

PETITIONER:
JAWAHARLAL NEHRU UNIVERSITY

Vs.

RESPONDENT:
DR. K.S. JAWATKAR & ORS.

DATE OF JUDGMENT 12/05/1989

BENCH:
PATHAK, R.S. (CJ)
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PATHAK, R.S. (CJ)
MUKHARJI, SABYASACHI (J)

CITATION:
1989 AIR 1577 1989 SCR (3) 273
1989 SCC Supl. (1) 679 JT 1989 (2) 538
1989 SCALE (1) 1438

ACT:

Jawaharlal Nehru University Act 1966: Section 7--University-Establishing Centre of Post Graduate Studies at Imphal--Whether a member of the teaching staff at Centre can be transferred without his consent to the Manipur University.

HEADNOTE:

The appellant, Jawaharlal Nehru University, had set up a Centre of Post-Graduate Studies at Imphal under s. 5(2) of the University Act. The Respondent while he was working as a temporary research Assistant in the School of International Studies of the University was offered the post of Associate Fellow at the Centre of Post-graduate Studies, Imphal, on ad hoc basis which offer was accepted by him on 3 December, 1973. His term of appointment was extended from time to time. On 21st March, 1979 the University offered him the post of Assistant Professor in the Political Science Division at the Centre at Imphal for a period of two years. The respondent joined the post on 29 August, 1979. Later, he was appointed as such on a regular basis from the date of his initial appointment, and was confirmed with effect from the same date.

The Centre of Post-graduate Studies at Imphal was to be merged with the Manipur University as provided in the Manipur University Act, 1980. On 3 February, 1981 the Syndicate of the Jawaharlal Nehru University provided for the transfer of the Centre to the Manipur University and resolved that the members of the faculty employed by the Jawaharlal Nehru University Centre of Post-graduate Studies, Imphal, immediately 'before its merger into the Manipur University would on and from that date become members of the staff of the Manipur University.

The respondent filed a writ petition in the Delhi High Court praying for the quashing of the Resolution of the Jawaharlal Nehru University whereby his services were transferred to the Manipur University. The learned Single Judge allowed the writ petition holding that the respondent could not be obliged to join the Manipur University, and that he was confirmed as Assistant Professor in the employment of the

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Jawaharlal Nehru University in its Imphal Centre and was entitled to continue in service until he attained the age of 60 years.

In appeal, the Division Bench upheld the view that the services of the respondent could not stand automatically transferred with the transfer of the Centre at Imphal, from the Jawaharlal Nehru University to the Manipur University. Dismissing the appeal, this Court,

HELD: (1) The Centre of Post-graduate Studies was set up at Imphal as an activity of the appellant--Jawaharlal Nehru University. To give expression to that activity, the University set up and organised the Centre at Imphal and appointed teaching and administrative staff to man it. Since the Centre represented an activity of the University the teaching and administrative staff must be understood as employees of the University. [279H; 280A]

(2) The contract of service entered into by the respondent was a contract with the appellant University and no law can convert that contract into a contract between the respondent and the Manipur University without automatically making it, either expressly or by necessary implication, subject to the respondent's consent, notwithstanding any statutory provision to that effect whether in the Manipur University Act or otherwise. The position of law is clear that no employee can be transferred, without his consent, from one employer to another. The consent may be express or implied. [280B-C, E]

(3) The transfer of the Centre of Post-graduate Studies to the Manipur University may be regarded as resulting in the abolition of the post held by the respondent in the appellant University. In that event, if the post held by the respondent is regarded as one of a number of posts in a group, the principle "last come, first go" will apply, and someone junior to the respondent must go. If the post held by him constitutes a class by itself, it is possible to say that he is surplus to the requirements of the appellant University and is liable to be retrenched. Since, however, the respondent has been adjusted against a suitable post in the appellant University during the pendency of the litigation, the appellant cannot be permitted to retrench him. [280F-H; 281A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2948 of 1984

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From the Judgment and Order dated 20.1.1984 of the Delhi High Court in L.P.A. No. 145 of 1982.

G. Ramaswami, Additional Solicitor General, S.C. Dhanda, C.S. Vaidyanathan, P. Chowdhary and S.R. Sethia for the Appellant.

Respondent No. 1 In-person, Girish Chandra, Ms. Sushma Relan and P. Chowdhary for Respondents.

The Judgment of the Court was delivered by

PATHAK, CJ. This is an appeal by special leave against a judgment of a Division Bench of the High Court of Delhi in a Letters Patent Appeal upholding the judgment of a Single Judge of the High Court in a writ petition filed by the first respondent for a declaration that he continues to be in the service of the Jawaharlal Nehru University.

The Jawaharlal Nehru University Act, 1966 sets forth as the objects of the Jawaharlal Nehru University "to dissemi-

nate and advance knowledge, wisdom and understanding by teaching and research and by the example and influence of corporate life, and in particular the objects set out in the first Schedule." The powers of the University extend to establishing within the Union Territory of Delhi or outside that territory such Special Centres as may be necessary for the furtherance of its objects, to create such teaching, administrative and other posts as the University may deem necessary, and to make arrangements thereto, and to appoint or recognise persons as Professors, Readers or Lecturers or otherwise as teachers of the University. Section 7(b) of the Act declares that where the University establishes and maintains any institution or body outside the Union Territory of Delhi then the powers and jurisdiction of the University will extend to such institution or body subject to the rules and regulations of the University within whose jurisdiction the institution or body is situate.

On 21 September, 1970 the Additional Secretary, Ministry of Education and Youth Services wrote to the Vice-Chancellor of the University informing him of the intention of the Government of India, to establish a Central University at Shillong to serve the needs of the North Eastern Region of India, and that in August, 1969, the University Grants Commission had approved the proposal of the Manipur Administration to have a Post-graduate Centre at Imphal under the auspices of the Gauhati University, and considering the fact that the

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proposed Central University for the Hill Areas was also intended to cater to the needs of Manipur, it would be appropriate, he said, that the Jawaharlal Nehru University should establish a Centre at Imphal also which could later be made over to the proposed new University to be established by the Centre. On 3 October, 1970, a resolution was passed by the Executive Council of the Jawaharlal Nehru University agreeing with the proposal of the Ministry of Education to set up an Institute of Post-graduate Studies at Imphal. A committee was set up to study the problems connected with the setting up of such an Institute and to submit concrete proposals in that regard. On 12 June, 1971, the Executive Council of the University recorded their agreement in principle to the proposal of the Ministry of Education to set up an Institute of Post-graduate Studies at Imphal and noted that the committee had submitted its report. Then on 12 June, 1971, the Executive Council passed a resolution that a Centre of Post-graduate Studies be set up at Imphal under s. 5(2) of the Jawaharlal Nehru University Act.

On 27 January, 1971, the appellant University informed the respondent that he had been selected for the post of Research Assistant in the Department of South Eastern Studies, School of International Studies of the University, that the appointment would be temporary for a period of six months and his services could be terminated on one month's notice on either side. On 25 April, 1973, the term of temporary appointment as Research Assistant in the School of International Studies was extended by the appellant University for a further period of six months with effect from 4 June, 1973. Thereafter, by letter dated 29 November, 1973 the Vice-Chancellor of the appellant University offered the respondent the post of Associate Fellow in the Post-graduate Studies Centre of the University at Imphal for a period of one year in the first instance, the appointment being made on ad hoc basis, and his regular appointment at the Centre of the Post-graduate Studies at Imphal or at the New Delhi

campus of the University would be subject to the recommendations of the Selection Committee. It was stated that he was expected to take part in the teaching and research programmes of the University. He was directed, in case he accepted the offer, to join the Post-graduate Centre, Imphal (Manipur) as early as possible. On the same date the respondent accepted the offer of appointment as "Associate Fellow", Centre of Post-graduate Studies, Imphal, under the terms and conditions of the Vice-Chancellor's letter of that date. On 3 December, 1973 the respondent reiterated his acceptance of the offer of appointment as "Associate Fellow" at the Centre of Post-graduate Studies, Imphal, and stated that he was reporting for duty to the Head of the Centre for Political Studies, School

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of Social Sciences, New Delhi with effect from 3 December, 1973 so that after necessary briefing at the Centre he would proceed to Imphal as early as possible. Thereafter by Office Order No. 2376 dated 24 August, 1974 the term of appointment of the respondent as "Associate Fellow" at the Centre of Post-graduate Studies, Imphal, was extended for a period of one year from 3 December, 1974 to 2 December, 1975. By Office Order No. 2440 dated 23 September, 1974 the respondent's term of appointment in the same capacity at the said Centre was now enlarged from 3 December, 1974 to 2 December, 1976. His existing scale of Rs.400-40-800-50-950 was revised to Rs.700-40-1100-50-1600 by Office Order No. 295 dated 21 June, 1975 with effect from 1 January, 1973. It appears that the temporary appointment of Associate Professor in Political Science at the Centre of Post-graduate Studies, Imphal, was extended upto 3 August, 1987 or until the post was filled on a regular basis whichever is earlier. Thereafter on 23 December, 1977 an advertisement was issued by the Jawaharlal Nehru University, Centre of Post-graduate Studies, Imphal (Manipur) for appointment to, inter alia, the posts of Associate Professor/Fellow and Assistant Professor/Assistant Fellow in the Political Science. The respondent applied for the post of Associate Professor but the Selection Committee did not find him suitable for that post and recommended him for the lower post of Assistant Professor. By letter dated 29 April, 1978 the Jawaharlal Nehru University offered him the appointment of Assistant Professor in Political Science on an ad hoc basis in the Centre of Post-graduate Studies, Imphal, for a period of one year or until his services were required by the Centre, whichever was earlier. The respondent, however, wrote back on 2 May, 1978 stating that he had not applied for the post of Assistant Professor in Political Science and that he deserved to be appointed as Associate Professor at the Imphal Centre. By letter dated 21 March, 1979 the Jawaharlal Nehru University offered the respondent the post of Assistant Professor in the Political Science Division at the Centre of Post-graduate Studies of the University at Imphal for a period of two years. He was informed that in all matters relating to leave and other conditions of service he would be required to enter into an agreement with the Centre of Post-graduate Studies, Imphal. This agreement was never executed. On 29 August, 1979 the respondent joined as Assistant Professor in accordance with the terms mentioned in the University's letter dated 21 March, 1979. Thereafter the respondent was appointed as Assistant Professor by a Resolution of the Jawaharlal Nehru University dated 29 October, 1979 on a regular basis with effect from the date of his initial appointment dated 29 August, 1979 and he was confirmed with effect from that date.

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In 1980 proceedings were taken to transfer the Imphal Centre from the Jawaharlal Nehru University to the Manipur University. To effectuate this the Syndicate of the Manipur University passed a Resolution on 19 December, 1980 detailing the terms for the transfer of the Centre to the Manipur University, and the Manipur University and the Manipur Government requested the Jawaharlal Nehru University for transferring the Centre accordingly. The Jawaharlal Nehru University by its Resolution dated 3 February, 1981 accepted the proposal and authorised the Vice-Chancellor to transfer the Centre to the Manipur University. The date for transfer was fixed as 1 April, 1981. Meanwhile, the Manipur Legislature passed the Manipur University Act, 1980, which was assented to by the Governor on 28 May, 1980. Section 1(4) of the Act provided that on and from the date on which the Act came into force in respect of post-graduate education and research, the Jawaharlal Nehru University would cease to exercise jurisdiction over the Centre of Post-graduate Studies in Imphal, and that the State Government of Manipur may make provision for the transfer of employees from the Jawaharlal Nehru University, Centre of Post-graduate Studies, Imphal to the Manipur University. Thereafter an order dated 31 March, 1981 was made by the Governor of Manipur providing that the members of the faculties of the Jawaharlal Nehru University, Centre of Post-graduate Studies, Imphal, immediately before its merger into the Manipur University would, on and from the 1 April, 1981, become members of the staff of the Manipur University on the same terms and conditions of service as they were entitled to immediately before that day. Meanwhile on 3 February, 1981, the Syndicate of the Jawaharlal Nehru University provided for the transfer of the Centre to the Manipur University. It was resolved that the said Jawaharlal Nehru University for Post-graduate Studies would cease to exist as such and the Divisions of the Centre would become the Divisions of the Manipur University and function accordingly. It was further resolved that the members of the faculty employed by the Jawaharlal Nehru University, Centre of Postgraduate Studies, Imphal, immediately before its merger into the University would on and from that date, become members of the staff of the Manipur University.

The respondent filed a writ petition in this Court on 27 March, 1981 challenging his transfer from the Jawaharlal Nehru University to the Manipur University, and that petition was dismissed as withdrawn on 21 September, 1981. Thereafter the respondent filed a writ petition on 22 May, 1982 in the Delhi High Court praying for the quashing of the Resolution of the Jawaharlal Nehru University on 3 February, 1981 transferring his services to the Manipur University. The learned

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Single Judge of the High Court held that the respondent could not be obliged to join the Manipur University, that he was confirmed as Assistant Professor in the employment of the Jawaharlal Nehru University in its Imphal Centre and was entitled to continue in service until he attained the age of 60 years and that the services had not been specifically terminated. Accordingly, the writ petition was allowed and the respondent was deemed to continue, in the service of the Jawaharlal Nehru University and if no equivalent post was available for him in 1981 in the Jawaharlal Nehru University had he had become surplus, the said University was at liberty to dispense with his services. In appeal, the Division Bench of the High Court upheld the view that the services of

the respondent could not stand automatically transferred from the Jawaharlal Nehru University to the Manipur University with effect from 1 April, 1981 by operation of law and that the order dated 31 March, 1981 transferring the employees at the Imphal Centre to the Manipur must be considered as implying or assuming that the concerned employee had exercised an option to join the Manipur University. The learned Judges also rejected the contention of the appellant that there was an automatic termination of the respondent's service without notice or order or discharge or dismissal. They held further that the Centre at Imphal was commenced and conducted as part and parcel of the Jawaharlal Nehru University that the respondent must be regarded as an employee continuing with the Jawaharlal Nehru University even upon the transfer of the Centre from that University. They further observed that if, in the result, the strength of the staff should be surplus, the principle of "last come first go" had to be applied, and that the application of the principle was to be effected with reference to the cadre to which the respondent belonged and also to the discipline in which he was competent. In the event of it being found that he constitutes a class by himself, his services could be absorbed in some suitable post in the Jawaharlal Nehru University.

In this appeal the main contention of the appellant is that the respondent was appointed at the Centre of Post-graduate Studies, Imphal, and when the Centre was transferred to the Manipur University, his services were automatically transferred to that University, and consequently he could not claim to be an employee of the appellant University. The argument proceeds on the assumption that the Centre of Post-graduate Studies at Imphal was an independent entity which existed by itself and was not a department of the appellant University. The submission proceeds on a fallacy. The Centre of Postgraduate Studies was set up at Imphal as an activity of the appellant University. To give expression to that activity the appellant University set up and organised the Centre at Imphal and appointed a teaching

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and administrative staff to man it. Since the Centre represented an activity of the appellant University the teaching and administrative staff must be understood as employees of the appellant University. In the case of the respondent, there can be no doubt whatever that he was, and continues to be, an employee of the appellant University. There is also no doubt that his employment could not be transferred by the appellant University to the Manipur University without his consent, notwithstanding any statutory provision to that effect whether in the Manipur University Act or elsewhere. The contract of service entered into by the respondent was a contract with the appellant University and no law can convert that contract into a contract between the respondent and the Manipur University without simultaneously making it, either expressly or by necessary implication, subject to the respondent's consent. When the Manipur University Act provides for the transfer of the services of the staff working at the Centre of Postgraduate Studies, Imphal, to employment in the Manipur University, it must be construed as a provision enabling such transfer of employment but only on the assumption that the employee concerned is a consenting party to such transfer. It makes no difference that the respondent was not shown in the list of Assistant Professors of the appellant University or that the provision was not indicated in its budget; that must be regarded as proceeding from an erroneous conception of the status of the respondent. The

position in law is clear, that no employee can be transferred, without his consent, from one employer to another. The consent may be express or implied. We do not find it necessary to refer to any case law in support of this conclusion.

Inasmuch as the transfer of the Centre of Post-graduate Studies from the appellant University to the Manipur university could not result in a transfer of the employment of the respondent from the one to the other, it must be concluded that the respondent continues in the employment of the appellant University. The transfer of the Centre of Post-graduate Studies to the Manipur University may be regarded as resulting in the abolition of post held by the respondent in the appellant University. In that event, if the post held by the respondent is regarded as one of a number of posts in a group, the principle "last come, first go" will apply, and someone junior to the respondent must go. If the post held by him constitutes a class by itself, it is possible to say that he is surplus to the requirements of the appellant University and is liable to be retrenched. But it appears that the respondent has been adjusted against a suitable post in the appellant University and has been working there without break during the pendency of this

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litigation, and we cannot, therefore, permit the appellant University to retrench him.

In the result, the appeal fails and is dismissed with costs.

R.S.S.
missed.

Appeal dis-

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