

A STATE OF RAJASTHAN  
v.  
A.N. MATHUR & ORS.  
(Civil Appeal No. 8469 of 2013)

B SEPTEMBER 23, 2013

[ANIL R. DAVE AND DIPAK MISRA, JJ.]

*Service Law – Retiral benefits – Payment of – Change in policy – Resolutions passed by the Board of Management of the University in relation to giving options to the University employees for changing from Contributory Provident Fund scheme to Pension Scheme – Change effected subsequently set aside by the appellant-State – Justification – Held: Though the University is an autonomous body, any financial liability incurred by it is to be ultimately discharged with the financial help of appellant-State – In spite of the clear and unambiguous provisions of s.39, the Board of Management of the University did not get necessary assent of the Chancellor, i.e. the Governor of the State before effecting the change in the scheme with regard to payment of the retiral benefits to its employees – The University could not have unilaterally decided to give huge financial benefit to its employees without taking consent of the Chancellor, i.e. the Governor of the State in violation of s.39 – Control exercised by the State on the University in the financial matters is completely justified – The State was entitled to reject the change effected by the University – Rajasthan Agricultural University, Udaipur Act, 2000 – ss.2(h) r/w s.8 and ss.38 and 39 – Pension Rules, 1990.*

G The University in question is an autonomous body constituted under the Rajasthan Agricultural University, Udaipur Act, 2000, but dependent on the appellant-State in its financial matters, especially in relation to expenditure pertaining to salary and allowances given to

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its employees. On 7th December, 2000, the Board of Management of the University passed resolution giving option to its employees to either continue under the existent Contributory Provident Fund Scheme or opt for a pension scheme under the Pension Rules, 1990. Another resolution in this regard was passed by the Board of Management of the University on 18th December, 2009.

Before giving option under the resolutions dated 7th December, 2000 and 18th December, 2009, the University had not consulted the appellant. Upon getting information about the Pension Scheme, the appellant, under its order dated 3rd June, 2011, did not approve the same. When the order dated 3rd June, 2011 issued by the appellant was communicated to the University, by order dated 30th November, 2011, the University withdrew its resolutions dated 7th December, 2000 and 18th December, 2009.

The University employees approached the High Court by filing several writ petitions. The High Court quashed the order dated 3rd June, 2011 passed by the appellant, and, therefore the present appeals.

Allowing the appeals, the Court

HELD: 1. According to Section 39 of the Act, it was obligatory on the part of the Board of Management of the University to submit the resolutions dated 7th December, 2000 and 18th December, 2009 to the Chancellor i.e. to the Governor of the State of Rajasthan before inviting options from the employees. The High Court ought not to have constrained the University to continue to pay pension to the respondent-employees, especially in view of the fact that the change effected in the payment of retiral benefits to the employees was never approved by the Chancellor of the University as required under

**A Section 39 of the Act. [Paras 23, 27] [250-H; 251-A; 252-B-C]**

**B 2. The provisions in Section 39 of the Act are of vital importance because the legislature wanted to have some control over the University, though the University is an autonomous body. The reason behind having such a control could be for the fact that the University is given substantial financial assistance by the appellant as seen from the provisions of Section 36 of the Act. Any financial liability incurred by the University is to be ultimately discharged by the University with the financial help of the appellant-State. [Para 28] [252-D-E]**

**D 3. In spite of the clear and unambiguous provisions of Section 39 of the Act, the Board of Management of the University did not get necessary assent of the Chancellor, i.e. the Governor of the State of Rajasthan before effecting the change in the scheme with regard to payment of the retiral benefits to its employees. When the appellant is reimbursing the expenditure incurred by the University by giving grants or financial aids in one form or the other, the control exercised by the State on the University in the financial matters is completely justified. The University cannot unilaterally decide to give huge financial benefit to its employees without taking consent of the Chancellor, i.e. the Governor of the State of Rajasthan in violation of the provisions of Section 39 of the Act. [Para 29] [252-E-F, H; 253-A-B]**

**G 4. From the contents of the order dated 3rd June, 2011, passed by the State of Rajasthan it is clear that because of the changed policy adopted by the University in the matter of payment of the retiral benefits to its employees, financial burden on the University would be substantially increased and ultimately that burden will have to be discharged by the State of Rajasthan. As the H University had taken the decision to give an option to its**

employees for changing the manner in which they were to be given retiral benefits in violation of Section 39 of the Act, the State of Rajasthan was entitled to reject the change effected by the University. The High Court was not correct while quashing and setting aside the order dated 3rd June, 2011 passed by the appellant-State of Rajasthan. [Paras 30, 31] [253-B-D, F]

5. So far as the submission with regard to violation of the principles of natural justice is concerned, by not giving hearing to the concerned employees, the action of the University would not become void. Violation of one of the principles of natural justice would make the action voidable but not void. Even if the University gives notices to all the employees calling upon them to show cause as to why the option exercised by them should not be cancelled so as to restore the original scheme of the Contributory Provident Fund, and even after considering the replies of the employees, the University cannot continue to give pension to the employees. If issuance of show cause notice is a mere formality, that would not affect the decision taken by the University in pursuance of the order dated 3rd June, 2011 because the order dated 3rd June, 2011 passed by the appellant-State is absolutely legal and by virtue of the said order, the resolutions dated 7th December, 2000 and 18th December, 2009 passed by the University have been quashed. Even if the employees were not given any notice, the final decision taken by the University is not bad in law. The order dated 3rd June, 2011 passed by the appellant-State shall operate and the employees shall be given retiral benefits as per the Contributory Provident Fund Scheme which was in force prior to 7th December, 2000. [Paras 33, 34, 35 and 36] [254-A-F, G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8469 of 2013.

A From the Judgment & Order dated 19.7.2012 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Special Appeal (Writ) No. 431 of 2012.

WITH

B C.A. Nos. 8470, 8471, 8472, 8473, 8474, 8475, 8476, 8477, 8478, 8479 and 8480 of 2013.

Dr. Manish Singhvi, AAG, Pragati Neekhra, H.D. Thanvi, Rishi Motoliya, Preeti Thanvi, Sarad Kumar Singhania for the Appellant.

C S.S. Shamsbery, V.M. Vishnu, Arun Bhardwaj, Bharat Sood, C.S. Ashri Milind Kumar for the Respondents.

The Judgment of the Court was delivered by

D **ANIL R. DAVE, J.** 1. Leave granted in all the special leave petitions.

E 2. Being aggrieved by the judgment delivered in D.B. Civil Special Appeal (Writ) No.431 of 2012 in S.B. Civil Writ Petition No.9843 of 2011 dated 19th July, 2012, delivered by the High Court of Rajasthan, the appellant-State of Rajasthan has filed the present set of appeals.

F 3. As all the appeals arise out of a common judgment delivered by the Rajasthan High Court, all the appeals were heard together at the request of the learned counsel appearing for the concerned parties.

G 4. The facts giving rise to the present litigation, in a nutshell, are as under:

H Maharana Pratap University of Agriculture and Technology (hereinafter referred to as 'the University') is an autonomous body performing the function of making provisions for imparting education in different branches of study, particularly Agriculture,

Horticulture, Veterinary Science, Animal Husbandry etc. to the students and is constituted under the provisions of the Rajasthan Agricultural University, Udaipur Act, 2000 (hereinafter referred to as 'the Act'). The University is the employer of other respondents, who had been either working under the University and now retired or they are still in the employment of the University.

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5. The University had framed a Provident Fund Scheme for its employees. Accordingly, in the past, upon retirement, the employees of the University used to get their own contribution as well as contribution of the University by way of retiral benefits as per the provisions of the said scheme. On 7th December, 2000, the Board of Management of the University passed a resolution whereby it gave an option to its employees to either continue under the Contributory Provident Fund Scheme or to opt for a pension scheme under the Pension Rules, 1990. Certain employees had opted for the Pension Scheme. Once again, the Board of Management of the University passed another resolution on 18th December, 2009 inviting options from the employees as to whether they wanted to join the Pension Scheme or wanted to continue under the Contributory Provident Fund Scheme. In pursuance of the second resolution, some more employees had opted for the Pension Scheme.

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6. Though the University is an autonomous body constituted under the provisions of the Act, it is dependant on the appellant-State in its financial matters, as the University is unable to generate sufficient funds to meet with its expenditure. According to Section 36 of the Act, the appellant-State has to provide grant to the University to meet its expenditure, especially in relation to the expenditure pertaining to salary and allowances given to its employees. Thus, the University gets substantial funds from the appellant. Due to the option exercised by several employees in favour of the Pension Scheme, financial burden of the University had been substantially increased and the said burden was ultimately to

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A be discharged by the appellant. It is pertinent to note here and  
 it is an admitted fact that before giving such an option under  
 the resolutions dated 7th December, 2000 and 18th December,  
 2009, the University did not even consult the appellant in the  
 matter of changing the scheme with regard to payment of retiral  
 B benefits to its employees.

C 7. The appellant was unaware of the resolutions passed  
 by the Board of Management of the University, whereby its  
 employees were offered an opportunity to opt for the Pension  
 Scheme, but upon getting information about the change  
 effected by the University regarding implementation of the  
 Pension Scheme, upon due deliberation by the Finance  
 Department of the appellant, under its order dated 3rd June,  
 2011, the appellant did not approve the same.

D 8. When the order dated 3rd June, 2011 issued by the  
 appellant had been communicated to the University, by an order  
 dated 30th November, 2011, the University withdrew its  
 resolutions dated 7th December, 2000 and 18th December,  
 2009.

E 9. As a result of the withdrawal of the two resolutions by  
 the University on 30th November, 2011, the employees, who  
 had opted for the Pension Scheme were deprived of the benefit  
 of the Pension Scheme, and the University had to make  
 necessary accounting adjustments for making payment of the  
 F provident fund to the employees, which the employees were  
 entitled to upon their retirement. Some of the employees were  
 very much in service and therefore, there was no question of  
 any recovery and the University had to merely pass necessary  
 book entries. The employees who had opted for the Pension  
 G Scheme and had already retired had either to make payment  
 to or receive some amount from the University upon change  
 made in the scheme.

H 10. Upon the Pension Scheme being abolished and as the

employees had to either pay back the amount of pension received from the University or had to accept the Contributory Provident Fund scheme, they had approached the High Court of Rajasthan by filing several writ petitions. Some of the employees, who had not opted for the pension scheme, had also filed petitions praying that they be permitted to opt for the pension scheme even if there was delay in opting for the same. The said writ petitions had been heard together by the learned single Judge of the High Court and they had been allowed by a common judgment dated 5th April, 2012. By virtue of the said judgment, the order dated 3rd June, 2011 passed by the appellant- the Government of Rajasthan had been quashed and as a result thereof, the employees who had opted for the Pension Scheme were to be paid pension by the University in accordance with the Pension Rules.

11. Being aggrieved by the aforestated judgment delivered by the learned Single Judge, the University preferred intra-court appeals and the said appeals have been dismissed by the Division Bench of the Rajasthan High Court by virtue of the impugned judgment and therefore, the State of Rajasthan has filed these appeals because ultimately, the burden of payment of pension to the employees would be passed over to the State of Rajasthan as per Section 36 of the Act.

12. The learned counsel appearing for the appellant, while challenging the validity of the impugned judgment as well as the judgment delivered by the learned single Judge of the Rajasthan High Court had mainly submitted that the Resolutions passed by the Board of Management of the University inviting options in relation to the Pension Scheme were in violation of the provisions of Section 39 of the Act. Extracts of Sections 38 and 39 of the Act are reproduced hereinbelow:

**“38. Statutes** – Subject to the provisions of this Act, the Statutes of the university may provide for any matter connected with the affairs of the university and shall in

A particular, provide the following namely:-

1. to 6. xxx xxx xxx.

B 7. Establishment of pension and insurance schemes for the benefit of officers, teachers and other employees of the University and the rules, terms and conditions of such schemes.

8 to 14. xxx xxx xxx”

C **“39. Statutes how made –**

D 1. Statutes under this Act shall be proposed by the Board and submitted to the Chancellor for his assent and shall come into force only after the assent is received and notified by the Vice-Chancellor.

2. Any statutes may be amended or repealed by the Board with the assent of the Chancellor.

E 3. All Statutes made under this Act shall be published in the official Gazette.”

F 13. The learned counsel appearing for the appellant had vehemently submitted that before considering the change in the scheme with regard to giving different retiral benefits to its employees, the Board of Management of the University ought to have taken consent of the Chancellor, i.e. the Governor of the State of Rajasthan as per provision of Section 39 of the Act. Thus, without consent of the State of Rajasthan, who is ultimately going to be burdened with the financial liability relating to payment of the retiral benefits, the University could not have changed the policy with regard to payment of the retiral benefits.

H 14. The learned counsel had then submitted that when the facts about the resolutions passed by the Board of Management of the University, which had not been approved

by the Chancellor, were brought to the notice of the State of Rajasthan, the said resolutions were duly considered by the State of Rajasthan and when it was found that because of the said resolutions financial liability of the State was being increased for no justifiable reason, the State was constrained to pass the order dated 3rd June, 2011, whereby both the resolutions passed by the Board of Management of the University had been quashed and set aside.

15. Thus, the short but forceful submission of the learned counsel appearing for the State was that the change effected in the scheme under which the employees were given retiral benefits was not legal or was not in accordance with the provisions of the Act and therefore, the employees who had opted for the Pension Scheme cannot be given pension and they will have to continue with the Contributory Provident Fund scheme. In the circumstances, he had prayed that the appeals should be allowed and the impugned judgment confirming the judgment of the learned Single Judge of the Rajasthan High Court should be quashed and set aside.

16. On the other hand, the learned counsel appearing for the University had passively supported the submissions made by the learned counsel appearing for the State and he had to admit the fact that before inviting options from the employees in pursuance of the two resolutions referred to hereinabove, approval of the Chancellor, i.e. the Governor of the State of Rajasthan had not been obtained by the Board of Management of the University.

17. The appeal was vehemently opposed on behalf of the employees of the respondent- University.

18. The learned counsel appearing for the employees had submitted that the employees had opted for the Pension Scheme within the period prescribed by the resolutions passed by the Board of Management of the University and therefore,

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A the University had no right to make any change in the policy thereafter.

B 19. It had been further submitted that some of the respondent employees had also started getting pension upon their retirement in pursuance of the option exercised by them. According to the learned counsel, it would be unjust to change the scheme with regard to the retiral benefits considering the lapse of time and it would be unfair to the employees who are getting pension as per the option exercised by them. It had been further submitted that the change effected in the policy with regard to payment of retiral benefits by the University was retrospective in nature and therefore, it was bad in law.

D 20. The learned counsel appearing for the employees had also submitted that before effecting change in the scheme, no notice was ever issued to the employees and therefore, the action of the withdrawal of the Pension Scheme was against the principles of natural justice.

E 21. The learned counsel appearing for the employees had supported the reasons given in the impugned judgment and had also submitted that certain other universities in the State of Rajasthan were also giving benefit of a pension scheme to its employees and therefore, there was no justification on the part of the University from preventing its employees from getting the benefit of the Pension Scheme. He had, therefore, submitted that the appeals should be dismissed.

G 22. We have heard the learned counsel at length and have carefully considered the provisions of the Act, and the resolutions passed by the University as well as the order dated 3rd June, 2011 passed by the appellants-State.

H 23. Upon carefully going through the statutory provisions, we are of the view that the High Court ought not to have constrained the University to continue to pay pension to the respondent-employees, especially in view of the fact that the

change effected in the payment of retiral benefits to the employees was never approved by the Chancellor of the University as required under Section 39 of the Act.

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24. As stated hereinabove, though the University is an autonomous body, it is much dependent on the State of Rajasthan in its financial matters. It gets substantial funds from the State for performing its duties and possibly for the said reason the State has control over it in the financial affairs. Be that as it may, Section 39 of the Act makes it mandatory to get approval or assent of the Chancellor of the University before effecting any change in the Statute.

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25. Section 38 of the Act clearly indicates that the University can provide for any matter connected with the affairs of the University and in particular, the matters which have been referred to under Section 38 of the Act. In the instant case, we are concerned with clause 7 of Section 38 of the Act, which also pertains to establishment of pension scheme for the benefit of the employees of the University. Thus, it is open to the University to frame or change any scheme with regard to payment of retiral benefits to its employees.

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26. In the instant case, the University wanted to change the scheme—from the Contributory Provident Fund scheme to the Pension Scheme. The University had given option to its employees to opt either for the Pension Scheme or to continue with the Contributory Provident Fund scheme and for that purpose, two resolutions, viz. resolutions dated 7th December, 2000 and 18th December, 2009 had been passed by the Board of Management of the University. In the said process, the University missed to look at the provisions of Section 39, which makes it obligatory for the Board of Management of the University to submit the proposed amendment to the Chancellor of the University for his assent. The amended statute would come into force only after the assent is received and the same is notified by the Vice-Chancellor of the University. The

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A Chancellor, as per the provisions of Section 2(h) read with Section 8 of the Act, is the Governor of the State of Rajasthan.

B 27. According to the aforestated provision of Section 39 of the Act, it was obligatory on the part of the Board of Management of the University to submit the resolutions dated  
 C 7th December, 2000 and 18th December, 2009 to the Chancellor i.e. to the Governor of the State of Rajasthan before inviting options from the employees. If the assent of the Chancellor, i.e. the Governor of the State of Rajasthan is not  
 D received by the University, the amended statute would not come into force.

E 28. The aforestated provisions in Section 39 of the Act are of vital importance because the legislature wanted to have some control over the University, though the University is an  
 F autonomous body. The reason behind having such a control could be for the fact that the University is given substantial financial assistance by the appellant as one can see from the provisions of Section 36 of the Act. Any financial liability incurred by the University is to be ultimately discharged by the  
 G University with the financial help of the appellant-State.

H 29. In spite of the clear and unambiguous provisions of Section 39 of the Act, the Board of Management of the University did not get necessary assent of the Chancellor, i.e. the Governor of the State of Rajasthan before effecting the  
 I change in the scheme with regard to payment of the retiral benefits to its employees. The change in scheme would result into a huge financial liability on the University, which ultimately will have to be borne by the appellant- the State of Rajasthan. Had the University been having complete autonomy and had  
 J been not dependent on the State of Rajasthan in its financial matters, possibly Section 39 of the Act would not have been incorporated in the Act in the form in which it is at present. When the appellant is reimbursing the expenditure incurred by the University by giving grants or financial aids in one form or

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the other, the control exercised by the State on the University in the financial matters is completely justified. The University cannot unilaterally decide to give huge financial benefit to its employees without taking consent of the Chancellor, i.e. the Governor of the State of Rajasthan in violation of the provisions of Section 39 of the Act.

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30. From the contents of the order dated 3rd June, 2011, passed by the State of Rajasthan it is clear that because of the changed policy adopted by the University in the matter of payment of the retiral benefits to its employees, financial burden on the University would be substantially increased and ultimately that burden will have to be discharged by the State of Rajasthan. As the University had taken the decision to give an option to its employees for changing the manner in which they were to be given retiral benefits in violation of Section 39 of the Act, the State of Rajasthan was entitled to reject the change effected by the University.

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31. For the aforesaid reasons, in our opinion, the order dated 3rd June, 2011 passed by the appellant, whereby both the resolutions passed by the University in relation to giving options to its employees for changing the Contributory Provident Fund scheme to the Pension Scheme, is absolutely just and legal. We are, therefore, of the view that the High Court was not correct while quashing and setting aside the order dated 3rd June, 2011 passed by the appellant-State of Rajasthan.

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32. A submission had been made on behalf of the employees that some other universities in the State of Rajasthan are giving pension to its employees. Be that as it may, each University has a different set of rules and if another university had adopted a different policy in accordance with law or as per its rules and regulations, we cannot say that the order dated 3rd June, 2011 passed by the appellant is incorrect. According to us, the said submission is not relevant and therefore, we do not accept the said submission.

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A 33. So far as the submission with regard to violation of the principles of natural justice is concerned, in our opinion, by not giving hearing to the concerned employees, the action of the University would not become void. Violation of one of the principles of natural justice would make the action voidable but  
 B not void.

C 34. Let us see as to what would happen if the University gives notices to all the employees calling upon them to show cause as to why the option exercised by them should not be cancelled so as to restore the original scheme of the  
 D Contributory Provident Fund. Even after considering the replies of the employees, the question is whether the University can continue to give pension to the employees? Answer to the question would be in the negative. If issuance of show cause notice is a mere formality, in our opinion, that would not affect  
 E the decision taken by the University in pursuance of the order dated 3rd June, 2011 because the order dated 3rd June, 2011 passed by the appellant-State is absolutely legal and by virtue of the said order, the resolutions dated 7th December, 2000 and 18th December, 2009 passed by the University have been quashed.

35. In view of the above facts, we are of the view that even if the employees were not given any notice, the final decision taken by the University is not bad in law.

F 36. In the aforestated circumstances, we quash and set aside the impugned judgment delivered by the Division Bench of the Rajasthan High Court, which has confirmed the judgment delivered by the learned single Judge. The order dated 3rd June, 2011 passed by the appellant-State shall operate and the  
 G employees shall be given retiral benefits as per the Contributory Provident Fund Scheme which was in force prior to 7th December, 2000. The University shall make necessary adjustments so as to revive the Contributory Provident Fund Scheme either by accounting entries or by making payment of  
 H appropriate amount in case of retired employees, in respect

of whom changes are to be affected. We clarify that if prior to passing the resolution dated 7th December, 2000 by the Board of Management of the University, if there was any scheme about payment of pension to its employees and if any of the employees had opted for the said scheme, payment of pension to such employees would not be affected by virtue of this judgment. A B

37. The appeals are allowed with no order as to costs.

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Appeals allowed.