IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 28.03.2022	Delivered on 12.04.2022

CORAM:

THE HONOURABLE MR.**JUSTICE V.PARTHIBAN**

W.P. Nos.17918 and 17929 of 2021

W.P.No.17918 of 2021

Dr.S.Kothandaraman ... Petitioner

Vs

1 The Pro-Chancellor
Puducherry Technological University
(Erstwhile Pondicherry Engineering College)
cum The Secretary to Govt. (Education)
Govt. of Puducherry, Puducherry

2 The Vice-Chancellor
Puducherry Technological University
(Erstwhile Pondicherry Engineering College)
Puducherry-605 014.

3 The Registrar
Puducherry Technological University
(Erstwhile Pondicherry Engineering College)
Puducherry 605 014.

4 The Principal
Pondicherry Engineering College Puducherry-
605 014.

5 All India Council for Technical Education
No.29 Haddows Road
Shastri Bhavan Nungambakkam
Chennai - 600 006.
(R5 Suo motu impleaded) ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondents to reinstate the petitioner into service with effect from 01.04.2021 with all consequential benefits including monetary benefits and further permit the petitioner to continue in service till he attains the age of 65 years.

W.P.No.17929 of 2021

Dr.A.V.Raviprakash ... Petitioner

Vs

1 The Pro-Chancellor
Puducherry Technological University
(Erstwhile Pondicherry Engineering College)
cum The Secretary to Govt. (Education)
Govt. of Puducherry, Puducherry

2 The Vice-Chancellor
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Pondicherry Engineering College
Puducherry-605 014.

5 All India Council for Technical Education
No.29 Haddows Road
Shastri Bhavan Nungambakkam
Chennai - 600 006.
(R5 Suo motu impleaded) ... respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondents to reinstate the petitioner into service with effect from 01.05.2021 with all consequential benefits including

monetary benefits and further permit the petitioner to continue in service till he attains the age of 65 years.

For Petitioner ... Mr.Karthik Rajan,
for M/s.Menon, Karthik, Mukundan, Neelakantan

For Respondents ... Mr.I.Kumaran,
Additional Government Pleader, (Puducherry)
for respondents 1 to 3

Mrs.N.Mala, Government Pleader (Puducherry)
and Ms.B.Priyatharsini,
for the 4th respondent

Mrs.AL.Gandhimathi,
for the 5th respondent

COMMON ORDER

The common facts and circumstances that gave rise to the filing of the writ petitions are briefly stated hereunder:

(a) The petitioner in W.P.No.17918 of 2021 was appointed in the erstwhile Pondicherry Engineering College, as Lecturer of Civil Engineering on 10.10.1987 and subsequently, promoted as Assistant Professor and Professor on 28.06.1999 and 13.08.2004 respectively. Later, he was given additional charge as Principal, Pondicherry Engineering College on 08.07.2019.

(b) The petitioner in W.P.No.17929 of 2021 was appointed as Assistant Professor on 19.08.1999 of Mechanical Engineering, subsequently promoted as

Associate Professor and Professor with effect from 01.01.2006 and 01.07.2013 respectively. The erstwhile Pondicherry Engineering college was promoted and fully funded by the Government of Pondicherry. It was started in the year 1984 as an autonomous Institution, affiliated to the Pondicherry University. In 2019, Government of Puducherry framed Puducherry Technological University Act, 2019 (Act 4 of 2020 dated 31.03.2020) thereby reconstituting the Pondicherry Engineering College as a Technological University and incorporated it as an affiliated and research University of Puducherry. The Act came into force on 05.09.2020.

(c) The erstwhile Pondicherry Engineering College before it became a Technological University by virute of Act 4/2020 was a technical institution governed by the All India Council for Technical Education, (hereinafter referred to as 'the AICTE'), the fifth respondent herein. The service conditions of the teaching staff are regulated by the instructions issued by AICTE from time to time. The latest set of regulations issued by AICTE is as follows:

> ***"AICTE REGULATIONS ON PAY SCALES, SERVICE CONDITIONS AND MINIMUM QUALIFICATIONS FOR THE APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF SUCH AS LIBRARY, PHYSICAL EDUCATION AND TRAINING & PLACEMENT PERSONNEL IN TECHNICAL INSTITUTIONS AND MEASURES FOR THE MAINTENANCE OF STANDARDS IN TECHNICAL***

EDUCATION – (DEGREE) REGULATION, 2019."

(d) The notification was issued on the first of March 2019, and made applicable to all technical institutions in the country, effective from the date of notification. The notification thus stood applied to the Pondicherry Engineering College before its conversion as Technological University with effect from 05.09.2020.

(e) The grievance of the petitioners herein is that as per the latest regulation of AICTE dated 01.03.2019, the age of superannuation of all faculty members and Principals/Directors of institutions shall be 65 years. Further extension of five years is also provided beyond 65 years up to 70 years of age on fulfillment of certain conditions. However, notwithstanding the stipulation of 65 years as the age of superannuation, the petitioners herein were forcibly retired on the date they completed 62 years of age, ostensibly on the basis of the University stipulations in this regard. Aggrieved by their premature retirement, the petitioners are before this Court praying for the issuance of a Writ of Mandamus directing the third respondent University to continue their service till they attain the age of superannuation, in terms of the AICTE regulations.

2. Mr.Karthik Rajan, learned counsel for the petitioners, would make the following submissions:

(a) After reiterating the facts as to the status of the erstwhile

Pondicherry Engineering College and its transformation into technological University, the learned counsel at the outset would submit that in terms of Section 5(4) of the Act of 4/2020, dated 31.03.2020, the service conditions of the teaching staff came to be protected as it stood applicable before the conversion of the college into a Technological University with effect from 05.09.2020. The effect of the saving clause is that whatever that was applicable before the coming into force of the Technological University Act, 2019, as on 05.09.2020, the same would be continued, and the teaching staff would be governed by such regulations. According to him, it is, therefore, not open to the third respondent University to have its own age of retirement in the teeth of AICTE regulations, 2019.

(b) The learned counsel would submit that the regulations governing the service conditions of teaching staff and other academic staff towards maintenance of standards in technical education are the result of the exercise of power conferred under sub-Section (1) of Section 23 read with Section 10(g), (h) and (i) of the All India Council for Technical Education Act, 1987. The learned counsel would draw the attention of this Court to certain relevant provisions of the regulations starting from regulation 1.2, which read as under:

"1.2 Categories of Institutions to whom the regulations apply

These shall apply to all degree level technical

institutions and Universities including deemed to be Universities imparting technical education and such other courses / programs approved by AICTE and areas as notified by the council from time to time.

1.3 Date of Effect:

a) Pay Scales and DA: The revised pay-scales shall be effective from 1.1.2016.

1.4 Effective date of application of Service Conditions

a) All other service conditions including Qualifications, Experience, Recruitment, Promotions publications, training and course requirements etc. shall come into force with effect from the date of this Gazette Notification.

b) The Qualifications, Experience, Recruitment and Promotions etc. during 01-01-2016 till the issue of this Gazette Notification shall be governed by All India Council for Technical Education Pay Scales, Service Conditions and Qualifications for the Teachers and other Academic Staff in Technical Institutions (Degree) Regulation, 2010 dated 5th March 2010 and subsequent notifications issued from time to time."

(c) According to the learned counsel, the regulations shall apply to all technical institutions and Universities including deemed to be Universities and the application of the latest regulation was with effect from the date of gazette notification, which was on 01.03.2019. In the same breath, the learned counsel would refer to regulation 2.12, which reads as under:

"2.12 Age of Superannuation

"The age of superannuation of all faculty members and Principals / Directors of institutions shall be 65 years. An extension of 5 years (till the attainment of 70 years of age) may be given to those faculty members who are physically fit, have written technical books, published papers and has average 360 feedback of more than 8 out of 10 indicating them being active during last 3 preceding years of service."

(d) When the above regulation stipulated age of superannuation as 65 years, retiring the petitioners herein at the age of 62 in the year 2021 is directly in contravention of the stipulation by the apex body, the fifth respondent herein.

(e) In this regard, the learned counsel would elaborate his submissions by contending that the regulations of AICTE issued under the provisions of the Central Act viz., All India Council for Technical Education Act, 1987, the same would prevail in terms of the scheme of the constitution. The individual institution or University has no option to prescribe its own age of retirement, inconsistent with the stipulation as mandated in the AICTE regulations.

(f) The learned counsel with a view to clarify the position adopted by the third respondent University that the age of superannuation prescribed in the regulation is optional and the third respondent University has not adopted the same for application to its teaching staff would submit the following:

(fa)The fifth respondent being the apex body, its regulations are automatically applicable across the spectrum and there is no option provided to any individual institution or University to have its own service conditions, outside the framework of AICTE regulations.

(fb) Likewise, when the regulations are to be automatically made applicable to all the technical institutions/Universities in the country, the question of adopting regulations at the convenience of any University or individual institution does not arise. As a matter of fact, the Union Government of Puducherry adopted the 7th Central pay scale applicable to its employees as per AICTE/UGC norms with effect from 01.01.2016. But the arrears were paid from 01.08.2019 to all its employees.

(fc) The reasons that are set forth by the third respondent University that by virtue of the fact that the University has its own prescription of age of superannuation and there is no requirement to follow the regulations of AICTE are unsustainable, not only with reference to the mandatory nature of AICTE regulations, which are applicable pan India but with reference to the decisions of the Hon'ble Supreme Court and High Courts.

(fd) The learned counsel then proceeded to refer to decisions of the

Hon'ble Supreme Court and High Courts in support of his contentions as under:

(a) 1995(4) SCC 104 (State of Tamil Nadu and Anr. vs. Adhiyaman Educational & Research Institute and Ors.)

(aa) The Hon'ble Supreme Court was considering the applicability of the provisions of AICTE and the functions of the Council established under the Act on one side and on the other, the Acts viz., Tamil Nadu Private Regulation Act and Rules and Madras University Act, regulating the institutions serving higher education in the State of Tamil Nadu.

(ab) The Hon'ble Supreme Court extensively dealt with various decisions of its own, earlier rendered on the subject matter, has finally concluded as under in paragraph 41 of the judgment:

> ***"41.What emerges from the above discussion is as follows:***
>
> ***(i) The expression "coordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. This power is***

absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause [2] of Article 254, the State leg- islation being repugnant to the Central legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case."

(ac) In the above matter, the Hon'ble Supreme Court has categorically held that when there is conflict between two legislations, the Central legislation will prevail to the extent of repugnancy.

(ii) The learned counsel would rely on two decisions, one of Punjab and Haryana High Court and another judgment of Karnataka High Court on the same issue of consideration of the age of retirement, namely, difference between the

age of retirement as prescribed in AICTE regulation and the State laws prescribing age of retirement.

(iii) The Division Bench of Punjab and Haryana High Court, in *Dr.Jogender Pal Singh and Others vs. Union of India and others, (CWP 20447-2020 dated 01.03.2021)*, was considering the issue exactly similar situation like the present one as to whether AICTE regulations would apply to the institutions or Union Territory of Puducherry Employees Rules is applicable in regard to application of prescription of the superannuation age. The learned counsel referred to paragraphs 8, 13 to 16, 18 to 22, 28 to 30. The said paragraphs are extracted hereunder:

> "***8. The basic issue, which falls for consideration in the present writ petition, is "whether the Notification dated 13.01.1992 (Annexure A-3) issued under proviso to Article 309 of the Constitution i.e. the Conditions of Services of Union Territory of Chandigarh Employees Rules, 1992 (the 1992 Rules) would still hold the field even where it is in conflict with the provisions of the AICTE Regulations, 2010 and 2019, which have been promulgated under the powers conferred under sub-section (1) of Section 23 read with Section 10 (g) (h) (i) of the AICTE Act, 1987 and in the case of petitioner No. 2, the UGC Regulations, 2010 and the Council of Architecture Regulations, 2017 framed under the Architecture Act, 1972 ?"***
>
> ***13. In the case of the Union Territories, the rule-making power, no doubt, belongs to the President. Therefore,***

in the case of Chandigarh, which is a Union Territory, this power to make Rules under Article 309 is in the President. This power has been exercised by the President while framing the 1992 Rules. This power under Article 309 and the rules framed under proviso thereto will operate and hold the field, having the force of law, unless and until Parliament chooses to legislate on the subject. Once the Parliament legislates, such Act and the Rules/Regulations framed thereunder, would take over the field resulting in the Rules framed by the President under proviso to Article 309 seizing to operate forthwith.

14. Article 246 of the Constitution of India deals with the subject matter of laws made by the Parliament and by the Legislatures of States. The Lists are contained in Schedule-VII of the Constitution. Entry 66 of List-I i.e. the Union List would be relevant for the present case, which reads as follows:-

"Entry 66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

15. In terms of Entry 66 of the List-I of the Constitution, the Union of India has promulgated and notified the All India Council for Technical Education Act, 1987 (hereinafter referred to as the AICTE Act). Relevant provisions of the AICTE Act read as under:-

2. Definitions.-In this Act, unless the context otherwise requires,-

(a) to (e) xxx

(f) "Regulations" means regulations made under this Act.

(g) "Technical Education" means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare;

2(h) "Technical Institution" means an institution, not being a University, which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions;

(i) xxx

10. Functions of the Council:

(1) It shall be the duty of the Council to take all such steps as it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may-

(a) to (h) xxx;

(i) Lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;

(j) xxx

(k) Grant approval for starting new technical institutions and For introduction of new courses or programmes in consultation with the agencies concerned;

(l) to (o) xxx

(p)Inspect or cause to inspect any technical institution;

(q) to (v) xxx

23. Power to make regulations-

(1) the Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act, and the rules generally to carry out the purposes of this Act.

(2) xxx" (emphasis applied)

16. The above Section 23 gives the power to the Council to issue regulations. Exercising this power, AICTE Regulations, 2010 were notified on 22.01.2010 (Annexure A-10) initially by the Ministry of Human Resource Development, Department of Higher Education, Government of India. The age of superannuation, which was provided therein, was 65 years with a provision for re-employment on contract appointment beyond the age of 65 years up to the age of 70 years.

Subsequently, AICTE Regulations, 2019 were issued by Ministry of Human Resource Development, Department of Higher Education, Government of India vide Notification dated 01.03.2019 (Annexure A-11).

Regulation 2.12 of these AICTE Regulations, 2019, deals with the age of superannuation, according to which, the age of superannuation of all faculty members and Principals/Directors of institutions was fixed at 65 years with a provision for extension of 5 years till the attainment of 70 years of age with certain other riders. This makes it clear that the age of superannuation for the faculty members of the Technical Institutions shall be 65 years.

18. It cannot be disputed that the regulations issued by the AICTE, the UGC and the Council of Architecture are binding upon the colleges and institutions covered under these

Acts, as has been held by the Supreme Court in the case of Parshavanath Charitable Trust vs. All India Council for Technical Education, 2013 (2) SCT 163 and in the Foundation for ORE Fore School of Management vs. AICTE, 2019 (3) SCT 307. Thus, it can clearly be said that the regulations issued under the Statute, which have come into force under the Central Act, would be operative qua the colleges/ institutions which would fall within the said regulations and the rules framed under the proviso to Article 309 would, therefore, have to give way to the regulations in case of there being any conflict.

In view of the above, the answer to the above posed question in para 8 would be that AICTE Regulations 2010/2019 and Architecture Regulations 2017 shall apply in case of conflict with the 1992 Rules.

19. Now the question would be "As to whether the colleges, in which the petitioners served/are serving, are governed by the provisions of the above-referred to Acts and Regulations or not ?"

20. The definitions as far as the AICTE Act, 1987 is concerned, as reproduced above, would show that Section 2 (g) defines 'Technical Education', which means programmes of education, research and training followed by various fields and trades which includes 'architecture' as well as 'applied arts and crafts'. Section 2 (h) defines 'Technical Institution', which means an institution which offers courses or programmes of technical education but not being a University. There is no denial to the aspect that the two colleges, where the petitioners are/were working, are being run by the Chandigarh Administration and are imparting education in the field of 'applied arts and crafts' and 'architecture' and,

therefore, would fall within the definition of 'Technical Institution'.

21. If that be so, the AICTE Regulations qua petitioners No. 1, 3 to 5 and Architecture Regulations, 2017 qua petitioner No. 2 would be applicable to the faculty members of these colleges. The age of superannuation, as per these regulations, shall be 65 years with a provision for extension of 5 years subject to fulfilment of the further requirements of the regulations as laid down therein.

22. The stand of the respondents primarily is that these regulations are not applicable which appears to be without any basis. The respondents have tried to assert that the colleges, which are being run by the Chandigarh Administration, do not fall within the ambit of Central Government Institutions or centrally funded institutions. It has further been asserted that these colleges are not funded by the Central Government but are funded by the Chandigarh Administration.

However, the aspect that all the funds are provided by the Central Government could not be disputed by the counsel for the Chandigarh Administration. Once the funds have been provided by the Central Government, merely because the same were being distributed and utilized by the Chandigarh Administration for running the colleges would not bring it outside the ambit of the centrally funded institutions and in any case, that would not be a requirement per se for the applicability of the AICTE and/or Architecture Regulations.

.....

28. In view of the above, we are of the considered view that the services of the petitioners are governed by the AICTE

Regulations, 2010/2019, according to which, the age of superannuation of the petitioners would be 65 years with provision for extension of 5 years subject to the requirements of the Regulations. and, therefore, the action of the respondents in declining the representations/claim of the petitioners for continuing them in service till the age of 65 years as per the AICTE Regulations/Architecture Regulations is unsustainable.

29. As held above, the Conditions of Service of Union Territory of Chandigarh Employees Rules, 1992 issued vide Notification dated 13.01.1992 (Annexure A-3) would not be applicable to the petitioners so far as they are inconsistent with the Architecture Regulations, 2017 qua petitioner No. 2 and AICTE Regulations qua other petitioners as they cease to operate from the date the above Regulations came into effect respectively. The action of respondents No. 4 to 7 retiring the petitioners at the age of 60 years i.e. 58 years with 2 years extension by applying the Conditions of Service of Union Territory of Chandigarh Employees Rules, 1992 as notified on 13.01.1992 (Annexure A-3) is illegal and thus set aside.

30. The writ petition stands allowed by setting aside the order dated 29.09.2020/27.10.2020 (Annexure P-8) passed by the Central Administrative Tribunal, Chandigarh Bench.

A direction is issued to the respondents to take back the petitioners who have been forcibly superannuated by them by giving effect to the 1992 Rules. They shall also be entitled to the all consequential benefits. The consequential benefits be released to the said petitioners within a period of two months from the date of receipt of certified copy of the order."

(iv) The above extensive discussion of the Division Bench of the High Court on the subject-matter would unequivocally support the contention that AICTE regulation is mandatory and no option is available for any institution or University coming under its purview having different conditions of service contrary to the AICTE regulations. According to the learned counsel, as against the said decision of the Division Bench, an appeal was filed before the Hon'ble Supreme Court and eventually, the same was withdrawn by the State and an order was also passed to that effect dismissing the appeal in SLP(C) Nos.12454 to 12455 of 2021 on 15.12.2021. The order of the Division Bench has thus become final.

(v) The learned counsel would then refer to a decision of the Karnataka High Court rendered in W.P.No.15421/2020 *(Dr.G.R.Bharat Sai Kumar vs. State of Karnataka, decided on 24.05.2021)*. There again, the issue was determination of the age of superannuation and whether AICTE regulation enhancing the age of retirement could be said to be applicable to any aided educational institution. In the said factual context, a reference could be made to paragraphs 13 to 15, 19 to 21.

> ***"13. The mandatory nature of the Regulations notified by the AICTE applicable to degree level institutions is considered by the Apex Court in the case of Parshvanath***

Charitable Trust v. All India Council for Technical Education reported in (2013) 3 SCC 385, which reads as follows:

"25. It is also a settled principle that the regulations framed by the Central authorities such as AICTE have the force of law and are binding on all concerned. Once approval is granted or declined by such expert body, the courts would normally not substitute their view in this regard. Such expert views would normally be accepted by the court unless the powers vested in such expert body are exercised arbitrarily, capriciously or in a manner impermissible under the Regulations and the AICTE Act."

(Emphasis supplied) In terms of the afore-extracted judgment of the Apex Court it becomes unmistakably clear that AICTE Regulations notified by Government of India would have binding effect on the institutes to whom the Regulations apply.

14. The emphasis in the afore-extracted Regulations of the AICTE is that it regulates service conditions of faculty members of the Institutes regulated by AICTE. Regulation 1.2 mandates that it applies to all degree level Technical Institutes and Universities. Regulation 2.12 unequivocally depicts that age of superannuation of all faculty members, Principals and Directors of the Institutes which would mean degree level technical institutes shall be 65 years and discretion is vested with the Institutes to extend it up to 70 years. The mandatory nature of the direction is with regard to the age of superannuation being 65 years and the directory nature of the Regulations is an extension to 70 years from 65 years. Therefore, any Institute being regulated in terms of

Regulation 1.2 would be bound by the service conditions stipulated in the Regulations.

It is not in dispute that norms and standards prescribed by the AICTE regulate the service conditions of the faculty of the 4th respondent/Institute.

15. It is also not in dispute and cannot be disputed that the faculty of the fourth respondent are appointed in terms of the norms of the AICTE from time to time and are in receipt of every benefit that is regulated in terms of the Regulations (supra) with regard to pay, allowances, facilities and all other service conditions. One such illustration is an advertisement issued by the Institute calling for applications for various posts which displays the following:

....

19. It is not be mistaken that the petitioner is seeking a writ at the hands of this Court for a direction to the 4th respondent to implement a Government order. The case of the petitioner is that he is entitled to continue up to the age of 65 years on the strength of the Regulations of AICTE which bind the 4th respondent/Institute. It is, therefore, the writ petition would become maintainable even against the 4th respondent/Institute, more so, in the light of the fact that Professors in the VTU retire at the age of 62 years which is also governed by AICTE Act and the Norms and Standards and the Professors in the 4th respondent/Institute retire at 60 years which is also governed by the same provisions of the AICTE Act and Norms and Standards, which clearly depict different ages of retirement despite being governed by the very same Regulations.

Uniformity in application of statute in every case will drive away arbitrariness in action and would be in consonance with Article 14 of the Constitution of India failing which, every Institute that is governed by a solitary Regulation would become free to adopt Service Conditions at their whim and fancy. This cannot be the purport of the mandate of the AICTE Act or the Regulations in notifying the Service Conditions applicable to all faculty of Institutes which come under its purview.

20. Insofar as judgments relied on by the learned Senior Council appearing for the 4th respondent is concerned, in the case of Jagdish Prasad Sharma, the issue that fell for consideration before the Apex Court was whether a communication of the University Grants Commission for enhancement of age of superannuation would become binding on the Institutes. The Apex Court in the very judgment clearly holds that the Central Government itself took a decision that discretion of the State Government should not be fettered by extension of financial initiative insofar as it pertains to directions issued by the UGC for implementation of enhancement of age of superannuation of teachers and other staff from 62 years to 65 years. The relevant portion of the judgment of the Apex Court reads as follows:-

"65. We are then faced with the situation where a composite scheme has been framed by the UGC, whereby the Commission agreed to bear 80% of the expenses incurred by the State in such scheme was to be accepted, subject to the condition that the remaining 20% of the expense would be met by the State and that on and from 1st April, 2010, the State Government would take over the entire burden and would also

have enhanced the age of superannuation of teachers and other staff from 62 to 65 years. There being no compulsion to accept and/or adopt the said scheme, the States are free to decide as to whether the scheme would be adopted by them or not. In our view, there can be no automatic application of the recommendations made by the Commission, without any conscious decision being taken by the State in this regard, on account of the financial implications and other consequences attached to such a decision. The case of those petitioners who have claimed hat they should be given the benefit of the scheme dehors the responsibility attached thereto, must, therefore, fail."

(Emphasis supplied) The Apex Court clearly holds that there is no compulsion to accept or adopt the UGC scheme which enhanced the age of superannuation from 62 to 65 years. The Regulations of the AICTE applicable to the case at hand are mandatory in nature and do not leave any discretion to the degree level institutions to implement it or otherwise, as it is couched in such language that following mandate of the Regulations would be in consonance with the maintenance of minimum standards of teaching and appointment of faculties in all the degree level technical institutions. Therefore, the judgment in the case of Jagdish Prasad Sharma, in my considered view, would be inapplicable to the facts obtaining in the case at hand.

21. Wherefore, I deem it appropriate to follow the judgments cited by the learned Senior Counsel appearing for the petitioner quoted (supra) and not the one relied on by the learned Senior Counsel appearing for the 4th respondent/Institute."

(vi) The above decision once again reaffirms the mandatory nature of applicability of AICTE regulations.

(vii) The learned counsel would also refer to a latest Division Bench decision of this Court reported in *2021 SCC OnLine Mad 2946 (V.Lekha vs. Chairman, U.G.C. & Ors.)*. According to the learned counsel, the above decision dealt with the issue as to whether the Central legislation will prevail in terms of Entry 66 of List I or Entry 25 (List III) of the Seventh Schedule to the Constitution enabling the State to enact legislation in the shared legislative field. The Division Bench after elaborate discussion held as under:

> ***"105. From the above, it could be seen that the power of the State Legislature is not altogether excluded, but it is restricted and circumscribed to the Central enactment. The emphasis highlighted by the Apex Court is the determination of uniform minimum standards in higher education nationwide.***
>
> ***106. When the above ruling is to be applied in this case, the requirement of the minimum qualification of ML Degree and enrollment as advocate is a clear instance of varying the minimum standards fixed by the Central body. In that view of the matter and to that extent, the two Government Orders, viz., G.O.Ms.No.1349 dated 19.11.1985 and G.O.Ms.No.264 dated 20.12.2005, are to be necessarily held as invalid as it originated from colourable legislation.***

107. As a matter of fact, the learned counsel for the BCI has very rightly and importantly cited three Constitution Bench decisions apart from two other decisions of the Hon'ble Supreme Court. The decisions cited are, [1] AIR 1953 SC 375 [CB] ; [2] AIR 1968 SC 888 [CB] ; [3] 2007 [2] SCC 202 ; [4] 2009 [4] SCC 590 ; and [5] 2020 SCC Online SC 699 [CB]. The relevant paragraphs of the decision have been extracted supra. From the cumulative reading of the decisions of the Hon'ble Supreme Court of India and the relevant Constitutional Entries in the Seventh Schedule of the Constitution and the Doctrine of Pith and Substance in terms of Article 246 of the Constitution of India, this Court has to come to an inexorable conclusion that the prescription of additional qualifications, viz., M.L.Degree, and enrollment as advocate, suffers from lack of legislative competence.

108. The qualifications prescribed by the State authority may appear to be in addition to minimum standards laid down by the Central Regulating body, but the qualifications being ex facie irrational, arbitrary and unreasonable are in reality in conflict with the minimum standard fixed by the Central Regulating Body nationally. Further, irrationality and arbitrariness would also result in exclusion of the whole lot of candidates from even consideration or participation in the recruitment process, even though they are qualified in terms of the Central Regulating Body. This Court has to necessarily conclude that the additional qualifications prescribed, run afoul of the qualifications prescribed by the Central Regulating Authority. viz., the BCI and the qualifications thus, are repugnant to the Central Legislation and cannot pass the test of constitutional scrutiny."

(viii) Here again, the Division Bench of this Court has ruled that in the field of higher education, the central enactment will prevail.

(ix) Lastly, the learned counsel would refer to the order of a learned Single Judge of this Court dated 26.11.2009 in W.P.No.10049/2004 *(S.Palanivel vs. Principal, Pondicherry Engineering College).*

(x) The learned counsel would particularly place reliance on paragraphs 6, 7 and 14 to 16.

> ***"6.The first respondent college filed counter statement stating that the college is run by a Society registered under the Societies Registration Act and sponsored by Government of Union Territory Pondicherry and stated that the first respondent college is governed by an administrative body of the college, which has framed its own regulations relating to the conditions of service of the employees viz. both the members of teaching faculties as well as administrative staff. Regarding the claim of the petitioner placement to senior scale and selection grade scale, it is stated that the college is bound to take only the service of the employee in the first respondent, and that first respondent was not intimated about the adoption of UGC guidelines issued by AICTE for counting of past service in other institutions. It is further stated in para 6 of the counter affidavit that even if the said communication is***

received from AICTE, it is not binding on the college and it cannot accept any recommendations of AICTE, unless it is approved by the Governing Body.

7.In para 8 of the counter affidavit it is categorically stated that UGC itself pointed out that even in para 8.0.0 it is stated it is the guideline and not a direction which is mandatory. In para 17 of the counter affidavit, it is stated that ACTE guidelines are not mandatory in respect of service conditions of the first respondent institution and AICTE has no jurisdiction to the service matters of the employees of technical institution as could be seen in Section 10(1) of the AICTE Act 1987. With regard to the service matter of the employees of the college including the teachers the decision of the Governing Body will be binding on the college and not the guidelines of the AICTE or UGC.

.....

12.On the other hand Mrs.Mala, learned counsel for the first respondent reiterating the counter filed by the first respondent submitted that governing body of the institution has to pass resolution with regard to adopting guidelines for its employees.

"AICTE notification on revision of pay scales and associated terms and conditions of service of Teachers, Librarians and Physical Education personnel of Degree level Technical Institutions"

which states in clause 15.1 that the implementation of the revised scale of pay would be subject to acceptance of all the

conditions mentioned in the scheme as well as other terms and conditions issued by the AICTE in this behalf. By relying upon the said terms, he submitted that AICTE itself has accepted the importance of the decision to be taken by the institutions. When such is the position only after getting approval from the general body, the instructions could be implemented by the first respondent.

14.It is not in dispute that the petitioner had worked as lecturer in Regional Engineering College Warangal and as a scientist Grade IV at Structural Engineering Research Centre, CSIR, Chennai for more than six years. When UGC and AiCTE regulations unequivocally stated that past services of the candidates have to be considered for Career Advancement Scheme to move into cadre of Senior scale, the first respondent institution is bound to follow the same. As rightly pointed out by Mr.V.Perumal, learned counsel for the petitioner as well as Mr.N.Muralikumaran, learned Central Government Standing counsel, the first respondent institution cannot insist the guidelines from the second respondent. The regulations are subordinate legislation and they are to be treated as statute. When such is the position, the stand of the second respondent that guidelines are to be approved by a resolution of first respondent's general body has no leg to stand and it has to be negatived. If such a stand is to be approved, it would be ultravires of UGC Act and AICTE and it will not be in the interest of development and acceleration of Career Advancement scheme for higher education in this country. It is seen from petitioner's typed set of papers that Anna University, Chennai counted past service of one Mr.R.Bhuvaneswaran for career advancement as early as on

10.8.1999. When that is the position, there cannot be any prohibition for the first respondent to follow the same.

15.The courts have recognised the importance of All India Councils for higher education namely medical council in the medical field and technical council for technical education. These councils are expert bodies and they are alone competent to give guidelines in the respective fields. When such is the position, the stand taken in the counter affidavit filed by the first respondent that AICTE regulations are not mandatory in respect of service condition and that the State has no jurisdiction on service matters are all without any substance and such contention should not be allowed to be raised by the institution, which will go against the intention of the legislature/parliament and it has to be discourage and condemned.

16. As rightly pointed out by Mr.Perumal, learned counsel for the petitioner that the first respondent institute itself has taken into consideration the past services of Dr.Nagarajan, Mr.S.Gothandaraman and Dr.Paramanandan for senior scale. Subsequently in 57th governing body of the Engineering college (Pondicherry) Society held on 16.2.2006 adopted the revised Career Advancement Scheme issued by the

AICTE by the first respondent college. In view of the above subsequent development also, the petitioner has to succeed in the writ petition. Even otherwise, by G.O.Ms.No.103 dated 22.9.2009, the government of Pondicherry implemented VI Pay Commission recommendation and thereby the petitioner is eligible to be appointed as lecturer. There is no reason available for the first respondent to deny the said right to the petitioner, which only go to show that the petitioner alone was subject to discriminatory treatment for no fault on his part. Violating Article 14 of the Constitution of India as held by the Hon'ble Supreme Court, in (2009) 7 SCC 734 and 2004 (12) SCC 540 there cannot be discrimination between similarly situated. Therefore the petitioner should be extended the same benefit given to the aforesaid similarly placed persons."

(xi) In that case, a stand was taken by the Pondicherry Engineering College that the UGC and AICTE's regulations have not been approved by the college and no resolution to that effect was passed by the general body and therefore, the same would not be applicable. The learned Single Judge repulsed the said contention stating such stand is ultra vires the UGC and AICTE regulations which are subordinate legislation and have the force of a statute. The learned Judge went on to hold any contention that UGC and AICTE regulations/ guidelines are not mandatory is without substance and the same has to be discouraged and condemned.

(xii)The learned counsel would therefore sum up that the principal issue is

no longer res integra and as such, it is not open to the third respondent University to refuse to toe the line of the AICTE stipulations by prescribing its own age of retirement, contrary to the regulations.

3. On behalf of the respondents 1 to 4, Ms.N.Mala, learned Government Pleader (Puducherry) appeared and she made her submissions as follows:

(a) Her principal contention opposing the relief as prayed for by the petitioners herein is that option is available to the University to follow the age of superannuation stipulated by AICTE or it can prescribe its own age of retirement.

(b) The contention is entirely premised on a particular clause in the stipulation of AICTE regulation, 2019. She would refer to regulations 2.11 "Financial Assistance from Government of India for implementation of 7th CPC Scale." The clauses contained therein are extracted herein.

> ***"2.11 Financial Assistance from Government of India for implementation of 7th CPC scale.***
>
> ***The Central Government shall provide by way of financial assistance, 50% of the additional expenditure (arrears from 01.01.2016 till 31.03.2019) on implementing the revised scales of pay for faculty and other staff such as Library, Physical Education and Training Placement Personnel in State Government/Government Aided /State Government Autonomous institutions/State University***

Departments.

a) Financial assistance from the Central Government to State / UT Governments for revising pay scales of teachers and other staff such as Library, Physical Education and Training Placement Personnel under the scheme shall be limited, by way of reimbursement, to the extent of 50% (fifty percent) of the additional expenditure involved after payment of arrears to eligible faculty members in the implementation of the revision, for the Universities, colleges and other technical education institutions funded by the State / UT Government. For this, State / UT Governments shall submit the claim to the Central Government. All such claims must be submitted to the Central Government by the state / UT on or before 31.03.2020. No claim of the State / UT Government shall be condidered for financial assistance after 31.03.2020.

b) Financial assistance referred to in sub-clause (a) above shall be provided for the period from 01.01.2016 to 31.03.2019 only.

c) The entire liability on account of revision of pay scales etc. with effect from 01.04.2019 shall be taken over by the State / UT Government opting for revision of pay scales.

d) Financial assistance from the Central Government shall be restricted to revision of pay scales and not for any other allowances and in respect of only those posts which were in existence and had been filled up on regular basis as on 01.01.2016.

e) State / UT Governments, taking into consideration other local conditions, may also decide at their discretion, to introduce pay higher than those mentioned in this Scheme, and shall give effect to the revised scales of pay from

01.01.2016; 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 as approved by the Central Government and not to any higher pay fixed by the State / UT Government(s).

f) 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 laid down by the AICTE by way of Regulations and other guidelines shall be implemented by State / UT Governments and technical institutions coming under their jurisdiction as a composite scheme.

g) An undertaking shall be taken from every beneficiary under this Scheme to the effect that any excess payment made on account of incorrect fixation of pay or due to any other reason shall be adjusted against the future payments due or otherwise to the beneficiary in the same manner as provided in this HRD Ministry's O.M. No. F.23-7/2008-IFD dated 23.01.2008, read with Ministry of Finance (Department of Expenditure) O.M. No. F.1-1/2CQ8-IC dated 30.08.2008.

h) The revised pay including arrears of salary and applicable allowances from the date of application as mentioned above shall be paid to all eligible beneficiaries under this scheme."

(c) According to the learned Government Pleader, from the cumulative reading of the above clauses, it could be deduced that an option is available if only University/institution is complying with the entire AICTE scheme/ regulation. She would particularly place emphasis on sub-clause (f) as extracted above, in this regard. According to the learned Government Pleader, the University had

taken a decision not to take any financial assistance from the Central Government in respect of the arrears of pay to be paid to its employees on account of revision of pay scales in pursuance of its implementation of the VII CPC and restricted its payments only from 01.08.2019. In the absence of seeking central assistance towards payment of arrears of revision of payment to its employees from 01.01.2016 in terms of clause 2.11 of the AICTE regulations, there cannot be any insistence of automatic applicability of prescription of age of superannuation in terms of regulation 2.12. According to her, sub-Clause (f) clearly stipulates that the scheme of AICTE is to be applicable only when the entire scheme is adopted by an university or institution.

(d) According to the learned counsel, revision of pay of teachers and increased age of superannuation would not become effective, as conditions of service of the State/ Union Territory Government colleges were within the domain of the State Government/Union Territory Government, till such time as it has decided to adopted the same. The essence and substance of the stand of the Government is reflected in three paragraphs as contained in the counter-affidavit filed on behalf of respondents 1 to 4 herein. The relevant paragraphs 10 to 12 are extracted hereunder:

> ***"10. I respectfully submit to state that on mere communication of gazette notification by All India Council for Technical Education, the revision of the pay of teachers and***

increase in the age of superannuation would not automatically become effective and that, in any event, the right to alter the terms and conditions of service of the State / UT Governments colleges were within the domain of the State Government/ UT Governments and till such time as it decided to adopt the same, the same would have no application to the teachers and staff of the technical institutions in the State/ UT Governments.

11. I respectfully submit to state that purport the scheme to enhance the pay of the teachers and connected staff in the State/UT Government technical institutions and also to increase their age of superannuation from 62 to 65 years. The scheme provides that if it was accepted by the concerned State/ UT Governments, the Central Government would bear 50% of the expenses on account of such enhancement in the pay structure and the remaining 50% would have to be borne by the State. This would be for the period commencing from 1st January, 2016, till 31st March, 2019, after which the entire liability on account of revision of pay-scales would have to be taken over by the State UT Governments. Furthermore, financial assistance from the Central Government would be restricted to revision of pay-scales in respect of only those posts which were in existence and had been filled up as on 1st January, 2016. While most of the States / UT Governments were willing to adopt the scheme, for the purpose of receiving 50% of the salary of the teachers and other staff from the Central Government which would reduce their liability to 50% only, they were unwilling to accept the scheme in its composite form which not only entailed acceptance of the increase in the retirement age from 62 to 65 years, but also shifted the total liability in regard to the increase in the pay- scales to the

States/UT Governments, after 1st April, 2019.

12. I respectfully submit that there being no compulsion to accept and/or adopt the said scheme, the State/UT Governments are free to decide as whether the scheme would be adopted by them or not. Further , there can be no automatic application of the recommendations made by the Council, without any conscious decision being taken by the State/UT Governments in this regard on account of the financial implications and other consequences attached to such a decision. The case of the Petitioners have claimed that they should be allowed to continue in service till they attain the 65 years de hors the responsibility attached thereto, must, therefore, fail."

(e) She would lay emphasis on the above averments in the counter-affidavit and submit that there is no need or necessary to change the service conditions of the employees of the Union Territory as it would fall within the domain of the State/Union Territory and in any event, unless the regulations of AICTE are specifically adopted, it cannot on its own be stated to be applicable.

(f) The learned counsel in her turn referred to a decision of the Hon'ble Supreme Court in the decision of *Jagdish Prasad Sharma vs. State of Bihar and ors. (Civil Appeal Nos.5527 to 5543 of 2013) dated 17.07.2013.*

(g) She particularly placed reliance on paragraphs 58 to 65. According to

the learned counsel, the Hon'ble Supreme Court has held that there is no compulsion to adopt the scheme of UGC and in such event, there is no question of mandatory application of AICTE stipulation as well. Paragraphs 58 to 65 are reproduced hereunder:

> ***"58. However, in the instant case, the said questions do not arise, inasmuch as, as mentioned hereinabove, the acceptance of the scheme in its composite form was made discretionary and, therefore, there was no compulsion on the State and its authorities to adopt the scheme. The problem lies in the desire of the State and its Authorities to obtain the benefit of 80% of the salaries of the teachers and other staff under the scheme, without increasing the age of retirement from 62 to 65 years, or the subsequent condition regarding the taking over of the scheme with its financial implications from 1st April, 2010.***
>
> ***59. As far as the States of Kerala and U.P. are concerned, they have their own problems which are localised and stand on a different footing from the other States, none of whom who appear to have the same problem. Education now being a List III subject, the State Government is at liberty to frame its own laws relating to education in the State and is not, therefore, bound to accept or follow the Regulations framed by the UGC. It is only natural that if they wish to adopt the Regulations framed by the Commission under Section 26 of the UGC Act, 1956, the States will have to abide by the conditions as laid down by the Commission.***
>
> ***60. That leaves us with the question which is special to the State of Bihar, i.e., the effect of Section 67(a) introduced into the Bihar State Universities Act, 1976, by the Bihar State***

Universities (Amendment) Act, 2006, and the corresponding amendments made in the Patna University Act, 1976. Section 67(a) has been extracted herein before in Paragraph 13. While, on the one hand, it has been mentioned that notwithstanding anything to the contrary contained in any Act, Rules, Statutes, Regulation or Ordinance, the date of retirement of a teaching employee of the university or of a college shall be the date on which he attains the age of 62 years, the confusion is created by the next sentence which further provides that the date of retirement of a teaching employee would be the same which would be decided by the UGC. It has been urged that the said provision clearly contemplates that in the event of an alteration resulting in an upward revision of the age of superannuation, the same would automatically apply to all such teachers and staff, without any further decision of the State and its authorities in that regard. In other words, what has been sought to be urged is that when in regard to Centrally-funded universities, colleges and educational institutions, the age of superannuation has been increased to 65 years by the University Grants Commission, the same has to uniformly apply to all universities and colleges throughout the country, without any discrimination. The same did not necessitate any separate decision to be taken by the State and its authorities regarding the applicability of the decision taken by the University Grants Commission.

61. The said submission, in our view, is not acceptable on account of the fact that in the first paragraph of the said Section it has been categorically stated that the age of superannuation would be 62 years. The second paragraph of the said section makes it even more clearer, since it reiterates that the date of retirement of non-teaching employees, other

than the inferior servants, shall be the date on which he attains the age of 62 years. The first proviso also indicates that the university shall, in no case, extend the period of service of any of the teaching or non- teaching employee after he attains the age of 62 years. The second proviso, however, states that even after retirement, teachers may be reappointed in appropriate cases up to the age of 65 years in the manner laid down in the Statutes made in this behalf in accordance with the guidelines of the Commission.

62. As against the above, certain writ petitions have been filed in the Patna High Court which rejected the contention of the Petitioners and dismissed the writ petitions on the ground that the Commission had not taken any conscious decision with regard to teachers and staff, except for those which were Centrally-funded. Subsequently, however, since in its 452nd meeting the Commission took a conscious decision and recommended that the Report of the Pay Review Committee recommending the enhancement of age of superannuation from 62 to 65 years be made applicable throughout the country, fresh writ petitions were filed in the Patna High Court, including CWJC No.2330 of 2009, filed by the Appellants herein. The learned Single Judge allowed the writ petitions upon holding that once the Commission had recommended that the age of superannuation be accepted as 65 years, the State Governments had no discretion but to enhance the age of superannuation in line with the recommendations made by the Commission. The Division Bench subsequently reversed the finding of the learned Single Judge, resulting in these Special Leave Petitions (now Appeals).

63. Learned Standing Counsel for the State of Bihar, Mr. Gopal Singh, had in his submissions reiterated the views of the High Court, i.e., that on mere communication, the revision of the pay of teachers and increase in the age of superannuation would not automatically become effective and that, in any event, the right to alter the terms and conditions of service of the State universities and colleges were within the domain of the State Government and till such time as it decided to adopt the same, the same would have no application to the teachers and staff of the different educational institutions in the State.

64. We are inclined to agree with such submission mainly because of the fact that in the amended provisions of Section 67(a) it has been categorically stated that the age of superannuation of non-teaching employees would be 62 years and, in no case, should the period of service of such non-teaching employees be extended beyond 62 years. A difference had been made in regard to the teaching faculty whose services could be extended up to 65 years in the manner laid down in the University Statutes. There is no ambiguity that the final decision to enhance the age of superannuation of teachers within a particular State would be that of the State itself. The right of the Commission to frame Regulations having the force of law is admitted. However, the State Governments are also entitled to legislate with matters relating to education under Entry 25 of List III. So long as the State legislation did not encroach upon the jurisdiction of Parliament, the State legislation would obviously have primacy over any other law. If there was any legislation enacted by the Central Government under Entry 25 List III, both would have to be treated on a par with each other. In the

absence of any such legislation by the Central Government under Entry 25 List III, the Regulation framed by way of delegated legislation has to yield to the plenary jurisdiction of the State Government under Entry 25 of List III.

65. We are then faced with the situation where a composite scheme has been framed by the UGC, whereby the Commission agreed to bear 80% of the expenses incurred by the State if such scheme was to be accepted, subject to the condition that the remaining 20% of the expense would be met by the State and that on and from 1st April, 2010, the State Government would take over the entire burden and would also have enhanced the age of superannuation of teachers and other staff from 62 to 65 years. There being no compulsion to accept and/or adopt the said scheme, the States are free to decide as to whether the scheme would be adopted by them or not. In our view, there can be no automatic application of the recommendations made by the Commission, without any conscious decision being taken by the State in this regard, on account of the financial implications and other consequences attached to such a decision. The case of those Petitioners who have claimed that they should be given the benefit of the scheme dehors the responsibility attached thereto, must, therefore, fail."

(h) The learned counsel would also rely on a communication of the University Grants Commission to all Registrars of Central/Deemed Universities, dated 04.04.2007, enhancing the age of superannuation from 62 to 65 years for teaching positions. The communication was in pursuance of the decision taken by the UGC dated 23.03.2007 enhancing age of superannuation as above and

according to the learned counsel, the enhancement was confined only to those institutions as against the sanctioned posts to central funded higher technical education. According to her, the same analogy would hold good for the applicability of the AICTE regulations as well.

(i) Her principal submission is, in terms of clause 2.11 availing of financial assistance from Government of India for payments towards arrears of revised payments from 01.01.2016 till 31.03.2019 is a condition precedent for applicability of clause 2.12 prescribing age of superannuation. In the absence of the respondent University availing the central financial assistance, as it restricted the arrears of revised payments only from 01.08.2019, it cannot *per se* be argued that age of superannuation prescribed by AICTE regulations ought to be mandatorily followed. She would therefore submit that the writ petitions are bereft of merits and are liable to be dismissed.

(j) By way of reply, Mr.Karthik Rajan, learned counsel would submit that the primary contention of the learned counsel appearing for the respondent University is fallacious and misconceived. According to the learned counsel, the clauses as contained under the caption *"Financial Assistance from Government of India for implementation of 7th CPC scale"* as contained under Stipulation 2.11 are only in respect of revision of pay scales with effect from 01.01.2006 till

31.03.2019. The Central Finance Assistance was available only for the said period and thereafter, from 01.04.2019, the liability was to be taken over by the State Government/ Union Territory. In the instance case, the respondent University opted for revision of pay scales and given effect to such revision notionally from 01.01.2016 and restricted the arrears of pay from 01.08.2019.

(k) According to the learned counsel, the argument centered on Clause 2.11 should be read in conjunction with regulation 1.3 which provides for coming into force of the revised pay scale from 01.01.2016. These clauses are only related to the revision of pay scales and grant of arrears and have no nexus to the prescription of the age of superannuation which is mandatory in nature.

(l) As regards the reliance placed by the learned counsel on the decision of the Hon'ble Supreme Court, the learned counsel for the petitioners would submit that the reference to the Hon'ble Supreme Court decision is erroneous for the simple reason that that was a case relating to the applicability of UGC regulations. UGC regulations itself was held to be discretionary in nature where stipulation therein was confined only to certain positions centrally funded. As a matter of fact, the learned counsel would refer to the same decision and submit that the Hon'ble Supreme Court has factually found therein that UGC stipulation had not made the scheme compulsory and there was no compulsion to accept or

adopt the said scheme. On finding of fact, the Hon'ble Supreme Court has held that there was no compulsion to adopt the age of prescription of the age of superannuation. But on the other hand, the Courts have held that the AICTE regulations are mandatory and no option is available for any institution or University from having a different condition of service in contravention of the regulations. Therefore, the arguments put-forth on behalf of the respondent University cannot be countenanced both in law and on facts.

4. This Court in the course of the hearing with a view to obtain certain clarifications has suo motu impleaded AICTE as a party respondent in these proceedings. On behalf of the AICTE Ms.AL.Gandhimathi appeared. On a direction from this Court, counter-affidavit has also been filed by AICTE. In the counter-affidavit, it is admitted that all technical institutions are governed under the regulations of AICTE dated 01.03.2019 including prescription of age of superannuation. It is useful to refer to the statements contained in the counter-affidavit filed on behalf of the fifth respondent AICTE in paragraphs 4 to 6.

> ***"4. Further AICTE publishes Approval Process Handbook every year which provides the regulations and procedures which is applicable to all AICTE approved institutions. Clause 7.16 of Approval Process Handbook 2021-2022 which provides as follows:***
>
> > ***"The Technical institutions shall follow Faculty Cadre and Qualifications as provided in the Appendix 8 of the Approval***

Process Handbook.

The age of superannuation of all faculty members Principal/ Director the Institutions shall be 65 years. An extension of 5 years (till the attainment of 70 years of age) maybe given to those faculty members who are physically fit, have written Technical Books, published papers and has average 360 feedback of more than 8 out of 10 indicating them being active during last 3 preceding years of service"

5. Further, the Government of Tamil Nadu under G.O.Ms.No.51 dated 07.05.2020 had increased the age of superannuation of Government servants from 58 years to 59 years and subsequently Government of Tamil Nadu under G.O.Ms.No.92 dated 13.09.2021 had increased the age of superannuation of Government servants from 59 to 60 years which was made applicable to all teaching and non-teaching staff working in aided educational institutions.

6. I respectfully submit there are no separate regulations of AICTE relating to stand alone institutions on the issue of age of retirement. All institutions are governed under the regulations dated 01.03.2019 and the approval process handbook of AICTE, which provides the age of superannuation of all faculty members, Principals/Directors of institutions shall be 65 years."

5. Apart from filing the above counter-affidavit, the learned counsel has also circulated a decision of the Bombay High Court reported in ***2021 SCC OnLine Bom3649 (Lalit Rajendra Gajanan vs. Vidyavardhani, thorugh***

its Secretary). The learned counsel would refer to the decision in order to bolster her submission that AICTE regulations will prevail over the State enactment. The Bombay High Court was seized of the issue as to whether the age of superannuation was to be made applicable in terms of AICTE regulations or the resolution passed by the higher education Department of the State. There was a conflict between the State Government's prescription of 58 years of age and AICTE prescription of 60 or 62 years as the case may be. In consideration of the issue therein, the Bombay High Court has finally held that the age of superannuation should be 60 years and not 58 years. It is useful to refer to the decision and the final reasoning of the High Court as under:

> ***"62. The MEPS Act is a State Legislature. In exercise of its legislative power under Article 246(3) of the Constitution, the MEPS Act has been enacted in relation to the subject mentioned in Entry 25 of List III (Concurrent List) viz. "Education, including technical education, medical education and Universities subject to the provisions of entries 63, 64, 65 and 66 of List I, vocational and technical training of labour.***
>
> ***63. The AICTE Act has been enacted by the Parliament in exercise of its legislative power under Article 246(1) and (2) read with Entry 66 of List I bdp 29 wp-3125.20 & ors(j).doc (Union List) and Entry 25 of List III (State List).***
>
> ***64. The Hon'ble Supreme Court in case of State of Tamil Nadu v. Adhiyaman Education & Research Institute (supra) has held that the expression 'coordination' used in Entry 66 of the Union List does not merely mean evaluation. It***

would include power to do all things which are necessary to prevent what would make 'coordination' either impossible or difficult.

65. The question that arises for consideration of this Court is whether there is any inconsistency or conflict between the MEPS Act and the AICTE Regulation insofar as the age of superannuation is concerned. Under the provisions of the MEPS Act, the age of superannuation is 58. On the other hand, the provisions of AICTE Regulation prescribes the age of superannuation as 65.

66. This Court in case of Amrutraj Pratapji Vyas and Ors. (supra) after considering the provisions of MEPS Act and AICTE Act held that till 1990, all Polytechnics were not within the ambit of MEPS Act. Thereafter, the AICTE was responsible to prescribe the pay scales and other service conditions of the teaching as well as non-teaching staff in technical institutions like the Polytechnics and degree courses. Various resolutions were passed by the State Government adopting the recommendations made by the AICTE regarding the qualifications and the pay scales. This Court also considered that under section 4(1) of the MEPS Act, the State Government is empowered to make rules providing for the minimum qualifications for recruitment, duties, pay, allowances, post retirement and other benefits and other conditions of service of employees of private schools. bdp 30 wp-3125.20 & ors(j).doc

67. This Court also held that AICTE being a body created under the AICTE Act, is required to carry out statutory functions and it is a model agency so far as the technical education in India is concerned and is thus responsible to issue directions/ instructions to the

Management whether aided or unaided in view of the provisions of section 4(3) of the M.E.P.S. Act, read with section 3(1) of the said M.E.P.S. Act. It is held that the polytechnic was not only bound to comply with the directions issued under the provisions of MEPS Act and the MEPS Rules framed thereunder, but, were also bound to comply with the directions issued by the AICTE under the provisions of AICTE Act including the directions issued for payment of pay scale and other service conditions prescribed in respect of the staff in a Polytechnic college or schools. The principles laid down by this Court in case of Amrutraj Pratapji Vyas and Ors. (supra) squarely applies to the facts of this case. We do not propose to take any different view in the matter.

68. In our view, since there is conflict between the provisions of the MEPS Act and the AICTE Regulations in respect of the age of superannuation, the provisions of the AICTE Regulations would prevail. The resolutions passed by the State Government under the provisions of the AICTE Regulations prescribing the age of superannuation would apply to the teaching and non-teaching staff appointed by the polytechnic institutes governed by the provisions of the AICTE Act and Regulations. In our view, Mr.Anturkar, learned senior counsel for the petitioners is right in his submission that the provisions of the MEPS Act and of the AICTE Regulations cannot be read harmoniously and thus there being a conflict insofar as the age of superannuation is concerned, the provisions of the AICTE Regulations or the resolutions and/or the circulars issued under the provisions of the AICTE Act or the Regulations would prevail and not the bdp 31 wp-3125.20 & ors(j).doc age of superannuation prescribed under the provisions of the MEPS Act read with

Rules.

....

72. In our view, though the MEPS Act has received the assent of the President on 16th March, 1978 and AICTE Act had received the assent of the President 23rd December, 2010 and in ordinary course, the MEPS Act would bdp 32 wp-3125.20 & ors(j).doc have prevailed over any other Central Act, having received the assent of the President, however in view of the proviso to Article 254(2) of the Constitution of India, nothing prevents Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

73. The Hon'ble Supreme Court in case of T. Barai v/s. Henry AH Hoe and another (supra) has held that the proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the President's assent. Parliament may repeal or amend the repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the 'same matter'. It is held that even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together.

74. In our view, the MEPS Act has to the extent that it provides for the age of superannuation has become void as soon as the AICTE Act creating the repugnancy was enacted.

Such repugnancy arises since both law operates in the same field and cannot stand together.

....

85. In our view, the age of superannuation of the petitioners in each of these petitions would be 60 years and not 58 years. We, accordingly pass the following order:

(a) Writ Petition No. 3125 of 2020 is made absolute in terms of prayer clauses (a) to (d). Rule is made absolute accordingly.

(b) Writ Petition No. 3617 of 2020 is made absolute in terms of prayer clauses (B) and (C). Rule is made absolute accordingly.

(c) In view of the disposal of the Writ Petition No. 3617 of 2020, Interim Application (St) No.93900 of 2020 does not survive and is accordingly disposed of.

(d) There shall be no order as to costs.

(e) The parties to act on the authenticated copy of this judgment."

6. According to the learned counsel, the above ruling of the Bombay High Court is answer to the *lis* in this case and there cannot be any doubt about the mandatory nature of AICTE regulations and any contrary condition against the regulation would have to be discountenanced as being legally unsustainable.

7. Heard Mr.Karthik Rajan for the petitioners, Ms.N.Mala for respondents 1 and 4, and Ms.AL.Ganthimathi, for the 5th respondent (AICTE), the newly impleaded respondent.

8. After adverting to the contentions/submissions of the parties, perusing the materials and the case laws cited, the nucleus of consideration is pivoted on one point issue, as to whether the prescription of age of superannuation by AICTE Regulations, 2019 is to be mandatorily applied to the third respondent University or is it open to the University to prescribe its own age of superannuation for its teaching staff?

9. If this Court were to hold that AICTE regulations are mandatory consideration of the other subaltern contentions that the regulation ought to be specifically adopted and the scheme as such must also be adopted in its entirety for its application would become trifle consequence and otiose.

10. In the run-up to the conclusion on the basis of the above framework of consideration, it is relevant to refer to the position of the third respondent University before it became a University. In 1984, the Pondicherry Engineering College was established. It was an autonomous institution fully funded by the Government of Puducherry. It was a technical institution governed by the AICTE regulations. However, an Act was passed in 2019 called, "Puducherry Technological University Act, 2019", (Act 4 of 2020) dated 31.03.2020, providing for reconstitution of Puducherry Engineering College as a Technological

University. The Act came into force on 05.09.2020.

11. According to Section 5(4) of the Act of 2020, the service conditions as enjoyed by them in their employment under the Pondicherry Engineering College was to be protected. Section 5(4) reads as under:

> ***"5. On and from the commencement of this Act,-***
>
> ***(4) Every person duly employed by the Pondicherry Engineering College before the commencement of the Act, shall hold his office or service in the University by the same tenure, at the same remuneration and upon the same terms and conditions, and with the same rights and privileges, as to the pension, leave and gratuity, provident fund and other matters, as he/she would have held the same, if, this Act had not been passed, and shall continue to do so unless and until his/ her employment is terminated by due process of law or he/she has opted for the University's terms and conditions of employment as prescribed in the Statutes."***

12. The above saving clause has protected the conditions of service, rights and privileges etc. from being varied to their detriment, after transformation of the college into a University under Act 4 of 2020. Therefore, the petitioners' service conditions continued to be governed by AICTE regulations, even after their services were continued under the University. In the light of the said position, is it still open to the University to adopt a stand that AICTE regulations, particularly with reference to prescription of the age of

superannuation, is not applicable, is to be examined by this Court, as part of its judicial discourse. Further, *de hors* the saving clause, viz., Section 5(4) of Act 4 of 2020, if this Court were to ultimately hold that the third respondent is mandatorily governed by AICTE regulations even otherwise, consideration of the above issue may become eventually immaterial and nugatory.

13. This Court, in consideration of the kernel of the *lis* in this case, has to first refer to the contentions of the learned counsel for respondent University in order to examine whether the opposition to the claim of the petitioners is strong and valid enough to refuse relief to them. The preferential reference to the University's objection first, before considering the claim of the petitioners is because of the fact that almost cast iron case has been put-forth on behalf of the petitioners as to the peremptory nature of application of the AICTE regulations, across the spectrum.

14. The primal contention raised on behalf of the University is with reference to regulation 2.11, which has been extracted supra. Her focal contention is on sub-Clause (f) of the regulation, which is here again extracted for clearer understanding and demystifying the hallowness of the stand of the University.

"f) 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 laid down by the AICTE by way of Regulations and other guidelines shall be implemented by State / UT Governments and technical institutions coming under their jurisdiction as a composite scheme."

15. The learned counsel for the University strongly and entirely premised her arguments on the above sub-clause, contending that unless the University has chosen to implement the entire scheme (composite scheme), various regulations as provided in AICTE regulations, 2019, including regulation 2.12, prescribing the age of superannuation, would not be applicable, automatically. According to the learned counsel, the University has taken a decision not to seek financial assistance from Government of India towards payment of arrears from 01.01.2016 to 31.03.2019 as a consequence of the revision of pay scales (VII Pay Commission). Therefore, the question of applicability of age prescription by AICTE regulation in terms of regulation 2.12 did not arise at all.

16. According to her, the teaching staff of the University were not paid arrears from 01.01.2016 in the first place, nor the University had taken away financial assistance from the Central Government in that regard. The adoption of VII Central Pay Commission scale of pay was only notionally effected from 01.01.2016 and the actual arrears came to be paid to the teaching staff only from 01.08.2019. The substance of the arguments is that not opting out of

availing central assistance in terms of regulation 2.11 as per sub-clause (f), the University concisely did not adopt the earlier scheme and hence concomitantly, the University was not bound by the other regulations of AICTE, interpreting regulation 2.12 prescribing age of superannuation.

17. The above contention of the learned counsel may appear to be having some force on a precipitative understanding, but when the same is critically and incisively examined, the counter arguments put-forth on behalf of the petitioners by the learned counsel, would be a clincher for rejecting the contention of the University in this regard. As rightly contended by the learned counsel for the petitioner, the clauses as contained in regulation 2.11 have to be read in the context of clause 1.3 of the regulation. Clause 1.3 of regulation deals with the effective date of revised pay scales from 01.01.2016. Both the provisions if conjointly read, the implementation of the AICTE scheme which is referred to in sub-clause (f), as extracted above, is to be confined only with reference to payment of arrears of revised pay scales from 01.01.2016. Sub-clause (f) is nothing but an off-shoot provision incorporated under the caption, "Financial Assistance from Government of India for implementation of 7th CPC Scale" (Regulation 2.11). Such stipulation in the said sub-clause cannot be stretched beyond the contours of the main regulation 2.11. Therefore, the argument put-forth on behalf of the University is deeply flawed, legally unacceptable and has

to be rejected.

18. The legal position further becomes pellucid and translucently clear if a reference could be made to regulation 1.2 and 2.12, which are extracted herein.

> ***"1.2 Categories of Institutions to whom the regulations apply***
>
> ***These shall apply to all degree level technical institutions and universities including deemed to be universities imparting technical education and such other courses / programs approved by AICTE and areas as notified by the council from time to time.***
>
> ***....***
>
> ***2.12 Age of Superannuation***
>
> ***The age of superannuation of all faculty members and Principals / Directors of institutions shall be 65 years. An extension of 5 years (till the attainment of 70 years of age) may be given to those faculty members who are physically fit, have written technical books, published papers and has average 360o feedback of more than 8 out of 10 indicating them being active during last 3 preceding years of service."***

19. The above two regulations in no uncertain terms use peremptory expressions that the regulations shall apply to all degree level technical institutions and Universities and the age of superannuation shall apply to all faculty members/ Principals/Directors etc. In the teeth of the mandatory nature of expression as found in the above clause, it does not lie in the mouth of the

University to contend that it has an option to adopt the regulation, or it can choose to ignore it. In fact, the learned Judge of this Court in W.P.No.10049 of 2004 dated 26.11.2009 has held that such intransigent stand by any institution or University against applicability of AICTE regulation ought to be discouraged and condemned.

20. The learned counsel for the University in support of her contention that unless the AICTE regulations are specifically adopted by the University, the same cannot said to be applicable automatically, has referred to relevant paragraphs 58 to 65 in the case of ***Jagdish Prasad Sharma***, which have been extracted supra. In that case, the Hon'ble Supreme Court was dealing with the fact situation that UGC has introduced a scheme for its implementation by the Universities coming under the States' control. Primarily, UGC regulations were applicable to the Centrally funded educational institutions and in the regulations, an option was provided, in adoption of the scheme of UGC, on fulfillment of certain conditions by the States. In that context, the Hon'ble Supreme Court has held that their being no compulsion, to accept or adopt the scheme, the States are free to decide as to whether the scheme would be adopted by them or not. The Hon'ble Supreme Court went on to hold that there cannot be an automatic application of the recommendations made by the Commission, without any conscious decision being taken by the States in this regard.

21. With regard to the above observation of the Hon'ble Supreme Court reference could be made to the UGC communication dated 23.03.2007 in respect of enhancement of age of superannuation from 62 to 65 years for teaching position. The enhancement was particularly confined to centrally funded higher technical educational institutions. The UGC regulations therefore provided a lee-way to the States to either adopt or not to adopt. Such latitude is not provided in AICTE regulations as held by the Courts, which would be briefly referred to hereunder.

22. The learned counsel for the petitioner referred to two relevant judgments one of the Punjab and Haryana High Court and another of Karnataka High Court. The Courts' observations and rulings have also been extracted supra. In the case of ***Dr.Jogender Pal Singh,*** the High Court of Punjab and Haryana has clearly held that in case of conflict between the Central Act and the State laws, AICTE regulations would prevail over the State laws and the High Court has also held that the age of faculty members shall be 65 years. Such prescription was also held to be binding upon college/institution covered under the AICTE regulations. That was a case where the High Court was dealing with the Union Territories Act vis-a-vis AICTE regulations.

23. In regard to the decision of the Karnataka High Court in ***Dr.G.R.Bharat Sai Kumar,*** the same legal position has been affirmed. The Karnataka High Court has clearly distinguished between UGC and AICTE regulations and stated that as far as UGC regulations were concerned, it was not mandatory, whereas AICTE regulation was mandatory in nature and the same does not leave any discretion or option for any individual institution or University governed by the regulation to have different service conditions for its staff in contravention of the regulations. The above decision of the Karnataka High Court is answer to the contention of the learned counsel for the University that analogy drawn by them as between AICTE and UGC regulations is misplaced and fundamentally erroneous.

24. The learned counsel for AICTE has also pointedly referred to the decision of the Bombay High Court reported in ***Lalit Rajendra Gajanan***. The relevant ruling of the Court has also been extracted supra. In that case also, the Bombay High Court was considering a conflict between the State Legislature MEPS Act and AICTE regulation, particularly in respect of age of superannuation. It categorically held that the provisions of AICTE regulation would prevail. This decision has been cited by none other than AICTE itself, in order to bolster their unequivocal stand as disclosed in their counter-affidavit, stating that their regulations are binding on all institutions/ University governed by AICTE.

25. In respect of the larger issue, as to whether in case of conflict between State laws and the Central enactments, two references have been drawn by the learned counsel for the petitioner. The earlier reference was made to a decision of the Hon'ble Supreme Court in the case of ***Adhiyaman Educational & Research Institute and Ors.***. The final ruling of the Court as contained in paragraph 41 of the judgment has been extracted supra. The Court has held that to the extent the State legislation is in conflict with the Central legislation, the same would be void and inoperative. The Court was interpreting Entry 66 of the Union List vis-a-viz Entry 25 of the Concurrent List of the Seventh Schedule to the Constitution of India.

26. The second reference is to the Division Bench of this Court wherein also, the settled legal position in terms of the constitutional scheme has been reinforced in the case reported in ***V.Lekha***. The relevant observation of the Division Bench has been extracted supra wherein also it has been held that the State law will have to give way to the Central enactment to the extent of repugnancy. To state the obvious is a trite proposition, nevertheless it has to be reaffirmed and re-enforced with a view to repulse the argument put-forth on behalf of the University.

27. In the teeth of the mandatory nature of AICTE regulation and also the decision of the Courts which have clearly and categorically clarified the legal position as to the mandatory nature of the AICTE regulations, yet the stand adopted by the third respondent University that unless the regulations are specifically adopted by the University, the same cannot have automatic application is nothing but advancing a specious case on behalf of the university. In the opinion of this Court, the university appears to be blissfully oblivious to the constitutional scheme and also various case laws which have consistently held that the AICTE regulations are mandatory in nature. The warped interpretation of regulation 2.11 by the University to wriggle out of its legal obligation in regard to the prescription of age of superannuation, is to be discountenanced as being downrightly vexatious.

28. For all the above stated reasons, this Court is of the considered view that the age of superannuation as prescribed under regulation 2.12 is binding on the third respondent University and any other prescription of age of superannuation repugnant to the AICTE regulation is to be held void and inoperative and it cannot be enforced in law.

29. The trajectory of the above judicial discourse would only lead to an inexorable conclusion that these petitioners have made out a peremptory case

for grant of relief as prayed for by them.

30. In the said circumstances, there will be a direction to the third respondent University to reinstate the petitioners in service forthwith and continue them in service till they attain the age of 65 years, as prescribed by AICTE regulations, 2019.

31. The third respondent University is directed to pass appropriate orders reinstating the petitioners with effect from the respective dates the petitioners were retired from service, along with consequential benefits, including all pay and allowances for the period when the petitioners had been kept out of employment, illegally, within a period of four weeks from the date of receipt of a copy of this order.

32. In the result, the writ petitions are allowed. There will be no order as to costs. Consequently, W.M.P.Nos.19128 and 19143 of 2021 are closed.

12.04.2022

Index: Yes/no
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To
1 The Pro-Chancellor
Puducherry Technological University

Govt. of Puducherry, Puducherry

2 The Vice-Chancellor
Puducherry Technological University
Puducherry-605 014.

3 The Registrar
Puducherry Technological University
Puducherry 605 014.

4 The Principal
Pondicherry Engineering College
Puducherry-605 014.

5 All India Council for Technical Education
No.29 Haddows Road
Shastri Bhavan Nungambakkam
Chennai - 600 006.

V.PARTHIBAN, J.

(tar)

Pre-delivery order in

W.P. Nos.17918 and 17929 of 2021

12.04.2022