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v.

STATE OF UTTARAKHAND AND ORS.

(Civil Appeal No. 11856 of 2018)

DECEMBER 05, 2018

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[U. U. LALIT AND

**DR. DHANANJAYA Y CHANDRACHUD, JJ.]**

*Service Law – University-Second respondent passed resolution terminating College Development Council (CDC) – Challenged by the appellant-Director of CDC – High Court quashed the resolution directing that while the CDC will continue, it will be without the Appellant as its Director – Plea of appellant that the tenure limitation for two terms of three years can only apply to those Directors appointed on deputation – Held: Terms of the advertisement issued by the University calling for applications for the posts in the newly constituted CDC are material – Appellant was put to notice that his appointment was for three years – Though the office order by which the Appellant was appointed as Director, CDC does not mention a tenure, however, it cannot be said that the Appellant was not put to notice that his appointment to the post of Director, CDC was for three years – Appointment was in terms of the advertisement – Further, Clause 3 of the ‘Revised Guidelines for the Establishment of College Development Council’ deals with the appointment of the Coordinator/Director/Dean of the CDC – Merely because in the said clause, the sentence providing for tenure limitation follows the sentence on deputationists, it cannot be said that the tenure limitation applies only to deputationists – Tenure limitation applies to every person who is appointed to the post – Having served the tenure laid down by the revised guidelines, the Appellant cannot continue as Director, CDC.*

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**Dismissing the appeal, the Court**

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**HELD: 1.1 The terms of the advertisement issued by the University calling for applications for the posts in the newly constituted CDC are material. The Appellant was put to notice that his appointment was for a period of three years. Though the**

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A office order by which the Appellant was appointed as Director, CDC does not mention a tenure, it cannot be said that the Appellant was not put to notice that his appointment to the post of Director, CDC was for a period of three years. The appointment was in terms of the advertisement. [Para 9][1079-E-H]

B 1.2 The Clause 3 of the ‘Revised Guidelines for the Establishment of College Development Council’ deals with the appointment of the Coordinator/Director/Dean of the CDC. When the clause is read as a whole, the word “he” is used to indicate the pay scale and the tenure of the Coordinator/Director/Dean of the CDC. The sentence on deputationists is merely to provide that those persons on deputation will be eligible for deputation allowance and other permissible allowances. The clause read as a whole, deals with the conditions for the appointment of the Coordinator/Director/Dean of the CDC. Hence, it cannot be held that merely because the sentence providing for a tenure limitation follows the sentence on deputationists, the tenure limitation applies only to deputationists. The tenure limitation applies to every person who is appointed to the post. The Appellant has admittedly served out the tenure as Director, CDC of two terms of three years each. Having served the tenure laid down by the revised guidelines, the Appellant cannot continue as Director, CDC. [Paras 12, 13][1080-E-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11856 of 2018.

F From the final Order dated 28.12.2011 of the High Court of Uttarakhand at Nainital in Writ Petition No.429 of 2006 (S/B).

With

Contempt Petition (Civil) No. 196/2014 in S.L.P. (Civil) No.10084 of 2012.

G Vikas Singh, Sr. Adv., Sanjay Kumar Dubey, Rakesh Kumar Tewari, Krishna Kant Dubey, Devendra Kumar Shukla, Shuchi Singh, Kapish Seth, Satish Vig, Advs. for the Appellant.

H Jatinder Kumar Sethi, DAG, Rajiv Nanda, Dr. Kartidey Hari Gupta, Vinodh Kanna B., M. B. Ramasubnba Raju, Somyashree Kulkarni, V. Sudeer, Balaji Srinivasan, Advs. for the Respondents.

The Judgment of the Court was delivered by

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**DR. DHANANJAYA Y CHANDRACHUD, J.**

1. Leave granted.

2. The appeal in the present case arises from the judgment of a Division Bench of the High Court of Uttarakhand dated 28 December 2011<sup>1</sup>. The High Court quashed a Resolution dated 29 July 2006, being Resolution No. 23 of the 76<sup>th</sup> General Meeting of the Executive Council of the Second Respondent<sup>2</sup>. By that resolution, the College Development Council<sup>3</sup> was terminated with immediate effect. The Appellant, who was a Director of the CDC, has filed the present appeal, aggrieved by the direction of the High Court that while the CDC will continue, it will be without the Appellant as its Director.

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3. On the request of the Second Respondent, the University Grants Commission<sup>4</sup> agreed to set up a CDC if an assurance was communicated by the Government of Uttar Pradesh that it would bear the financial liability after 31 March 1995. By a letter dated 31 October 1991, the Government of Uttar Pradesh agreed to bear all the expenses incurred on the post of Director, CDC after 31 March 1995. By a letter dated 07 November 1991, the UGC agreed to the request of the University to set up a CDC with two posts – (i) A Director in the Professor's scale; and (ii) A stenographer. An advertisement inviting applications for the above posts was issued on 06 January 1992. The Appellant was appointed as Director, CDC through open selection by an office order dated 02 November 1992 of the Second Respondent. On 23 January 1996, the Appellant was permanently absorbed.

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4. In 2003, the University shifted the office of the CDC from Srinagar to Dehradun. The Appellant filed a writ petition<sup>5</sup> before the High Court of Uttarakhand challenging the order of transfer. On 09 December 2005, the University transferred the Appellant to the Swami Ramtirth Campus, New Tehri. On 30 June 2006, disciplinary proceedings were initiated against the Appellant and he was suspended. The order of suspension was stayed on an interim application in the above writ petition,

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<sup>1</sup>In Writ Petition No 429 of 2006

<sup>2</sup>Hemwati Nandan Bahuguna Garhwal University, Srinagar

<sup>3</sup>CDC

<sup>4</sup>UGC

<sup>5</sup>Writ Petition (SB) No 7 of 2006

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A on 10 July 2006. On 19 July 2006, the High Court of Uttarakhand disposed of the writ petition by revoking the suspension, subject to the Appellant joining service at Srinagar. However, the disciplinary proceedings were not stayed.

B 5. At the 76<sup>th</sup> General Meeting of its Executive Council, the University passed a resolution to abolish the post of CDC on the ground that the permission of the government for bearing the financial burden of the CDC was not received and it was not legally created. Challenging this resolution, the Appellant filed a writ petition<sup>6</sup> before the High Court of Uttarakhand, from which the present appeal arises. The High Court  
C relied on the ‘Revised Guidelines for the Establishment of College Development Council in Universities’ issued by the UGC for the establishment of the CDC. Clause 3 of the revised guidelines deals with tenure of the Director, thus:

D “He may be appointed on a tenure basis for three years, extendable for another terms of three years, but not beyond the age of 65 years, when he would retire.”

E The High Court observed that the Government of Uttar Pradesh agreed to bear the expenses to be incurred in respect of the post of Director, CDC. However, the University did not obtain reimbursement from the State Government for the expenses incurred. Ruling that the  
F University could not hold out that there was no assurance by the State Government to take over the liability of the CDC after 31 March 1995, the High Court quashed Resolution No. 23 of the 76<sup>th</sup> General Meeting of the Executive Council by which the post of the CDC was sought to be abolished. This ruling of the High Court is not challenged. On the  
G question whether the Appellant should be allowed to continue as Director, CDC, the High Court observed that he was admittedly appointed under the scheme envisaged by the revised guidelines issued by the UGC and could only work for two tenures of three years. Noting that the Appellant had already served two terms of three years, the High Court held that the CDC will continue, but without the Appellant as its Director. It is this direction of the High Court, refusing the Appellant’s continuation as Director, CDC that forms the basis of the present appeal. The High Court directed that the University to complete the adjustment of the Appellant as mentioned in Resolution No. 23 of the 76<sup>th</sup> General Meeting

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H <sup>6</sup>Writ Petition No 429 of 2006

of the Executive Council. The High Court held that the submission that the term limit in the revised guidelines applies only to deputationists has no merit since the deputationists are also people associated with higher education and at the relevant time when the revised guidelines were issued, the retirement age of persons associated with higher education would be much less than 65 years.

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6. We have heard the learned counsel for the parties.

7. Mr Vikas Singh, learned Senior Counsel for the Appellant submitted that the office order dated 02 November 1992 by which the Appellant was appointed as Director, CDC did not mention that he is being appointed on deputation or on a tenure basis. The main contention put forth for the Appellant is that applying the principle of *ejusdem generis*, the tenure limitation of two terms of three years in Clause 3 of the revised guidelines can only apply to those Directors appointed on a deputation basis. It was further contended that once the Appellant was absorbed, the tenure limitation which applied only to deputationists, did not apply to him.

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8. The learned counsel for the Respondent University submitted on the other hand that the Appellant was put to notice that his appointment was for a tenure of three years and that the tenure limitation of two terms of three years applied to the post of Director, CDC and barred the Appellant from continuing in the post after having served two terms.

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9. The terms of the advertisement issued on 06 January 1992 by the University calling for applications for the posts in the newly constituted CDC are material. The relevant portion reads thus:

“Minimum qualification for Director are same as those for the post of a Professor as prescribed by the University. Preference will be given to the candidate who has dealt with academic administration. **The tenure of the Director, College Development Council will be for 3 years.**” (Emphasis supplied)

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The Appellant was put to notice that his appointment was for a period of three years. Though the office order dated 02 November 1992 by which the Appellant was appointed as Director, CDC does not mention a tenure, it cannot be said that the Appellant was not put to notice that his appointment to the post of Director, CDC was for a period of three years. The appointment was in terms of the advertisement.

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A 10. Clause 3 of the revised guidelines reads thus:

“3. The Coordinator/Director/Dean of the College Development Council may be appointed by the Syndicate on the recommendation of the Selection Committee consisting of the Vice-Chancellor, as Chairman, a nominee of the UGC, and a nominee of the Syndicate of the University. He may be appointed in the scale of Rs. 1500-2500 plus other admissible allowances as per university rules. **Persons on deputation will be eligible for deputation and other permissible allowances. He** may be appointed on a tenure basis for three years, extendable for another term of three years, but not beyond the age of 65 years, when he would retire.”

C (Emphasis supplied)

D 11. Learned Senior Counsel for the Appellant contended that the sentence that provides for a tenure follows the sentence that states that “persons on deputation will be eligible for deputation and other permissible allowances” and hence, the tenure limitation applies only to those appointed as deputationists. It is submitted that the word “he” appearing at the beginning of the sentence and after the sentence permitting the appointment of deputationists must be read together.

E 12. There is no merit in this contention. The clause deals with the appointment of the Coordinator/Director/Dean of the CDC. When the clause is read as a whole, the word “he” is used to indicate the pay scale and the tenure of the Coordinator/Director/Dean of the CDC. The sentence on deputationists is merely to provide that those persons on deputation will be eligible for deputation allowance and other permissible allowances. The clause read as a whole, deals with the conditions for the appointment of the Coordinator/Director/Dean of the CDC. Hence, it cannot be held that merely because the sentence providing for a tenure limitation follows the sentence on deputationists, the tenure limitation applies only to deputationists. The tenure limitation applies to every person who is appointed to the post.

G 13. The Appellant, who was appointed on 02 November 1992, has admittedly served out the tenure as Director, CDC of two terms of three years each. We are in agreement with the High Court that having served the tenure laid down by the revised guidelines, the Appellant cannot continue as Director, CDC.

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[DR. DHANANJAYA Y CHANDRACHUD, J.]

14. For these reasons, we see no reason to interfere with the judgment of the High Court. The appeal shall stand dismissed. In view of the appeal being dismissed, the contempt petition does not survive. There shall be no order as to costs. A

Divya Pandey

Appeal dismissed.