27th February, 2014, nor before the Executive Council Resolution dated 28th February, 2017/7th March, 2017 and the consequential communication dated 28th March, 2017, was she afforded an opportunity to present her case. The impugned actions are, therefore, contrary to the principles of natural justice.

18.8. The University's action was not a mere prospective withdrawal of a benefit, but a retrospective nullification of nearly five years of service already rendered and accepted. By treating her as having superannuated on 30th April, 2012, the University sought to alter, with retrospective effect, the legal character of her service. The later attempt to describe the period from



2012 to 2017 as contractual engagement is assailed as artificial: no contract was executed, no contractual terms were agreed upon, and the Petitioner continued throughout to function as Director, DHMI, under the University's own administrative arrangement.

18.9. The proposed recovery is unsustainable. The payments made to the Petitioner were not obtained by fraud, misrepresentation, suppression of facts, or under any undertaking to refund. They were made by the University under its own orders, while it continued to take work from her as Director, DHMI. The recovery is founded only on the University's subsequent attempt to retrospectively alter her service status and remuneration. Such a course is impermissible in law and contrary to the settled principles governing recovery of alleged excess payments from retired employees.

18.10. The withholding of salary and increments is illegal. Salary for services rendered could not be withheld without authority of law, nor could increments be withheld without following the prescribed procedure. Although the Petitioner was paid salary until November 2016, salary thereafter was withheld despite her continuing to discharge her duties until 30th April, 2017.

18.11. The plea of delay is misconceived. The writ petition was instituted on 9th February, 2017. The communication retrospectively treating the Petitioner as having superannuated on 30th April, 2012 was issued only on 28th March, 2017, after notice had already been issued in the present proceedings. The petition was amended thereafter with the Court's permission. The challenge, therefore, is neither belated nor barred by laches.

Contentions on behalf of the University of Delhi

19. Mr. Mohinder J.S. Rupal, counsel for the University of Delhi, submits



as follows:

19.1. The Petitioner had no enforceable right to continue in service until the age of 65 years. The post of Director, DHMI, is not a teaching post and the staff of DHMI were not recognised by the UGC as teachers of the University. The enhancement of the age of superannuation from 62 to 65 years was intended only for teachers engaged in teaching classes, courses or programmes of study. As Director, DHMI, the Petitioner did not fall within that category.

19.2. The University, being a statutory body, could not act contrary to statutory provisions, binding policy decisions or UGC directives. There can be no estoppel against law. Therefore, even if Executive Council Resolution No. 126 dated 27th December, 2007 extended the benefit of retirement at 65 years to the Petitioner, no enforceable right could arise if the Resolution was contrary to the governing legal framework.

19.3. Upon seeking clarification from the UGC, the University was informed that the enhanced age of superannuation was not applicable to the post of Director, DHMI. The UGC, as the statutory body entrusted with coordination and maintenance of standards in higher education, had disapproved the extension of the retirement age from 62 to 65 years in respect of that post. The Executive Council, therefore, withdrew Resolution No. 126 by Resolution No. 21 passed at its meeting held on 28th February, 2017/7th March, 2017.

19.4. The Petitioner attained the age of 60 years on 30th April, 2012 and must, therefore, be treated as having superannuated on that date. Any period thereafter cannot be regarded as regular service under the University.

19.5. To account for the period after 30th April, 2012, the University treated



the Petitioner's engagement as contractual and fixed remuneration accordingly. The additional affidavit filed by the University states that contractual fee was payable at the rate of INR 52,732/- per month from 2nd May, 2012 to 31st May, 2013 and INR 90,000/- per month from 1st June, 2013 to 28th March, 2017. On that basis, the University contends that excess payments aggregating INR 38,90,648/- were made and that, after adjustment of gratuity, provisional leave encashment and CPF subscription with interest, a balance amount remains recoverable.

19.6. The University also relies upon the Petitioner's failure to furnish a No Dues Certificate and contends that, in the absence of such compliance, her terminal benefits could not be finally processed.

19.7. The University further raises the plea of delay and laches. The UGC communication is dated February 2014 and was referred to in the writ petition itself. The challenge thereto, introduced by amendment only in 2017, is belated.

Contentions on behalf of the University Grants Commission

20. Mr. Ravinder Agarwal, counsel for the UGC, submits as follows:

20.1. The UGC acted within its statutory remit. Under the University Grants Commission Act, 1956, and in light of policy directions issued by the Central Government, the UGC is empowered to ensure that universities act consistently with governing policy in matters relating to higher education and service conditions connected therewith.

20.2. The UGC relies on the communication dated 19th April, 2007 issued by the Ministry of Human Resource Development. That communication clarified that the enhancement of the age of superannuation from 62 to 65 years applied only to teachers in centrally funded institutions who were



actually engaged in teaching classes, courses or programmes of study. It did not extend to other categories of employees merely because their posts were considered equivalent to teaching positions.

20.3. On that basis, the UGC contends that it correctly communicated its view that the enhanced age of superannuation was not applicable to the post of Director, DHMI. It denies that the communication was without authority or otherwise *non est*, and also disputes the allegation that the principles of natural justice were violated.

20.4. The petition is barred by the principles of delay and laches. The impugned communication was issued in February 2014, whereas the writ petition was instituted only in February 2017 and the challenge to that communication was introduced subsequently by amendment.

20.5. It is further submitted that no substantive relief was originally sought against the UGC and that its presence was not necessary for adjudicating the dispute between the Petitioner and the University. The UGC states that it has defended the communication only because the amended petition specifically impugns it.

20.6. The petition is not maintainable in the present form due to non-joinder of essential parties. The Ministry of Human Resource Development is a necessary party, since the impugned communication is founded upon the Ministry's policy clarification dated 19th April, 2007. Any challenge to the consequential action taken by the UGC cannot be effectively adjudicated in the absence of the Ministry.

Points for determination

21. On the pleadings, the record and the rival submissions, the following questions arise for determination:



- (i) Whether the challenge to the UGC communication dated 27th February, 2014 and the University's consequential action is liable to be rejected on the grounds of delay, laches or non-joinder of necessary parties.
- (ii) Whether Executive Council Resolution No. 126 dated 27th December, 2007 operated as a case-specific protection in favour of the Petitioner in respect of her age of retirement, having regard to her previous status as a Reader in Bharati College, the clarification sought by her before joining DHMI, and the fact that the Resolution was conveyed while her lien was still subsisting.
- (iii) Whether the University could withdraw the benefit of the 2007 Resolution without affording the Petitioner an opportunity of being heard, particularly when the withdrawal carried adverse civil consequences.
- (iv) Whether Executive Council Resolution No. 21 dated 28th February, 2017/7th March, 2017 and the University's communication dated 28th March, 2017 are sustainable insofar as they retrospectively treat the Petitioner as having superannuated on 30th April, 2012 and re-characterise the subsequent period as contractual engagement.
- (v) Whether the University is entitled to recover or adjust any amount from the Petitioner on the basis of its subsequent fixation of contractual fee for the period after 30th April, 2012.
- (vi) If the impugned action is found unsustainable, what consequential reliefs should follow in relation to salary, increments, retiral benefits, interest and release of withheld dues.

Analysis and findings

22. The first objection is founded on delay and laches. The Respondents submit that the Petitioner was aware of the UGC communication dated 27th



February, 2014, yet chose to challenge it only by way of amendment in 2017. The objection, however, cannot be accepted in the broad form in which it is urged.

23. The distinction is between a communication exchanged at the institutional level and an adverse civil consequence imposed on an employee. The UGC communication may have been issued in February 2014, but the record does not show that, at that stage, the Petitioner was informed that the protection granted under Executive Council Resolution No. 126 dated 27th December, 2007 stood withdrawn; that she had already superannuated on 30th April, 2012; or that her service thereafter would be treated as contractual. The actionable injury arose only when the University issued its communication dated 28th March, 2017. By then, the writ petition had already been filed and notice had been issued.

24. The order dated 23rd August, 2017, allowing the amendment, reflects this very position. The Court permitted the Petitioner to challenge both the University communication dated 28th March, 2017 and the UGC communication dated 27th February, 2014, while expressly preserving the Respondents' objections on facts and law. Thus, the plea of delay remains open for consideration, but it must be tested by reference to the date on which the impugned decision was actually applied to the Petitioner. Judged on that basis, the petition is not barred by delay or laches.

25. The objection of non-joinder of the Ministry of Human Resource Development is equally without merit. The Ministry's communication dated 19th April, 2007 is not challenged as an independent cause of action. The Petitioner's grievance is directed against the manner in which the University and the UGC applied that communication to her case, without considering



the special circumstances in which she moved from Bharati College to DHMI and without affording her an opportunity of hearing. The Ministry's presence is, therefore, not necessary for deciding whether the University could withdraw its own 2007 Resolution in the Petitioner's case, or whether the consequential recovery action can be sustained.

26. The first point is accordingly answered in favour of the Petitioner: the petition is not barred by delay or laches, and the objection of non-joinder of the Ministry of Human Resource Development is rejected.

27. The second, and central, issue concerns the effect of Executive Council Resolution No. 126 dated 27th December, 2007. The Respondents have approached the Resolution as though it effected a general and impermissible conversion of the post of Director, DHMI, into a teaching post. That is not what the Resolution says. Its language is carefully confined. It treats the post of Director, DHMI, as a teaching post only "for the purpose of age of retirement", and explains the reason for doing so: "since the present incumbent is from teaching fraternity."

28. The expression "present incumbent" is central to the Resolution. It identifies both the reason for the protection and the limit of its operation. The Petitioner moved to DHMI from within the University system, after serving as Reader in Bharati College, where she would have had the benefit of the enhanced retirement age applicable to teachers. Before joining DHMI, she sought clarification on the retirement age and obtained a one-year lien. Resolution No. 126 was passed while that lien was alive and was communicated to her before it expired. Acting on that assurance, she remained in DHMI instead of returning to Bharati College.

29. These circumstances determine the legal effect of the Resolution. It



was not a casual service concession, but a formal assurance by the University, acting through its Executive Council, on which the Petitioner altered her position. By permitting her lien to lapse, she gave up the opportunity to return to a teaching post carrying retirement at 65 years. Having thereafter treated Resolution No. 126 as governing her service for years, the University could not later reduce it to a mere administrative concession and withdraw it retrospectively.

30. Promissory estoppel in public law rests not on contract, but on fairness in State action. Where a public authority makes a clear representation within the field of its authority, and a person acts on it to her prejudice, the authority cannot ordinarily resile merely because the representation later appears inconvenient or mistaken. In *UOI and Ors. v. Indo Afghan Agencies Ltd.*,³ the Supreme Court held the Government bound by a representation under an export promotion scheme once the citizen had acted upon it. In *Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh*,⁴ the Court held that a governmental promise intended to be acted upon may be enforceable once the promisee alters position on its strength. In *Union of India and Ors. v. Godfrey Philips India Ltd. and Ors.*,⁵ the Court reaffirmed the doctrine, while recognising its limits: it cannot compel an act prohibited by law and must yield to a clearly established superior public interest.

31. The Respondents invoke that limitation and submit that there can be no estoppel against statute. The principle is unexceptionable, but its application is not automatic. The Court must first determine whether giving

³ 1967 SCC OnLine 12.

⁴ (1979) 2 SCC 409.



effect to the representation would violate any statutory provision. A public authority cannot be compelled to do what the law forbids; however, in the present case, the Respondents have identified no statutory provision prohibiting the Executive Council from extending case-specific protection to the Petitioner in respect of retirement age, especially when she moved from a teaching post, sought clarification before joining DHMI, and acted upon the assurance conveyed to her.

32. The UGC communication states the general position: DHMI staff had not been recognised as teachers, and the enhanced superannuation age of 65 years was intended for teachers. That general proposition does not decide this case.

33. The Petitioner does not seek a declaration that DHMI constitutes a teaching cadre or that every Director of DHMI is entitled to retire at 65 years. Her claim is confined to enforcement of the case-specific protection extended to her before she allowed her lien in Bharati College to lapse.

34. At this point, the legal distinction drawn in *Registrar, University of Delhi v. Ashok Kumar Chopra* assumes direct relevance. In that judgment, the Court explicitly held that the rule of ‘no estoppel against a statute’ does not automatically render every administrative departure void. The Court drew a clear line between acts completely prohibited by law (*ultra vires*) and those that are merely ‘irregular.’ Specifically, it ruled that if a statute provides the authority with the power to relax rules or grant exemptions, any departure may be an irregular exercise of power within an area where it had room to act. The Petitioner, herein, has invoked Rule 22 of the University Non-Teaching Employees (Terms and Conditions of Service) Rules, 1971

⁵ (1985) 4 SCC 369.



[since repealed by the University Non-Teaching Employees (Terms and Conditions of Service) Rules, 2013, the corresponding provision being Rule 18 thereof], which confers a power of relaxation on the Executive Council. The Respondents have not pointed to any provision divesting the Executive Council of the power to extend a case-specific protection to an employee transitioning from a teaching post within the University system, nor have they furnished any persuasive response to the Petitioner's reliance on the power of relaxation.

35. The Court, therefore, need not decide the status of the post of Director, DHMI, for every purpose or future incumbent. On the facts of this case, Resolution No. 126 operated as a personal protection in respect of the Petitioner's age of retirement. It was passed while her lien in Bharati College was subsisting, conveyed before that lien expired, and acted upon by the Petitioner in continuing with DHMI.

36. The University's subsequent conduct confirms how it understood Resolution No. 126 until the dispute was later reopened. Had the Resolution been void from inception, the University would not have allowed the Petitioner to continue in service for years, paid her salary on that footing, issued an identity card recording her date of retirement as 30th April, 2017, or informed the UGC in September 2013 that she would retire on that date. Having treated the Resolution as operative for nearly a decade, the University cannot later dismiss it as a legal nullity merely because its consequences have become inconvenient.

37. The second point is accordingly answered by holding that Executive Council Resolution No. 126 dated 27th December, 2007 conferred an enforceable, case-specific protection on the Petitioner in relation to her age



of retirement. Whether that protection could thereafter be withdrawn, and if so by what process and with what effect, is the next question.

38. The third and fourth points may conveniently be considered together. They concern the procedure adopted before the benefit of the 2007 Resolution was withdrawn and the legality of giving that withdrawal retrospective effect.

39. As noted above, the Petitioner's claim did not rest on any assertion that DHMI, as a cadre, should be treated as a teaching cadre. It rested on a specific assurance extended to her by the University before her lien in Bharati College expired.

40. This distinction was material, but the record does not show that it was adequately placed before the UGC. Although the University's letter dated 12th September, 2013 referred to Resolution No. 126 and the Petitioner's earlier position as Reader, it did not place before the UGC the material circumstances noted above: that the Resolution was sought, granted and acted upon while the Petitioner's lien in Bharati College was still subsisting. Consequently, the issue presented to the UGC was whether the post of Director, DHMI, could be treated as a teaching post for purposes of superannuation at 65 years, rather than whether the University could honour the protection already extended to the Petitioner.

41. More importantly, the Petitioner was not heard before the UGC communication was acted upon to her prejudice, nor before the Executive Council passed Resolution No. 21 dated 28th February, 2017/7th March, 2017 withdrawing the earlier protection. The consequence was severe: in March 2017, she was told not merely that she would retire prospectively, but that she had already retired on 30th April, 2012, almost five years earlier; service



rendered and accepted by the University was then re-described as contractual engagement.

42. The law does not permit such a consequence to be imposed without fair procedure. In *State of Orissa v. Dr. Binapani Dei*,⁶ the Supreme Court held that even an administrative order involving civil consequences must conform to the rules of natural justice. The principle was carried further in *A.K. Kraipak v. Union of India*,⁷ where the Court recognised that the dividing line between administrative and quasi-judicial action becomes thin when rights are affected.

43. The expression “civil consequences” is not confined to dismissal from service or deprivation of property. It includes consequences which affect service status, salary, pension, accrued benefits and the security attached to completed service. A decision which retrospectively treats an employee as having retired five years earlier, and then converts the intervening period into contractual service, plainly carries civil consequences. It alters not only the Petitioner’s terminal date but the character of the service she had already rendered.

44. The Respondents contend that once the UGC clarified the position, the University had no option but to withdraw Resolution No. 126. The submission cannot be accepted. The UGC communication was an administrative response to a reference made by the University. It did not examine the Petitioner’s case in its full factual setting, including the circumstance that she had acted upon the University’s assurance while her lien in Bharati College was still subsisting. Nor did it consider whether the

⁶ 1967 SCC OnLine 15.

⁷ (1969) 2 SCC 262.



Executive Council could, in those circumstances, honour a case-specific protection already extended to her. The communication could not, by itself, extinguish a protection created by the University's own Resolution and acted upon by the Petitioner for years.

45. The University's action also suffers from a further infirmity: its retrospective sweep. Resolution No. 21 did not merely withdraw a benefit for the future. It sought to rewrite a completed period of service by declaring, in March 2017, that the Petitioner had stood superannuated on 30th April, 2012. Yet, from May 2012 until November 2016, the University took work from her as Director and paid her salary on that footing. The Petitioner also asserts that she continued to discharge functions until 30th April, 2017, though without salary thereafter. The later attempt to describe the intervening period as contractual engagement was not the implementation of any contract made at the relevant time; it was a post facto re-characterisation of service already rendered.

46. A public authority cannot settle service tenure by hindsight. If the University considered that the Petitioner was required to retire on attaining the age of 60 years, it had to say so before that date, or at least when that date arrived, after giving her a fair opportunity to meet the proposed action.

47. What it could not do was accept the Petitioner's service for years, pay her as Director, and then retrospectively deny that the same period counted as regular service. That course ignored her reliance on Resolution No. 126, recast completed service by hindsight, and was manifestly arbitrary. It therefore offended Article 14.

48. The Respondents' emphasis on the Petitioner not being a teacher for all purposes does not advance their case. That contention may answer a



claim for general cadre parity; it does not answer a claim founded on a specific assurance extended before her lien expired.

49. Executive Council Resolution No. 21 dated 28th February, 2017/7th March, 2017 and the University's communication dated 28th March, 2017 are, therefore, unsustainable to the extent they operate against the Petitioner.

50. This conclusion does not require the Court to invalidate the UGC communication dated 27th February, 2014 in its entirety. Insofar as that communication records the general policy that the enhanced age of superannuation is not available to non-teaching staff, it may stand. What is unsustainable is its application to the Petitioner. The communication dated 27th February, 2014 is, therefore, held inapplicable to the Petitioner to the extent it was used to retrospectively defeat the case-specific protection granted to her under Executive Council Resolution No. 126.

Recovery and adjustment

51. The University's recovery claim rests on the retrospective premise already rejected: that the Petitioner superannuated on 30th April, 2012 and that her later service could be treated as contractual. In 2019, the University fixed a notional "contractual fee" for that completed period and, by comparing it with salary already paid, claimed an excess payment of INR 38,90,648/-, subject to adjustments.

52. That approach fails at the threshold. A contractual engagement cannot be created retrospectively by a unilateral office order after the service period has ended. The Petitioner was not offered contractual engagement in 2012, did not accept contractual remuneration, and worked without any contemporaneous fixation of a monthly fee. The University cannot, in 2019, impose a contractual character on service rendered between 2012 and 2017



and use that *post facto* characterisation to create a monetary liability.

53. Nor was the Petitioner's service during this period unauthorised in any real sense. She worked under the University's own administrative arrangement, was paid by it, and was treated as Director, DHMI. The University cannot convert that course of conduct into a charge of excess payment against the employee who acted under it.

54. There is, moreover, no allegation of fraud, misrepresentation or suppression against the Petitioner. This is not a case where an employee secured payment by concealing facts or furnishing false particulars. All material facts were within the University's knowledge. The University itself passed Resolution No. 126 in 2007, conveyed it to the Petitioner, paid her salary for years, and, in 2013, informed the UGC that she would retire on 30th April, 2017 in terms of the Executive Council Resolution.

55. In *State of Punjab v. Rafiq Masih*,⁸ the Supreme Court held that recovery of excess payment would be impermissible in situations where it would be harsh, inequitable or arbitrary, including recovery from retired employees, recovery from employees who are due to retire shortly, and recovery where the excess payment had continued for a long period without fault of the employee. The Court did not treat recovery as a matter of mere arithmetic. It recognised that when payment is received in good faith and the employee is not at fault, recovery after years may itself become unjust.

56. In *Syed Abdul Qadir v. State of Bihar*,⁹ the Supreme Court restrained recovery where the excess payment was not attributable to fraud or misrepresentation by the employees and recovery after a long lapse of time

⁸ (2015) 4 SCC 334.

⁹ (2009) 3 SCC 475.



would cause hardship. In *Thomas Daniel v. State of Kerala*,¹⁰ the Court again interfered with recovery from a retired employee where the payment had been made by the employer on its own understanding of the applicable rules and not because of any misrepresentation by the employee. The principle applies with greater force here, because the alleged excess payment is not the result of an erroneous calculation alone. It is the product of a retrospective re-description of service which this Court has already found unsustainable.

57. The University cannot derive support for its recovery claim from the orders dated 24th August, 2022 and 7th December, 2022. The order dated 24th August, 2022 merely permitted release of terminal dues, including provident fund contributions, as per the University's calculations, expressly subject to the outcome of the writ petition and without waiver of the Petitioner's rights. It did not approve those calculations. Similarly, the order dated 7th December, 2022 did not accept the University's claim of excess payment. It only required the University to furnish the computation of dues and the break-up of the alleged excess amount. The legality of recovery, therefore, remained fully open and is answered by this judgment.

58. The objection based on non-submission of a "No Dues Certificate" is of limited relevance. Such a certificate may ordinarily be required for processing retiral papers. It cannot, however, be used to withhold the Petitioner's own CPF contributions, to support a retrospective declaration that she had retired nearly five years earlier, or to sustain a recovery founded on the impermissible re-characterisation of her past service as contractual engagement.

¹⁰ 2022 SCC OnLine SC 536.



59. The recovery was claimed after the Petitioner had reached retirement age and after the alleged excess payment had continued for years. In the absence of fraud, misrepresentation, or any binding undertaking to refund, recovery from retiral benefits would be impermissible under the principles stated in the decisions noted above.

60. The fifth point is accordingly answered in favour of the Petitioner. The University is not entitled to recover or adjust any amount from her on the basis of the 2019 contractual fee fixation, the alleged excess payment, or the premise that she stood superannuated on 30th April, 2012.

Relief

61. The Petitioner seeks salary, increments and retiral benefits on the footing that she retired on 30th April, 2017. Once the withdrawal of the 2007 protection is held unsustainable, consequential relief must follow. She is entitled to be treated as having continued in service till 30th April, 2017 for purposes of pay, increments, terminal pay fixation and retiral benefits.

62. The University emphasises that salary was paid only up to 30th November, 2016 and disputes the Petitioner's claim for the period thereafter. That objection cannot defeat the relief. The Petitioner has placed on record communications asserting that she continued till 30th April, 2017 and handed over charge at the end of that period. The University's communication dated 28th March, 2017 also proceeded on the footing that the service after 30th April, 2012 had to be accounted for, though it wrongly described the period as contractual engagement. Once that description is rejected, and the Petitioner's retirement date is held to be 30th April, 2017, the University cannot withhold salary and consequential benefits for the remaining period merely because it stopped payment from December 2016. The entitlement



shall, however, be computed after giving due credit for amounts already paid and after verifying any purely ministerial particulars necessary for calculation.

63. Salary is not a bounty, and pension is not an act of grace. In *D.S. Nakara v. Union of India*,¹¹ the Supreme Court recognised pension as a measure of socio-economic justice and as deferred compensation for past service. The Petitioner's terminal benefits must therefore be recomputed on the footing that she retired on 30th April, 2017, subject only to deductions, if any, that are otherwise lawful and wholly unrelated to the impugned recovery exercise.

64. Interest must also be considered. The Petitioner has remained deprived of salary, increments and terminal dues for a substantial period. At the same time, the dispute did involve an issue between the University and the UGC concerning the treatment of the post and the effect of the 2007 Resolution. A punitive rate would therefore be inappropriate. Equally, denial of interest altogether would fail to compensate the Petitioner for the time value of money that ought to have been released to her.

65. In the facts of the present case, interest at 9% per annum would meet the ends of justice. The rate is compensatory, not punitive. If the amounts are not released within the time granted by this Court, the unpaid amount shall carry interest at 12% per annum for the period of default.

66. One clarification is necessary. This judgment does not declare that all Directors of DHMI, or all academic or non-teaching staff of the Directorate, are entitled to retire at 65 years. That question is not decided. Relief is confined to the Petitioner because Executive Council Resolution No. 126



was case-specific and because she altered her position on its strength. Nor does this judgment prevent the University or the UGC from regulating future service conditions in accordance with law. It only holds that the case-specific protection granted to this Petitioner could not be retrospectively withdrawn in the manner attempted here.

Directions

67. For the reasons stated above, the writ petition is allowed in the following terms:

- (i) Executive Council Resolution No. 21 dated 28th February, 2017/7th March, 2017 and the University's communication dated 28th March, 2017 are quashed to the extent they: withdraw, in the Petitioner's case, the benefit of Executive Council Resolution No. 126 dated 27th December, 2007; treat her as having superannuated with effect from 30th April, 2012; and describe her service thereafter as contractual engagement.
- (ii) The UGC communication dated 27th February, 2014 shall not be acted upon against the Petitioner so as to defeat the case-specific protection granted to her under Executive Council Resolution No. 126 dated 27th December, 2007. This direction is confined to the Petitioner's case.
- (iii) The Petitioner shall be treated as having continued in service as Director, Directorate of Hindi Medium Implementation, University of Delhi, till 30th April, 2017 for all consequential purposes, including salary, increments, terminal pay fixation, leave encashment, provident fund, pensionary/retiral benefits and other service benefits.
- (iv) The University shall compute and release all unpaid salary, increments and consequential dues payable to the Petitioner up to 30th April,

¹¹ (1983) 1 SCC 305.



2017, after giving due credit for amounts already paid.

(v) The University shall recompute the Petitioner's retiral benefits on the footing that her date of retirement was 30th April, 2017, and not 30th April, 2012.

(vi) The University shall not recover or adjust any amount from the Petitioner on the basis of the 2019 contractual fee fixation, the alleged excess payment of INR 38,90,648/-, or any calculation founded on the premise that she stood superannuated on 30th April, 2012.

(vii) If any amount has already been adjusted, withheld or appropriated from the Petitioner's gratuity, leave encashment, CPF, pensionary dues or any other terminal benefit on the premise set aside by this judgment, the same shall be restored and paid to her.

(viii) The amounts payable under this judgment shall carry interest at 9% per annum from the date on which each component became due until the date of payment. If the amounts are not released within six weeks from today, the unpaid amount shall carry interest at 12% per annum for the period of default.

(ix) The Petitioner shall complete all ministerial formalities, including submission of forms reasonably required for release of dues, within four weeks. The University shall not insist on any "No Dues Certificate" in a manner that defeats or delays release of the Petitioner's own contributions or the benefits directed to be paid under this judgment. If the University claims any specific institutional dues wholly unrelated to the impugned recovery claim, it shall communicate those dues to the Petitioner within four weeks, with particulars and supporting material. Only such dues as are otherwise lawful may be adjusted.



68. The writ petition is disposed of in the above terms. Pending applications, if any, also stand disposed of.

SANJEEV NARULA, J

JULY 01, 2026