

JUDGMENT

The intra-court appeal in W.A. No.100198/2022 is filed by a non-party to the Writ Petition No.10638/2021 & Writ Petition 10628/2021 with leave of the Court calls in question the Judgment dated 28.04.2022 rendered by a learned Single Judge of this Court whereby petitioners' prayer for a direction to continue them in service till they attain the age of 65 years, in terms of the age of retirement prescribed by the extant UGC Regulations, 2018, has been negated.

2. The companion case in W.P. No.101937/2022 is filed by the appellant himself who happens to be a Dean in the College of Agricultural Sciences. He *inter alia* seeks to lay a challenge to Clause 30(8) of the University Statutes, 1964, which prescribes 62 years as the age of superannuation. He has also sought for a direction to continue him in service till he attains the age of 65 years in terms of UGC Regulations, 2018 and the Central Government Order dated 02.11.2017.

3. On request, learned GA appears for the respondent-State Government; learned Panel Advocates appear for the respondent-University, UGC, AICTE & ICMR. No notice is issued to the private respondents No.14 & 15, who were the writ petitioners, who lost their case at the hands of learned Single Judge. Liberty is reserved to them to challenge the impugned order independently.

4. FOUNDATIONAL FACTS:

i) The writ appellant and the writ petitioner are one and the same person. He has been working as a Dean (Agri), in the College of Agricultural Sciences, at Hanumanamatti. The said College is a constituent institution of the respondent-University of Agricultural Sciences. He completed the age of 62 years yesterday. The essential grievance of the appellant/petitioner is against the prescription of 62 years by the State Government and the respondent-University as the age of superannuation. He seeks a direction to these

respondents inter alia to continue him in service till he attains the age of 65 years.

ii) The appellant/petitioner, in support of his case, banks upon the UGC Regulations, 2018, promulgated in terms of the 2017 recommendations made by the Pay Review Committee. In substance, he contends that after the 42nd Amendment, education figures in List-3, Schedule VII of the Constitution of India and therefore, the UGC Regulations, 2018 partaking the character of Central Law override the impugned statute of the University, which is the State Law, and that prescribe 65 years as the age of retirement for the Teachers in all Agricultural Universities and their constituent Colleges. Learned Senior Advocate, Mr. V.Lakshminarayana, appearing for the appellant/petitioner in support of his submission invoked certain decisions of Apex Court.

iii) Learned GA appearing for the State and learned Panel Counsel appearing for the University resist

the case of appellant/petitioner essentially contending that: the subject UGC Regulations do not mandatorily prescribe 65 years as the age of superannuation for the employees of Agricultural Universities established under the State Legislations; even in the UGC Pay Package, an option is given to these Universities to adopt the said age, if they so wish; the respondent-University having prescribed 62 years as the age of retirement consistent with the Government Order dated 28.10.2009, the appellant/petitioner is not justified in seeking relief of the kind, to the contrary.

iv) Learned GA vehemently contends that the age of retirement is a condition of service; it is regulated by the provisions of the University Statutes which are promulgated under the provisions of State Enactment; the UGC Regulations leave the prescription of retirement age to the will of the University; that being the position, the question of repugnancy between the Central Law and the State Law even remotely does not arise; lastly, even

the State Government has prescribed 62 years as the age of superannuation for these employees, which the University has adopted. Both, the Panel Counsel and the Government Advocate relied upon certain decisions of this Court in support of their version.

5. Having heard the learned counsel for the parties and having perused the case papers, we decline indulgence in the matter for the following reasons:

a) The respondent-University is established under Section 3 of the University of Agricultural Sciences Act, 1963 (hereafter referred to as 'the State Act'). Section 39 of the State Act provides for promulgating Statutes regulating the service conditions of employees of the University of Agricultural Sciences. Accordingly, the Statutes having been made and resolution having been passed, the age of 62 years admittedly, has been prescribed as the age of superannuation, in terms of the Government Order dated 28.10.2009. Accordingly, all employees of the University have been demitting their

Office/Post on attaining the age of 62 years, although, with no demur.

b) UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018 (hereafter called as 'UGC Regulations'), are promulgated under the provisions of Sections 14 & 26 of the University Grants Commission Act, 1956 (hereafter referred to as 'the UGC Act'). In terms of UGC recommendation, the Central Government vide order dated 31.12.2008 extended the benefits of Sixth Central Pay Commission Recommendation to the "Teachers in the Central Universities". In fact, the very Preamble of the said Order specifically mentions this. One of these benefits is the enhanced age of retirement i.e., 65 years. Therefore, these benefits did not extend to the employees of the State Universities which are different from the Central ones. A similar order was issued on

02.11.2017. It does not *ipso facto* extend to the employees of the State Universities and therefore, a committee was constituted to look into the matter. The Committee at recommendation 12 recommends enhancement of the age of retirement from 62 years to 65. A recommendation of the kind *per se* is not justiciable and therefore no support can be drawn from the same by the appellant/petitioner, as rightly contended by the learned Government Advocate and the Panel Counsel.

c) The vehement contention of the learned Senior Counsel Laxminarayana that the UGC has prescribed 65 years as the age of superannuation and therefore the impugned statute of the University prescribing 62 years for retirement is liable to be voided, is bit difficult to countenance. This argument is structured on a wrong premise that the subject UGC Regulation and the University Statutes are in conflict with each other and therefore, the former being the Central

Law would override the later which is a State Law. True it is that when the Central Law occupies the a field in respect of an item in the Concurrent List, the State Law cannot operate as provided under Article 254 of the Constitution of India. However, the conflict can logically arise only if the Central Law is shown to impose a norm, with the no option whatsoever. That is not the case here. The UGC Letters dated 30.01.2018 and 31.01.2018 although extend the benefit of 7th Central Pay Commission Report do not much say about the enhancement of age of retirement from 62 years to 65 as being obligatory *qua* the State Universities of the kind. When option is given by the Central Law as to the age of superannuation, it is open to the State Universities to prescribe the age of retirement for its employees, in variance. In such a situation the doctrine of occupied field is not invocable.

d) The above view gains support from the following observations of the Apex Court in ***B.Bharat***

Kumar & others Vs. Osmania University & others

(2007)11 SCC 58:

"16. Much debate was centered around the interpretation of the words 'wish' and 'gamut'. In our opinion it is wholly unnecessary and we have merely mentioned the arguments for being rejected. Once the scheme suggested that it was left to the "wish" of the State Government, there will be no point in trying to assign the unnatural meaning to the word 'wish'. ..."

"19. Learned counsel also argued, to a great extent, the desirability of the age of superannuation being raised to 60 or 62, as the case may be. We again reiterate that it is not for his Court to formulate a policy as to what the age of retirement should be as by doing so we would be trailing into the dangerous area of the wisdom of the legislation. If the State Government in its discretion, which is permissible to it under the scheme, decides to restrict the age and not increase it to 60, or as the case may be, 62, it was perfectly justified in doing so."

"23. Further it is clear from the letter dated 27-7-1998 that it is expressly left to the discretion of the State Government to implement or not to implement the policy. Once there is no question of any conflict we do not think that would have the effect of overruling T.P. George. ..."

The reliance of the appellant/petitioner on the decision of the Apex Court in ***Kalyani Mathivanan Vs. K,V Jeyaraj*** (2015)6 SCC 363 again does not much come to his support. At paragraph 62.3, 62.4 & 62.5, it is observed as under:

“62.3. UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central Universities and Colleges thereunder and the Institutions deemed to be Universities whose maintenance expenditure is met by the UGC.

62.4. UGC Regulations, 2010 is directory for the Universities, Colleges and other higher educational institutions under the purview of the State Legislation as the matter has been left to the State Government to adopt and implement the Scheme. Thus, UGC Regulations, 2010 is partly mandatory and is partly directory.

62.5. UGC Regulations, 2010 having not adopted by the State Tamil Nadu, the question of conflict between State Legislation and Statutes framed under Central Legislation does not arise. Once it is adopted by the State Government, the State Legislation to be amended appropriately. In such case also there shall be no conflict between the State Legislation and the Central Legislation.”

We are of the view that these observations far from supporting the case of the appellant/petitioner, come to the rescue of the answering respondents.

e) Learned Panel counsel for the University is more than justified in heavily banking upon a Co-ordinate Bench decision in ***State of Karnataka Vs. Dr. R. Halesha and others***, ILR 2012 KAR 545, wherein at paragraph 15 it is observed as under”

“15. ... The UGC has taken the stand that the subject Directions are not mandatory so far as the increase of the age of superannuation to 65 years even in respect of Teachers in Colleges in the State. This also obviates and renders superfluous the interesting and intricate interplay between entries in the Union List and the Concurrent List of the Seventh Schedule to the Constitution of India.”

These observations were made in the light of the claim for enhancement of age of retirement from 62 years to 65 years by the employees of the Universities on the basis of UGC norms. After said decision, a learned Single Judge of this Court in more or less a similar fact matrix

decided another case in W.P. No.103868/2018 between ***Dr. P.V. Kenchanagoudar Vs. The Principal Secretary and another*** disposed off on 22.06.2018. The claim of the employees of the State Universities founded on UGC Regulations and Central Government Orders came to be negated. The contention of the appellant/petitioner that these decisions of the Co-ordinate Bench and the learned Single Judge were structured on Sixth Pay Commission Recommendations and therefore not applicable to a case involving Seventh Pay Commission Recommendation is bit difficult to countenance, the differential being irrelevant to the issue debated before us.

f) The impugned Statute of the University prescribes the age of 60 years for superannuation of the employees. Earlier it was 58 years. It is the State Government which has prescribed the age of 62 years which the University has adopted. Thus, even if the impugned Statute is voided on the grounds urged herein,

no purpose would be served. The fixation of age of retirement of Public Servants has a bearing on the State Exchequer and the employment opportunities for others. We are told at the Bar that there are thousands of employees in various Universities and in the constituent & affiliated Colleges. If the prayer, as sought for, is granted, all these employees would continue in the Office for an additional period of three years and eventually, there would be no vacancies for fresh appointments. This is not desirable. At what age the Public Servants like teachers in the Universities/constituent colleges should retire is purely within the domain of the State Executive, which bears the expenditure towards salary, emoluments and terminal benefits. In matters like this, a host of financial & other factors enter the fray of decision making and Courts cannot readily venture interference therein, the worth of such factors not being assessable by judicially manageable standards. The UGC, in its wisdom, has left to the State Universities to prescribe the age of superannuation, as already mentioned above. That

concession if at all that be, is not put in challenge by the appellant/petitioner. Whether it is prudent to retain old blood or to infuse fresh one is best left to the wisdom of the State Executive & the Universities. After all, "*Old order changeth, yielding place to the new and God fulfills himself in many ways*" said Alfred Tennyson (1809-1892).

g) The learned Single Judge (Hon'ble Justice R.Devdas) having bestowed consideration to all the material aspects of the case in the right perspective has rendered the impugned judgment, which cannot be faltered on the grounds urged before us. The appellant/petitioner has miserably failed to show that this judgment is wrong in any way and much less is otherwise unsustainable. We have not adverted to the decisions treated by the learned Single Judge inasmuch as we are in complete agreement with the way he has construed the ratio thereof.

h) Lastly, the learned Senior Advocate Mr. Laxminarayana cited a latest decision of the Apex Court in W.P. (Civil) No. 1525/2019 between **Gambhirdhan K.Gadhavi V. the State of Gujarat & Ors.** decided on 03.03.2022. It related to the appointment of the Vice-Chancellor to a State University in violation of the extant UGC Regulations. The material facts of the said Ruling do not much match with those of the case at hands and therefore, the appellant/petitioner cannot draw much milk from the observations made therein. It hardly needs to be stated that a case is an authority for the proposition that it lays down in a given fact matrix, and not for all that which logically follows from what has been so laid down vide **QUINN Vs. LEATHAM** (1901) AC 495, UKHL 2.

In the above circumstances, both the writ appeal and the writ petition being devoid of merits are liable to be rejected and accordingly they are, costs having been made easy.

However, this Judgment shall not come in the way of the recommendation of the Committee of the University being expeditiously considered, by the quarters that be, in accordance with law. It is hoped that such a consideration would take place without brooking any delay.

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