

A

STATE OF BIHAR AND ORS.

v.

BIHAR RAJYA M.S.E.S.K.K. MAHASANGH AND ORS.

B

OCTOBER 12, 2004

[Y.K. SABHARWAL AND D.M. DHARMADHIKARI, JJ.]

C *Service Law—Absorption—Colleges affiliated to various universities taken over as constituent colleges under the Act of 1976—Jurisdiction of University vis-à-vis the State Government to adjudicate upon validity of appointments in affiliated colleges and absorption of those appointees in constituent colleges—Held: Appointments in affiliated college in normal circumstances has to be with the prior approval of State Government in accordance with S.35—But subject matter of absorption of staff of the taken over institutions shall be within exclusive jurisdiction of the concerned University in accordance with S.4(1)(14)—On that matter, S.35 is not a constraint on the power of the University—No conflict between provisions of S.4(1)(14) and S.35, although each contains a non-obstante clause—The two provisions intend to operate in two different situations and fields, hence, over-ride each other in the field exclusively assigned to each—Bihar State Universities Act, 1976—Sections 4(1)(14) and 35—Interpretation of Statutes—Harmonious construction—Requirement of—In case of two provisions in same Act each containing a non-obstante clause.*

F *Constitution of India, 1950—Article 166—Order of State Government formally not expressed in the name of Governor—Challenge to, by the State itself—Validity of—Held, not valid—State being the author of that decision, it itself cannot be allowed to resile or go back on that decision—Mere change of the elected government does not justify dishonouring the decision of previous*
G *elected government—If at all the decision of the earlier Government was not acceptable to the newly elected Government, it was open to it to withdraw or rescind the same formally.*

Interpretation of Statutes—Non-obstante clause—Meaning, object and

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effect of—Two provisions each containing a non-obstante clause—Mode of interpretation in such situation—Held: No settled principles can be applied except to refer to the object and purpose of each of the two provisions and the language employed in each—Harmonious construction required.

Dispute concerning absorption of about 4,000 employees working on teaching and non-teaching posts in 40 colleges "affiliated" to various universities which were taken over as "constituent" colleges in accordance with the provisions of Bihar Universities Act, 1976 arose for consideration in the present appeal.

The aforementioned "affiliated" colleges were made "constituent colleges" of respective universities under the Resolution of the Government of Bihar taken in the year 1986 and implemented by the respective universities on entering into formal agreements with the affiliated colleges in the year 1987. The words 'affiliated college' and 'constituent college' are defined in Section 2(c) and 2(i) of the Act. Every institution recognized and receiving privileges of the universities in accordance with provisions of the Act and universities' statutes is called 'affiliated college' while 'constituent college' means a teaching institution maintained and controlled by the university itself.

The High Court in the impugned judgment held that in accordance with Section 4(I)(14) of the Act, the concerned Universities themselves are empowered to take a decision on the disputes regarding the validity of the appointments in the affiliated colleges and the absorption of those appointees in the constituent colleges; and that in view of the *non-obstante* clause contained in proviso in section 4(I)(14), the constraints in Section 35 which provides for grant of prior approval of the State Government to the creation and appointment to the posts in the affiliated colleges, will have no application to absorption of existing staff of affiliated colleges taken over by the universities on their conversion as constituent colleges.

The High Court rejected the contentions of the State that it alone has jurisdiction to set up enquiries including a vigilance enquiry for identification and considering the absorption of only such staff of the erstwhile affiliated colleges which had been duly appointed with the prior

A approval of the State Government. Consequently allowing the writ petitions filed by the Federation of employees, it issued a writ directing the Universities to take steps and consider absorption of the existing staff of the affiliated colleges in accordance with Section 4(I)(14).

B On appeal by the State Government to this Court, it appointed Mr. Justice S.C. Agrawal, a former Supreme Court Judge as a one-member Commission to go into the various controversies and disputes with regard to absorption of employees of the erstwhile affiliated colleges in the services of the converted constituent colleges. The Commission submitted a detailed report.

C Dismissing the appeal, and the connected special leave petition and contempt petitions, the Court

D HELD: 1.1. A *non-obstante* clause is generally appended to a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the *non-obstante* clause. It is equivalent to saying that inspite of the provisions or Act mentioned in the *non-obstante* clause, the provision following it will have its full operation or the provisions embraced in the non-obstante clause will not be an impediment for the operation of the enactment or the provision in which the non-obstante clause occurs.

[401-G, H; 402-A]

F ‘*Principles of Statutory Interpretation*’, 9th Edition by Justice G.P. Singh - Chapter V, Synopsis IV pages 318 and 319, referred to.

G 1.2. When two or more laws or provisions operate in the same field and each contains a non-obstante clause stating that its provision will override those of any other provisions or law, stimulating and intricate problems of interpretation arise. In resolving such problems of interpretation, no settled principles can be applied except to refer to the object and purpose of each of the two provisions, containing a *non-obstante* clause. Two provisions in same Act each containing a *non-obstante* clause, requires a harmonious interpretation of the two seemingly conflicting provisions in the same Act. In this difficult exercise, there are involved

proper consideration of giving effect to the object and purpose of two provisions and the language employed in each. [402-B, C] A

Shri Swaran Singh and Anr. v. Shri Kasturi Lal, [1977] 1 SCC 750, relied on.

1.3. However, *non-obstante* clauses are not always to be regarded as repealing clauses nor as clauses which expressly or completely supersede any other provision of the law, but merely as clauses which remove all obstructions which might arise out of the provisions of any other law in the way of the operation of the principle enacting provision to which the *non-obstante* clause is attached. [402-E, F] B C

Bipathumma and Ors. v. Mariam Bibi, (1966) 1 Mysore Law Journal 162 and 165, approved.

2.1. There is no conflict in the provisions of Section 4(I)(14) and Section 35, although each contains a *non-obstante* clause. They intend to override each other in field exclusively assigned to each. Appointments in affiliated college in normal circumstances has to be with prior approval of State Government in accordance with Section 35 but subject matter of absorption of services of staff taken over shall be within exclusive jurisdiction of concerned university in accordance with Section 4(I)(14) of the Act. [404-F, G] D E

2.2. Section 35 is applicable to all 'affiliated colleges' but does not cover a situation at a stage when an 'affiliated college' is proposed to be taken over as 'constituent college' by the university on the sanction or proposal of the State Government. The subject of taking over institution affiliated or non-affiliated with assets, liabilities and staff is regulated by provisions of clause 14 of Section 4(I) alone. [403-D] F

2.3. Compared with Section 35 - Section 4(I)(14) has limited operation at a stage when university enters into an agreement with the management or governing bodies of private institutions affiliated or non-affiliated for taking over its management, assets, liabilities and staff. The effect of *non-obstante* clause in Section 4(I)(14) is that the matter of absorption of staff of such institution/college proposed to be taken over, H G

- A would be within the sole power and jurisdiction of the university concerned within whose jurisdiction the affiliated college or institution falls. On matter of absorption of staff of taken over institutions, Section 35 requiring prior sanction or approval of the State Government for creation of posts and appointment, would not be a constraint on the power of the university.
- B It is a different thing that the university in considering absorption of the staff of institution taken over may give due consideration to the legality/regularity or otherwise of a particular appointment but it would not be inhibited by the absence of prior sanction or approval of the State as contemplated in section 35 of the Act. This is how the two *non-obstante*
- C clauses have to be harmoniously construed and applied as giving overriding effect to each and restrict their operation within exclusive field assigned to each. In the matter of creation of posts and appointments in affiliated colleges in normal circumstances, requirement of prior sanction or approval of the State Government, as contained in Section 35, is not
- D dispensed with because of the contrary provision contained in section 4(I)(14) and the latter Section is restricted in its operation to absorption of staff of a taken over institution by the university. [405-A-E]

- 2.4. The two *non-obstante* clauses, although slightly differently worded one in proviso to Section 4(I)(14) and the other in Section 35 of the Act have thus, been construed harmoniously. They operate in two
- E different fields - former to consideration of absorption of staff of taken over colleges and the latter to affiliated colleges when they are not under any proposal of being taken over by the university. The two provisions being intended to operate in two different situations and fields both have
- F an overriding effect on each other. That is why the Legislature has employed a *non-obstante* clause in each. [406-E, F]

3. Clause (c) to sub-section (2) of section 57A was introduced by Act 3 of 1990 and has no retrospective application to the cases of affiliated
- G colleges taken over as constituent colleges prior to the year 1990. The said clause (c) to sub-section (2) of section 57A requires further approval of Bihar State University [Constituent Colleges] Service Commission before absorbing the services of teachers of the affiliated colleges converted into constituent colleges. The aforesaid piece of subsequent legislation amending
- H the same Act can appropriately be taken as an aid to the interpretation

of the unamended provisions of the Act. The amended provisions of the Act is an indication that subject of absorption of staff of taken over affiliated colleges is treated as a subject distinct from regular recruitment to the posts in affiliated colleges which is to be made with prior sanction or approval of the State Government as provided in section 35 of the Act. Similarly, Sub-section (3) added to section 35 by Act 17 of 1993 is also prospective in application and has no adverse effect on the absorption of the services of the teaching staff of the affiliated colleges taken over as constituent colleges prior to 1993. Sub-section (3) applies to normal mode of recruitment to staff [teaching or non-teaching] of affiliated colleges and is merely reiteration of the legal position that appointments and promotion made contrary to the provisions of the Acts, statutes, rules and regulations would be invalid and liable to be terminated at any time. It also provides that any expenditure incurred by the university against such illegal, irregular, unauthorized appointments/promotions shall be realized from the officers found responsible for committing such illegality as a public demand under the provisions of Public Demand Recovery Act, 1914. Clause (c) of section 57A (2) introduced in the year 1990 and sub-section (3) of section 35 introduced in the year 1993 being prospective in operation have no application to the affiliated colleges taken over as constituent colleges with the existing staff prior to the year 1990. Those provisions introduced subsequently in the year 1990 and 1993 referred to for a limited purpose show that the Legislature has always treated differently the normal recruitment which has to be made with approval of State Government to teaching and non-teaching posts in affiliated colleges and the matter of absorption of existing staff appointed against sanctioned or non-sanctioned posts in the affiliated colleges taken over and converted as constituent colleges. [405-F-H; 406-A-D]

4. So far as the order of the State Government directing absorption of employees against posts sanctioned and recommended by the Committee, the State being the author of that decision, merely because it is formally not expressed in the name of Governor in terms of Article 166 of the Constitution, the State itself cannot be allowed to resile or go back on that decision. Mere change of the elected Government does not justify dishonouring the decisions of previous elected Government. If at all the decision was not acceptable to the newly elected Government, it was open

A to it to withdraw or rescind the same formally. In the absence of such withdrawal or rescission of the decision, it is not open to the State of Bihar and State of Jharkhand [created after reorganization of the State of Bihar] to contend that that decision does not bind them. [407-G, 408-C, D]

B 5.1. The judgment of the High Court to the extent of the interpretation placed by it on the provisions of section 4(I)(14) and section 35 with the directions issued in paragraphs 24 to 26 therein, is hereby confirmed. [410-A]

C 5.2. The report of the commission of enquiry of Hon. Justice S. C. Agrawal [retired], is accepted and all objections filed against the said report are rejected. [410-H, 411-A]

D 5.3. The members of the staff in various affiliated colleges identified and named in list no. (i) being appointees against the sanctioned posts shall be absorbed and formal order to that effect shall be issued by the universities concerned. [411-A]

E 5.4. The universities shall take a decision under section 4(I)(14) of the Act in the matter of absorption of appointees named in list no. (ii) of the Report of the Commission, being appointees against posts for which recommendations were sent by the universities to the State up to the cut-off date in accordance with the decision of the State Government.
[411-B, C]

F In considering the question of absorption of appointees named in list no. (ii) of the report of the Enquiry Commission, the universities concerned shall rely on the contents of the report of the enquiry commission and the present judgment of this Court. [411-D]

G 5.5. The appointees mentioned in list no. (iii), being the appointees against posts for which recommendations were sent by the universities to the State Government after the cut-off date or those working against posts for which no recommendations were sent for approval of the State Government, have no right of being considered for absorption - whatever maybe the fortuitous circumstances or otherwise in the matter of not sending recommendations for sanction in their cases. The negative report
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of the enquiry commission with regard to list no. (iii) is accepted and the universities are directed to exclude all such appointees named in list no. (iii) from consideration for absorption. [411-D-F] **A**

5.6. Decision in individual cases, with due regard to the qualification of each employee and corresponding statute applicable at the relevant time prescribing qualifications, if any, for the teaching and non-teaching posts, shall be taken by the universities based on the findings in the report of Justice Agrawal Commission and in the light of the legal position explained above. [411-G, H; 412-A] **B**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6098 of 1997. **C**

From the Judgment and Order dated 31.1.97 of the Patna High Court in C.W.J.C. No. 4021 of 1995.

With S.L.P.(C) No: 18168/2002, C.P.(C)Nos. 5,53,54,83,353,363,549,82/2002 and 343,377,441/2004 in C.A.No. 6098/97, I.A.Nos.102-103, 105-108, 110-113, 119, 143,146,150,154, 157, 158, 159, 173, 178, 183,188-189, 195-198, 201, 203-204, 212-215, 224, 234, 236-237, 244, 247, 250, 273, 276, 278-280, 286, 293, 295,299, 303, 318, 320, 329, 332 [Applications for Impleadment]. **D**

I.A. Nos. 114,115, 120,121-124,145,151,160,161,164,174,177, 179, 185-187, 190-192, 199, 202, 208, 210, 211, 216, 217, 219, 221, 222-223, 225, 226-227, 229, 231, 233, 235, 238, 241-242, 243, 246,249, 252-255, 260, 281, 288-289, 290-291, 294, 297-298, 302, 305-307, 311-317, 322-328, 343, 346,, 347-349, 351, 354-355, 363, 364, 367-371, 375, 377 [Applications for permission to file objections] **E**

I.A.Nos. 116-118, 207, 262, 283, 345, 365 [Applications for Intervention]

I.A.Nos. 125-142, 144, 147, 149, 152, 155, 156, 162-163, 165, 167-168, 170-172, 175, 179-182, 184, 193, 205, 239, 256, 258, 264-272, 277, 284-285, 292, 201, 308-309, 333, 360-361, 373, 374 [Application for directions] **G**

I.A.No. 353 [Application for change of name of Advocate-on Record]

I.A.No. 304 [For substitution], I.A.No. 275 [For modification]

I.A.No. 331 [For condonation of delay] **H**

A I.A.Nos. 357-358 [Applications for permission to file Addl. Documents and exemption]

I.A.Nos. 148, 153, 166, 169, 176, 194, 200, 206, 209, 218, 220, 228, 230, 232, 240, 245, 248, 251, 257, 259, 261, 263, 274, 283, 287, 289A, 296,

B 300 [Application for exemption].

Rakesh Dwivedi, B.B. Singh, Akhilesh Kr. Pandey and Ashok Kr. Pandey with him for the Appellant for State of Bihar.

C M.L. Verma, Ashok Mathur and Rajesh Pathak with him for the Appellant for State of Jharkhand.

Shambhu Prasad Singh and Ms. Manjula Gupta for the Petitioner in S.L.P.

D Ranjit Kumar, Harish N. Salve, Raju Ramachandran, Gopal Subramaniam, L.N. Rao, A. Sharan, A.K. Srivastava, Chandra Shekhar, P.S. Mishra, Ajit Kumar Sinha, Vijay Kumar Sinha, Pankaj Bhagat, Ashok Kumar Singh, Saket Singh, Ms. Niranjana Singh, Shi Pujan Singh, Abhay Prakash Sahay, Kuldip Singh, P.V. Dinesh, Sanjay K. Mishra, Abhishek Thakur, Ms. E Nutan Mishra, Atul Jha, Nirmal Mittal, Naresh Kumar, Gopal Prasad, Arup Banerjee, D.P. Mukherjee, Braj K. Mishra, Ms. Aparna Jha, Ranjan Kumar Jha, Iliren Dasan, Manoj Swarup, Athar Alam, Ambar Qamaruddin, Mrs. M. Qamaruddin, Sumit Kumar, Ashwani Bhardwaj, S.P. Sharma, Abhishek Atrey, Shishir Singh, Prem Prakash, Ms. Sharmila Upadhyaya, K.V. Viswanathan, F Atul Kr. Sinha, B. Raghunath, Devender Singh, M.P. Jha, R.E. Roy, Harshvardhan Jha, Anil K. Chopra, Sunil Kumar Verma, Amresh Kumar Singh, A.P. Mayee, Yugal Kishore Prasad, B.S. Rajesh Agrajit, Varinder Kr. Sharma, Pavan Kumar, P. Chandra, Ajay Amritraj, Sanjeev Kumar, N.N. Jha, Phabhat Kumar, Atishi Dipankar, Rajeev Singh, Ms. Sunita R. Singh, T. Anil Kumar, G Rakesh K. Khanna, Ms. Abha R. Sharma, R.P. Singh, Swetank Shantanu, Rajeev Bansal, A.K. Ghai, Ambhoj Kumar Sinha, Neeraj Shekhar, Mohan Pandey, Vidya Bhushan Misra, R.D. Rathore, Dr. Kailash Chand, D.K. Thakur, Ms. Poonam Kumari, Sanjay Jain, Ajay Choudhary, Rakesh Uttamchandra Upadhyay, Navin Prakash, D.K. Garg, Mahendramohan Kumar Singh, Sudama H Ojha, A.K. Tiwari, Dr. Maya Rao, R.P. Wadhwani, Tathagat Harsh Vardhan,

Mrs. Swarupa Reddy, Upendra Mishra, Amitabh Chandra Mishra, Dhruv Kr. Jha, C.D. Singh, S. Chandra Shekhar, Shree Prakash Sinha, Prabhash Kumar Yadav, Dr. K.S. Chauhan, N.S. Bisht, Sunil Kumar, Himanshu Shekhar, Shravan Singh, Sanjeev Malhotra, Mansoor Ali, Irshad Ahmad, Amit Kumar, K.S.Rana, Satish Chand Gupta, Dr. (Mrs.) Vipin Gupta, R. Nedumaran, Rajan Dwivedi, D.K.Sinha, P. Gaur, S.K.Verma, T. Mahipal, Vikash Singh, Amrita Narayan, Prashant Chaudhary, Ms. V. Mohana, Anupam Lal Das, Manish Verma, Rajnish Ranjan, Mohan Pandey, R.P. Goyal, Sunil Kumar, Mrs. Kirti Sinha, Mrs. Sarla Chandra, Kanhaiya Priyadarshi, Krishnanand Pandeya, Mrs. S. Usha Reddy, Rana Ranjit Singh, P.S. Jha, Amitesh Kumar, L.R. Singh, K.N. Rai, Bharat Sangal, Manoj Swarup, K.K. Mohan, Arunabh Suman, Biswajit, Ashwani Kumar, Ranjeet Kumar, Harishankar, Pawan Kumar, Alok Vagreche, Manish Singhvi, Saurabh Ajay, P.V. Yogeswaran, Manish Kumar Saran, Santosh Kumar, Chandra Kanta Nayak, Rakesh K. Sharma, K.C. Bajaj, Himanshu Bajaj, Anil Kumar Jha, Vijayendra Misra, Binay Kr. Das and Samarendra Jha with them for the Respondents.

The Judgment of the Court was delivered by

WITH

I.A. Nos. 102-103 Para I.A. Nos. 105-108, 110-113, 119, 143, 146, 150, 154, 157, 158, 159, 173, 178, 183, 188-189, 195-198, 201, 203-204, 212-215, 224, 234, 236-237, 244, 247, 250, 273, 276, 278-280, 286, 293, 295, 299, 303, 318, 320, 329, 332 [*Applications for impleadment*].

DHARMADHIKARI, J. In this appeal, preferred by the State of Bihar against the judgment dated 31.1.1997 of the High Court of Patna, the dispute is concerning the absorption of about 4,000 employees working on teaching and non-teaching posts in 40 colleges affiliated to various universities which were taken over as constituent colleges in accordance with the provisions of Bihar Universities Act, 1976. The aforementioned affiliated colleges were made constituent colleges of respective universities under the Resolution of the Government of Bihar taken in the year 1986 and implemented by the respective universities on entering into formal agreements with the affiliated colleges in the year 1987.

This appeal is being decided along with the connected special leave petition and contempt petitions. Our decision in the present main appeal,

- A which we take as a lead case, would dispose of all other connected cases and interlocutory applications.

It is not necessary for us to go into all the facts and details as we would be confining our decision to the legal issues raised before us.

- B The necessary factual background for the purpose of understanding the legal issues raised before this court in these cases is as under:-

The State of Bihar took a decision to convert affiliated colleges of different universities into constituent colleges of concerned universities in a phased manner.

- C The words 'Affiliated college' and 'constituent college' are defined in section 2(c) and 2(i) of the Bihar State Universities Act, 1976 [for short 'the Act']. Every institution recognized and receiving privileges of the universities in accordance with provisions of the Act and universities' statutes is called 'affiliated college'. 'Constituent college' means a teaching institution maintained and controlled by the university itself.

By letter dated 19.8.1986, the State of Bihar conveyed its decision to all the Vice-Chancellor of various universities in the State of converting 36 affiliated colleges mentioned in the appended list as constituent colleges.

- E Three other colleges were similarly decided to be converted as constituent colleges under decision conveyed by letter dated 03.7.1987. One minority educational institution was also decided to be converted as constituent college. In all thus 40 affiliated colleges were decided to be converted into constituent colleges. In the decision conveyed by the State, the universities were instructed in accordance with the provisions of Section 14 of the Act to pass a formal resolution for taking over the assets and liabilities of the various affiliated colleges falling within the respective universities and enter into formal agreements with their governing bodies for the purpose of converting them into constituent colleges.

- F resolution for taking over the assets and liabilities of the various affiliated colleges falling within the respective universities and enter into formal agreements with their governing bodies for the purpose of converting them into constituent colleges.
- G In the same decision of the State Government, the universities were directed to obtain from each of the affiliated colleges information regarding sanctioned teaching and non-teaching posts existing on the date of taking over of the colleges as constituent colleges and also ascertain information with regard to proposals for creation of additional posts in the affiliated colleges which were received from the universities by 30.4.1986 and were
- H pending with the government. The list of teachers appointed against such

additional posts pending for approval of the State Government were also directed to be separately prepared for the purpose of consequential action on the part of the State Government. A

Consequent upon the above decision of the government with instructions to the universities to take various steps for identifying the number of sanctioned posts, the proposals for additional posts received by the universities and pending with the government for approval, a further decision was conveyed by the State Government by letter dated 12.6.1987. The aforesaid subsequent decision has created the present controversy on the claims of various categories of teachers and non-teaching employees for absorption in the services of their respective converted constituent colleges. By the subsequent decision contained in letter dated 12.6.1987, it was directed that in addition to the proposal for creation of additional posts pending with State Government, the proposals for approval of posts for additional subjects in the colleges which had been received from the universities up to 30.4.1986 and pending with the government, be also ascertained and necessary information in the prescribed proforma be sent to the government to consider creation of posts, granting of affiliation to additional subjects and absorption of teachers who were appointed against such posts. In the resolution of the government, each university was directed to constitute a three-member committee to ascertain existing sanctioned teaching and non-teaching posts, *proposals pending for additional posts, proposals pending for posts for additional subjects* and list of various teachers who were working against sanctioned and non-sanctioned posts before the cut-off date. B C D E

In implementation of the resolution of the government to convert the 40 affiliated colleges into constituent colleges formal resolutions were passed by the governing bodies of the affiliated colleges. The three-member committees constituted by the universities completed their investigation for submitting necessary information in the prescribed proforma showing separately names of teachers and non-teaching employees working against sanctioned posts and those working against posts the creation of which was recommended by the University for sanction of the State Government. F

On 17.1.1987, the Government of Bihar constituted a separate committee headed by Chairman of Inter-Universities Board to examine the proposals received before the cut off date i.e. 30.4.1986 for creation of posts of teachers and non-teaching staff in affiliated colleges which were converted into constituent colleges. On the report of the said Committee which were G H

A subsequently reconstituted on 01.2.1988, the State Government passed an order to absorb employees working against teaching and non-teaching posts but only on provisional basis because there were disputes with regard to the claims for absorption of certain members of the staff in various colleges.

B The State Government later constituted eight-member committee and thereafter a five-member committee to go into the question of absorption of members of the staff in the converted constituent colleges and ascertain number of posts duly created before the cut-off date and which were pending with the Government for approval or sanction.

C On the recommendations of the above mentioned two committees, on 18.12.1989, the Government of Bihar took a formal decision to provisionally absorb teachers against sanctioned posts and posts which were recommended for sanction by some of the universities.

D It seems that with the change of elected government there was rethinking on the decision of the earlier government to absorb members of the staff working against additional posts for the creation of which sanction was awaited. Large number of employees, it was reported, got surreptitious entry into the services of the erstwhile affiliated colleges in connivance with the members of governing bodies of the said colleges and tried to take advantage of conversion of those colleges into constituent colleges. A large number of complaints of manipulations and fabrication of records in affiliated colleges were received by the Government which became a subject of hot debate in Legislative Assembly and public.

F The State Government took a decision to set up a vigilance enquiry into the alleged malpractices adopted by the various affiliated colleges in inducting employees, who had not been legally appointed in various affiliated colleges prior to cut-off date fixed in the resolution of the Government to take over the colleges. On the setting up of the vigilance enquiry, apprehensions arose of large scale termination and dispensation with the services of employees of various categories of employees working on teaching and non-teaching posts in erstwhile affiliated colleges. The association of the employees representing both holders of teaching and non-teaching posts approached the High Court in writ petition leading to the passing of the impugned judgment and the present appeal. In the writ petitions, the association of the employees of the affiliated colleges claimed a writ of prohibition restraining State and the universities from dispensing with or terminating the appointments of nearly
H four thousand employees working in different colleges under universities.

They also sought a further relief that their services be protected and not interfered with. A

The Division Bench of the High Court after examining the record of the case, the contents of proceedings of the various committees and construing the provisions of the Act, allowed the writ petitions of the employees' association. The High Court made the following observations and issued following directions in the concluding part of its judgment:- B

"In that view of the matter, the controversies have not reached a finality as contemplated under section 4(14) of the Act. This Court, therefore, directs the concerned universities to take steps under sub-section (14) of section 4 of the said Act in respect of regularization of the services of the teachers of the colleges which have become constituent colleges of the different universities in the fourth phase. C

Even though, the universities have been made parties including the chancellors of the said universities, and they have been served with notice, but nobody appeared on behalf of the universities or on behalf of the chancellors nor any affidavit has been filed. D

In that view of the matter, this Court directs the universities who are parties of this proceeding to take steps in accordance with the communication of the State Government which is at annexure-5 of the writ application in the light of the observation made in this judgment and in accordance with the provisions of section 4(14) of the said Act within a period of four months from the date of receipt/production of a copy of this order. E

It is, however, made clear that till such steps are taken by the respective universities, the status quo as existing on today will continue. With the aforesaid direction this writ petition is allowed to the extent indicated above. No order as to costs. F

Aggrieved by the judgment and the directions made by the High Court, the State of Bihar has preferred this appeal. From the record of the proceedings in this appeal, it seems this Court thought that before the universities are directed to implement the order of the High Court and to complete the process of absorption of employees of various categories in the constituent colleges, an independent enquiry is required to be made through a high power Commission so as to identify alleged bogus appointees in various affiliated colleges who sneaked into the services of the erstwhile affiliated colleges in H

A connivance with the authorities of the various Colleges and Universities of the State. With the above view, after adding new State of Jharkhand as a separate party (as a result of bifurcation of State of Bihar into two States), this Court by order dated 12.10.2001 appointed Shri Justice S. C. Agrawal, retired Judge of this Court as one member Enquiry Commission to go into the various controversies and disputes with regard to the absorption of employees of the erstwhile affiliated colleges in the services of the converted constituent colleges. The Terms of Reference to be answered after enquiry, by the one-member Commission of the hon'ble retired Judge read as under:-

"Terms of Reference"

- C
1. How many sanctioned posts of teachers and non-teaching employees were there in the 40 colleges which were converted into constituent colleges pursuant to the sanction letter dated 19.8.1986 of the State of Bihar?
- D
2. How many proposals with regard to creation of posts for teachers and non-teaching employees had been submitted to the Education Department of the *State of Bihar or universities before 30.4.1986, the cut-off date mentioned in Appendix 'Kha'* (p.208 of SLP) with respect to 36 colleges converted into constituent colleges as per government letter dated 19.8.1986? [List of colleges is at pp206-207 of SLP and other dates mentioned in government communications in respect of four other colleges]?
- E
3. How many teachers and non-teaching employees seeking absorption in the constituent colleges were not appointed through selections made by the College Service Commission/University Service Commission and whether they possess the basic qualifications prescribed by the Act and Statutes? This exercise will be without prejudice to the contention of the respondents that section 57A is not applicable to such selection, as has been held by the High Court in the judgment?
- F
4. How many teachers and non-teaching employees would be entitled to absorption on the basis of the government letter dated 19.8.1986 and Appendix 'Kha' and the agreement entered into between the University concerned and the constituent college under section 4(14) of the Bihar State University Act, 1976 and other orders of government?"
- G
- H

The one-member Commission completed within two years the stupendous task of examining the records, hearing various authorities of the State and the colleges as also individual employees. After seeking extension of period for completing the enquiry, the Commission has submitted a detailed report on 19.12.2003. On submission of the report of the enquiry commission, parties were granted time to submit their written objections, if any. Objections have also been filed before this Court in large number. The Commission has purposely, as was expected of it, avoided to express any opinion on the legal issues involved and which are pending decision before this Court. Some opinions have been expressed by the Commission on the provisions of the Act with the limited purpose of providing necessary information to this Court, for coming to a right and just conclusion.

In answer to 'terms of reference' no. 1, enquiry commission has taken different cut-off dates for different affiliated colleges with reference to the dates on which decision was taken to convert them into constituent colleges. Thus taking 30.4.1986 or 31.3.1987 or 01.1.1987 as dates applicable to the particular colleges, the Commission has identified the number of sanctioned posts and the members of the staff working against each of them. It has given separate report for one minority institution in which there was no indication of cut-off date. To answer term No. 2, the commission has divided it into two parts and answered each separately. Identification has been done in respect of each college which had sent proposals with regard to creation of additional posts and which have been submitted by concerned universities to the education department of the State before the cut-off date.

Separate identification has been done by the Commission regarding proposals for creation of additional posts *submitted by each college before the cut-off date and which were pending with the concerned universities.*

On the basis of the decision of the government conveyed from time to time by various letters to the universities, the Commission has come to a conclusion that the decision taken was to absorb services of members of teaching and non-teaching staff of converted constituent colleges only against *additional posts for which proposals had been received from the universities by the State Government by the cut-off date and were pending for consideration with the State Government.* In the opinion of the Commission, there is no decision of the Government to consider for absorption the staff working against such posts, *the proposal for creation of which had been submitted by the governing bodies to the universities before the cut-off date.*

A We have perused carefully the contents of decisions of the government taken by it from time to time which are contained in its letters dated 19.8.1986, 25.8.1986, 30.6.1986 and 18.12.1989. At this very stage, it would be proper for us to opine that we find no merit in the objections submitted to this part of the report of the commission which is based on the contents of the various resolutions of the government on the subject of converting affiliated colleges into constituent colleges. We agree with the opinion of the Commission that only such members of the staff are liable to be considered for absorption who were working against additional posts *for which proposals had been received from the universities by the State Government before the cut-off date*. The other proposals for creation of posts which were pending at the university level are outside the purview of the various decisions taken by the government to take over the 40 affiliated colleges. The claims for absorption of services of employees working against posts for which proposals had not reached to the State Government before cut off date, are liable to be rejected.

D With regard to term of reference no. 3, requiring identification of teaching and non-teaching members of the staff, who have not been appointed through selection made by College Service Commission/ Universities Service Commission and enquiry about their possessing or not possessing basic qualifications prescribed for the posts in accordance with the Act and the Statutes, the conclusions of the commission are that the revised list submitted by the screening committee dated 30-1-1987 containing names of employees recommended for absorption is not worthy of acceptance.

F In the course of its enquiry, the commission found that there were interpolation and tampering with records including the proceedings of governing bodies of certain colleges. The screening committees constituted by the universities under the resolution of the government have gone into that aspect and have prepared a list of members of the staff who deserved to be absorbed. According to the opinion of the Commission after the screening committee had completed its task, the screening committee, without assigning any reasons, could not have submitted revised list to include some more names or exclude others. This inclusion and exclusion can be an omission or error in original report or it was done on other extraneous consideration. In the opinion of the commission, the last mentioned eventuality is not ruled out. It is in these circumstances that the commission has recommended that revised list of the screening committee dated 30.1.1987, deserves no consideration.

H

After reading the report of the Commission and considering the objections raised to it by the various parties before us, in our opinion the report of the Commission proposing rejection of the revised list submitted by the screening committee on 30.1.1987, which show inclusion or exclusion of certain names from its original list, deserves to be accepted. A

So far as the qualifications of the various categories of holders of teaching and non-teaching posts are concerned, the commission has gone into contents of the various statutes prescribing the qualifications for different teaching posts pursuant to the recommendations of University Grants Commission which were adopted by the universities with implementation of revised scales of pay. B C

In our opinion, decision on absorption of the existing teaching and non-teaching staff of the affiliated colleges, which are taken over as constituent colleges, is within exclusive jurisdiction of the universities concerned. Decision in individual cases, with due regard to the qualification of each employee and corresponding statute applicable at the relevant time prescribing qualification, if any, for the teaching and non-teaching post, is required to be taken by the university based on the findings in the report of Justice Agrawal Commission and in the light of the legal position explained in this judgment. D

In answer to the terms of reference no. 4 requiring identification of teachers and non-teaching employees who are entitled to absorption on the basis of government resolution dated 19.8.1986 and the agreements entered between universities and the concerned colleges, the commission after a thorough enquiry and probe into records of the various colleges have given three separate lists (i) teachers appointed against the sanctioned posts have been placed in the order of the date they became eligible for consideration; (ii) list of teachers appointed against posts for which the recommendations were sent by the universities to the State Government upto the cut-off date are arranged in the order of the date they became eligible for consideration and (iii) list of teachers appointed against posts for which recommendations were sent by the universities to the State of Bihar after the cut-off date and those for which no recommendations were sent by the universities. E F G

After hearing the counsel appearing for various parties and considering their objections, we find no difficulty in accepting the report of the commission so far as *list no. (i)* containing names of employees working on sanctioned posts and *list no. (ii)* containing names of employees working on posts for H

- A which recommendations were sent by the universities to the State upto the cut-off date. So far as *list no. (iii)* is concerned, it has been seriously objected to the State Government and in our opinion, there is justification for it. The teachers, who were appointed against the posts for which recommendations were sent by the *universities to the State* after cut-off date or for which there were no recommendations sent by the universities, can claim no right of consideration for absorption, whatever may be the reasons for alleged delay in sending recommendations. It is likely that due to fortuitous circumstances some recommendations which could have been sent by the universities to the State were not submitted before the cut-off date, nonetheless, on the basis of clear terms of the government resolution, such appointees working on posts recommended after cut-off date can legitimately claim no right of being considered for absorption.

- The Division Bench of the High Court construed the relevant provisions of the Act and accepted the contentions advanced on behalf of the employees that in accordance with section 4(I)(14), the concerned universities themselves, in respect of colleges within their jurisdiction, are empowered to take a decision on the disputes regarding the validity of the appointments in the affiliated colleges and the absorption of those appointees in the constituent colleges. The High Court was of the opinion that in view of the non-obstante clause contained in proviso in section 4(I)(14), the constraints in section 35 of the Act which provides for grant of prior approval to the creation and appointment to the posts in the affiliated colleges, will have no application to absorption of existing staff of affiliated colleges taken over by the universities on their conversion as constituent colleges.

- The High Court rejected the contentions advanced on behalf of State that it alone has jurisdiction to set up enquiries including a vigilance enquiry for identification and considering the absorption of only such staff of the erstwhile affiliated colleges which had been duly appointed with the prior approval of the State Government. The High Court allowed the writ petitions filed by the Federation of the employees and issued a writ directing the universities, which are impleaded as parties to the petitions, to take steps and consider absorption of the existing staff of the affiliated colleges in accordance with section 4(I)(14) of the Act within a period of four months from the date of the order.

- Learned senior counsel Shri Rakesh Dwivedi appears for the State of Bihar as the appellant before us. He has mainly attacked the judgment of the

High Court on the ground that it placed erroneous interpretation on the relevant provisions of the Act and has arrived at a wrong conclusion that the respective universities alone in respect of affiliated colleges within their jurisdiction have to consider the merits of the claims for absorption of various categories of members of the staff [teaching and non-teaching] of affiliated colleges in accordance with section 4(1)(14) of the Act.

We take up first the legal submissions advanced on behalf of the State as appellants on the interpretation of the relevant provisions of the Act.

To appreciate the rival contentions advanced on the interpretation of the various relevant provisions of the Act, it would be necessary to examine the scheme and make a brief survey of relevant provisions of the Act.

The Act has been passed in the year 1976 'to establish and incorporate affiliating teaching universities at Muzafferpur, Bhagalpur, Ranchi, Gaya [Bhodgaya] and Dharbhanga in the State of Bihar'. Section 2(c) defines the affiliated college thus :-

"2(c). 'Affiliated College' means educational institution having received privileges of the University according to the provisions of this Act and University statutes relating thereto."

Section 2(i) defines the 'constituent college' as under :-

"2(i). 'Constituent College' means a teaching institution maintained or controlled by the University."

Section 4 enumerates various purposes and powers of the universities and clause 14 of sub-section (I) of section 4 of the Act which is directly under consideration for interpretation before us, confers power on the university to assume management of any educational institution as also take over its assets and liabilities. This power can be exercised by the university after obtaining sanction of the State Government. The university can also take over by entering into an agreement with the concerned governing body, management of any educational institution upon receiving a proposal for the same from the State Government. In the instant case, the proposal to take over affiliated colleges emanated from the State Government which was conveyed to the universities by its letter dated 19.3.1986. Proviso to clause 14 of Section 4(I) contains a non-obstante clause. It confers power on the university to take decision with regard to the appointments, special pay or allowances and irregularity, if any, found in respect thereof in affiliated

A colleges of which management is assumed by the university with its assets and liabilities. As it is stated in the proviso, the decision taken by the university 'shall be final and binding'. Clause 14 of section 4(I) of the Act with its proviso needs full reproduction :-

B "4. Purpose and powers of the University. (I) There shall be the following purposes and powers of the University.

.....

.....

C (14) to enter into agreement with other bodies and persons for promoting the purposes of this Act and to assume the management of *any institution* under them and to take over its assets and liabilities :

D Provided that before entering into such an agreement the University shall obtain the sanction of the State Government, or shall do so upon receiving such a proposal from the State Government :

E Provided further that if at any time any irregularity is found in determination and payment of any pay, special pay or allowances, or in any appointment in an institution taken over by the university in its management under such an agreement, then, *notwithstanding anything to the contrary contained in this Act*, the University shall have the powers to take decisions after reviewing it and such a decision shall be final and binding."

[Emphasis supplied]

F Other relevant provision is section 35 of the Act which prohibits any affiliated college from creating a post or making appointment to any post without prior approval of the State Government. Sub-clause (i) of clause (b) of section 35 has been substituted by Act No. 3 of 1990 but without any material change over the original sub-clause (i) of clause (b) of section 35.

G Sub-clause (i) of clause (b) of section 35 prior to its substitution by new clause under Act No. 3 of 1990 reads as under :-

H "35. No post for appointment shall be created without the prior sanction of the State Government. '*Notwithstanding anything contained in this Act*', no University or any college affiliated to such a university,

except such college :-

A

(a)

(b) as is established by a religious or linguistic minority;

(i) shall after the commencement of this Act, create any teaching or non-teaching post involving financial liability;

B

(ii)

(iii)

(iv)without prior approval of the State Government.

C

Sub-clause (i) of clause (b) of section 35 inserted by Act No. 3 of 1990 reads as under :-

“35. No post for appointment shall be created without the prior sanction of the State Government—*Notwithstanding anything contained in this Act*, no University or any college affiliated to such a university, except such college :-

D

(a)

(b) as is established by a religious or linguistic minority;

(ii) after the commencement of this Act no teaching or non-teaching post involving financial liabilities shall be created *without the prior approval of the State Government.*

E

[Emphasis supplied]

A new sub-section (3) of section 35 of the Act has also been added by Act No. 17 of 1993 which reads thus:-

F

“Section 35(3). Any appointment or promotion made contrary to the provisions of this Act, or Statutes, Rules or Regulations made thereunder or made in irregular or unauthorized manner shall be invalid and shall be terminated at any time. The expenditure incurred by the University against such appointment or promotion shall be realized from the officer making such appointment or promotion as a public demand under the provisions of the Public Demand Recovery Act, 1914.

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- A Under section 57, there is a provision of appointment of Bihar State University [Constituent Colleges] Service Commission for making selections and recommendations for appointment to posts in constituent colleges. Section 57A which was inserted by Act No. 68 of 1982 and was applicable at the relevant time to affiliated colleges converted as constituent colleges, provides for requirement of consultation with a 'College Service Commission' set up.
- B for affiliated colleges on dismissal, termination, removal and retirement of employees of affiliated colleges. Clause (c) of sub-section (2) of section 57A substituted by Act No. 3 of 1990 is relevant only for the purpose of ascertaining the legislative intention and as an aid to the interpretation of the provisions regulating the absorption of staff of affiliated colleges. Sub-section (2) of
- C section 57A requires recommendation of 'College Service Commission' for making appointments to teaching posts in affiliated colleges. Thus, there are two separate commissions one for constituent colleges to be set up under Bihar State University [Constituent Colleges] Service Commission Act 1987 and another for affiliated colleges to be set up under Bihar College Service Commission Act of 1976. Section 57A with all sub-sections and clauses
- D added to it by various amendment Acts read as under :-

- E “¹[57A]. (1) Appointment of teachers of affiliated colleges not maintained by the State Government shall be made by the Governing Body on the recommendation of the College Service Commission. Dismissal, termination, removal, retirement from service or demotion in rank of teachers of such colleges shall be done by the Governing Body in consultation with the College Service Commission in the manner prescribed by the Statutes :

- F Provided that the Governing Bodies of affiliated minority colleges based on religion and language shall appoint, dismiss, remove or terminate the services of teachers or take disciplinary action against them with the approval of the College Service Commission :

- G Provided further that the advice of the College Service Commission shall not be necessary in cases involving censure, stoppage of increment or crossing of efficiency bar and suspension till investigation of charges is completed.

(2) Recommendation for the appointment of teachers of colleges shall be made in accordance with the following provisions :-

H 1. Ins. by Act, 68 of 1982.

(a) College Service Commission shall give its consent/ recommendation for the appointment, dismissal or termination etc. of teachers of affiliated colleges till the date of their being made constituent colleges. Its consent recommendations shall be deemed valid only till that date. A

(b) If an affiliated college becomes a constituent college of a university by the time the recommendation of the college service commission is received, the Syndicate shall take action in accordance with sub-section (4) of section 57 of the said Act, as if the recommendation has been made by the Commission. B

²[(c)] For the purpose of absorbing the service of the teachers of the affiliated colleges, who were appointed by the governing body of the college against the sanctioned post before the Establishment of the College Service Commission and whose services have been approved by the University as also the services of such teachers who were appointed by the governing body on the recommendations of the University Service Commission (Dissolved College Service Commission) as the case may be, approval of the Bihar State University (Constituent Colleges) Service Commission shall be necessary, and such teachers shall be absorbed, in the University Service from the date of making the college constituent and their seniority shall be determined according to the rules prescribed in the Statutes. C D E

Learned counsel appearing for State of Bihar has argued that power to sanction additional posts and appointments against the same in the affiliated colleges is within the exclusive jurisdiction and power of the State under section 35 of the Act. The section opens with a *non-obstante* clause meaning thereby that section 35 would have overriding effect on clause 14 of section 4(I). The contention advanced is that such appointees of the affiliated colleges who were working against non-sanctioned posts can claim no right of absorption after the conversion of affiliated colleges into constituent colleges. It is pointed out that taking advantage of the decisions dated 12.6.1987 and 18.12.1989 of the State Government by which information was called with regard to appointees against post for which sanction was pending either with F G

2. Subs. by Act 3 of 1990. H

- A the university or the State Government, large number of manipulations and fabrications of the records took place in various affiliated colleges to facilitate surreptitious entry in services of the constituent colleges of several employees who were either appointed after the cut off date or appointed illegally. It is also contended that the second decision of the Government dated 18.12.1989
- B was taken after the change of elected government and it had no prior approval of the Council of Ministers. The said decision of 18.12.1989, which is purported to have been issued with the approval of the Chief Minister for and on behalf of the Cabinet, cannot be treated to be a valid resolution of the Government. It being not formally taken and expressed in the name of Governor in accordance with Article 166 of the Constitution of India, is not
- C binding on the State Government. On behalf of the State, therefore, it is contended that the High Court committed a serious error in allowing the writ petition preferred by the association of employees of erstwhile affiliated colleges and directing the universities concerned to re-examine regularity or otherwise of all appointments in the affiliated colleges for absorption of the staff into converted constituent colleges in accordance with Section 4(I)(14)
- D of the Act.

- On behalf of the teachers and employees, learned counsel who appeared separately in the cases in which they are engaged, advanced arguments projecting different points of view on the interpretation of the provisions of section 4(I)(14) and section 35 of the Act. In substance common argument
- E advanced is that section 4(I)(14), which deals with powers of the university to review and take a decision on the regularity or otherwise of appointments of affiliated colleges, after they are taken over by the universities as constituent colleges, as a result of *non-obstante* clause contained in its proviso gives an overriding effect to the said provision over section 35. The State Government,
- F it is argued, cannot be allowed to arrogate to itself the power of the university in the matter of absorption of members of the staff working in the affiliated colleges against sanctioned posts or against posts for creation of which sanction was pending with the university or the State Government on the date of taking over the colleges. Learned Senior Counsel Shri Ranjit Kumar by reading the text of clause 14 of section 4(I) and section 35 highlighted the different
- G language employed in the *non-obstante* clauses in the two above-mentioned sections. It is pointed that in proviso to clause 14 of section 4(I), the *non-obstante* clause uses the expression '*notwithstanding anything to the contrary contained in this Act*' whereas non-obstante clause in the opening part of section 35 uses the expression '*notwithstanding anything contained in this*
- H *Act*'. Pointing out above distinction in the two expressions of *non-obstante*

clauses in section 4(I)(14) and section 35, the contention advanced is on the subject of absorption of teachers of affiliated colleges which are converted into constituent colleges, section 4(I)(14) overrides section 35 and the directions made by the High Court, therefore, deserve to be maintained. A

For deciding to the question of interpretation of section 4(I)(14) and section 35 and the competing claims of the State and the University concerning their powers in the matter of absorption of the staff of erstwhile affiliated colleges converted into constituent colleges, a closer examination of the two provisions in the light of other provisions of the Act becomes necessary. Section 35 is couched in mandatory terms. It prohibits any affiliated college either to create a teaching or non-teaching post involving financial liabilities or to make any appointment against such post without prior approval of the State Government. Compared with this provision, clause 14 of section 4(I) enables the university, after obtaining sanction from the government or on the basis of the proposals of the State Government, to take over any 'institution' affiliated or non-affiliated. *It is with the purpose of enabling universities to take over any institution that it has been conferred with a power to enter into an agreement with the Governing and/or Managing Body of such institution.* B
C
D
After entering into such agreement the university is empowered by the proviso to clause 4 to review the appointments made in the institution which is taken over and take a decision with regard to the regularity or otherwise of the appointments. The decision of the university in the above regard is to be held as 'final and binding'. E

Taking note of the difference in language employed in the *non-obstante* clauses in section 4(I)(14) and somewhat similar clause in section 35, we do find that the legislature intends to give overriding effect to one provision over the other. Proviso to clause 14 of section 4(I) uses the expression '*notwithstanding anything to the contrary contained in this Act*' whereas opening part of section 35 uses the expression '*notwithstanding anything contained in this Act*'. F

A non-obstante clause is generally appended to a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the non-obstante clause. It is equivalent to saying that inspite of the provisions or Act mentioned in the *non-obstante* clause, the provision following it will have its full operation or the provisions embraced in the non-obstante clause will not be an impediment for the operation of the enactment or the provision in G
H

- A which the non-obstante clause occurs. [See '*Principles of Statutory Interpretation*', 9th Edition by Justice G.P. Singh Chapter V, Synopsis IV at pages 318 and 319]

When two or more laws or provisions operate in the same field and each contains a *non-obstante* clause stating that its provision will override those of any other provisions or law, stimulating and intricate problems of interpretation arise. In resolving such problems of interpretation, no settled principles can be applied except to refer to the object and purpose of each of the two provisions, containing a non-obstante clause. Two provisions in same Act each containing a *non-obstante* clause, requires a harmonious interpretation of the two seemingly conflicting provisions in the same Act. In this difficult exercise, there are involved proper consideration of giving effect to the object and purpose of two provisions and the language employed in each. [See for relevant discussion in para 20 in *Shri Swaran Singh & Anr. v. Shri Kasturi Lal*, [1977] 1 SCC 750.]

- D Normally the use of phrase by the Legislature in a statutory provision like 'notwithstanding anything to the contrary contained in this Act' is equivalent to saying that the Act shall be no impediment to the measure [See *Law Lexicon* words 'notwithstanding anything in this Act to the contrary']. Use of such expression is another way of saying that the provision in which the *non-obstante* clause occurs usually would prevail over other provisions in the Act. Thus, *non-obstante* clauses are not always to be regarded as repealing clauses nor as clauses which expressly or completely supersede any other provision of the law, but merely as clauses which remove all obstructions which might arise out of the provisions of any other law in the way of the operation of the principle enacting provision to which the *non-obstante* clause is attached. [See *Bipathumma and Ors. v. Mariam Bibi* (1966) 1 Mysore Law Journal page 162 and at page 165]

- If we examine the scheme of the Act and object of the two provisions, they seem to operate in two different fields and there is no conflict in them. Section 35 is expressly applicable to affiliated colleges and mandates that new posts giving rise to financial liabilities cannot be created and appointments against them cannot be made without prior approval of the State Government.

- In contrast, clause 14 of section 4(I) operates in a totally different field that is where on grant of sanction by the government or on *receiving* a proposal from the State Government, the university enters into an agreement with any affiliated or non-affiliated institution to take over its management

with assets and liabilities. It is with regard to such institutions which are taken over with the staff working in them that the university has been given exclusive power to review the appointments made in such institution and take a decision regarding absorption of the staff with due regard to the regularity or otherwise of their appointments. Clause 14 of section 4(I), by the language employed in it, contemplates taking over of even such institutions where there may be staff employed or working without valid sanction of the posts. University is empowered to make a review of such appointments and consider absorption of such employees. The *non-obstante* clause using the expression 'notwithstanding anything to the contrary contained in this Act' has to be construed and given effect to with the above object and purpose *evinced* by express language employed in clause 14 which enables the university not only to take over the assets and liabilities of the institution but also the staff appointed regularly or otherwise.

Section 35 is applicable to all 'affiliated colleges' but does not cover a situation at a stage when an 'affiliated college' is proposed to be taken over as 'constituent college' by the university on the sanction or proposal of the State Government. The subject of taking over institution affiliated or non-affiliated with assets, liabilities and staff is regulated by provisions of clause 14 of Section 4(I) alone. Section 35 of the Act requiring obtaining of prior approval to creation of posts or appointments against them, is not intended to restrict the powers of university in absorbing staff of institutions taken over in accordance with the terms of agreement entered into with the governing bodies of those institutions. It is a different matter that in taking a decision for absorbing the staff of non-affiliated or affiliated institution under an agreement to be entered into with the Governing Bodies or Managements of such institution, the university may bestow due regard to the validity or otherwise of the appointments where the institution is an affiliated college and the qualifications of persons appointed. University may also take into consideration the provisions of section 35 to decide whether any appointment made against posts, without prior approval of the State Government, should be recognized for absorption or not.

In the course of argument on behalf of the State, it is urged that the provision requiring prior approval for creation of posts and appointments against them in section 35 is mandatory in nature and no *ex-post facto* approval can be granted.

On the other hand on behalf of the employees, learned counsel has

A argued that looking to the other provisions of the Act particularly those permitting absorption of existing staff regularly appointed or otherwise, the provision requiring 'prior approval' in section 35 is to be construed as merely directory meaning that it does not prohibit State Government granting an *ex-post facto* approval to a post created and appointment made against it.

B We do not consider it necessary to express any final opinion as to whether the provision of 'prior approval' contained in section 35 for creation of posts and appointments in affiliated college is mandatory or directory. For the purpose of this batch of cases, it is sufficient for us to opine that clause 14 of section 4(I) operates in exclusive field of considering and taking decision

C on absorption of staff appointed regularly or otherwise in an institution including an affiliated or non-affiliated college which is to be taken over as 'constituent college' under a formal agreement reached between the university and the Governing Body of that college. In the process of taking over of management, assets, liabilities and staff of the affiliated or non-affiliated college, the university has to take a decision with regard to absorption of

D existing staff. In this process of consideration for absorption, it may have regard to the provisions of the Act including observance of the provisions of section 35 of the Act. *In the matter of absorbing staff of colleges taken over, any alleged non-observance of alleged mandatory provision* of obtaining prior approval under section 35, before creation of posts and appointments to

E them, would not be an impediment in the way of university to permit absorption of an employee working against a post. It may for the above purpose seek *ex-post facto* approval of the State Government. The decision of the government contained in its communication dated 18.12.1989 itself allows consideration of absorption of the members of the staff working against post for which sanction for creation of posts was pending with the State Government

F on recommendations of the university. We do not find any conflict in the provisions of section 4(I)(14) and section 35, although each contains a *non-obstante* clause. They intend to override each other in field exclusively assigned to each. Appointments in affiliated college in normal circumstances has to be with prior approval of State Government in accordance with section 35 but

G subject matter of absorption of services of staff taken over shall be within exclusive jurisdiction of concerned university in accordance with Section 4(I)(14) of the Act.

The two *non-obstante* clauses with slightly different wordings have thus to be harmoniously construed so as to fulfil the object of each one of

H them. On examination of the scheme of the Act and the relevant provisions,

we find that Section 35, requiring prior sanction of the State Government for creation of posts and appointments, applies to all affiliated colleges. Compared with Section 35 - Section 4(I)(14) has limited operation at a stage when university enters into an agreement with the management or governing bodies of private institutions affiliated or non-affiliated for taking over its management, assets, liabilities and staff. The effect of non-obstante clause in Section 4(I)(14) is that the matter of absorption of staff of such institution/college proposed to be taken over, would be within the sole power and jurisdiction of the university concerned within whose jurisdiction the affiliated college or institution falls. On matter of absorption of staff of taken over institutions, Section 35 requiring prior sanction or approval of the State Government for creation of posts and appointment, would not be a constraint on the power of the university. It is a different thing that the university in considering absorption of the staff of institution taken over may give due consideration to the legality/regularity or otherwise of a particular appointment but it would not be inhibited by the absence of prior sanction or approval of the State as contemplated in section 35 of the Act. This is how the two non-obstante clauses have to be harmoniously construed and applied as giving overriding effect to each and restrict their operation within exclusive field assigned to each. In the matter of creation of posts and appointments in affiliated colleges in normal circumstances, requirement of prior sanction or approval of the State Government, as contained in Section 35, is not dispensed with because of the contrary provision contained in section 4(I)(14) and the latter Section is restricted in its operation to absorption of staff of a taken over institution by the university.

Clause (c) to sub-section (2) of section 57A was introduced by Act 3 of 1990 and has no retrospective application to the cases of affiliated colleges taken over as constituent colleges prior to the year 1990. The said clause (c) to sub-section (2) of section 57A requires further approval of Bihar State University [Constituent Colleges] Service Commission before absorbing the services of teachers of the affiliated colleges converted into constituent colleges. The aforesaid piece of subsequent legislation amending the same Act can appropriately be taken as an aid to the interpretation of the unamended provisions of the Act. The amended provisions of the Act is an indication that subject of absorption of staff of taken over affiliated colleges is treated as a subject distinct from regular recruitment to the posts in affiliated colleges which is to be made with prior sanction or approval of the State Government as provided in section 35 of the Act. Similarly, Sub-section (3) added to section 35 by Act 17 of 1993 is also prospective in application and has no

- A adverse effect on the absorption of the services of the teaching staff of the affiliated colleges taken over as constituent colleges prior to 1993. Sub-section (3) applies to normal mode of recruitment to staff [teaching or non-teaching] of affiliated colleges and is merely reiteration of the legal position that appointments and promotion made contrary to the provisions of the Acts, statutes, rules and regulations would be invalid and liable to be terminated at any time. It also provides that any expenditure incurred by the university against such illegal, irregular, unauthorized appointments/promotions shall be realized from the officers found responsible for committing such illegality as a public demand under the provisions of Public Demand Recovery Act 1914. Clause (c) of section 57A (2) introduced in the year 1990 and sub-section (3) of section 35 introduced in the year 1993 being prospective in operation have no application to the affiliated colleges taken over as constituent colleges with the existing staff prior to the year 1990. Those provisions introduced subsequently in the year 1990 and 1993 are being referred to for a limited purpose to show that the Legislature has always treated differently the normal recruitment which has to be made with approval of State Government to teaching and non-teaching posts in affiliated colleges and the matter of absorption of existing staff appointed against sanctioned or non-sanctioned posts in the affiliated colleges taken over and converted as constituent colleges.

- E The two *non-obstante* clauses, although slightly differently worded one in proviso to Section 4(I)(14) and the other in Section 35 of the Act have thus, been construed harmoniously. Our conclusion is that they operate in two different fields former to consideration of absorption of staff of taken over colleges and the latter to affiliated colleges when they are not under any proposal of being taken over by the university. The two provisions being intended to operate in two different situations and fields both have an overriding effect on each other. That is why the Legislature has employed a non-obstante clause in each.

- G Based on the various decisions taken by the State Government from time to time to which reference has already been made above, by order passed on 01.2.1988, the State Government on the recommendations of the Committee constituted by it to consider proposals for creation of additional posts and proposals for affiliation which had been received from the universities up to 30.4.1986, decided to grant sanction to the proposals.

- H On behalf of State of Bihar and State of Jharkhand, learned counsel

appearing have contended that the order dated 01.2.1988 granting sanction and affiliation for certain posts received by the universities before the cut-off date on recommendation of the Committee constituted by the State Government cannot be treated to be a valid order of the government sanctioning posts because there was no Cabinet approval to the same. It is submitted that the order dated 01.2.1988 was issued by the Deputy Secretary to Government of Bihar without any approval of the Cabinet. It has no legal efficacy. Any valid order of the government has to be formally expressed in the name of Governor in accordance with Article 166 of the Constitution of India. A B

Similar objection has been raised against the order dated 18.12.1989 by which, relying on the recommendations of the Committee constituted, the State Government directed absorption of incumbents working on posts sanctioned and recommended before the cut-off date. C

The validity and authenticity of the two orders dated 01.2.1988 and 18.12.1989 of the State Government were not questioned before the High Court in the writ petition filed by the employees of the converted constituent colleges. Question on their validity was raised only before the one-member Enquiry Commission of Shri Justice S. C. Agrawal [Retd.]. On the question of validity of the order dated 01.2.1988, the Enquiry Commission delved into the notings in the government files and found that the Education Minister had recorded in one of the files that the Cabinet in its meeting held on 22.6.1988 had authorized the Chief Minister to take a decision in that regard. According to the Commission, the order dated 01.2.1988 is duly authorized order of the State Government and this fact is evident from the subsequent Resolution No. 307 dated 08.3.1988, which is duly authenticated order issued in the name of the Governor of Bihar. The subsequent Resolution formally issued in the name of Governor is a sequel to the order dated 01.2.1988 and does not disturb it. D E F

So far as the order dated 18.12.1989 of the State Government directing absorption of employees against posts sanctioned and recommended by the Committee, the Commission did not go into that question stating that it was subject matter for decision before this Court in the present pending appeal. G

Since the validity and authenticity of the two orders dated 01.2.1988 and 18.12.1989 were not raised before the High Court and were raised for the first time before the Commission, we decline to go into them. The joint stand taken on behalf of the State of Bihar and the State of Jharkhand before this Court, deserves to be rejected. H

A That apart the Commission has taken note of the fact that the order dated 01.2.1988 was followed by a formal Resolution No. 307 dated 08.3.1988 which was duly authenticated order issued in the name of Governor of Bihar and did not disturb the order dated 01.2.1988. It is a resolution formally taken and expressed in the name of Government of Bihar in accordance with Article 166 of the Constitution of India to give effect to the order made on 01.2.1988.

B So far as the order dated 18.12.1989 is concerned, the State being the author of that decision merely because it is formally not expressed in the name of Governor in terms of Article 166 of the Constitution of India, the State itself cannot be allowed to *resile* or go back on that decision. Mere change of the elected government does not justify dishonouring the decisions of previous elected government. If at all the two decisions contained in the orders dated 01.2.1988 and 18.12.1989 were not acceptable to the newly elected government, it was open to it to withdraw or rescind the same formally. In the absence of such withdrawal or rescission of the two orders dated 01.2.1988 and 18.12.1989, it is not open to the State of Bihar and State of Jharkhand [which has been created after reorganization of the State of Bihar] to contend that those decisions do not bind them.

Special Leave Petition (C) No. 18168 of 2002

E This Special leave petition arises out of an order of the Division Bench of the High Court of Patna whereby the claim for retirement dues of the appellant, as member of the teaching staff of the erstwhile affiliated colleges, which were converted into constituent colleges have been directed to be paid to him subject to the outcome of the present appeal pending before this Court.

F As we have held above, the University has to take a decision on the claim of retrial dues, on the basis of the findings of the enquiry commission. The university shall examine the question of regularity or otherwise of the appointment of the appellant in the concerned college and if he was found to be entitled to be absorbed, the university, shall disburse his retrial dues. The special leave petition of Chander Kishore Sharma thus, stands disposed of with the above directions.

G *Contempt Petition (C) Nos. 5, 53, 54, 83, 353, 363, 549, 82 of 2002 and 343, 377, 441 of 2004 in CA No. 6098 of 1997*

H

The contempt petitions have been filed by members of the staff individually and jointly. Many of them were not even parties before the High Court. They complain non-compliance of order of this Court. After the Commission of Enquiry to be headed by Justice SC Agrawal (retired judge of this Court) was set up, the employees were directed to be paid their salary along with admissible allowances pending decision of this appeal.

In the counter-affidavit filed by alleged contemnors who are the authorities of the State, the defence taken is that since the question of validity of appointment in various affiliated colleges and absorption of members of the staff was under investigation before the enquiry commission and in this Court, it was not possible for the State to make payment of salary to such persons whose appointment itself was in serious doubt. The Commission has also found several cases of manipulations and interpolations in the records. It is submitted that in the above circumstances, non-disbursement of salaries to such employees, whose appointments itself were in serious doubt, cannot be held to be a deliberate contempt which deserves any punitive action. The stand taken by the contemn Ors., seems reasonable and justified. Salaries could not have been disbursed to such employees whose appointments were in serious doubt. We find no good ground to take any punitive action against the authorities. The Contempt Petitions, thus, stand disposed of.

For Impleadment/interventions :

Large number of applications individually and collectively have been filed by the employees objecting to the report of the Commission to the extent it adversely affects their status, right of absorption and payment of salaries to them. By different applications, they have sought their joinder as parties to the appeals before us and filed objections to the enquiry report. We have considered all the written objections and submissions filed in support thereof. Most of the written objections by individual employees preferred independently or through their associations are mainly based on the reports of the Committees constituted by State Government and the recommendations for absorption made by the concerned universities.

We have already mentioned above that this Court decided to set up one-member Enquiry Commission of retired Judge of this Court only because serious doubts were raised on the authenticity of the records of the affiliated colleges converted into constituent colleges as also the proceedings of the Committee and the recommendations of the universities. The Enquiry

A Commission set up by this Court had granted opportunity to all affected parties to place their cases before it. Some of the parties and individuals availed the opportunity before the Commission.

B Most of the objections to the report of the Enquiry Commission are based on the reports of the various committees set up by the State and the recommendations of the universities. Thereafter, we set up an Enquiry Commission which has given its report. It is, therefore, not possible to grant any relief or directions in favour of the objectors on the basis of the reports of the various committees and recommendations of the universities. We have now directed the universities concerned, in respect of colleges within their
C respective jurisdiction to issue formal orders of absorption in the constituent colleges on the basis of the report of the Enquiry Commission and in the light of our judgment.

D In some of the written objections, certain mistakes of names and descriptions of employees in the Report of the Commission have been pointed out. Such mistakes in the Report of the Commission may be brought by the affected employees to the notice of the universities concerned. It would be open to the universities, for the above limited purpose to undertake enquiry and verification of the records to rectify and rely upon the report of the Commission with the necessary corrections only with regard to the names
E and descriptions of the employees.

In view of this judgment and the directions made herein to the University to take a final decision based on the report of the enquiry commission, all the applications for impleadment as parties and objections filed to the enquiry report are rejected. It is for the University to take a final decision concerning
F the individual employees. For the same reason, no further orders are required on the Interlocutory applications seeking certain directions pending the appeal and for modification of earlier orders made. Other interlocutory applications also need no further directions or orders. They all stand disposed of.

G *Conclusions :*

1. The judgment of the High Court to the extent of the interpretation placed by it on the provisions of section 4(I)(14) and section 35 with the directions issued in paragraphs 24 to 26 therein, is hereby confirmed for the reasons recorded by us above.
- H 2. The report of the commission of enquiry of Hon. Justice S. C. Agrawal [retired], is accepted and all objections filed against the

said report are rejected.

3. The members of the staff in various affiliated colleges identified and named in list no. (i) being appointees against the sanctioned posts shall be absorbed and formal order to that effect shall be issued by the universities concerned.
4. The universities shall take a decision under section 4(I)(14) of the Act in the matter of absorption of appointees named in list no. (ii) of the Report of the Commission, being appointees against posts for which recommendations were sent by the universities to the State up to the cut-off date in accordance with the decision of the State Government conveyed in its letter dated 19.8.1986 followed by letters dated 25.08.1986 and 12.06.1987.

In considering the question of absorption of appointees named in list no. (ii) of the report of the Enquiry Commission, the universities concerned shall rely on the contents of the report of the enquiry commission and the present judgment of this Court.

5. The appointees mentioned in list no. (iii), being the appointees against posts for which recommendations were sent by the universities to the State Government after the cut-off date or those working against posts for which no recommendations were sent for approval of the State Government, have no right of being considered for absorption - whatever maybe the fortuitous circumstances or otherwise in the matter of not sending recommendations for sanction in their cases. The negative report of the enquiry commission with regard to list no. (iii) is accepted and the universities are directed to exclude all such appointees named in list no. (iii) from consideration for absorption.
6. A large number of objections to the Report of the Enquiry Commission filed before us by associations of employees and individuals pertain to the alleged lack of prescribed qualifications for the posts on which they are working. All those objectors have not been recommended for absorption in the report of the Enquiry Commission. Decision in individual cases, with due regard to the qualification of each employee and corresponding statute applicable at the relevant time prescribing qualifications, if any, for the teaching and non-teaching posts, shall be taken by the universities based on the findings in the report of Justice

A Agrawal Commission and in the light of the legal position explained above.

The universities concerned shall now complete the process of absorption of the staff of the affiliated colleges [teaching and non-teaching] in the manner and to the extent stated above in our judgment within a period of four months from the date of receipt/production of the copy of this order.

C The arduous work of scrutinizing large number of files, hearing large number of individual employees and their associations as also concerned authorities and preparing and submitting a detailed report to facilitate this Court in deciding these cases, was completed by Mr. Justice S. C. Agrawal [retired] as one-member Enquiry Commission within a reasonable period. Before parting with this case, we thankfully acknowledge the valuable services of the Commission.

D In the result, the appeal, the connected special leave petition and contempt petitions, all are dismissed. The applications for impleadment as parties, applications seeking interventions and other applications raising objections to the report of the Enquiry Commission and seeking directions, all stand rejected.

E In the circumstances, we leave the parties to bear their own costs incurred in this Court.

B.B.B.

Appeal, Connected Special Leave Petition and
Contempt petition dismissed.