

By now, it is a settled position of law that recovery from the salary/pension of an employee cannot be made, if the amount in excess was paid to such an employee for the reasons not attributed to such an employee.

See Para 4 of Judgement on Page 105

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH
AT AURANGABAD**

WRIT PETITION NO. 9054 OF 2010

Association of College and University Superannuated Teachers (Maharashtra) PETITIONER **VERSUS** The State of Maharashtra through its Secretary, Higher and Technical Education Department, Mantralaya, Mumbai and ors. RESPONDENTS **AND WRIT PETITION NO. 2868 OF 2011** Association of College and University Superannuated Teachers (Maharashtra) PETITIONER **VERSUS** The State of Maharashtra through its Secretary, Higher and Technical Education Department, Mantralaya, Mumbai and ors. RESPONDENTS

.....
Mr. S.V. Adwant, Advocate for the Petitioner. Mr. K.S. Patil, A.G.P. for the Respondent State. Mr. Alok Sharma, Assistant Solicitor General for the respondent no.3UGC.

.....
CORAM : B.R. GAVAI AND M.T. JOSHI, JJ.

DATED : 22ND AUGUST, 2011

ORAL ORDER:

1. Rule. Rule made returnable forthwith. Heard by consent.

2. By way of the present Petitions, the petitioners impugn the communication addressed by the respondent Government dated 10.3.2008 and 18.3.2010, **thereby seeking to recover the amount of stagnation increment from the pension account of the members** of the petitioner association, whose names are given in the Exhibit "F".

3. The members of the petitioner association were employees of colleges and universities. The respondent State had given the benefits on account of stagnation of the services to the members of the petitioner association vide Government resolution dated 25.1.1999. However, it appears that subsequently, it was realised by the State Government that the members of the petitioner association were not entitled to stagnation allowance and as such the impugned communications were issued, thereby seeking to recover the amount from the pension account of the members of petitioner association.

4. **By now, it is a settled position of law that recovery from the salary/pension of an employee cannot be made, if the amount in excess was paid to such an employee for the reasons not attributed to such an employee.** It is not the case of the respondents that the stagnation amount was paid to the members of the petitioner association on account of any misrepresentation made by such members.

5. In that view of the matter, in view of the law laid down by the Apex Court in *Syed Abdul Qadir and ors. Vs. State of Bihar and ors. 2009* reported in (2009) 3 Supreme Court Cases 475, both the Petitions deserve to be allowed.

6. **The impugned communication dated 10.3.2008 and 18.3.2010 are therefore quashed and set aside.** It is held that the respondents are not entitled to recover the amount from the pension of the petitioners. Insofar as the amount which is already recovered from the pension of the members of the petitioner association, it is directed that such amount shall be returned to the employees from whom it is deducted within a period of three (3) months from today alongwith the interest at the rate of 12% per annum.

7. Rule is made absolute in the aforesaid terms, however, with no order as to costs.

Sd/ [M. T. JOSHI, J.]

Sd/ [B. R. GAVAI, J.]

**AF : P215 **

IN THE HIGH COURT OF JUDICATURE AT BOMBAY CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2093 OF 2011 Satish Kundanlal Agarwal ...Petitioner Versus The State of Maharashtra and ors. ...Respondents **WITH WRIT PETITION NO. 3197 OF 2011** Mr.Mallikarjun Ramgondappa Patil and ors. ...Petitioners Versus The State of Maharashtra and ors. ...Respondents **WITH WRIT PETITION NO.3463 OF 2011** Karishma Shankarlal Dass ...Petitioner Versus The State of Maharashtra and ors. ...Respondents **WITH WRIT PETITION NO.6262 OF 2011** Prof. T.K. Zanke ...Petitioner Versus The State of Maharashtra and ors. ...Respondents **WITH WRIT PETITION NO. 7143 OF 2011** Hamid Babulal Munde ...Petitioner Versus The State of Maharashtra and ors. ...Respondents **WITH WRIT PETITION NO. 7348 OF 2011** Deoram Bajaba Dhamane ...Petitioner Versus The State of Maharashtra and ors. ...Respondents **WITH WRIT PETITION NO. 7756 OF 2011** Shri Sanjay Raghunath Kulkarni ...Petitioner Versus The State of Maharashtra and ors. ...Respondents **WITH ORIGINARY ORIGINAL CIVIL JURISDICTION WRIT PETITION NO.951 OF 2011** Altamash Alnasir Ghaznavi ...Petitioner Versus The State of Maharashtra and ors. ...Respondents **WITH WRIT PETITION NO. 953 OF 2011** Raghavendra Bhimrao Deshpande ...Petitioner Versus The State of Maharashtra and ors. ...Respondents **WITH WRIT PETITION LODGING NO. 1409 OF 2011** Krishna Kumar Sharma ...Petitioner Versus The State of Maharashtra and ors. ...Respondents **WITH WRIT PETITION LODGING NO.1426 OF 2011** Evelyn D'Souza ...Petitioner Versus The State of Maharashtra and ors. ...Respondents **WITH WRIT PETITION LODGING NO.1427 OF 2011** Mrs. Rina B. Chakravarty ...Petitioner Versus The State of Maharashtra and ors. ...Respondents

Mr.Mihir Desai for petitioners in W.P.Nos.2093 and 7348 of 2011. Mr.S.G. Deshmukh with Mr.Abhijeet Kandarkar for petitioners in W.P.No.3463 of 2011. Mr.S.A.Sawant with Ms.Gunjan Shah for petitioners in W.P.Nos.3197 and 6262 of 2011. Mr.M.S.Bhandari with Ms. Pranjali Bhandari for petitioners in W.P.Nos. 951 and 953 of 2011. Mr.Vivek Salunke for petitioners in WP (L) No.1409, 1426 and 1427 of 2011. Mr.J.S.Chandanani for resp.no.4 in W.P.No.3463 of 2011 and for resp.no. 3 in W.P.Nos.951 and 953 of 2011 and for Resp.No.5 in W.P.(L) Nos. 1409, 1426 and 1427 of 2011. Mr.Rui A. Rodrigues for UGC in all petitions and for AICTE in W.P.No. 2683 of 2011. Mr.R.A.Lokhande for resp.no.4 in W.P. No.2093 of 2011. Mr.Shriram Chaudhary with Mr. Vishwanath Talkute for resp.nos.5 and 6 in W.P. No.2093 of 2011. Mr.Nitin Jamdar with Mr.Haribhau Deshinge for resp.no.2 in W.P. No. 3197 of 2011. Mr.Rajiv Chavan with Mr.Vinod Joshi for resp.no.4 in W.P.No.7348 of 2011. Mr.S.K.Shinde, Additional G.P. with Mr.A.B. Vagyani, AGP for State in all Appellate Side petitions. Ms.S.M.Dandekar, AGP for State in W.P.No.951 of 2011. Mr.M.D.Naik, AGP for State in W.P.No.953 of 2011 and W.P.(L) Nos. 1409, 1426 and 1427 of 2011. Mr.Rajiv Chavan with Mr.G.Hariharan for Union of India in W.P. (L) 1409, 1426 and 1427 of 2011.

CORAM: B. H. MARLAPALLE & : SMT. NISHITA MHATRE, JJ.

September 30, 2011. ORAL ORDER (PER B.H.MARLAPALLE,J.)

1. This group of petitions raises common challenge to the Government Resolution dated 5th March 2011 issued by the State of Maharashtra through the Department of Higher and Technical Education and to the extent of Clauses 11(1), 11(3) and 11(4) of the said G.R. There is no dispute that the impugned GR has replaced the earlier GR dated 25/2/2011 and, therefore, the challenge to the same clauses of the GR dated 25/2/2011 is required to be considered with reference to the GR dated 5/3/2011 as the petitions were filed prior to the GR dated 5/3/2011. Hence these petitions are being decided by this common order.

2. The petitioners are either working as Lecturers / Professors at the graduation or post graduation level in different colleges affiliated to non agricultural Universities and with the said universities as well as in the Government colleges (Engineering and Non-agricultural) in the State of Maharashtra. On 31/12/2008 the Government of India through the Ministry of Human Resources Development addressed a letter to the Secretary – University Grants Commission (UGC) regarding the scheme of revision of pay of teachers and equivalent categories in the Universities and Colleges, following the revision of pay scales of Central Government employees on the recommendations of the Sixth Central Pay Commission (SCPC). The said communication sets out elaborately the educational qualifications, revised pay scales, career advancement scheme, annual increments, pay fixations and age of superannuation etc. The pay

scales of the Professors in Graduate as well as Post Graduate Colleges have been revised as under:

- (i) Assistant Professor - Rs.15,600 – 39,100.
- (ii) Associate Professor - Rs. 37,400 – 67,000.

So far as the post of Professor is concerned, the pay band of Rs.37,400 – 67,000 would be applicable with higher Academic Grade Pay (AGP) than applicable to the post of Associate Professor. **We are mainly concerned with the age of superannuation clause and the said clause reads as under:**

“(f) Age of Superannuation:

(i) *In order to meet the situation arising out of shortage of teachers in universities and other teaching institutions and the consequent vacant positions therein, the age of superannuation for teachers in Central Educational Institutions has already been enhanced to sixty five years vide the Department of Higher Education letter No.F.No.119/2006-U.II dated 23.3.2007, for those involved in class room teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period. Consequent on upward revision of the age of superannuation of teachers, the Central Government has already authorized the Central Universities, vide Department of Higher Education D.O. letter No.F.1-24/2006-Desk(U) dated 30.3.2007 to enhance the age of superannuation of Vice- Chancellors of Central Universities from 65 years to 70 years, subject to amendments in the respective statutes, with the approval of the competent authority (Visitor in the case of Central Universities).*

(ii) *Subject to availability of vacant positions and fitness, teachers shall also be reemployed on contract appointment beyond the age of sixty five years up to the age of*

seventy years. Re-employment beyond the age of superannuation shall, however, be done selectively, for a limited period of 3 years in the first instance and then for another further period of 2 years purely on the basis of merit, experience, area of specialization and peer group review and only against available vacant positions without affecting selection or promotion prospects of eligible teachers.

(iii) Whereas the enhancement of the age of superannuation for teachers engaged in class room teaching is intended to attract eligible persons to a career in teaching and to meet the shortage of teachers by retaining teachers in service for a longer period, and whereas there is no shortage in the categories of Librarians and Directors of Physical Education, the increase in the age of superannuation from the present sixty two years shall not be available to the categories of Librarians and Directors of Physical Education."

3. On the applicability of the said scheme, clauses p(i) and p(v) of the said communications read as under:

(p)(i) This scheme shall be applicable to the teachers and other equivalent cadres of Library and Physical Education in all the Central Universities and Colleges thereunder and the Institutions Deemed to be Universities whose maintenance expenditure is met by the UGC. The implementation of the revised scales shall be subject to the acceptance of all the conditions mentioned in this letter as well as Regulations to be framed by the UGC in this behalf. Universities implementing this Scheme shall be advised by the UGC to amend their relevant statutes and ordinances in line with the UGC Regulations within three months from the date of issue of this letter.

(p)(v) This Scheme may be extended to universities, Colleges and other higher educational institutions coming under the purview of State legislatures, provided State Governments wish to adopt and implement the Scheme subject to the following terms and conditions: (emphasis supplied)

(a) Financial assistance from the Central Government to State Governments opting to revise pay scales of teachers and other equivalent cadre covered under the Scheme shall be limited to the extent of 80% (eighty percent) of the additional expenditure involved in the implementation of the revision.

(b) The State Government opting for revision of pay shall meet the remaining 20% (twenty percent) of the additional expenditure from its own sources.

(c) Financial assistance referred to in sub-clause (a) above shall be provided for the period from 1.01.2006 to 31.03.2010.

(d) The entire liability on account of revision of pay scales etc. of university and college teachers shall be taken over by the State Government opting for revision of pay scales with effect from 1.04.2010.

(e) Financial assistance from the Central Government shall be restricted to revision of pay scales in respect of only those posts which were in existence and had been filled up as on 1.01.2006.

(f) State Governments, taking into consideration other local conditions, may also decide in their discretion, to introduce scales of pay higher than those mentioned in this Scheme, and may give effect to the revised bands / scales of pay from a date on or after 1.01.2006, however, in such cases, the details of modifications proposed shall be furnished to the Central Government and Central assistance shall be restricted to the Pay Bands as approved by the Central Government and not to any higher scale of pay fixed by the State Government(s). (emphasis supplied)

(g) Payment of Central assistance for implementing this Scheme is also subject to the condition that the entire Scheme of revision of pay scales, together with all the conditions to be laid down by the UGC by way of Regulations and other guidelines shall be implemented by State Governments and Universities and Colleges coming under their jurisdiction as a composite scheme without any modification except in regard to the date of implementation and scales of pay mentioned herein above. (emphasis supplied)

4. On the date of implementation of the revised pay and allowances and payment of arrears etc. it was stated that the revised pay and dearness allowance would be effective from 1/1/2006 and other allowances shall be paid with effect from 1/9/2008. Payment of arrears of

40% of the total arrears was to be paid during the current financial year i.e. 2008-2009 after deduction of admissible income tax. It was also clarified that the revised pay in the relevant pay band and the Academic Grade Pay together with the applicable allowances including arrears of salary as mentioned above shall be paid to all eligible candidates under the scheme pending framing of Regulations by the UGC. The Government of Maharashtra, therefore, without waiting for the Regulations being framed by the UGC issued a GR on 12th August 2009 and implemented the scheme of the Union of India as formulated through the communication dated 31st December 2008 so as to revise the pay scales on par with the recommendations of the SCPC. However, there was no enhancement in the age of retirement of the colleges as well University teachers.

5. It is also pertinent to note that the UGC brought into force the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010 (for short the UGC Regulations 2010) and they came to be published in the Gazette of India dated 18th September 2010.

6. It is pertinent to note at this stage that the teachers and principals in the Government colleges (Engineering, Polytechnic and other nonagricultural colleges) retire at the age of 58 years and there was no increase in the age of retirement till the impugned GR was issued. So far as graduation and post graduation teachers in the aided and un-aided private colleges are concerned, their age of retirement has been 60 years including the Principals. However, by the impugned GR the State Government has proposed to bring about uniformity in the age of retirement of the teachers at all levels i.e. in polytechnics, degree colleges as well as post graduate institutes. The age of retirement of all these teachers has been enhanced to 62 years. Whereas for the Principals in all the colleges (Government, private aided and private unaided), the age of retirement has been enhanced to 65 years. **At the same time, the enhancement in the age of retirement is not unconditional and it is subject to review of performance by a Committee constituted by the Government. For the Assistant Professors, Associate Professors and Professors the review is at the age of 60 years, whereas for the Principals such a review is at the age of 62 years and continuation beyond the age of 60 years or 62 years, as the case may be, is subject to the Review Committee's recommendations. Let us, therefore, reproduce the relevant impugned clauses of the G.R. dated 5th March 2011**

११. वरील सर्व संस्थातील अध्यापक तथा प्राचार्यांच्या सेवानिवृत्तीसाठी मुदतवाढ देतांना संबंधितांनी निम्न बाबींची पूर्तता करणे अनिवार्य राहिल-

१) सदर संस्थामधील अध्यापक/प्राचार्य यांच्या प्रथम नियुक्त्या विद्यापीठ अनुदान आयोग व राज्य शासनाने विहित केलेल्या पात्रता, अटी व शर्ती प्रमाणे झालेल्या असणे आवश्यक आहे.

२)

३) संबंधित अध्यापक/प्राचार्यांनी Ph.D. अथवा विद्यापीठ अनुदान आयोग तथा अखिल भारतीय तंत्रशिक्षण परिषदेच्या निकषानुसार Ph.D. शी समकक्ष अशी शैक्षणिक अर्हता धारण करणे आवश्यक राहिल.

४) संबंधित अध्यापक /प्राचार्य यांच्या मुदतवाढीच्या दिनांकापूर्वीचे मागील पाच वर्षातील वार्षिक गोपनीय अहवाल विचारात घेऊन, सदर गोपनीय अहवालाची सर्वसाधारण मूल्यमापनाची प्रतवारी किमान तीन वर्षे उत्कृष्ट (A) आणि दोन वर्षे निश्चित चांगला (B +) असणे आवश्यक आहे.

7. Clause 11 of the impugned GR states that the initial appointments of the Professors / Principals must be in keeping with the Rules and the qualifications laid down were satisfied for such appointments. The continuation beyond the age of 60 years is subject to the clearance regarding the physical and mental fitness by the Government Medical Committee. The Professor / Principal concerned must have acquired the Degree of Ph.D. or equivalent educational qualification. While **considering the cases of the Professors / Principals for retention beyond the age of 60/62 years the ACRs for the last five years would be considered by the Performance Committee** and for being retained beyond such years the Professor / Principal concerned must have "A" Grade rating for three years and "B+" Grade rating for the remaining two years.

8. It is submitted by the petitioners that the insistence of Ph.D. Degree and the assessment of performance at the age of 60 or 62 years, as the case may be, for being retained till the age of 62 years or 65 years is illegal, unreasonable, harsh, unrealistic and contrary to the UGC Regulations, 2010. When the prescribed qualifications for the post of Assistant Professor do not provide for a Ph.D. Degree as the necessary qualification, the State cannot be allowed to insist on such a qualification for being continued up to the age of 62 years. Once the UGC Regulations have extended the age of retirement to 65 years unconditionally, it is not permissible for the State Government to extend the age of retirement on such conditions of educational qualifications etc. **Mr.Desai, the learned counsel appearing for some of the petitioners submitted that the UGC Act was enacted by the Parliament in exercise of its powers under Entry 66 of List 1 to Schedule VII of the Constitution and, therefore, it is a Central Legislation as contained in Article 254(1) of the Constitution.** The formulation of service conditions of the university and college teachers, including the determination of the age of superannuation is the subject matter of State Legislation as the same would fall within Entry 25 of List III and there cannot be any conflict between the provisions of the UGC Regulations and the Rules framed by the State Government for the service conditions of such teachers. In short the State Government is bound by the UGC Regulations and if the said Regulations have not imposed any conditions for extending the age of superannuation beyond 60 years, it would not be within the competence of the State Government to impose any conditions or any conditions like the Ph.D. degree or performance assessment by a specially constituted committee. **The enhancement in the age of retirement is required to be unconditional subject to the incumbent being found medically fit. The Regulations formulated by the UGC are a composite package and it is not permissible for the State Government to accept something unconditionally and impose conditions while granting some other benefits. If the UGC in its wisdom has decided to enhance the age of retirement unconditionally, the decision of the State to impose the impugned conditions is illegal and requires to be quashed and set aside.** It was also urged that even the preamble of the impugned Resolution has considered the vacancy position and the scarcity of experienced and qualified college teachers. It has been stated that there are about 17000 vacancies of Assistant Professors, Associate Professors and Professors etc. and, therefore, there is a need to retain the experienced college and university teachers by enhancing the age of

retirement. On the backdrop of these realities the State Government ought to have extended the age of retirement without imposing any conditions so long as the concerned teachers were found to be medically fit. When the Ph.D. degree is not an essential qualification for appointment to the post of Assistant Professor or for granting senior scale / selection grade, imposing of such a condition for enhancing the age of retirement up to 62 years is arbitrary and more so when the Professors concerned have reached at the fag end of their career and insistence on the Ph.D. degree qualification would be, therefore, an impossible condition. If such a condition is followed strictly coupled with the assessment of performance, the enhancement in the age of retirement would remain on paper and it would be only an illusion as there would be hardly any college teachers who would be eligible for being retained till the age of 62 years. **The learned counsel also brought to our notice that similar challenge has been allowed by the High Court of Jharkhand in Writ Petition No.363 of 2010 and others, the High Court of Patna in CWJC No.11348 of 2010 and ors. and the High Court of Karnataka in Writ Petition No.13429 of 2011 and ors.**

9. **The State Government has filed affidavit in reply through the In charge Joint Director of Higher Education** in Writ Petition No.953 of 2010 and the same has been adopted in all the petitions. Similarly the UGC has filed affidavit in reply in Writ Petition No.2093 of 2011 and the same has been adopted in other petitions as well. The State Government has opposed the petitions whereas the UGC has placed on record the UGC Regulations of 2000 and UGC Regulations of 2010. It has also been pointed out that the Government of India had revised the pay scales of teachers in the Colleges following the revision of pay scales of Central Government employees on the recommendations of the FCPC vide its letter dated 27th July 1998 addressed to the UGC and by the said letter while revising the pay scales in line with the Fifth Pay Commission

ITEM NO. 4 : COURT NO. 2 : SECTION XI

SUPREME COURT OF INDIA

Record of Proceedings

(Prayer for interim relief and office report)

DATE : 30.06.2011

This petition was called on for hearing today

CORAM

Hon'ble Mr.Justice P. SATHASIVAM

Hon'ble Mr.Justice A.K.PATNAIK

(Vacation Bench)

For Petitioner(s) Mr. S.R. Singh, Sr. Adv. Mr. D.N.Dubey, Adv. Mr. Asha Gopalan Nair, Adv.

For Respondent(s)

Upon hearing counsel the court made the following

ORDER

Exemption allowed. Permission to file SLP is granted. Issue notice on the application seeking condonation of delay, special leave petition as also on I.A. for implementation.

Status quo exists as on date shall be maintained, in the meanwhile.

Tag with SLP(C) Nos. 18766-18782 of 2010.

(Madhu Bala)
Sr. PA

(Savita Sainani)
Court Master

Recommendations the age of superannuation of University and College teachers was fixed at 62 years and it was left open to the University or College to re-employ superannuated teacher according to the guidelines framed by the UGC up to the age of 65 years. Accordingly, the UGC Regulations of 2000 increased the age of superannuation to 62 years for college and university teachers. On 23rd March 2007 the Government of India addressed a letter to the UGC for enhancement of age of superannuation from 62 years to 65 years for the teaching positions in the centrally funded institutions in higher and technical education. As per the said letter the age of superannuation of all persons who were holding teaching positions on regular employment in centrally funded institutions in higher and technical education under the Ministry of Human Resources Development shall be increased from 62 years to 65 years. It was clarified in the said communication that the enhancement of retirement age as mentioned above and the provision for re-employment, would apply only to persons in teaching positions against the posts sanctioned to the centrally funded higher and technical education institutions coming under the purview of the HRD Ministry so as to overcome the shortage of teachers. While framing the UGC Regulations of 2000 the Government of India's directives have been taken into consideration and the age of retirement has been increased to 62 years for the college and university teachers. It is pertinent to note that the UGC has not specifically commented on the contentions of the petitioners or for that matter of the State Government on their respective claims in these petitions. **The UGC has not commented adversely on the GR dated 5th Mach 2011 issued by the Government of**

Maharashtra and the impugned conditions under Clause No.11 therein.

10. So far as the Government of Maharashtra is concerned, it is contended that the impugned GR has not been issued to permit or allow the candidates without Ph.D. degree to continue endlessly in service and the State Government has taken a policy decision to ensure that only those professors / principals who possess the Ph.D. degree are granted the benefit of enhancement in the age of retirement. Though there was no requirement for a candidate to be appointed to the post of Assistant Professor, of possessing a Ph.D. degree but to prevent the falling standards of education and to raise the standard of higher and technical education it was felt necessary to insist on a Ph.D. degree coupled with the performance assessment of the teachers during the last five years. Reference has been made to the notification dated 1st June 2009 issued by the UGC and making it compulsory for any candidate to be eligible for appointment as Assistant Professor with any university or college to possess the qualifications of NET / SET / Ph.D. degree. As per the State Government the said notification of the UGC is a standing proof of the recommendation by the Central Government as well as UGC for the felt need to insist on Ph.D. degree while granting enhancement in the age of retirement to the college as well as university professors. **It is also pointed out that the teachers who do not possess a Ph.D. degree and who would otherwise retire at the age of 60 years cannot claim to be entitled to be continued in service merely because the age of superannuation has been raised.** Such teachers in normal course would have retired at the age of 60 years and imposing conditions of higher qualifications or performance of B+ or above level during the last five years cannot be termed to be unreasonable conditions. **The State Government has not violated or acted in breach of the UGC Regulations 2010 or the Government of India's instructions dated 31st December 2008.** The State Government is well within its rights, while enhancing the age of retirement, to impose conditions of higher qualifications and assessment of performance during the last five years. If such conditions are found to be unacceptable to the Government of India

SUPREME COURT OF INDIA

Record of Proceedings

Petition(s) for Special Leave to Appeal (Civil)
No(s). 18766-18782/2010

(From the judgment and order dated 18/05/2010 in LPA No. 117, 280, 282, 285, 287, 289, 293, 294, 354, 384, 416, 519, 526, 574, 578, 580 and 592 of 2010 of the High Court of Patna)

JAGDISH PRASAD SHARMA etc.etc.Petitioner(s)
VERSUS

STATE OF BIHAR & ORS.Respondent(s)

(With appln(s) for exemption from filing O.T., permission to place addl. documents on record, intervention and with prayer for interim relief and office report)

DATE : 26.07.2010

These petitions were called on for hearing today.

CORAM

Hon'ble Mr. Justice B.SUDERSHAN REDDY
Hon'ble Mr. Justice SURINDER SINGH NIJJAR

For Petitioner(s) Mr. P.P. Rao, Sr. Adv. Mr. Devashish Bharuka, Adv. Ms. Jaya Bharuka, Adv.
For Respondent(s)

Upon hearing counsel the court made the following

ORDER

Issue notice returnable in four weeks. Dasti service, in addition, is also permitted. In the meanwhile, **status quo as on today shall be maintained.**

(S.Thapar)
P.S. to Registrar

(J.P. Shirma)
Court Master

ITEM NO. 26 : COURT NO. 2 : SECTION XVI

SUPREME COURT OF INDIA

Record of Proceedings

Petition(s) for Special Leave to Appeal (Civil)
No(s). 18766-18782/2010

DATE : 28.09.2011

These petitions were called on for hearing today

CORAM

Hon'ble Mr. Justice ALTAMAS KABIR
Hon'ble Mr. Justice SURINDER SINGH NIJJAR

Upon hearing counsel the court made the following

ORDER

Let notice issue on I.A. Nos. 28 and 29 of 2011. Since State of U.P. is already represented on caveat, service of notice is dispensed with.

The State will be entitled to file its response to the interlocutory applications, within two weeks **and let the main matter itself be listed for final disposal on 23rd November, 2011, fairly at the top of the list.**

(Chetan Kumar)
Court Master

(Juginder Kaur)
Assistant Registrar

or the UGC, it is entirely a matter between the State of Maharashtra and the UGC or the Government of India as the case may be. The petitioners cannot claim that they must be given the benefit of enhancement of age of retirement unconditionally. It is emphasised by the State Government that in the interest of maintaining better standards of higher and technical education, it has a right to have a scrutiny of college and university teachers for deciding about their continued utility and more so when such teachers are from the Government colleges or Government aided private colleges. When the teachers are being paid from public funds, it would be competent for the State Government to lay down conditions to decide the continued utility of such teachers in public interest. It is also reiterated that in the impugned GR there is no conflict between the powers of the Central Government or for that matter the UGC on one hand and the State Government on the other hand. **In support of these contentions the State Government has relied upon the following decisions of the Supreme Court:**

(i) The State of Maharashtra and ors Vs. Association of Maharashtra Education Service Class II Officers and ors. [(1974) 4 SCC 706]

(ii) T.P. George and ors. Vs. State of Kerala and ors. [1992 Supp (3) SCC 191] and

(iii) B. Bharat Akumar and ors. Vs. Osmania University and ors. [(2007) 11 SCC 58].

11. In the writ petitions before the High Court of Jharkhand the common question involved was whether the UGC Regulations 2010 would be binding upon the State Government / State Universities so far as it related to the enhancement of age of teachers of universities from 62 to 65 years. The State of Jharkhand vide its Resolution dated 10/10/2009 had decided to implement the scheme formulated by the Government of India through its letter dated 31/12/2008 with respect to the revision of pay as well as enhancement of age of superannuation with effect from 1/1/2006. The Government of India vide its letter dated 11/5/2010 had intimated to the Government of Jharkhand that payment of central assistance for implementing the scheme would be subject to the condition that the entire scheme of revision of pay scales together with all the conditions to be laid down by the UGC by way of Regulations and other guidelines, shall be implemented by the State Government. Some of the lecturers in different colleges filed writ petitions for directions to enhance the age of superannuation from 62 to 65 years and while these petitions were pending before the High Court, **the State of Jharkhand passed a Resolution on 20/11/2010 prescribed the age of superannuation at 62 years under Section 67 of the Jharkhand University Act. The learned Single Judge of the High Court of Jharkhand while allowing the petitions recorded his findings as follows:**

“Thus, in view of the proposition laid down by the Hon’ble Supreme Court as referred to above, stipulation made under the regulation regarding enhancement of the age from 62 to 65 years cannot be said to be an encroachment of the field of the State Legislature. That being the situation, age of superannuation prescribed under Section 67 of the Jharkhand University Act framed under Entry 25 of List III of the Constitution of India being in conflict with the regulation so far it relates to enhancement of the age from 62 to 65 would be void and inoperative in terms of Article 254(1) of the Constitution of India. Accordingly order as contained in Memo No.1188 dated 20.11.2010 refusing to extend the age from 62 to 65 is hereby set aside. Thus, in view of the conclusion arrived at just hereinabove and also conclusion that scheme

formulated by way of regulation is to be adopted a composite one, the age of superannuation of the petitioners would stand extended to 65 years. As a consequence whereof the petitioner who was in service but was made to retire on 30.6.2010 or thereafter on attaining the age of 62 years would be entitled to the benefit of extended age of superannuation as a result of which they are to be taken back in service with continuity and all consequential benefits.”

The decisions of the High Court of Patna and the High Court of Karnataka (Supra) are almost on the same lines as the above view taken by the High Court of Jharkhand.

12. The only questions that fall for our considerations are (1) whether the State Government acted illegally by incorporating Clause 11(3) and 11(4) in the impugned GR dated 5/3/2011 while enhancing the age of retirement from 60 to 62 years for the college and university teachers and from 62 to 65 years for the college principals and (2) whether it is permissible for the State Government to subject the professors/ principals for performance review of last five years and to insist on B+ and above grade rating for retention beyond the age of 60 or 62 years as the case may be.

13. So far as clause 11(1) is concerned, it mandates that the Professors / Principals concerned ought to have been appointed as per the Rules prescribed by the UGC and the State Government and they comply with the prescribed conditions of qualifications etc. We do not find any error or incompetence on the part of the State Government in insisting that the teachers who are going to be retired at the age of 62 years must have been appointed at the initial stage, as per the Rules and other conditions of qualifications and experience etc. prescribed by the UGC or the State Government were fulfilled. In our opinion, **the challenge to Clause 11(1) of the impugned GR does not need any further elaboration and it is devoid of any merits. Hence, it is rejected summarily.**

14. Coming to the clause of performance review for being eligible to be retained beyond 60 years of age, it has been fairly conceded by the State Government that the mechanism for performance assessment is at place in the Government colleges and the Annual Confidential Reports (ACRs) of each lecturer / principal / professor in such colleges are written and reviewed and, therefore, there would not be any difficulty in assessing the performance of past five years of these professors / principals. **So far as private aided colleges are concerned, there is no dispute that most of these colleges do not have at place the mechanism for performance review and there is hardly any aided private college in the State of Maharashtra which has a formal system of performance assessment of teachers in each academic year.** If the mechanism for performance is not prevalent in the private aided colleges, there would be merit in the petitioners’ arguments that clause 11(4) of the impugned GR cannot be implemented, it is unrealistic and without application of mind to the ground realities. Having realised the prevailing conditions in the private aided colleges, the State Government has come out with an alternative mechanism for performance review and a number of parameters have been suggested with a view to decide the continued utility of the teachers / principals beyond the age of 60 years and by the Performance Review Committee (PRC).

15. So far as clause 11(3) of the impugned GR is concerned, Mr. Shinde, the learned Additional GP, on instructions, stated that after the first GR dated 25/2/2011 was issued, the State Government considered the

cases of 155 college / university teachers who had attained the age of 60 years or were due to attain the age of 60 years, so as to review their performance and it was noticed that 80 of these professors were Ph.D. degree holders. From amongst the Ph.D. degree holders 66 have been granted the benefit of enhanced age of retirement of 62 years and 14 of them have been denied because of their unsatisfactory performance though some of them may be Ph.D. degree holders. Mr. Shinde, therefore, urged before us that Clause 11(3) cannot be said to be an illusion and there are college / university teachers as well as the principals who hold a Ph.D. degree. **He urged that the State Government must be allowed to subject the professors / principals to the scrutiny of performance review, with the modified scheme of performance assessment, in the interest of better standards in higher and technical education.**

16. In the case of Association of Maharashtra Education Service Class II Officers (Supra), the UGC report for the year 1966-67 recommending a revision of pay scales for various categories of university and college teachers was accepted by the Government of India and by its letter dated 7th April 1966 to the Education Secretary, Government of Maharashtra, the Government of India undertook to pay 80 % of the expenditure incurred by the university or the colleges for implementing the scheme of UGC which was brought into operation with effect from April 1, 1966. As per the said scheme, the UGC had recommended the following scale of pay to the college / university lecturers:

Senior Lecturers – Rs.700-40-1100

Lecturers (Senior Scale) – Rs.400-30-640-40-800

Lecturers (Junior Scale) – Rs.300-25-600.

However on 6/11/1967 the Government of Maharashtra passed a resolution accepting in principle the proposal of the Government of India but Note 1 to the said resolution stated that only such persons who possess at least a second class Master's Degree of a statutory university would be eligible for the revised scales and in regard to the scale of Rs. 700-1100 it was further necessary that the teachers were recognised or approved by the university for post graduate work as on 1/4/1966 and had in fact done post graduate teaching for a minimum period of one year prior to 1/4/1966. The respondent teachers meeting these education requirements for the pay scale of Rs.700-1100 possessed the requisite qualification but the State Government refused to offer them pay scales unless they appeared before the State Public Service Commission for selection as per the notice dated 2/3rd March 1970. The teachers, therefore, approached this Court praying for quashing of the notices dated 2/3rd March 1970 and for further prayer that they be placed in the pay scale of Rs.700-1100 with effect from 1/4/1966. This Court allowed the petitions and quashed the notices directing to appear before the Maharashtra State Public Service Commission. The challenge of the State of Maharashtra to the order passed by this Court failed before the Supreme Court and the Supreme Court observed, inter alia, thus,

“8. The contention that Lecturers in Class II of the Maharashtra Educational Service must present themselves for selection before the Public Service Commission was introduced apparently on a misunderstanding of the Scheme initiated by the University Grants Commission. That Scheme envisages no promotion of Lecturers from one Class to another. It concerns itself with the revision of pay-scales of the Collegiate teachers and its object was to raise the salary-structure as one of the basic essentials for improvement of

educational standards. The letter of the Government of India to the State Government, dated April 7, 1966 shows that the subject matter of the correspondence was “Improvement of salary Scales of College and University teachers” and that the Government of India had accepted the recommendations of the University Grants Commissions for (a) “revision of the salary scales” of collegiate teachers with effect from April 1, 1966. The Government of Maharashtra misunderstood the Scheme as requiring the promotion of Class II teachers to Class I and since under its Rules such a promotion could not be granted without consultation with the Public Service Commission, it asked respondents 2 to 11 to offer themselves for selection by that Commission. The imposition of such a condition being based on a misunderstanding of the Scheme proposed by the University Grants Commission, the High Court was right in directing the Government to place respondents 2 to 11 in the pay-scale of 700-1100\ without asking them to appear before the Public Service Commission. As stated by the High Court whether respondents 2 to 11 should, as a consequence of the upgrading of their pay-scale, be placed in Class I Educational Service and whether they are entitled to the other benefits available to Class I officers is an entirely separate matter which the State government will be at liberty to decide in accordance with the relevant rules and procedure.”

It is thus clear that the Supreme Court did not approve the notices issued calling upon the Lecturers to appear before the Maharashtra Public Service Commission but at the same time there was no interference either by this Court or by the Supreme Court in the conditions of higher qualifications set out by the State Government by its resolution dated 6/11/1967 though such conditions were not set out in the letter dated 7th April 1966 of the Government of India or in the scheme framed by the UGC. The State Government decision to prescribe higher qualification, was not faulted.

17. In the subsequent decision in the case of T.P. George (Supra) the UGC Scheme of 1986 framed pursuant to the Malhotra Committee's Report was circulated by the Government of India on 17th June 1987 and for adoption by all States / Union Territories. It was also clarified that the adoption of the scheme was voluntary and the only result which might follow from the State Government not adopting the scheme might be that the State Government would forfeit the offer of reimbursement from the Government of India to the extent of 80 % involved in giving benefit of the recommendation of the scales as recommended by the scheme (emphasis ours). The age of retirement which was part of the scheme and which was fixed at 60 years was not followed by the State Government and at the relevant time the age of retirement for the college / university lecturers in Kerala was 55 years. The college teachers moved the High Court and in Writ Appeal No.223 of 1991 the following observations made by the Division Bench have been approved by the Supreme Court,

“Though Clause 26 of the scheme provides that the age of superannuation for teachers should be 60 years, and the scheme contemplates certain improvements in providing for assistance in that behalf, it is not a scheme which is statutorily binding either on the State Government or the different Universities functioning under the relevant statutes in the State of Kerala. What the State Government has done by its order dated March 13, 1990 is to implement the UGC Scheme including revision of scales of pay in relations to teachers in Universities including Kerala - Agricultural University, affiliated colleges, Law Colleges, Engineering Colleges and qualified Librarians and qualified Physical Education Teachers with effect from January 1, 1986, subject however to the express condition that insofar as the age of retirement is concerned, the present fixation of 55 years shall continue. The contention of the appellant is that the State Government having accepted the UGC Scheme, and as the scheme provides for a higher age of 60 years, all the clauses of the scheme became applicable. It is not possible to accede to this

contention. Firstly, as already stated the UGC Scheme does not become applicable because of any statutory mandate making it obligatory for the Government and the Universities to follow the same. Therefore the State Government had the discretion either to accept or not to accept the scheme. In its discretion it has decided to accept the scheme, subject to the one condition, namely, insofar as the age of superannuation is concerned, they will not accept the fixation of higher age provided in the scheme. The State Government having thus accepted the scheme in the modified form, the teachers can only get the benefit which flows from the scheme to the extent to which it has been accepted by the State Government and the concerned Universities. The appellant cannot claim that major portion of the scheme having been accepted by the Government, they have no right not to accept the clause relating to fixation of higher age of superannuation. That is a matter between the State Government on the one hand and the University Grants Commission on the other, which was provided certain benefits by the scheme. It is for the University Grants Commission to extend the benefit of the scheme or not to extend the benefit of the scheme, depending upon its satisfaction about the attitude taken by the State Government in the matter of implementing the same. That is a matter entirely between the State Government on the one hand and the University Grants Commission on the other. Teachers of the private institution concerned are governed by the statutes framed under the relevant statutory enactment. As long as the superannuation remains fixed at 55 years and so long as the State Government has not accepted the UGC's recommendation to fix the age of superannuation at 60 years, teachers cannot claim as a matter of right that they are entitled to retire on attaining the age of 60 years.” (emphasis ours)

The Supreme Court further went on to state,

“5. We may further point out that the teachers in Universities are governed in respect of their conditions of service and the age of retirement by the separate statutes made by the Universities concerned. On the other hand the teachers in private colleges or affiliated colleges are governed in respect of their conditions of service by regulations or rules framed by the Government (separate state (sic set) of statutes). In these circumstances, the two classes of Universities teachers and teachers in private colleges cannot be regarded as similar for the purposes of conditions of service as to bring the case under Article 14 of the Constitution”

18. Though the Lecturers could not succeed before the Supreme Court, the Supreme Court observed that the age of retirement fixed at 55 years was too low but it would not be for the Court to prescribe the correct age of retirement and that would be a policy function requiring considerable expertise which can properly be done by the State Government or the State Legislature or the Universities concerned. In the case of Bharat Kumar and ors (Supra) the Supreme Court reiterated the view taken earlier in the case of T.P. George (Supra). In para 14 and 15 of the said decision the Supreme Court stated,

“14. In spite of our best efforts, we have not been able to follow as to how the judgment of the Kerala High Court, which has been approved by this Court is, in any manner, different from the factual situation that prevails here in this case. It is for that reason that we have extensively quoted not only the aforementioned letter dated 27-7-1998 but also the subsequent letters and the further policy statement. Plain reading of all these is clear enough to suggest that the scheme was voluntary and it was up to the State Governments to accept or not to accept the scheme. Again even if the State Government accepted a part of the scheme, it was not necessary that all the scheme as it was, had to be accepted by the State Government. In fact the subsequent developments suggest that the State Government has not chosen to accept the scheme in full inasmuch as it has not accepted the suggestions on the part of the UGC to increase the age of superannuation.

15. Once we take this view on the plain reading of the scheme, it would be necessary for us to take stock of the subsequent arguments of Mr. Rao regarding Entry 66 in List I vis-a-vis Entry 25 in List III. In our opinion, the communications, even if they could be heightened to the pedestal of a legislation, or as the case may be, a policy

decision under Article 73 of the Constitution, they would have to be read as they appear and a plain reading is good enough to show that the Central Government or as the case may be UGC also did not introduce the element of compulsion vis-a-vis the State Government and the universities. We, therefore, do not find any justification in going to the entries and in examining as to whether the scheme was binding, particularly when the specific words of the scheme did not suggest it to be binding and specifically suggest it to be voluntary.”

19. In the case of All India Judges' Association v. Union of India [AIR 1993 SC 2493], the Supreme Court considered the necessity to clamp scrutiny and that too an additional one at the age of 58 years for the Judicial Officers whose age of retirement was directed to be enhanced to 60 years as per the judgment dated 13th November 1991. The Supreme Court stated,

“... The benefit of the increase of the retirement age to 60 years shall not be available automatically to all judicial officers irrespective of their past record of service and evidence of their continued utility to the judicial system. The benefit will be available to those who, in the opinion of the respective High Courts, have a potential for continued useful service. It is not intended as a windfall for the indolent, the infirm and those of doubtful integrity, reputation and utility. The potential for continued utility shall be assessed and evaluated by appropriate Committees of Judges of the respective High Courts constituted and headed by the Chief Justices of the High Courts and the evaluation shall be made on the basis of the judicial officers' past record of service, character rolls, quality of judgments and other relevant matters. The High Court should undertake and complete the exercise in case of officers about to attain the age of 58 years well within time by following the procedure for compulsory retirement as laid down in the respective Service Rules applicable to the judicial officers. Those who will not be found fit and eligible by this standard should not be given the benefit of the higher retirement age and should be compulsorily retired at the age of 58 by following the said procedure for compulsory retirement. The exercise should be undertaken before the attainment of the age of 58 years even in cases where earlier the age of superannuation was less than 58 years. It is necessary to make it clear that this assessment is for the purpose of finding out the suitability of the concerned officers for the entitlement of the benefit of the increased age of superannuation from 58 years to 60 years. It is in addition to the assessment to be undertaken for compulsory retirement and the compulsory retirement at the earlier stage/s under the respective Service Rules.”

So far as the judicial officers who had crossed the age of 58 years and who could not be subjected to the review mechanism, the Supreme Court stated,

“Since those who have already crossed the age of 58 years have had no benefit of exercising their option to retire earlier and the point of time at which their assessment could be undertaken for compulsory retirement, if any, has also passed, it is not considered proper to subject them to the review for compulsory retirement at this stage. They may, therefore, be given the benefit of the enhanced superannuation age of 60 years without subjecting them for such review.”

20. Admittedly the Government of India by its letter dated 27th July 1998 addressed to the Education Secretaries of all the States / Union Territories issued directions for implementation of the revision of pay scales of teachers in the universities and colleges following the revision of the pay scales of the Central Government employees on the recommendations of the Fifth Central Pay Commission. It was stipulated that the Central Government will provide financial assistance to the State Government which would opt for these revised pay scales to the extent of 80 % of the additional expenditure involved in the implementation of revision and the balance 20 % of the expenditure was to be borne by the State Governments. The age of retirement was enhanced to 62 years and the clause of age of superannuation read thus:

“The age of superannuation of university and college teachers would be 62 years and thereafter no extension in service should be given. However, it would be to the university or college to re-employ the retiring teacher according to the existing guidelines framed by the UGC up to the age of 65 years.”

Following the instructions of the Government of India as set out in the letter dated 27th July 1998, the UGC framed its Regulations of 2000 and the Government of Maharashtra adopted the directions of the Government of India as well as the UGC Regulations of 2000. However, it did not increase the age of retirement for the college / university teachers and during the last about more than ten years neither the UGC nor the Government of India has ever taken any objection or taken any steps against the Government of Maharashtra for its failure to enhance the age of retirement.

21. It is also pertinent to note that age of retirement for the lecturers/principals **with the Government colleges** was directed to be increased by the Nagpur Bench of this court to 60 years by judgment and order dated 24/7/1989 while allowing Writ Petition No. 788 of 1980 and the consequent thereto on 20/12/1990, the Government of Maharashtra increased the age of superannuation of Government college lecturers to 60 years. However, Civil Appeal No. 10994 of 1996 filed by the Government of Maharashtra against the decision of this court in Writ Petition No. 788 of 1980 came to be allowed and the judgment of this court was set aside. The Government of Maharashtra, therefore, issued a fresh order and recalled the earlier order dated 20/12/1990. The age of retirement was brought down to 58 years with effect from 30/4/2002 and till the impugned resolution was issued, the age of retirement of the teachers and principals in the Government colleges remained at 58 years. In these circumstances, it is difficult to accept the contentions of the petitioners that the scheme framed by the UGC under the instructions of the Central Government is required to be accepted as a package and the State Government has no powers to vary the clauses of age of superannuation. It is also relevant to note that though the Central Government has enhanced the age of retirement to 65 years and the Government of Maharashtra has enhanced the age of superannuation to 62 years by the impugned resolution, there is no challenge in any of these petitions so as to seek a mandamus against the State Government to fix the age of retirement at 65 years.

22. As observed by the Supreme Court in the case of T.P. George (Supra) and Bharat Kumar (Supra), if any condition of the UGC Regulations framed under the instructions of the Central Government and more particularly condition of age of superannuation, has not been followed by the State Government, it is entirely a matter between the State Government on one hand and the UGC and the Central Government on the other hand. Clause (8)(f) of the scheme formulated by the Government of India vide its letter dated 31/12/2008, clearly indicated that it was applicable for the teachers in the University and other teaching institutions in Central Educational Institutions and Clause 8(t) of the said scheme also clearly stated that the scheme was applicable to the teachers and other equivalent cadre in all the Central Universities and colleges thereunder as well as the institutions deemed to be the University whose maintenance expenditure is met by the UGC. Subclause (f) below clause 8(p) of the said scheme stated,

“(f) The State Governments, taking into consideration other local conditions, may also decide in their discretion, to

introduce scales of pay higher than those mentioned in this scheme, and may give effect to the revised bands/scales of pay from a date on or after 1/1/2006; however, in such cases, the details of modifications proposed shall be furnished to the Central Government and Central assistance shall be restricted to the Pay Bands as approved by the Central Government and not to any higher scale of pay fixed by the State Government(s).” (emphasis ours)

This clause gave a flexibility to the State Government in revising the pay scales and also to fix the date of implementation on or after 1/1/2006 depending upon the local conditions and other considerations. It was clarified that in case the pay scales would be higher than the prescribed in the scheme, the Central assistance would be restricted to the Pay bands as approved by it. Clause 8(p)(i)(g) of the said scheme also stated that the payment of Central assistance for implementing the scheme would also be subject to the condition that the entire scheme of revision of pay scales together with all the conditions to be laid down by the UGC by way of Regulations and other guidelines shall be implemented by the State Governments and Universities and Colleges coming under their jurisdiction as a composite scheme without any modification except in regard to the date of implementation and scales of pay mentioned herein above. The learned counsel for the petitioners have placed reliance on this clause in support of their contentions that the scheme was a composite scheme for being implemented and without any modifications except with regard to the date of implementation and scales of pay mentioned in the scheme and there was no discretion left to the State Government to put any condition while enhancing the age of superannuation to 62 years. There is nothing to indicate in the Regulations that the State Government is either called upon to enhance the age of superannuation or while doing so, it is prevented from imposing some additional conditions to maintain higher standards of education. It is at this backdrop Mr. Shinde, the learned AGP, submitted before us that if the challenge to the impugned clauses of the GR dated 5/3/2011 is allowed by this court, nothing would stop the State Government from withdrawing the said GR in its totality and re-fix the age of superannuation at 60 years. Having regard to the UGC Regulations 2010 read with the scheme framed by the Government of India vide its letter dated 31/12/2008, we have no doubt in our mind that the State Government is not prevented from either fixing the age of superannuation at less than 65 years of age or for imposing some additional conditions while enhancing the age of superannuation to 62 years, so as to maintain higher standards of education and also to decide the continued utility of teachers and principals by a performance review mechanism, beyond the age of 60 or 62 years, as the case may be.

23. Coming to the challenge on insistence of a Ph.D. degree for getting the benefit of enhanced age of superannuation for the teachers as well as the principals, it would be appropriate to consider the educational qualifications prescribed under the UGC Regulations 2010. For the post of Assistant Professor, the minimum academic qualification prescribed is a good academic record with 55% marks or an equivalent grade at the Master’s Degree level and qualifying in the National Eligibility Test or an accredited test (State Level Eligibility Test-SLET/SET). It has been further stated that NET/SLET/SET shall remain the minimum eligibility condition for recruitment and appointment of Assistant Professors in Universities /Colleges / Institutions. However, as per Clause No. 3.3.1 the candidates who are or have been awarded a Ph.D. degree in accordance with the UGC

(Minimum Standards and Procedure for Award of Ph.D. degree) Regulations 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions. The Ph.D. degree shall be a mandatory qualification for the appointment of professors and for the promotion as professors. It is also an essential qualification for all candidates to be appointed as Associate Professors through direct recruitment. It is thus clear that for appointment as Assistant Professor, the minimum qualification is not the Ph.D. degree but certainly it is one of the qualifications and the candidate with Ph.D. degree is exempted from NET/SET. A Ph.D. degree is not an essential qualification but it is one of the qualifications prescribed. For the post of Principal, a Master's Degree with at least 55% marks by a recognized University with a Ph.D. degree in the concerned/allied/relevant discipline in the institution concerned with evidence of published work and research guidance is the prescribed qualification. At the same time, Associate Professors/Professors with a total experience of 15 years teaching/research/administration in Universities, Colleges and other institutions of higher education are also eligible for being appointed to the post of principals. Clause 4.3.0 of the Regulations has set out the qualification for Associate Professor and the Ph.D. degree is an essential qualification. The Regulations framed by the UGC during the last more than 20 years or so go to show that acquiring of Ph.D. degree even for the post of Lecturer / Assistant Professor has been an indicator of advancing the academic achievements and under the Career Advancement Scheme there is a special consideration for the Ph.D. degree holders. Whereas for the post of Associate Professor, Professor and Principal, Ph.D. degree is an essential qualification.

24. The Government of Maharashtra while framing the scheme for implementation of the directives of the Government of India as well as the UGC Regulations, by way of policy decision, has set out conditions in Clause 11 of the impugned GR dated 5/3/2011 and unless such policy decision suffers from arbitrariness, inequality, unfairness or otherwise takes away any legal rights or vested rights, this Court under the power of judicial review may not cause interference in such decisions. In addition if the parameters laid down while granting enhancement in the age of superannuation are found to be impracticable / impossible, interference by this Court may also be necessary. But having regard to the figures provided by the learned AGP that out of 155 college teachers whose cases were scrutinised for retention beyond the age of 60 years, during the last few months, 80 of them were Ph.D. degree holders, it would go to show that the requirement of a Ph.D. degree is not impracticable or impossible or that a vast majority of the teachers will not stand to benefit by the enhancement of the age of superannuation. Even otherwise the scope for interference in the academic matters under the powers of judicial review is also limited. In the case of Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth [AIR 1984 SC 1543] the Supreme Court held,

“..... the Court should be extremely reluctant to substitute its own views as to that is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them.”

In the case of State of U.P. vs. Johri Mal [AIR 2004 SC 3800] a three-Judge bench while dealing with the limitations / parameters while exercising the power of judicial review stated that the scope and extent of power of the judicial review under Article 226 of the Constitution would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the Courts step into the areas exclusively reserved by the supreme lex to the other organs of the State. The Supreme Court reiterated the following guidelines on the scope of judicial review:

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.

(ii) A petition for a judicial review would lie only on certain well-defined grounds.

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

(v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies.

25. Coming to the requirement of performance review at the age of 60 and 62 years, as the case may be, while granting the benefit of enhancement in the age of superannuation the law laid down by the Supreme Court in All India Judges' Association (Supra) does empower the State Government to scrutinize the service record of an officer so as to decide his continued utility beyond the age of 58 or 60 years, as the case may be. Indeed Rule 10 the Maharashtra Civil Services (Pension) Rules provides for such a scrutiny at the age of 50 and 55 years as well, so as to decide the retention of the officer concerned in public interest and if the officer is found to be incompetent, dishonest, infirm or of doubtful integrity, an order of compulsory retirement on the basis of the service record and general standing is issued indicating that the retention of such officer any further would not be in public interest. In the academic arena, if the State Government has decided to set up a mechanism so as to assess the performance of college teachers to decide their continued utility beyond the age of 60 or 62 years, we cannot find fault with the same, nor can it be said that asking for such scrutiny for deciding continued utility is in any way illegal, perverse, unconstitutional or otherwise taking away any vested rights. To maintain the higher standards of education, research and training it is necessary that the college / university teachers are subjected to such performance review periodically and if the State Government has decided to enhance the age of superannuation beyond the age of 60 years, the performance review at the age of 60 years cannot be said to be illegal, capricious or otherwise warranting the interference by this Court under the powers of judicial review, so long as the mechanism sought to be put in place is fair, just and reasonable. On the queries made

by us the State Government fairly conceded during the course of arguments that in the private aided colleges there is hardly any mechanism at place so as to undertake the performance review of the college teachers, though such a mechanism is available with the Government colleges / institutions. Having realised that the assessment of performance review for the last five years as set out in Clause 11(4) would not be possible, the Government has proposed suitable parameters for the performance assessment of Assistant Professors, Associate Professors as well as Principals. Indeed such parameters suggested could be only illustrative and not exhaustive. Nonetheless, emphasis of such exercise to review the performance during the last five years ought to be on academic achievements and free from personal bias, unfairness and arbitrariness. The Professors and Principals are high academicians / administrators and, therefore, in the exercise of performance review each one of them ought to be provided with a chance of self assessment. Undoubtedly the Head of the Department / Principal would be the reviewing authority, but for the time being the Government has proposed a committee of four to six members. The committee envisaged under the impugned GR, in our opinion, did not reflect the emphasis on academics and, therefore, we suggested the presence of more academicians in such performance assessment committees. **These suggestions have been accepted by the State Government in the draft notification placed before us.**

26. It was submitted by Mr.Desai that the teachers who have already retired on attaining the age of 60 years after the impugned GR was issued and during the pendency of these petitions, be exempted from such performance review and granted the benefit of the enhanced age of superannuation, whether they hold a Ph.D. degree or otherwise. This submission appears to supported from the directions given by the Supreme Court in the case of All India Judges' Association (Supra). However, on closer scrutiny it appears that the said directions cannot be per se made applicable in these petitions. The Supreme Court by its earlier judgment dated 13th November 1991 had issued specific directions to all the State Governments so as to improve the service conditions of the members of the subordinate judiciary, through out the country. One of the directions was to enhance the age of superannuation to 60 years. The State Governments were directed to amend the Service Rules so as to implement these directions before a specific date. However, some of the State Governments approached the Supreme Court with review petitions raising general objections to some of the directions issued. The Union of India also had filed a review petition. The review petitions came to be decided on 24th August 1993. Thus from 13th November 1991 to 24th August 1993, a large number of subordinate judicial officers had already crossed the age of 58 years and the review mechanism proposed by the Supreme Court while deciding these review petitions could not have been feasible because the review was required to be undertaken before attaining the age of 58 years. In the instant petitions before us the first GR was issued on 25th February 2011 and it was substituted by the GR dated 5th March 2011. By way of interlocutory orders this Court has directed that the retirement / superannuation of any petitioner during the intervening period will be subject to the final outcome. **At the same time the learned AGP submitted that even on retirement, some teachers were subjected to review performance and have**

been granted the benefit of enhanced age of retirement despite the fact that they had already attained the age of 60 years.

27. **The local conditions in the State of Maharashtra are not comparable to the conditions in the States of Jharkhand, Bihar or Karnataka, in the field of higher and technical education.** In the case decided by the Jharkhand High Court and which has been relied upon by Mr.Desai, the State Government has prescribed the age of superannuation under Section 67 of the Jharkhand University Act framed under Entry 25 of List III of the Constitution. **In the State of Maharashtra the age of retirement for the college / university teachers has not been prescribed under the Maharashtra Universities Act, 1994 and the same is prescribed under the Rules framed by the State Government following the UGC Regulations.** We have already dealt with the prevailing age of superannuation for these academicians in the State of Maharashtra and there has been no uniformity between the age of retirement for the lecturers / professors in the Government colleges / institutions on one hand and the lecturers / professors in the private colleges aided by the State Government. The universities in the State of Maharashtra governed by the Maharashtra Universities Act, 1994 are fully aided by the State Government. In our opinion, therefore, and **in view of the elaborate reasons we have dealt with hereinabove, the decisions rendered by the High Court of Jharkhand, the High Court of Patna and High the Court of Karnataka and as relied upon by the petitioners, with respect, cannot be made applicable to the petitioners before us.**

28. **We must also deal with an additional facet so as to invite the State Government's attention to bring uniformity in performance assessment so as to decide the continued utility in public interest.** As noted earlier, the lecturers / professors / principals in the Government colleges / institutions are subjected to performance review at the age of 50 or 55 years as the case may be so as to decide their retention in service and continued utility and if on assessment of the entire service record they are found to be incompetent or of doubtful integrity, they are retired in public interest. The professors / principals in the private aided colleges as well as the universities covered by the Maharashtra Universities Act, 1994 are also paid from public funds and, therefore, all of them ought to be subjected to similar scrutiny in the public interest, at the age of 50 years, 55 years and 60 years so as to decide their continued utility for the advancement of academic standards i.e. education, training and research. **We hope the State Government will address on this issue as well, as early as possible.**

29. It was also urged before us by the learned counsel for the petitioners that insistence on a Ph.D. degree for enhancement in the age of superannuation has come as a sudden jolt by the impugned GR and at the fag end of their career and it is without leaving any scope, despite their best desires and efforts, to obtain a Ph.D. degree. It was submitted that in some cases it is possible that the teachers were genuinely interested in enrolling themselves for Ph.D., but because of the local conditions in the colleges concerned, they could not do so and for the reasons not attributable to them. Number of such teachers might have otherwise contributed for higher academic standards by writing books or publication of research papers. There may be some teachers whose books form part of the syllabus and, therefore, it would be harsh to

call upon such teacher, all of a sudden to produce a Ph.D. degree certificate. The insistence of the State Government on such conditions is unreasonable and in some cases impossible to achieve. We have no doubt that there is some merit in these arguments. **However, we have already stated that under the powers of judicial review, there is no case made to cause interference in the impugned policy decision to insist on a Ph.D. degree, as one of the conditions for the benefit of enhanced age of superannuation.** However, our suggestion to extend a concession for a limited period of three years to the Assistant Professors who are the beneficiaries of the Career Advancement Scheme, has been accepted by the State Government so as to subject them to performance assessment by the Committee. Such a response by the State Government also meets the twin object of compassion and equity and the State Government has been fair in accepting our proposal.

30. In the premises, we hold that clauses 11(1), 11(3) and 11(4) of the GR dated 5th March 2011 do not suffer from any infirmities / unconstitutionality and hence the challenge to the validity of the said clauses is hereby rejected. However, we direct, by way of exception, for the limited period up to 31st March 2014, to place the cases of the Assistant Professors who do not possess a Ph.D. degree but have received the benefits of the Career Advancement Scheme, before the Performance Review Committee and the said committee shall assess their performance as per the parameters set out for deciding their retention beyond the age of 60 years. The composition of the Performance Review Committees, shall be as under:

(a) For the post of Principal : (i) Vice Chancellor / Pro Vice Chancellor of the concerned University – Chairman (ii) Director, Higher Education – Member (iii) Dean / Professor in the subject concerned – Member (iv) Registrar of the University – Member Secretary

(b) For Professors, Associate/Assistant Professors in the non-agricultural Universities : (i) Vice Chancellor of the concerned University – Chairman (ii) Nominee of the Vice Chancellor who is a well known educationist – Member (iii) Professor and Head of the Department of the concerned subject – Member (iv) Dean/Expert of the concerned subject – Member (v) Director, Higher Education - Member (vi) Registrar of the University – Member Secretary

(c) For Assistant Professors / Associate Professors in the colleges : (i) Pro Vice Chancellor / Director of BCUD of the concerned University –

Chairman (ii) Head of the Department of the concerned subject in the University – Member (iii) Principal of the concerned college – Member (iv) Expert in the concerned subject and nominated by the Vice Chancellor – Member (v) Joint Director of Higher Education of the concerned region – Member (vi) Controller of Examinations of the concerned University – Member Secretary

The Performance Review Committee meetings shall be held at the University headquarters and every month. The Principals of the concerned colleges shall forward the names of the college teachers six months before he / she attains the age of sixty years, to the concerned University along with the consent for being retained beyond the age of 60 years to the Registrar of the concerned University to take appropriate steps so that the **Performance Review Committee meets and the performance assessment exercise is completed at least two months before the teacher attains the age of 60 years.** The State Government to issue the modified GR/ notification on the lines of the draft of the said notification placed before us, **within a period of two weeks from today so as to constitute the Performance Review Committees and to set out the parameters for performance assessment.** We also direct that the performance review of the **College / University Teachers and Principals who have retired during the intervening period i.e. from 28th February 2011 onwards be completed as expeditiously as possible and in any case within a period of six weeks from the issuance of the revised notification.** The Principals / Lecturers / Professors who are found to be fit for being continued till the age of 62 years or 65 years as the case may be, **shall be entitled for the payment of salary for the intervening period.** The suggestion is made by us to introduce the performance assessment of the Lecturers / Professors / Principals of the private aided colleges as well as those at the University level, at the age of 50 or 55 years so as to decide their further retention in service in public interest, **on the lines of Rule 10 of the Maharashtra Civil Services (Pension) Rules, be considered by the State Government as expeditiously as possible.**

31. All the petitions stand disposed in terms of the above directions.

(B. H.MARLAPALLE, J.)

(SMT.NISHITA MHATRE, J.)

**AF : P223 **

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