

**ORDER****S. SUNIL DUTT YADAV. J**

This order has been divided into the following sections to facilitate analysis:

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| 1. | <b>PRAYERS SOUGHT</b><br>BATCH - I<br>BATCH - II<br>BATCH - III   | 133<br>143<br>148                      |
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| 3. | <b>LEGISLATIVE AND EXECUTIVE FRAMEWORK</b><br>UGC/CENTRAL AND STATE GOVERNMENT NOTIFICATIONS  | 183                                    |
| 4. | <b>ANALYSIS</b><br><b>BATCH - I</b><br>Whether the Government Order dated 15.10.2009 enhancing the age of superannuation to the Teaching Community of Universities drawing UGC Scales from 60 Years to 62 Years, while continuing the age of superannuation to other Teaching Community to be at 60 Years is valid in law?<br><br><b>BATCH - II AND BATCH - III</b><br>Whether the petitioners are entitled for enhancement in age of superannuation to 65 years? | 189<br><br><br><br><br><br><br><br>208 |

The three batches of Writ Petitions involve adjudication of similar legal questions relating to applicability of the University Grants Commission Regulations ('UGC Regulations') as regards the age of superannuation and accordingly are taken up together and disposed off by this common order.

2. In order to facilitate analysis, the Writ Petitions are divided into the following batches:-

**BATCH - I**

2.1 This batch of Writ Petitions relate to those working as Lecturers, Principals and Associate Professors in Government Aided and in Colleges Affiliated to Universities and the prayers sought in the memorandum of Writ Petitions are as hereunder:-

| <b>SL. No.</b> | <b>CASE No.</b> | <b>PRAYER</b>  |
|----------------|-----------------|--|
| 1.             | W.P. 12880/2022 | a) Issue a writ of mandamus or an order or a direction directing the Respondents to fix the retirement age to 62 years for the Petitioner on par with the retirement age of teaching community of University and Government Colleges as per UGC regulations where retirement age is 62 Years, by quashing part of the Government Order No.ED-37 UNE 2009 (P) |

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|    |   | Bengaluru dated 15.10.2009 vide Annexure-A where the retirement age of the petitioner is 60 Years and to pass orders within time frame specified by this Hon'ble Court.   |
| 2. | W.P. 9069/2022  | a) Issue a writ in the nature of mandamus or an order or a direction directing the Respondents to fix the retirement age as 62 years for the Petitioner on par with retirement age of teaching community of Universities and Government Colleges under UGC Regulations as per which retirement age is 62 years by quashing part of the Government order No.ED-37 UNE 2009 (P) Bangalore dated 15.10.2009 vide Annexure-A where the retirement age of the petitioner is 60 years and to pass orders within time frame specified by this Hon'ble Court. |
| 3. | W.P.No.3589/2021  | a) Issue a writ of Certiorari by setting aside or quashing the Government Order No.ED 02 DCE 2020 dated 17.02.2020 vide Annexure-B only in respect of the Petitioners, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.<br><br>b) Same as Prayer-(a) in W.P.No.9069/2022.  |
| 4. | W.P.No.3515/2021  | a) Issue a writ of Certiorari by setting aside or quashing the Government Order No.02 DCE 2020 dated 17.02.2020 vide Annexure-B only in respect of the Petitioners, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.<br><br>b)Same as Prayer-(a) in W.P.No.9069/2022.  |
| 5. | W.P.No.19513/2021<br><br>The Petitioner is director of Physical Education | a) Issue a Writ of Certiorari by setting aside or quashing the order of Government of Karnataka through the Principal vide letter dated 22.02.2021 have notified the retirement of the Petitioner has 31.10.2021vide Annexure-B only in respect of the Petitioner, whose retirement age is fixed as 60 years, till  |

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|    |                    | <p>the disposal of this Writ Petition.</p> <p>b) Same as Prayer-(a) in W.P.No.9069/2022.</p>   |
| 6. | W.P. No.8992/2020  | <p>a) Issue a writ of Certiorari by setting aside or quashing the Government Order No.02 DCE 2020 dated 17.02.2020 vide Annexure-B only in respect of the Petitioners, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p>  |
| 7. | W.P.No. 12861/2022 | <p>a) Issue a writ of Certiorari by setting aside or quashing the letter bearing No.MC/002/NDC/2022-2023/103 dated 04.06.2022 vide Annexure-B only in respect of the Petitioners, whose retirement age is fixed as 60 years, till disposal of this WP.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022</p>   |
| 8. | W.P.No. 9702/2022  | <p>a) Issue a writ of Certiorari by setting aside the letter issued by the 5<sup>th</sup> Respondent college bearing No. AVK:106:2022-23 dated 12.05.2022 to the 1<sup>st</sup> Petitioner, vide Annexure-B and the letter issued by the 5<sup>th</sup> Respondent college bearing No:AVK:115:2022-23 dated 13.05.2022 to 2<sup>nd</sup> Petitioner vide Annexure B1 in respect of the Petitioners, whose retirement age is fixed as 60 years, till disposal of this WP.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022</p> |
| 9. | W.P.No.12020/2022  | <p>a) Issue a writ of certiorari by setting aside or quashing the letter issued by the 5<sup>th</sup> respondent in respect of the period 2021-2022 to the 1<sup>st</sup> petitioner vide Annexure-B as per the letter bearing REF.NO.S.V.V.S/K1b/Sec/33/2022-23 dated 01.06.2022 issued by the 7<sup>th</sup> respondent College to the 2<sup>nd</sup> petitioner vide</p>  |

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|     |                   | Annexure-B1 and quashing the government Order No:ED 251 DCE 2021 (E) dated 14.01.2022 vide Annexure-B2 only in respect of the petitioner No.3 whose retirement age is fixed as 60 years, till the disposal of this writ petition.<br><br>b)Same as Prayer-(a) in W.P.No.9069/2022  |
| 10. | W.P.No.12605/2022 | a) Issue a Writ of Certiorari by setting aside or quashing the letter bearing Ref.No.KTL/Sci./AMS/Sup-Ann/92/2022-23 dated 20.06.2022 vide Annexure-B only in respect of the Petitioner, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.<br><br>b)Same as Prayer-(a) in W.P.No.9069/2022   |
| 11. | W.P.No.10014/2022 | a) Issue a Writ of Certiorari by setting aside or quashing the letter bearing No:KaaShiE/Prakabe/Aav-2/99/VaaVePa/2021-22 to the Principal vide letter dated 08.02.2022 vide Annexure-B, vide letter bearing Ref.No.-KaPaKaMa/VA/Pra 2022 dated 04.04.2022 vide Annexure-B1 vide letter bearing Ref.No.BDR/KPES/SACCS/S.C/2021-22 dated 21.04.2022 vide Annexure B2 only in respect of the Petitioner, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.<br><br>b)Same as Prayer-(a) in W.P.No.9069/2022 |
| 12. | W.P.No.11071/2021 | Issue a writ of Certiorari by setting aside or quashing the Government Order No.02 DCE 2020 dated 17.02.2020 vide Annexure-B only in respect of the Petitioners, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.<br><br>b)Same as Prayer-(a) in W.P.No.9069/2022.  |
| 13  | W.P.No.8049/2022  | a) Issue a Writ of Certiorari by setting aside or quashing order passed by the Regional Joint Director which is comes under 2nd Respondent   |

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|     |                  | <p>vide Annexure-B only in respect of the Petitioner, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p>   |
| 14. | W.P.No.7734/2022 | <p>a) Issue a Writ of Certiorari by setting aside or quashing the Government Order No:ED 251 DCE 2021 (E) dated 14.01.2022 vide Annexure-B only in respect of the Petitioner, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p>   |
| 15. | W.P.No.7552/2022 | <p>a) Issue a Writ of Certiorari by setting aside or quashing the Government Order No:ED 251 DCE 2021 (E) dated 14.01.2022 vide Annexure-B only in respect of the Petitioner, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p>   |
| 16. | W.P.No.7531/2022 | <p>a) Issue a Writ of Certiorari by setting aside or quashing the order dated 31.12.2021 vide Annexure B, the order dated 31.12.2021 vide Annexure B1, the order dated 31.03.2022 vide Annexure B2, the order dated 07.08.2021 vide Annexure B3, the order dated 31.12.2021 vide Annexure B4 and the order dated 05.08.2021 vide Annexure B5 in respect of the Petitioners whose retirement age is fixed as 60 years, till disposal of this WP.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p> |
| 17. | W.P.No.4939/2022 | <p>a) Issue a Writ of Certiorari by setting aside or quashing the Government Order No:ED 251 DCE 2021 (E) dated 14.01.2022 vide Annexure-B only in respect of the Petitioner, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p>   |

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| 18. | W.P.No.4087/2022  | <p>a) Issue a Writ of Certiorari by setting aside or quashing the Government Order No:ED 251 DCE 2021 (E) dated 14.01.2022 vide Annexure-B issued by Respondent No.1 Prl. Secretary to Govt., Education Department (Higher Education) only in respect of the Petitioner, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p>   |
| 19. | W.P.No.2344/2022  | <p>a) Issue a Writ of Certiorari setting aside or quashing the Government Order No. GE4A/CE5/1029833/21-22/160 dated 26.10.2021 vide Annexure-B only in respect of the Petitioner, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p>   |
| 20. | W.P.No.24520/2021 | <p>a) Issue a Writ of Certiorari by setting aside or quashing the order of Government of Karnataka through the Principal vide letter dated 17.12.2020 which has notified the date of retirement of Petitioner No.1 as 31.12.2021 vide Annexure-B only in respect of the Petitioner, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b) Issue a Writ of Certiorari by setting aside or quashing the order of Government of Karnataka through the Principal vide letter dated 11.10.2021 which has notified the date of retirement of Petitioner No.2 as 31.12.2022 vide Annexure B1 only in respect of the Petitioner, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>c) Issue a Writ of Certiorari by setting aside or quashing the Government Order No. ED 12 DCE 2021 dated 21.01.2021 vide Annexure-B2 only in respect of the Petitioner No.3, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p> |

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| 21. | W.P.No.7277/2020  | <p>a) Issue a writ of Certiorari by setting aside or quashing the Government Order No.02 DCE 2020 dated 17.02.2020 vide Annexure-B only in respect of the Petitioners, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p>  |
| 22. | W.P.No.7223/2020  | <p>a) Issue a writ of Certiorari by setting aside or quashing the Government Order No.02 DCE 2020 dated 17.02.2020 vide Annexure-B only in respect of the Petitioners, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p>  |
| 23. | W.P.No.8889/2020  | <p>a) Issue a writ of Certiorari by setting aside or quashing the Government Order No.02 DCE 2020 dated 17.02.2020 vide Annexure-B only in respect of the Petitioners, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p>  |
| 24. | W.P.No.22629/2021 | <p>a) Issue a Writ of Certiorari by setting aside or quashing the order of Government of Karnataka through the Principal vide letter in Ref No: 118/21-22 dated 02.11.2021 which has notified the date of retirement of the Petitioner No.1 as 31.12.2021 vide Annexure B only in respect of the Petitioner, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b) Issue a Writ of Certiorari by setting aside or quashing the order of (sic) Government of Karnataka through the Principal vide dated 03.12.2021 which has notified the date of retirement of Petitioner No.2 as 31.05.2022 vide Annexure-B1 only in respect of the Petitioner, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> |



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|     |  | <p>c) Issue a Writ of Certiorari by setting aside or quashing the order of Government of Karnataka through the Principal vide letter Ref No:09/ES/SE Cer/2021-2022 dated 30.11.2021 which has notified the date of retirement of Petitioner No.3 as 30.06.2022 vide Annexure-B2 only in respect of the Petitioner, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>d)Same as Prayer-(a) in W.P.No.9069/2022.</p>   |
| 25. | <p>W.P.No.8314/2020</p> <p>Petitioner No.60 is Physical Education Director</p> | <p>a) Issue a writ of Certiorari by setting aside or quashing the Government Order No.02 DCE 2020 dated 17.02.2020 vide Annexure-B only in respect of the Petitioners, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p>   |
| 26. | W.P.No. 10105/2022   | b)Same as Prayer-(a) in W.P.No.9069/2022.   |
| 27. | W.P.No.9787/2022   | <p>a) Issue a Writ of Certiorari by setting aside or quashing the Government Order No:ED 251 DCE 2021 (E) dated 14.01.2022 vide Annexure-B only in respect of the Petitioner, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p>  |
| 28. | W.P.No.9808/2022   | <p>a) Issue a Writ of Certiorari by setting aside or quashing the letter bearing Ref.No.SSACC/Commerce/SSC/Ret./2022-23/2734 dated 11.05.2022 issued by the Respondent No.6 to the Petitioner No.1 vide Annexure-B, letter bearing No. HKES/BVBDC/Aca/2022-23/ dated 11.05.2022 issued by the Respondent No.7 to the Petitioner No.2 vide Annexure B1, letter bearing Ref. No. SPJMB/DEGREE/2021-22/137 dated 13.05.2022 issued by the Respondent No.8 to</p> |

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|     |                  | <p>the Petitioner No.3 vide Annexure B2, letter bearing Ref.No.HKES/SVPDEG/56/2022-23 dated 16.05.2022 issued by the Respondent No.9 to the Petitioner No.4 vide Annexure-B3, letter bearing Ref.No. HKES/SVPWCK/dated 14.05.2022 issued by the Respondent No.10 to the Petitioner No.5 vide Annexure B4, letter bearing No. MES/Cc/Cert./2022-23/ dated 14.05.2022 issued by the Respondent No.11 to the Petitioner No.6 vide Annexure B5 and letter Bearing Ref.No. KLE/GIBIN/EST/2021-22/685 dated 14.02.2022 issued by the Respondent No.13 to the Petitioner No.7 vide Annexure B6, in respect of the Petitioner, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p> |
| 29. | W.P.No.9700/2022 | <p>a) Issue a Writ of Certiorari by setting aside or quashing the letter bearing Ref.No. KTL/Sci./RYK/Ret./2022-2023 dated 09.05.2022 issued by the 4th Respondent College vide Annexure-B, the letter bearing Ref.No. SMC/MPA/Rtd./2022-23/237 dated 09.05.2022 issued by the 8th Respondent vide Annexure B1, the letter bearing Ref.No. JSSD/76/2022-23 dated 11.05.2022 issued by the 9th Respondent vide Annexure-B2, the letter bearing Ref.No. SMC/KFP/RTD./2022-23/238 DATED 13.05.2022 issued by the 8th Respondent vide Annexure-B3 in respect of the Petitioner, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p>  |
| 30. | W.P.No.9024/2022 | <p>a) Issue a Writ of Certiorari by setting aside or quashing the letter bearing No: SI.No/S.A.C.C/68/2022-2023 dated 23.04.2022 issued by the college to the Petitioner No.1 vide Annexure-B and vide letter dated 22.04.2022 issued by the College of the Petitioner No.2 vide Annexure B1 in respect of the Petitioner,</p>  |

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|     |                   | <p>whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p>  |
| 31. | W.P.No.9370/2020  | <p>a) Issue a writ of Certiorari by setting aside or quashing the Government Order No.02 DCE 2020 dated 17.02.2020 vide Annexure-B only in respect of the Petitioners, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p>    |
| 32. | W.P.No.15360/2020 | <p>a) Issue a writ of Certiorari by setting aside or quashing the Government Order No.02 DCE 2020 dated 17.02.2020 vide Annexure-B only in respect of the Petitioners, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p>    |
| 33. | W.P.No.10369/2020 | <p>a) Issue a writ of Certiorari by setting aside or quashing the Government Order No.02 DCE 2020 dated 17.02.2020 vide Annexure-B only in respect of the Petitioners, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p>    |
| 34. | W.P.No.13880/2021 | <p>a) Issue a Writ of Certiorari by setting aside or quashing the Government Order No. ED 12 DCE 2021 dated 21.01.2021 vide Annexure B only in respect of the Petitioners whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p> |

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| 36. | W.P.No.15412/2021 | <p>a) Issue a Writ of Certiorari by setting aside or quashing the Government Order No. ED 12 DCE 2021 dated 21.01.2021 issued by Respondent No.1 vide Annexure-B only in respect of the Petitioner whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p> |
| 37. | W.P.No.8888/2020  | <p>a) Issue a writ of Certiorari by setting aside or quashing the Government Order No.02 DCE 2020 dated 17.02.2020 vide Annexure-B only in respect of the Petitioners, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b)Same as Prayer-(a) in W.P.No.9069/2022.</p>                             |
| 38. | W.P.No.13790/2021 | <p>a) Issue a writ of Certiorari by setting aside or quashing the Government Order No.ED 12 DCE 2021 dated 21.01.2021 vide Annexure-B in respect of the Petitioner, whose retirement age is fixed as 60 years, till the disposal of this Writ Petition.</p> <p>b) Same as Prayer-(a) in W.P.No.9069/2022.</p>                               |

### **BATCH - II**

2.2 In this batch of Writ Petitions, the petitioners who are working as Lecturers, Principals and Associate Professors under Government Aided Colleges or Colleges Affiliated to Universities and the prayers sought in the memorandum of Writ Petitions are as hereunder:-

| <b>Sl. No.</b> | <b>CASE No.</b>   | <b>PRAYER</b>   |
|----------------|-------------------|---|
| 1.             | W.P.No.10426/2022 | <p>(a) Issuance of writ of mandamus directing the respondents to continue services of the petitioners till the petitioners attain the age of 65 years in terms of Section 44(t) of Act 15 of 2019 (Annexure-H) on the principle of parity.</p> <p>(b) Direct the respondents to extend the age of superannuation as provided under the UGC Regulations dated 18.07.2018 and further extend the benefit of 7<sup>th</sup> Pay Commission Recommendation in terms of Government Order dated 02.11.2017; (Annexure-L)</p> <p>(c) Direct the Respondents not to discriminate in the matters of appointment including extending the age of superannuation, and not to discriminate among the Classroom Teachers based on the place of working. The benefit is extended to University Classroom Teachers under the Karnataka State University Act of 2000, and the same is applicable to all the Classroom Teachers working in a College affiliated under the Karnataka State Universities Act of 2000 on the principle of parity.</p> <p>(d) Direct the respondents to continue services of the petitioners till the petitioners attain the age of 65 years and accord all consequential benefits and not to enforce any State law in this regard.</p> <p>(e) Declare that the Government Order issued by the State Government including Clause-9 of Government Order dated 16.03.2019</p> |

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|    |                  | bearing No. ED 483 UNE 2017 (Annexure-N) as being void, inoperative and unenforceable in view of the Regulations framed under the Central Legislation which are binding on the petitioners and the respondents.  |
| 2. | W.P.No.9016/2022 | <p>a) Issue a Writ of Mandamus directing the respondents to extend the age of superannuation till the Petitioners attain the age of 65 years as provided by the UGC Regulations of 2018 (Annexure-D) and as per the letter of the UGC and Central Government order dated 23.03.2007, 04.04.2007 and 31.12.2008 (Annexures-E,F,G)</p> <p>b) Declare that the Government Order dated 16.03.2019 (Annexure-C) bearing No. ED 483 UNE 2017 to the extent of denial of age of superannuation of 65 Years as provided under Regulations of UGC dated 18.07.2018, is arbitrary, illegal and inoperative and void to the extent of Central Regulations of UGC Dated 18.07.2018 and violative of Article 14 read with 16 of the Constitution of India and issue directions to continue petitioners upto the age of 65 Years with salary and emoluments attached to the post held by the petitioners.</p> <p>(c) Direct the respondents to extend the age of superannuation till 65 Years as provided to the teachers working in the Colleges of Maharani Cluster Universities applying the doctrine of principle of parity.</p> |

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|    |                  | (d) Issue a writ of mandamus directing the respondents not to discriminate between the age of superannuation in the cadre of Assistant Professor, Associate Professor and Professor in which the petitioners are working.   |
| 3. | W.P.No.4089/2022 | <p>(a) Declare that the age of retirement of the petitioner should be enhanced from 62 years to 65 years and re-employment from 65 years to 70 years as per the UGC Regulations of 2018 published in the Official Gazette dated 18.07.2018 Annexure-E and the Central Government Order dated 23.03.2007 Annexure-H and 04.04.2007 Annexure-J and also as per the G.O. dated 02.11.2017 issued by MHRD Annexure-D and also as per Clause-(f) of the MHRD Notification dated 31.12.2018 Annexure-A issued by the Ministry of Higher Education and also as per Clause-(2.0) and (2.1) of UGC Regulations of 2018 dated 18.07.2018 Annexure-E and direct the respondents to continue the services of the petitioner upto the age of 65 years treating the age of superannuation as 65 years and not 62 years.</p> <p>(b) Declare that the age of retirement provided by the State Government is impliedly repealed and taken away and the age of superannuation at 62 years is void <i>ab initio</i> and unconstitutional and declare that the age of retirement of petitioner should be in terms of the Government Order of the Union of India dated 02.11.2017 Annexure-D, accepting the 7<sup>th</sup> Pay Commission recommendations.</p> |

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|  | <p>(c) Issue a writ of certiorari and declare Clause-9 of the Government Order dated 16.03.2019 is inoperative in view of the decision reported in (2015) 6 SCC 363 Kalyani Mathivanan v. K.V.Jayaraj.</p> <p>(d) Direct the respondents to bring the state law on age of retirement/superannuation in conformity with UGC Regulations with UGC Regulations of 2018 and declare the said State Government order dated 16.03.2019 is unenforceable and inoperative in view of the UGC Regulations of 2018 and MHRD letter dated 18.07.2018.</p> <p>(e) Direct the State Government respondents to incorporate the age of superannuation which was applicable to all the teachers in the respondent University and Colleges as provided under the UGC Regulation dated 18.07.2018 and 30.06.2010 Annexure-E and G and extend the benefit of age of superannuation to the petitioner.</p> <p>(f) Issue a writ of mandamus directing the respondents not to discriminate the petitioner on the age of retirement and to treat them on par with that of the teachers in AICTE and National Medical Council of India and extend the benefit of continuing the services of the petitioner till the end of academic year and further not to relieve the services of the petitioner on attending the age of superannuation of 62 years in the University.</p> |
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**BATCH - III**

2.3 The petitioners who are working in Colleges of the Universities and the prayers sought in memorandum of Writ Petitions are as hereunder:-

| <b>Sl. No.</b> | <b>CASE No.</b>   | <b>PRAYER</b>   |
|----------------|-------------------|---|
| 1.             | W.P.No.13728/2022 | <p>a) Issue a Writ of Mandamus directing the respondents to continue the services of the Petitioner till the Petitioner attain the age of 65 years in terms of Section 44(t) of Act 15 of 2019 on the principle of parity. As the State Legislature has extended the age of faculty of Maharani's Cluster University and Constituent Colleges, the similar benefit is also to be extended to the teachers of Mysore University.</p> <p>b) Direct the Respondents to extend the age of superannuation as provided under the UGC Regulations dated 18.07.2018 (Annexure G) and further extend the benefit of the 7th CPC in terms of the G.O. dated 02.11.2017 (Annexure-F).</p> <p>c) Direct the Respondents not to discriminate in matters of extending the age of superannuation, and not to discriminate among the Classroom Teachers based on the place of working. The benefits extended to University Classroom Teachers under Karnataka State University Act and the same is to be made applicable to all the Classroom Teachers working in a College affiliated under the Karnataka State University Act, 2000 on the principle of parity.</p> <p>d) Direct the Respondents to continue services of the Petitioner till the attainment of age of</p> |

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|    |                   | <p>65 years and accord all consequential benefits.</p> <p>e) Declare that any GO issued by the State Government including the Clause 9 of the GO 16.03.2019 (Annexure H) as void, inoperative and the same is unenforceable in view of the regulation framed under the Central Legislature which are binding on the Petitioner and Respondents.</p>   |
| 2. | W.P.No.11879/2022 | <p>a) Issue a Writ of Mandamus directing the Respondents to continue the services of the Petitioner till the Petitioner attain the age of 65 Years in terms of Section 40(t) of Act 15 of 2019 on the principle of parity.</p> <p>b) Direct the respondents to extend the age of superannuation as provided under the UGC Regulations dated 18.07.2018 and further extend the benefit of the 7th Pay Commission Recommendation in terms of the GO dated 02.11.2017 bearing No:1-7/2015-U.T1(1) vide (Annexure L).</p> <p>c) Direct the Respondents not to discriminate in matters of appointment including extending the age of superannuation, and not to discriminate among the Classroom Teachers based on the place of working. The benefit is extended to University Classroom teachers under the Karnataka State University Act of 2000 and the same is applicable to all Classroom Teachers working in affiliated Institutions under Karnataka State University Act of 2000 on principle of parity.</p> <p>d) Direct the Respondents to continue the services of petitioners till the attainment of age of 65 years and accord all consequential benefits.</p> |

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|    |                   | <p>e) Declare that any GO issued by the State Government including the Clause 9 of the GO 16.03.2019 bearing No. ED483UNE 2017 (Annexure-M) as void, inoperative and the same is unenforceable in view of the regulation framed under the Central Legislature which are binding on the Petitioner and Respondents.</p>   |
| 3. | W.P.No.12953/2021 | <p>(a) Declare that, the Government Order dated 15.10.2009 (Annexure-M) fixing the age of superannuation as 62 years for Universities of Agricultural Science is inconsistent with the recommendations made by the pay review committee which has been accepted by the Ministry of HRD vide letter dated 02.11.2017 (Annexure-E), 31.01.2018 (Annexure-H) and declare that the G.O. dated 15.10.2009 (Annexure-M) is <i>void ab initio</i> and inoperative to the extent of the regulations framed by the UGC and declare that, the Government Order dated 15.10.2009 (Annexure-M) is unenforceable against the Petitioners and the same may be read down subject to the age of retirement fixed by the Central Government and UGC regulations.</p> <p>(b) Issue a Writ of Mandamus directing the Respondents to continue the service of the Petitioners upto the age of 65 years and to grant all consequential benefits and declare that the petitioners are entitled for retirement upto the age of 65 years and the respondents have no power to relieve the services of the petitioners on attaining the age of 62 years and restrain the respondents from enforcing any age of superannuation or retirement in terms of KCSR rules and the GO dated 15.10.2009 (Annexure-M).</p> <p>(c) Direct the State Government respondents to incorporate the age of superannuation</p> |

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|  |  | <p>which was applicable to all the teachers in the Universities and Colleges as provided under the UGC regulations of 2010 (Annexure-N) and the Government also should abide by the regulations framed by the UGC, 2018 (Annexure-F) and extend the benefit of age of superannuation to the Petitioner.</p> <p>(d) Further declare that, the age of retirement of the Petitioners should be enhanced from 62 years to 65 years and re-employment from 65 years to 70 years as per the UGC regulations, 2018 (Annexure-F) and in terms of the Central Government order dated 23.03.2007 (Annexure-K), 04.04.2007 (Annexure-J) and also as per the GO dated 02.11.2017 (Annexure-E), 31.12.2008 (Annexure-L) issued by the Ministry of Higher Education and also as per UGC regulations dated 18.07.2018 (Annexure-F) and direct the Respondents to continue the services of the Petitioner upto the age of 65 years treating the age of superannuation as 65 years and not 62 years.</p> <p>(e) Declare that, the age of retirement provided by the state government is impliedly repealed and taken away and fixing the age of superannuation at 62 years is void <i>ab initio</i> and declare that, the age of retirement of the Petitioner should be in terms of the letter of the Union of India dated 02.11.2017 (Annexure-E) and in terms of the letter dated 31.12.2008 (Annexure-L) and in accordance of the UGC regulations dated 18.07.2018 (Annexure-F) should be 60 to 65 years and reemployment from 65 to 70 years and grant all consequential benefits in terms of the UGC regulations of 2018 (Annexure-F).</p> <p>(f) Issue a writ of mandamus directing the respondents not to discriminate the petitioners in the age of retirement and threat them on</p> |
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|    |                   | <p>par with that of the teachers in the AICTE and National Medical Council of India including the State University teachers and teachers employed in Deemed Universities and extend the benefit of not relieving the services in the middle of the academic year to the Petitioner also.</p>   |
| 4. | W.P.No.13047/2021 | <p>(a) Declare that the Government Order dated 15.10.2009 (Annexure-L) fixing the age of superannuation as 62 years for Universities of is inconsistent with the recommendations made by the Pay Review Committee which has been accepted by the Ministry of HRD vide letter dated 02.11.2017 (Annexure-D), 31.01.2018 (Annexure-G) and declare that the GO dated 15.10.2009 (Annexure- L) is void <i>ab initio</i> and inoperative to the extent of the regulations framed by the UGC and declare that, the Government Order dated 15.10.2009 (Annexure-L) is unenforceable against the Petitioners and the same may be read down and declare the same to be subject to the age of retirement fixed by the Central Government and the UGC regulations.</p> <p>(b) Issue a Writ of mandamus directing the respondents to continue the service of the Petitioners upto the age of 65 years and to grant all consequential benefits and declare that the petitioners are entitled for retirement upto the age of 65 years and the Respondents have no power to relieve the services of the Petitioners on attaining the age of 62 years and restrain the Respondents from enforcing any age of superannuation or retirement in terms of KCSR Rules and the GO dated 15.10.2009 (Annexure-L).</p> <p>(c) Direct the State Government respondents to incorporate the age of superannuation which was applicable to all the teachers in the</p> |

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|  |  | <p>Universities and Colleges as provided under the UGC regulations of 2010 (Annexure-M) and the Government also should abide by the regulations framed by the UGC, 2018 (Annexure-E) and extended the benefit of age of superannuation to the Petitioners.</p> <p>(d) Further declare that, the age of retirement of the Petitioners should be enhanced from 62 years to 65 years and re-employment from 65 to 70 years as per the UGC regulations, 2018 (Annexure-E) and in terms of the Central Government order dated 23.03.2007 (Annexure-J), 04.04.2007 (Annexure-H) and also as per the GO dated 02.11.2017 (Annexure-D), 31.12.2008 (Annexure-K) issued by the Ministry of Higher Education and also as per UGC regulations dated 18.07.2018 (Annexure-E) and direct the Respondents to continue the services of the Petitioner upto the age of 65 years treating the age of superannuation as 65 years and not 62 years.</p> <p>(e) Declare that, the age of retirement provided by the State Government is impliedly repealed and taken away and the age of superannuation at 62 years is void <i>ab initio</i> and declare that the age of retirement of the Petitioner should be in terms of the letter of the Union of India dated 02.11.2017 (Annexure-D) and in terms of the letter dated 31.12.2008 (Annexure-K) and in accordance of the UGC regulations dated 18.07.2018 (Annexure-E) should be 60 years to 65 years and re-employment from 65 years to 70 years and grant all consequential benefits in terms of the UGC regulations of 2018 (Annexure-E).</p> <p>(f) Issue a writ of mandamus directing the respondents not to discriminate as regards the petitioners in the age of retirement and treat them on par with that of the teachers in the</p> |
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|    |                  | AICTE and National Medical Council of India including the State University teachers and teachers employed in Deemed Universities and extend the benefit of not relieving the services in the middle of the academic year to the petitioners also.  |
| 5. | W.P.No.1278/2022 | <p>(a) Declare that, the age of retirement of the Petitioner should be enhanced from 62 years to 65 years and re-employment from 65 years to 70 years as per the UGC Regulations, 2018 (Annexure K) and the Central Government order dated 23.03.2007 (Annexure N) and 04.04.2007 (Annexure P) and also as per the G.O. dated 02.11.2017 (Annexure J), 31.12.2008 (Annexure L) issued by the Ministry of Higher Education and also as per UGC regulations of 2018 dated 18.06.2018 (Annexure K) and direct the Respondents to continue the services of the Petitioner upto the age of 65 years treating the age of superannuation as 65 years and not 62 years.</p> <p>(b) Declare that, the age of retirement provided by the state government is impliedly repealed and taken away and the age of superannuation at 62 years is void <i>ab initio</i> and declare that, the age of retirement of the Petitioner should be in terms of the letter of the Union of India dated 02.11.2017 (Annexure J) and in terms of the letter dated 31.12.2008 (Annexure L) and in accordance of the UGC regulations dated 18.06.2018 (Annexure K) should be enhanced from 62 years to 65 years and reemployment from 65 years to 70 years and grant all consequential benefits in terms of the UGC regulations of 2018 (Annexure K).</p> <p>(c) Issue a writ of certiorari and declare Clause-9 of the Government Order dated 16.03.2019 as inoperative in view of <i>Kalyani</i></p> |

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|    |                  | <p><i>Mathivanan v. K.V. Jeyaraj, (2015) 6 SCC 363.</i></p> <p>(d) Direct the Respondents to bring the age of superannuation in conformity with UGC, in terms of the Central Government Order dated 16.03.2019.</p> <p>(e) Direct the State Government respondents to incorporate the age of superannuation which was applicable to all the teachers in the Universities and Colleges as provided under the UGC regulations of 2018 and 2010 (Annexures K &amp; M) and direct the Government to abide by the regulations framed by the UGC and extend the benefit of age of superannuation to the Petitioner.</p> <p>(f) Issue a writ of mandamus directing the respondents not to discriminate as regards the petitioners in the age of retirement and treat them on par with that of the teachers in the AICTE and National Medical Council of India including the State University teachers and teachers employed in Deemed Universities and extend the benefit of not relieving the services in the middle of the academic year to the Petitioner also.</p> |
| 6. | W.P.No.1579/2022 | <p>(a) Declare that, the age of retirement of the Petitioner should be enhanced from 62 years to 65 years and re-employment from 65 years to 70 years as per the UGC Regulations, 2018 (Annexure K) and the Central Government order dated 23.03.2007 (Annexure-N) and 04.04.2007 (Annexure P) and also as per the GO dated 02.11.2017 (Annexure-J), 31.12.2008 (Annexure L) issued by the Ministry of Higher Education and also as per UGC regulations of 2018 dated 18.06.2018 (Annexure K) and direct the Respondents to continue the services of the Petitioner upto the age of 65 years treating the age of superannuation as 65 years and not 62 years.</p>   |



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|  | <p>(b) Declare that, the age of retirement provided by the state government is impliedly repealed and taken away and the age of superannuation at 62 years is void <i>ab initio</i> and declare that, the age of retirement of Petitioner should be in terms of the letter of the Union of India dated 02.11.2017 (Annexure J) and in terms of the letter dated 31.12.2008 (Annexure L) and in accordance of the UGC regulations dated 18.06.2018 (Annexure K) should be 62 to 65 years and reemployment from 65 to 70 years and grant all consequential benefits in terms of the UGC regulations of 2018 (Annexure K).</p> <p>(c) Issue a writ of certiorari and declare Clause- 9 of the Government Order dated 16.03.2019 as inoperative in view of <i>Kalyani Mathivanan v. K.V. Jeyaraj, (2015) 6 SCC 363</i>.</p> <p>(d) Direct the respondents to bring it in conformity with UGC, in terms of the central Government Order dated 16.03.2019</p> <p>(e) Direct the State Government respondents to incorporate the age of superannuation which was applicable to all the teachers in the Universities and Colleges as provided under the UGC regulations of 2018 and 2010 (Annexure K &amp; M) and direct the Government to abide by the Regulations framed by the UGC and extend the benefit of age of superannuation to the Petitioner.</p> <p>(f) Issue a writ of mandamus directing the respondents not to discriminate as regards Petitioners in the age of retirement on par with that of the teachers in the AICTE and National Medical Council of India including the State University teachers and teachers employed in Deemed Universities and extend the benefit of</p> |
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|    |                  | not relieving the services in the middle of the academic year to the Petitioners also.  |
| 7. | W.P.No.9011/2022 | <p>(a) Issue writ of mandamus, directing the respondents to continue the services of the petitioners till the end of the academic year as per Clause 2 of the STATUTE GOVERNING RE-EMPLOYMENT OF RETIRED TEACHERS TILL THE END OF ACADEMIC YEAR dated (Annexure G), notwithstanding the fact that the Petitioner has reached the age of superannuation;</p> <p>(b) Declare that as far as the age of superannuation is concerned, that would be subject to the result of W.P. No. 13047/2021 (S Res) (Annexure E);</p> <p>(c) Direct the Respondent No.8 to pay the salary once the Petitioner has been assigned the duties as Chemistry lecturer till the end of the academic year;</p>  |
| 8. | W.P.No.9788/2022 | <p>(a) Issue a Writ of Mandamus directing the Respondents to continue the services of the Petitioners till the Petitioners attain the age of 65 years in terms of Section 40(t) of Act 15 of 2019 on the Principle of Parity as per Annexure-C;</p> <p>(b) Direct the Respondents to extend the age of superannuation as provided under the UGC Regulation dated 18.07.2018 and further extend the benefit of the 7th Pay Commission Recommendation in terms of the Government Order dated 02.11.1017;</p> <p>(c) Direct the Respondents not to discriminate in the matters of appointment including extending the age of superannuation, and not to discriminate among the Classroom Teachers based on the place of working. The benefit</p> |

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|    |                   | <p>extended to University Classroom Teachers: under the Karnataka State University Act of 2000, and the same is to be made applicable to all the Classroom Teachers working in a College affiliated under the Karnataka State Universities Act of 2000 on the principle of parity.</p> <p>(d) Direct the Respondents to continue services of the Petitioners till the Petitioners attain the age of 65 years and accord all consequential benefits and not to enforce any State law in this regard.</p> <p>(e) Declare that any Government Order issued by the State Government including the Clause 9 of Government Order Bearing no EO 483 E 2017 Bengaluru dated. 16.08.2019 (ANNEXURE M) as being void inoperative and the same is unenforceable in view the regulation framed under the Central Legislature which are binding on the Petitioners and Respondents.</p> |
| 9. | W.P.No.12373/2022 | <p>(a) Declare that, the age of retirement of the Petitioner should be enhanced from 62 years to 65 years and re-employment from 65 to 70 years as per the UGC Regulations, 2018 (Annexure P) and the Central Government order dated 23.03.2007 (Annexure-S) and 04.04.2007 (Annexure T) and also as per the GO dated 02.11.2017 (Annexure N), 30.06.2010 (Annexure Q) issued by the Ministry of Higher Education and also as per UGC regulations of 2018 dated 18.06.2018 (Annexure-P) and direct the Respondents to continue the services of the Petitioner upto the age of 65 years treating the age of superannuation as 65 years and not 62 years.</p> <p>(b) Declare that, the age of retirement provided by the state government is impliedly</p>   |

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|     |                  | <p>repealed and taken away and the age of superannuation at 62 years is void <i>ab initio</i> and declare that, the age of retirement of the Petitioner should be in terms of the letter of the Union of India dated 02.11.2017 (Annexure N) and in terms of the letter dated 31.12.2008 (Annexure R) and in accordance of the UGC regulations dated 18.06.2018 (Annexure P) should be enhanced from 62 years to 65 years and reemployment from 65 years to 70 years and grant all consequential benefits in terms of the UGC regulations of 2018 (Annexure P).</p> <p>(e) Direct the State Government respondents to incorporate the age of superannuation which was applicable to all the teachers in the Universities and Colleges as provided under the UGC regulations of 2018 and 2010 (Annexure P &amp; R) and direct the Government to abide by the Regulations framed by UGC and extend the benefit of age of superannuation to the Petitioner.</p> <p>(f) Issue a writ of mandamus directing the respondents not to discriminate as regards the petitioner in the age of retirement and treat them on par with that of the teachers in the AICTE and National Medical Council of India including the State University teachers and teachers employed in Deemed Universities and extend the benefit of not relieving the services in the middle of the academic year to the Petitioner also.</p> |
| 10. | W.P.No.9471/2022 | <p>a) Issue a Writ of Mandamus directing the Respondents to continue the services of the Petitioner till the Petitioner attains the age of 65 years in terms of Section 40(t) of Act 15 of 2019 on the principle of parity. As the State Legislature has extended the age of teaching faculty of Maharani's Cluster University and</p>  |

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|     |                   | <p>constituent Colleges, the similar benefit is also to be extended to Maharaja's College Universities and its Constituent colleges since both Maharani and Maharaja's Colleges were established in the year 1960 by the then Maharajas.</p> <p>b) Direct the Respondents to extend the age of superannuation as provided under the UGC Regulations dated 18.07.2018 and further extend the benefit of the 7<sup>th</sup> Pay Commission recommendation in terms of the GO dated 02.11.2017.</p> <p>c) Direct the respondents not to discriminate in the matters of extending the age of superannuation, and not to discriminate among the Classroom Teachers based on the place of working. The benefit extended to University Classroom teachers under KSU Act 2000 and the same is to be made applicable to all the classroom teachers working in a college under the KSU Act 2000.</p> <p>d) Direct the Respondents to continue services of the Petitioners till the attainment the age of 65 year and accord all consequential benefits and not to enforce any State law in this regard.</p> <p>e) Declare that any G.O. issued by the State Government including the Clause 9 of the G.O. 16.03.2019 (Annexure-N) as void, inoperative and the same is unenforceable in view of the regulation framed under the Central Legislature which are binding on the Petitioner and Respondents.</p> |
| 11. | W.P.No.13367/2022 | a) Issue a writ of mandamus directing the respondent to continue the services of the petitioner till the petitioner attains the age of 65 Years in terms of Section 40(t) of Act 15 of   |

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|  |  | <p>2019 Annexure-L on the principle of parity. As the State Legislature has extended the age of faculty of Maharani's Cluster University and constituent Colleges, the similar benefit is also to be extended to the Teachers of Mysore University.</p> <p>b) Direct the respondents to extend the age of superannuation as provided under the UGC Regulation dated 18.07.2018 Annexure-J and further extend the benefit of the 7<sup>th</sup> Pay Commission recommendation in terms of the Government Order dated 02.11.2017 Annexure-H.</p> <p>c) Direct the respondents not to discriminate in the matters of extending the age of superannuation, and not to discriminate among the classroom teachers based on the place of working. The benefit extended to University Classroom teachers under the Karnataka State University Act of 2000, and the same is to be made applicable to all the Classroom Teachers working in a College affiliated under the Karnataka State Universities Act of 2000 on the principle of parity.</p> <p>d) Direct the respondents to continue services of the petitioner till the petitioner attain the age of 65 Years and accord all consequential benefits and not to enforce any State law in this regard.</p> <p>e) Declare that any Government Order issued by the State Government including the Clause 9 of the Government Order 16.03.2019 (Annexure-K) as void, inoperative and the same is unenforceable in view the regulation framed under the Central Legislature which are binding on the petitioner and the respondents.</p> |
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**3. CONTENTIONS OF PARTIES:-****3.1. BATCH - I****RESTRICTING ENHANCEMENT OF AGE OF SUPERANNUATION FROM 60 YEARS TO 62 YEARS ONLY TO TEACHING COMMUNITY OF UNIVERSITIES DRAWING UGC PAY SCALES.**

The validity of the Government Order No.ED 37 UNE 2009(P), Bangalore dated 15.10.2009, insofar as enhancement of age of superannuation of Teaching Community of Universities drawing UGC Scales from existing 60 Years to 62 Years, while continuing the age of superannuation for other Teaching Community to be 60 Years is called in question in this batch of Writ Petitions.

**A. CONTENTIONS OF PETITIONERS:-**

(i) In this batch of Writ Petitions, the petitioners who belong to the Teaching Community other than the Government Colleges and Universities have assailed the increase in age of superannuation only to those staff of Universities/Government Colleges from 60 Years to 62

Years, while continuing the age of superannuation to 60 Years in other Educational Institutions.

(ii) It is contended that the revised UGC Pay Scale was extended to the Teaching Staff of even Government Aided Colleges but there was discrimination only as regards the age of superannuation and hence the petitioners have sought for parity in the age of superannuation as well.

(iii) The petitioners have contended that the appointment of Teaching Faculty both in the Universities and Government Colleges on one hand and Aided Colleges on the other hand was by the Government and the Service Conditions, Recruitment, Pay Scales, Increment and Academic Performance indicators for placement, are all governed by the UGC Guidelines which are uniform. Accordingly, it is contended that the disparity in age of superannuation was arbitrary.

(iv) All the Educational Institutions registered under Section 12B of the UGC Act, 1956 ought to be treated



similarly. Once the Grant is received from Central Government, uniformity is required to be maintained even as regards the staff of Government Aided Institutions which ought to be on par with the faculties in Government Institutions.

(v) In terms of UGC Regulations of 2010 and 2018, the entire Scheme of Revision of Pay Scale together with all conditions laid down by UGC and other Guidelines are required to be implemented for the State Government and Universities as a 'Composite Scheme' without any modification.

(vi) The Regulations passed by UGC cannot be treated only as recommendatory but must be construed as being mandatory.

(vii) The State of Karnataka having adopted the UGC Scheme, the UGC Regulations must be mandatorily implemented without any modification.

(viii) The provision of Rules under Article 309 of the Constitution of India are only temporary and are brought about to hold the field till provisions are made by or under an Act of the appropriate Legislature relating to the recruitment and conditions of service. Once the Regulations have been framed under the Central Act, same would be operative *qua* the Colleges/Institutions which would fall within the ambit of the said Regulations and the Rules framed under the Proviso to Article 309 of the Constitution of India would have to give way to the Regulations in case of any conflict.

(ix) The State Legislation being repugnant to the Central Legislation would be inoperative by virtue of Article 254(2) of the Constitution of India, as the State law encroaches upon Entry-66 of the Union List.

(x) The judgment in **Kalyani Mathivanan v. K.V.Jeyaraj and Others**<sup>1</sup> (*Kalyani Mathivanan*) by the Apex Court clearly distinguishes between the States which

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<sup>1</sup> (2015) 6 SCC 363

adopt UGC Regulations and others and stipulates that the States which have adopted the UGC Regulations have to mandatorily follow them.

(xi) The petitioners claim that as regards Teachers employed in the Universities and Government Colleges, the age of superannuation is enhanced to 62 Years, while insofar as Affiliated Colleges, whether Aided or Unaided, the age of retirement being only 60 Years and accordingly is discriminatory and ought to be enhanced to 62 Years.

**B. CONTENTIONS OF RESPONDENT - STATE**

(i) The State Government has accepted only that part of UGC recommendation with regard to the revision of UGC Pay Scales to the Teaching Community working in Government and Private Aided Colleges but the UGC recommendations insofar as superannuation is not accepted by the State Government.

(ii) Though UGC Pay Scales are applicable to the entirety of Teaching Community, other Service Conditions

like superannuation/retirement age, probationary period, pensionary benefits and the like are governed by the State Government Rules.

(iii) The Ministry of Human Resources Department (MHRD) has framed a Scheme for revision of Pay of Teachers and in view of the shortage of Teachers in Universities, the age of superannuation was enhanced to 65 Years. However, the State Government has made a provision for appointment of Guest Lecturers to bear the extra work load and accordingly, enhancing the age of superannuation is not required insofar as the Teaching Community of State Government/Universities are concerned.

(iv) In terms of Regulation 2.1.0 of UGC Regulations, 2010, Regulation 2.3.1 stipulates that revised Pay Scales and age of superannuation '**may**' also be extended to the Universities, Colleges and other Higher Educational Institutions. There is no categorical direction issued to enhance the age of retirement to 65 Years and accordingly,

the State Government has not adopted the same as the same is essentially a policy decision of the State Government.

(v) The Division Bench of this Court in **State of Karnataka and Others v. Dr.R.Halesha and Others**<sup>2</sup> (*Dr.R.Halesha*) has held that though the revision of Pay Scales prescribed by the UGC is mandatory, the enhancement of the age of superannuation was intended to be optional and only recommendatory and it is beyond the powers of the Court to issue a writ for its observance. This judgment of the Division Bench was upheld by the Apex Court while referring to the case of **Jagdish Prasad Sharma and Others v. State of Bihar and Others**<sup>3</sup> (*Jagdish Prasad Sharma*). The Apex Court has held that the recommendations by the UGC need not be extended directly and it is left to the States to take a conscious decision on account of the financial implications and consequences attached to such decisions.

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<sup>2</sup> W.A.No.5670/2011 & W.A.Nos.15681-15687/2011 decided on 09.11.2011.

<sup>3</sup> (2013) 8 SCC 633

(vi) The Teachers in Universities and Colleges under the State Government are governed by a different set of Acts and Rules. The University Teachers are governed by the Karnataka State Universities Act, 2000 ('KSU Act, 2000') and the statutory Rules framed by the respective Universities, while the Government Colleges are governed by the respective Cadre and Recruitment Rules. The Teachers of Aided Institutions are governed by the Karnataka Education Act, 1983 ('KEA Act, 1983') read with the Karnataka Educational Institutions (Collegiate Education) Rules 2003 [KEI (Collegiate Rules) 2003].

(vii) The method of recruitment and the nature of employment are different for the above categories and accordingly, there is no parity with respect to the Staff working in State Government Colleges and Universities on the one hand and the Staff working in Government Aided Institutions on the other hand, which aspect has been rightly noticed in ***Dr.R.Halesha (supra)***.

(viii) The recommendation of UGC made in Clause-8(f) of Appendix-I to UGC Regulations 2010 regarding the age of superannuation, is a matter to be decided by the State Government in light of financial burden which is a policy decision.

(ix) It is submitted that the age of superannuation is enhanced to 62 Years only in respect to Teaching Community of Universities drawing UGC Pay Scales and the age of superannuation of Teaching Community in Private Aided Colleges and Government Colleges would continue to be 60 Years.

### **3.2 BATCH - II**

**THE CLAIM OF PETITIONERS SEEKING ENHANCEMENT OF AGE OF SUPERANNUATION FROM 60 YEARS TO 65 YEARS AS REGARDS THOSE WHO ARE WORKING IN AIDED/AFFILIATED COLLEGES:-**

#### **A. CONTENTIONS OF PETITIONERS:-**

(i) The petitioners are working as Principal/Associate Professors in Colleges which are

affiliated to Universities (Affiliated to Bangalore University/Mysore University/Mangaluru University, Kuvempu University) and/or in Aided Institutions.

The petitioner in W.P.No.4089/2022, who is working in Aided College has sought for enhancement of age of superannuation from 62 Years to 65 Years, though his age of superannuation is 60 Years.

(ii) The petitioners contend that the age of superannuation and re-employment of staff working in Aided Colleges shall be as notified by the State Government in terms of the Government Order dated 16.03.2019 which must be in accordance with UGC and ICAR Notifications. As UGC Regulations of 18.07.2018 prescribes the age of superannuation as 65 Years, the same ought to prevail over the stipulations in the State laws.

(iii) In terms of letters of MHRD dated 23.03.2007, 04.04.2007 and 31.12.2009, the age of superannuation is



to be governed in terms with Clause-2.0 of UGC Regulation dated 18.07.2018.

(iv) After 18.07.2018, as no Rule is framed by the State Government under Article 309 of the Constitution of India or under KEA Act, 1983 or in the amendment to KEI (Collegiate Education) Rules 2003, all Educational Institutions are governed by UGC Regulation dated 18.07.2018 and Clause-1.1 in the absence of statutory Rule governing the age of superannuation.

(v) The State Government while implementing UGC Regulations ought not to confine implementation only to Government Colleges/Universities, but must extend the same to Aided Institutions coming under the Department of Collegiate Education and accordingly, have to be governed by UGC Regulations of 18.07.2018.

(vi) The petitioners further claim that they are entitled to claim the benefit of age of superannuation upto 65 Years in terms of Clause 2.0 of UGC Regulation dated 18.07.2018.

(vii) The petitioners claim the benefit of age of superannuation as prescribed by MHRD in its letters dated 23.03.2007, 04.04.2007, 30.06.2010 and 02.11.2017.

(viii) It is submitted that under Section 40(t) of the KSU Act 2000, the age of superannuation is governed by the University statutes and accordingly, the Universities ought to make statutes in consonance with UGC Regulations and the same legal logic is to be extended to the constituent Colleges.

(ix) Reliance is placed on the judgment of Apex Court in **Jacob Thudipara v. State of Madhya Pradesh and Others<sup>4</sup> (Jacob Thudipara)** to contend that the teachers of Aided Colleges must be considered on par with the teachers in Government Colleges.

(x) The petitioners have also relied on the judgment in **Gambhirdan K. Gadhvi v. State of Gujarat and**

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<sup>4</sup> (2022) 7 SCC 764

**Others<sup>5</sup> (*Gambhirdan*)** to contend that the Regulations of UGC would prevail over the State Legislature.

(xi) The petitioners contend that in terms of the Regulations of Central Government dated 02.11.2017, the implementation of age of superannuation is mandatory in terms of Clause-16(h), which provides that the Regulations and Guidelines shall be implemented by State Government and Universities as a 'Composite Scheme.'

(xii) In terms of the recommendation of 7<sup>th</sup> Pay Commission, the age of superannuation shall be 65 Years.

(xiii) In terms of the judgment of Apex Court in ***Kalyani Mathivanan (supra)***, the State Legislations made under Entry-25 of List-3 must give way to the Central Legislation, i.e., UGC Act framed under Entry-66 of List-1 by way of Central Act being repugnant to the State Act.

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<sup>5</sup> (2022) 5 SCC 179

### **3.3. BATCH - III**

**THE CLAIM OF PETITIONERS WORKING AS  
PROFESSOR/ASSISTANT PROFESSOR IN  
UNIVERSITIES AND SEEK ENHANCEMENT OF THE AGE  
OF SUPERANNUATION FROM 62 YEARS TO 65 YEARS**

#### **A. CONTENTIONS OF PETITIONERS:-**

(i) The petitioners state that, in terms of Section 40(t) of KSU Act, 2000<sup>6</sup>, as the superannuation benefit as per UGC Guidelines has been extended for Teachers who opted for Maharani Cluster University or Mandya Unitary University, they are also entitled for the same benefit.

(ii) It is submitted that they are entitled for enhanced age of superannuation in terms of UGC Regulations of 18.07.2018 and the extension of benefit of 7<sup>th</sup> Pay Commission recommendation in terms of MHRD's letter dated 02.11.2017.

(iii) The petitioners have assailed Clause-9 of Government Order dated 16.03.2019 whereby the State

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<sup>6</sup> Act 15 of 2019

Government has been conferred power to notify the age of superannuation as regards teachers in Government/Aided Colleges and Universities in the State.

(iv) The letters of MHRD dated 04.04.2007, 23.03.2007 and 31.12.2008 passed by the Central Government has extended the age of superannuation to 65 Years and the petitioners working in Universities seek for parity.

(v) It is the contention of petitioners that as regards all Universities registered under Section 12B of the UGC Act, the State Government cannot bind the University insofar as the conditions of service and the Universities must be left with liberty to determine the conditions of service by way of making statutes in terms of UGC Regulations.

(vi) Reliance has been placed on the judgments of Apex Court in **Jacob Thudipara(supra)** and **NDMC v.**

**Dr.Ram Naresh Sharma<sup>7</sup> (Dr.Ram Naresh Sharma)** to contend that the classification between University Teachers vis-à-vis, lecturers in Cluster University is unintelligible.

(vii) In certain Universities like Bangalore University in light of reduced cadre strength, there is acute shortage of Teachers which has been taken note of in the 7<sup>th</sup> Pay Commission recommendation, wherein there is a recommendation to extend the age of superannuation from 62 Years to 65 Years and to consider re-employment till 70 Years and same benefit is to be extended to the University Teachers.

(viii) In the alternative, the petitioners claim that in terms of Clause-21.2 of statutes of Bangalore University and similar provision in the statute of Mysore University and Mangalore University, if a Teacher retires in the middle of Academic Year, such Teacher is entitled to continue till the end of the Academic Year.

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<sup>7</sup> Civil Appeal No.4578/2021

(ix) Other contentions which are raised is common in the batch of Teachers seeking enhancement of age of superannuation from 60 Years to 62 Years and 60 Years to 65 Years, including that State Government has no discretion to reduce the age of superannuation and must implement the UGC Scheme in its entirety as a 'Composite Scheme'; that in the absence of State Government framing any Regulation in accordance with mandate of Clause-1.2 of UGC Regulation dated 18.07.2018, the UGC Regulations should apply; that the recommendations of 7<sup>th</sup> Pay Commission having been accepted by the University/MHRD in terms of its letter dated 02.11.2017, the same is binding on all the State Government Colleges, Universities and Deemed Universities.

(x) It is submitted that the Government Order dated 15.10.2009 enhancing the age of superannuation only as regards Teaching Community of Universities drawing UGC Scales from 60 Years to 62 Years is inconsistent with UGC Regulations.

**B. CONTENTIONS OF RESPONDENT-UNIVERSITIES:-**

(i) The Universities are bound by the orders issued by the State Government and accordingly, in terms of Government Order of 16.10.2009, the age of superannuation should be at 62 Years.

(ii) The recommendations of Pay Review Committee would not be applicable, as the Universities constituted under the KSU Act, 2000 are funded by the Government of Karnataka and unless the Government resolves to adopt the Pay Review Committee recommendations insofar as the Universities are concerned, same cannot be extended.

(iii) In terms of the letter of MHRD dated 11.09.2019, the age of superannuation in Government/Aided Colleges and Universities in the State shall be in accordance with the Rules and orders issued and notified by the State Government.

(iv) The letter dated 04.04.2007 issued by UGC enhancing the age of retirement from 62 Years to 65 Years



is only applicable to the Teaching positions in Centrally funded Institutions and not applicable to the Universities formed under the KSU Act, 2000 or the Affiliated Colleges.

(v) In terms of the Government Order dated 16.03.2019, as per Clause-9, the superannuation in Government/Aided Colleges and Universities shall be in accordance with the orders issued and notified by the State Government from time to time and accordingly, it is the prerogative of the Government of Karnataka to notify regarding the age of superannuation.

(vi) The continuation of service till the end of Academic Year where an employee attains superannuation in the middle of an Academic Year, is at the discretion of the administration concerned depending on the Rules of the concerned Department and the eligibility condition in terms of the letter of State Government addressed to the Universities dated 29.11.2011.

**C. CONTENTIONS OF UGC:-**

The respondent - UGC has contested by filing common statement of objections in W.P.No.11605/2021. Though W.P.No.11605/2021 is de-linked from the batches of Writ Petitions, the common statement of objections filed would hold good as regards the remaining Writ Petitions .

(i) The direction of Central Government under Section 20 of the UGC Act is to be followed by the UGC and accordingly, UGC is bound by such directions.

(ii) As per the letter dated 14.08.2012, the Government of India through MHRD had issued a communication to all the State Education Secretaries stipulating that the conditions contained in the communication dated 31.12.2008 was relaxed as regards the States, while acknowledging that the age of superannuation is a policy matter of the State.

(iii) The condition of adoption of age of superannuation as 65 Years as requisite for purpose of

getting Central Aid has been withdrawn by the Government of India in terms of its communication dated 14.08.2012.

(iv) The communication of Central Government dated 02.11.2017 relating to the acceptance of 7<sup>th</sup> Central Pay Commission recommendations stipulates at para-12 that the existing provision of superannuation and re-employment would continue, meaning thereby, relaxation under the Government letter dated 14.08.2012 would continue.

(v) There is no automatic applicability of UGC Regulations, unless the States seek to adopt the Scheme specifically.

(vi) The legal contentions raised by the petitioners is no more *res integra*, as the questions have already been decided and position is settled in terms of the judgments of this Court in ***Dr.R.Halesha (supra), R.N.Bhaskar v. Union of India and Others***<sup>8</sup> (***R.N.Bhaskar, Dr.Chidananda P. Mansur v. Union of India and***

<sup>8</sup> W.P.No.10638/2021 a/w W.P.No.10628/2021 decided on 28.04.2022

**Others<sup>9</sup> (Dr.Chidananda P. Mansur)**. Further, the Apex Court in the case of **Jagdish Prasad Sharma (supra)** and **Dr.J.Vijayan and Others v. State of Kerala and Others<sup>10</sup> (Dr.J.Vijayan)** has reiterated the same position as noted above.

#### **4. LEGISLATIVE AND EXECUTIVE FRAMEWORK:-**

##### **UGC/CENTRAL AND STATE GOVERNMENT NOTIFICATIONS:-**

4.1. The letter of MHRD, Department of Higher Education vide F.No.1-19/2006-U.II dated 23.03.2007.-

It provides for enhancement in age of superannuation from 62 Years to 65 Years for Teaching positions in Centrally funded Institutions in Higher and Technical Education.

It also provides for reconsideration for re-employment beyond 65 Years upto the age of 70 Years against the sanctioned posts, if such posts are not filled up by the regular candidates. Such re-employment is to be made

<sup>9</sup> W.A.No.100198/2022 c/w W.P.No.101937/2022 decided on 01.06.2022

<sup>10</sup> Civil Appeal No.5037/2022

after screening of staff as per the extant guidelines of the UGC.

4.2. Letter of MHRD, Department of Higher Education vide No.1-32/2006-U.II/U.I(i) dated 31.12.2008.-

The said letter contains the Scheme of Revision of Pay of Teachers and equivalent cadres in Universities and Colleges following the revision of Pay Scale of Central Government Employees on the basis of recommendations of Sixth Central Pay Commission. There is a direction regarding enhancement of age of superannuation except as regards Librarians and Directors of Physical Education from 62 Years To 65 Years.

4.3. UGC Notification dated 30.06.2010.-

"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, 2010."

(a) Clause 2.1.0 provides that the Revised Pay Scales and other service conditions including the age of

superannuation in Central Universities and other Institutions maintained and/or funding by the UGC shall be strictly in accordance with the decision of Central Government, MHRD.

(b) Clause-2.3.1 provides that the revised Scales of Pay and age of superannuation as provided in Clause - 2.1.0 may be extended to the Universities, Colleges and other Higher Educational Institutions coming under the purview of State Legislature and maintained by the State Government, subject to implementation of the Scheme as a composite one in adherence to the terms and conditions laid down in MHRD Notification dated 11.05.2010 with all conditions specified by the UGC.

4.4. The letter of MHRD, Department of Higher Education vide No.F.1-7/2010-U.II dated 14.08.2012.-

In the said letter, the Central Government has relaxed certain conditions relating to adoption of the Scheme. The relevant extract is reproduced below:-

"2. Although this Scheme was essentially for Teachers in Central Universities, provisions of the Scheme could be made applicable by State Governments to State Universities and Colleges coming under the purview of the State Government, provided the State Governments adopt and implement the scheme as a composite scheme, including the enhanced age of superannuation and the regulations laid down by the UGC in this regard. The age of superannuation for teachers in Central Universities had been enhanced to 65 years vide this Ministry's letter No. 1-19/2006-U.II dated 23.03.2007, for those involved in classroom teaching.

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4. After taking into consideration the views expressed by several State Education Ministers during the Conference held in 2010 the Central Government has now decided to de-link the condition of enhancement of age of superannuation from the payment of Central share of 80% arrears to the States.

**5. Bearing in mind that the question of enhancement of age of retirement is exclusively within the domain of the policy making power of the State Governments, the issue of age of retirement has been left to the State Governments to decide at their level. The condition of enhancement of age of superannuation to 65 years as mentioned in this Ministry's letter dated 31.12.2008 may be treated as withdrawn, for the purpose of seeking reimbursement of central share of arrears to be paid to State University and College teachers. However, the others conditions as mentioned in the letters cited above shall continue to apply.**

**(emphasis supplied)**

4.5. Government Order No.ED 37 UNE 2009(P), Bangalore dated 15.10.2009.-

It provides for enhancement of age of superannuation of the Teaching Staff of the Universities drawing UGC Scale.

4.6. Government Order No.ED/483/UNE/2017 Bengaluru dated 16.03.2019.-

It provides that the age of superannuation of Teachers and other equivalent cadres in the Government/Aided Colleges and Universities shall be in accordance with Rules/Orders issued and shall be regulated as notified by the State Government from time to time. Further, if the situation warrants, necessary steps may be taken to re-employ the academic staff with prior approval of the State and shall be in accordance with the conditions stipulated by UGC/ICAR from time to time.

4.7. Letter of MHRD, Department of Higher Education vide No.1-07/2015-U.II(1) dated 02.11.2017.-

Clause-12 provides that the existing provision on superannuation and re-employment of Teachers shall continue.



#### 4.8. UGC Notification dated 18.07.2018.-

"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".

It provides that Pay Scales as notified by Government of India from time to time will be adopted by UGC and the staff may be re-employed on contract basis beyond the age of superannuation, upto the age of 70 Years.

4.9. The proceedings of the meeting held on 29.10.2021 at 11.00 a.m. at Raj Bhavan, in the presence of His Excellency Governor and Chancellor of Universities in Karnataka to decide about the demands of the Association of Teachers. With regard to enhancement of superannuation from 62 Years to 65 Years, it was discussed and decided that the Government would take a suitable decision.

**5. ANALYSIS:-****5.1 BATCH - I**

"Whether the Government Order dated 15.10.2009 enhancing the age of superannuation to the Teaching Community of Universities drawing UGC Scales from 60 Years to 62 Years, while continuing the age of superannuation to other Teaching Community to be at 60 Years is valid in law?"

(i) The contention of petitioners that even those working in Affiliated Colleges are to be treated on par with the Teaching Community drawing UGC Scales cannot be accepted, as the Teaching Community of the Universities drawing UGC Pay Scales form a distinct class of employees vis-à-vis other Teaching Community staff.

(ii)(a) The Teachers in Universities insofar as their recruitment is concerned are governed by the provisions of KSU Act 2000 and are also subject to the directions of the State Government. The recruitment is normally done by

the Board of Appointment and Selection as approved by the Syndicate.

(ii)(b) Insofar as the Teachers of Aided Institutions, their recruitment would be governed by the KEA Act, 1983 read with KEI (Collegiate Education) Rules, 2003. The recruitment is normally on the basis of recommendation of Selection Committee comprising of Members nominated by the Management of the College, Department of Collegiate Education and University.

(ii)(c) As regards the Teachers in Government Colleges, they are governed by the provisions of the Karnataka Civil Services Act, 1978 as well as the Rules framed in that regard and selection was earlier done by Karnataka Public Service Commission and presently is on the basis of competitive examinations conducted by Karnataka Examination Authority.

(ii)(d) Accordingly, the method of recruitment in each of the above categories is different and distinct as also the

conditions of service and the Teachers are governed by applicable legislations and there is no identical and uniform process of recruitment or conditions of service. This by itself would justify treating each of the categories as distinct and forming a separate Class which is categorized on the basis of differentia which is to be treated as intelligible in light of the distinctiveness pointed out above. In light of the same, having different age of superannuation for these distinct categories by itself cannot be assailed as being discriminatory.

Therefore, the method of recruitment and the administrative control of staff as regards the above categories being different, equating the said categories and seeking for uniform application of the UGC Regulations cannot be sought for.

(iii) The reliance on the judgment of Apex Court in ***Dr. Ram Naresh Sharma (supra)*** would not aid the petitioner, as the Apex Court has recorded a specific finding that Doctors in AYUSH and those under the Central Health

Scheme cannot be treated as separate categories, as both render service to patients and there was nothing to distinguish them. Accordingly, the Apex Court has held that the extended age of superannuation had to be extended to both the categories. However, in the present case, in light of the differences regarding service conditions, method of recruitment and applicability of different laws governing employees as pointed out in para-5.1(ii), clearly case is made out permitting the treatment of the Teaching Staff as separate and distinct categories and accordingly, extending the extended age of superannuation in one of the categories to all other categories cannot be insisted.

(iv)(a) This Court, in **Dr.R.Halesha and Others v. State of Karnataka and Others**<sup>11</sup> had issued a writ directing that the age of retirement of all Professors/Teachers in all Colleges in the State regardless of whether they are serving in Central Universities or Educational Institutions funded by Central Government/UGC

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<sup>11</sup> ILR 2011 KAR 4976 (W.P.Nos.13449-453/2011 dated 22.06.2011)

should be increased to 65 Years. The same was taken up in Writ Appeal<sup>12</sup> in **Dr.R.Halesha (supra)**.

(iv)(b) The Division Bench<sup>13</sup> took note of the law laid down by the Apex Court in **B.Bharat Kumar and Others v. Osmania University and Others**<sup>14</sup> (**B.Bharat Kumar**), wherein the Apex Court at para-14 has observed as follows:-

*"14. ...Plain reading of all these is clear enough to suggest that the Scheme was voluntary and it was upto the State Government to accept or not to accept the Scheme. Again, even if the State Government accepted a part of the Scheme, it was not necessary that all the Scheme as it was, had to be accepted by the State Government. In fact, the subsequent developments suggest that the State Government has not chosen to accept the Scheme in full inasmuch as it has not accepted the suggestions on the part of the UGC to increase the age of superannuation."*

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<sup>12</sup> W.A. No.5670/2011 & W.A.Nos.15676-15798/2011)

<sup>13</sup> Dr.R.Halesha (supra)

<sup>14</sup> (2007) 11 SCC 58

(iv)(c) The Division Bench<sup>15</sup> has further observed at para-16 as follows:-

*"16. ... 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". Similarly, there would be no point in going into the interpretation of the word "gamut" and to hold that once the State Government accepted a part of the Scheme, the whole Scheme had to be accepted by the same as such would, in our opinion, be an unnecessary exercise."*

(iv)(d) The Division Bench has also noted that the Apex Court in **B.Bharat Kumar (supra)** had applied the law laid down in **T.P.George v. State of Kerala**<sup>16</sup> (**T.P.George**). The observations of Division Bench at para-7 are as follows:-

*"7. ...*

*The contention of the appellant is that the State Government having accepted the UGC Scheme, and as the scheme provides for a*

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<sup>15</sup> Dr.R.Halesha (supra)

<sup>16</sup> (1992) Supp.(3) SCC 191.

*higher age of 60 years, once the State Government accepted the scheme, all the clauses of the scheme became applicable. It is not possible to accede to this contention. Firstly, as already stated the UGC Scheme does not become applicable because of any statutory mandate making it obligatory for the Government and the Universities to follow the same. Therefore the State Government had the discretion either to accept or not to accept the scheme. In its discretion it has decided to accept the scheme, subject to the one condition, namely, insofar as the age of superannuation is concerned, they will not accept the fixation of higher age provided in the scheme. The State Government having thus accepted the scheme in the modified form, the teachers can only get the benefit which flows from the scheme to the extent to which it has been accepted by the State Government and the concerned Universities. The appellant cannot claim that major portion of the scheme having been accepted by the Government, they have no right not to accept the clause relating to fixation of higher age of superannuation. That is a matter between the State Government on the one hand and the University Grants Commission on the other,*



*which was provided certain benefits by the scheme. It is for the University Grants Commission to extend the benefit of the scheme or not to extend the benefit of the scheme, depending upon its satisfaction about the attitude taken by the State Government in the matter of implementing the same. That is a matter entirely between the State Government on the one hand and the University Grants Commission on the other. **Teachers of the private institution concerned are governed by the statutes framed under the relevant statutory enactment. As long as the superannuation remains fixed at 55 years and as long as the State Government has not accepted the UGC's recommendation to fix the age of superannuation at 60 years, teachers cannot claim as a matter of right that they are entitled to retire on attaining the age of 60 years.***

**(emphasis supplied)**

(iv)(e) The Division Bench also took note of the contention regarding observation made in para-8(f)<sup>17</sup>, which provides that the age of superannuation for Teachers

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<sup>17</sup> letter of MHRD dated 31.12.2008

in Central Education Institutions having been enhanced to 65 Years, the Central Government had authorized the Central Universities vide letter dated 30.03.2007 to enhance the age of superannuation from 65 Years to 70 Years as regards Vice Chancellors.

(iv)(f) The Division Bench took note of Clause-(p)<sup>18</sup> relating to applicability of the Scheme which provided that the Scheme would be applicable to Teachers and other equivalent cadres of Library and Physical Education in all the Central Universities and the Colleges thereunder and the Institutions Deemed to be Universities whose maintenance expenditure was met by UGC.

(iv)(g) The Division Bench noted Clause-(v) of Clause(p)<sup>19</sup> which reads as hereunder:-

*"This Scheme may be extended to Universities, Colleges and other Higher Educational Institutions coming under the purview of State Legislature, provided State Governments wish to adopt and implement the*

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<sup>18</sup> letter of MHRD dated 31.12.2008

<sup>19</sup> letter of MHRD dated 31.12.2008

*Scheme subject to the following terms and conditions....."*

(iv)(h) The Division Bench noted that the Government of Karnataka, in its letter dated 31.12.2008 in terms of the Order No.ED 37 UNE 2009 (P), Bangalore dated 15.10.2009 had resolved as follows:-

*"10. Responding to the said letter dated 31.12.2008, the Government of Karnataka, in terms of its Order No. ED 37 UNE 2009 (P), Bangalore, dated: 15<sup>th</sup> October, 2009 passed the following Resolution:*

**PREAMBLE:**

*1) Government of India, vide its letter read above, has revised the pay scales of the teaching community of the Central Universities based on the recommendations of VI Central Pay Commission with effect from 01.01.2006. It is also decided to enhance the age of superannuation of teachers. Government of Karnataka has also examined this issue and has decided to enhance the age of superannuation from the existing 60 (sixty) to 62 (sixty two) years to the University teachers drawing UGC scales. Hence, this Government Order.*

GOVERNMENT ORDER No. ED 37 JUNE,  
2009, (P), BANGALORE,  
DATED 15<sup>TH</sup> OCTOBER, 2009

*In the circumstances explained in the preamble, Government of Karnataka are pleased to enhance the age of superannuation of teaching community of Universities drawing UGC scales from the existing sixty years to sixty two years with immediate effect. In respect of other teaching community the age of superannuation shall continue to be 60 years only."*

(v) Thus, it becomes clear as rightly observed by the Division Bench<sup>20</sup> that the decision of State Government was only to enhance the age of superannuation with respect to the community of Teachers in Universities who were entitled to UGC Scales, from existing 60 Years to 62 Years and the order dated 15.10.2009 clarifies that in respect of other Teaching Community, the age of superannuation shall continue to be 60 Years.

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<sup>20</sup> Dr.R.Halesha (supra)

(vi)(a) As regards the contention that UGC Scheme has to be adopted as a "Composite Scheme", the Division Bench<sup>21</sup> observed as follows:-

*"11. ... We are unable to be persuaded that this mandates an increase in age of superannuation applicable not only to Central Universities and Institutions funded by the Central Government/UGC, but also to all other Colleges under the respective State Governments. As we see it, the commitment of the Central Government is only for reimbursement of 80% of the additional financial expenses of the State Governments which come into play upon the State Governments making necessary budgetary allocation for the remaining 20%. The Scheme dated 31.12.2008 as noted in paragraph 8(p) thereof specifies that it is compulsorily "applicable to teachers and other equivalent cadres of Library and Physical Education in all the Central Universities and Colleges thereunder and the Institutions Deemed to be Universities whose maintenance expenditure is met by the UGC." There is no dispute that these directions have been complied with by the State of Karnataka. The letter of the UGC dated 30.09.2010 addressed to the Registrar, Indian Law Institute, New Delhi has to be read in context and if so done,*

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<sup>21</sup> Dr.R.Halesha (supra)

*it would be manifestly clear that the statement that the UGC Regulations are mandatory in nature are in light of the fact that the Indian Law Institute, New Delhi is a Deemed University. Had it been a College under a University, the position would be appreciably different."*

(vi)(b) The Division Bench has also observed at para-13 as hereunder:-

*"13. ...Furthermore, Clause-8(f) of the said Scheme dated 31.12.2008 also deals with "**age of superannuation**"; however, it is restricted once again to **Central Educational Institutions**. Thus, we are unable to locate the basis on which the opinion favoured by the Learned Single Judge can be predicated namely, that increase of age of superannuation has been made mandatory by the UGC for teachers of all the Universities and Colleges."*

(vii) The Division Bench<sup>22</sup> has concluded at para-18 as follows:-

*"18. ... We affirm the arguments of the Learned Additional Advocate General that whilst adherence to the revised pay-scales prescribed by the University Grant Commission is mandatory on all State*

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<sup>22</sup>Dr.R.Halesha (supra)

*Governments, increase of age of superannuation was intendedly optional and only recommendatory. Therefore, whatever be the wisdom behind the reluctance of the Government of Karnataka for adherence to the suggested age of superannuation, it is beyond our province to issue a writ for its observance."*

The order of the Division Bench<sup>23</sup> came to be challenged before the Apex Court in SLP (Civil) No.21921/2013 and came to be dismissed.

(viii) It is necessary to note that the Division Bench<sup>24</sup> had referred to the judgment in **State of Bihar v. Prof.Dr.Jagdish Prasad Sharma**<sup>25</sup>, wherein it was held that Regulation relating to the age of superannuation of staff of Centrally funded Educational Institutions could not be extended to University Teachers as well. The said order of the Division Bench eventually came to be upheld by the Apex Court in **Jagdish Prasad Sharma**<sup>26</sup>. The observations made by the Apex Court are as follows:-

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<sup>23</sup> Dr.R.Halesha (supra)

<sup>24</sup> Dr.R.Halesha (supra)

<sup>25</sup> (2010) 3 PLJR 318,

<sup>26</sup> (2013) 8 SCC 633

*"77. 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 List III Entry 25. 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 List III Entry 25, both would have to be treated on a par with each other [**Ed.:** But see Articles 254(1) and 246 of the Constitution.] . In the absence of any such legislation by the Central Government under List III Entry 25, the regulations framed by way of delegated legislation have to yield*



*to the plenary jurisdiction of the State Government under List III Entry 25.*

*78. We are then faced with the situation where a composite scheme has been framed by 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 1-4-2010, 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."*

(ix)(a) Insofar as the reliance of the petitioner on the decision of Apex Court in **R.S.Sohane v. State of Madhya**

**Pradesh and Others**<sup>27</sup> (**R.S.Sohane**), the judgment cannot be held to be laying down a proposition that those Teaching Staff in Private Aided Educational Institutions are entitled to be treated on par with teaching staff of Government Colleges insofar as the age of superannuation is concerned.

(ix)(b) In fact, it is to be noted that in **R.S.Sohane (supra)**, the Apex Court considered Clause-26 of Statute 28 (College Code) and the same reads as hereunder:-

*"It was appropriate to maintain the age of superannuation of Principals, Teachers and Employees of Private Colleges on a par with the age of superannuation of Principals, Teachers and Employees of government colleges".*

(ix)(c) In light of such stipulation, it was held that the State Government could not contend that they will not extend the benefit of enhancement of age of

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<sup>27</sup> (2019) 16 SCC 796

superannuation upto 65 Years even as regards the Teachers working in Private Aided Colleges.

(ix)(d) Accordingly, the enhanced age of superannuation of 65 Years was extended to the Teaching Staff of Private Aided Institutes as well, which was only in light of Clause-26 of Statute 28 (College Code). Hence, no general principle regarding the treatment on parity as regards Teachers in Government Institutions vis-à-vis those working in Private Aided Institutions can be stated to have been laid down in ***R.S.Sohane (supra)***.

(x) In ***Jacob Thudipara (supra)***, the judgment was passed by Apex Court relying on the decision in ***R.S.Sohane (supra)*** and it is relevant to note that the case also arose from the State of Madhya Pradesh and relates to identical factual matrix where staff in Private Aided Educational Institution were claiming enhanced age of superannuation as was with respect to the Teaching Staff in Government Colleges.

Accordingly, as distinguished above, the Apex Court has not laid down any general principle which can be relied on by the petitioners.

(xi) Accordingly, the position is clear and it is for the State to take an appropriate decision as regards acceptance of the age of superannuation as provided for under the UGC Scheme.

(xii) It is also necessary to note that the age of retirement of Teaching Staff in Government Institutions is admittedly 60 Years. Rule 25<sup>28</sup> of K.E.I. (Collegiate Education) Rules, 2003 provides that the age of retirement for employees in Private Educational Institutions receiving aid from the State Government shall be the same as those applicable for corresponding category of employees in Government Educational Institutions.

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<sup>28</sup> **25. Qualification and conditions of service of employees :-** The minimum qualification for recruitment, age of recruitment and retirement for employees in Private Educational Institutions receiving aid from the State Government shall be the same as those applicable for the corresponding category of employees in the Government Educational Institutions

If that were to be so, the Teaching Staff in Aided Private Educational Institutions will not be entitled to claim that the age of superannuation should be above 60 Years in light of K.E.I. (Collegiate Education) Rules, 2003.

## **5.2 BATCH - II AND III**

"The common question that arises for consideration is whether the petitioners are entitled for enhancement in age of superannuation to 65 years?"

(i) The judgment of Apex Court in **(Dr.J.Vijayan)** **(supra)**, the Government of Kerala by a Government Order dated 10.12.2010 had adopted and implemented the UGC Regulations 2010 and it was the grievance of the petitioners that despite such acceptance, the Government had failed to comply with the condition of enhancement of the retirement age. The petition came to be rejected and the appeal filed was also dismissed. The petitioners had challenged the said orders before the Apex Court. The Apex Court while referring to the judgment in **Jagdish Prasad**

**Sharma (supra)** concluded that there was no change in law after the judgment in **Jagdish Prasad Sharma (supra)**. The Apex Court has made the following observations:-

- The statutory age of retirement was determined by State of Kerala under Article 309 of Constitution of India<sup>29</sup>.
- The prescription of age of superannuation has nothing to do with standards in Education<sup>30</sup>.
- The letter of MHRD dated 14.08.2012, withdrawing the Regulations regarding enhancement of age of superannuation would result in the same falling within the ambit of policy decision and was within the exclusive domain of the State Government.
- The Apex Court refers to the observations of Division Bench made while referring to **Jagdish Prasad Sharma (supra)** which has been

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<sup>29</sup> Paras-26 and 27 of Dr.J.Vijayan (supra)

<sup>30</sup> Paras-26 and 27 of Dr.J.Vijayan (supra)

approved as supporting the stand of State of Kerala and the relevant paragraphs are extracted below:-

**"29.** *The Division Bench of the High Court also found that the State Governments had the discretion to accept the scheme proposed under the UGC Regulations relying on the judgment in Jagdish Prasad Sharma (supra) and in particular Paragraph 72, thereof. The Division Bench held:—*

**"14.** *It is in the light of the above authoritative pronouncement of the Apex Court, that the present contentions of the counsel for the appellants are required to be considered. The contention that the UGC Regulations were made in exercise of the power under Entry 66 List I Schedule VII of the Constitution, while the State enactments are made under Entry 25 List III Schedule VII and for the said reason, in the event of repugnancy, the Central enactment would prevail, has to fail for more reasons than one. In the first place, the State Laws prescribing the age of retirement of teachers are made in exercise of the power under Article 309 of the Constitution. The Apex*

Court has found Jagdish Prasad Sharma (*supra*) that such enactments would remain unaffected by the stipulations contained in the UGC Regulations. Secondly, it has been further held by the Court in the said decision that the UGC does not have any power to stipulate the service conditions of teachers. Therefore, such power is vested entirely in the State. Thirdly, obviously in recognition of the above position of law the UGC Regulations have conferred a discretion on the State Governments to decide whether to implement the Regulations or not. In view of the conferment of the discretion as noted above, no question of repugnancy arises in these cases. Therefore, we do not think it necessary to consider the above contention in any further detail.

**15.** On the next contention that the Scheme under the UGC Regulations, 2010 has to be accepted in full as a composite one and that adoption of the Scheme without enhancing the retirement age of teachers was bad, we find that the said issue has been concluded by the Supreme Court. Though a similar contention was put forward in Jagdish Prasad Sharma (*supra*) with respect to the



*Government Order dated 10.12.2010, the same did not find favour with the Court. The said Government Order evidenced herein as Ext. P10 in W.A. No. 854 of 2016 provides at paragraph 6 as follows"-*

*6. Government are also pleased to order that where there are any provision in the Regulations inconsistent with the provisions in the G.O. read as 1<sup>st</sup> paper above, those provisions in the G.P. would override the provisions in the Regulations to the extent of such inconsistency.*

*Reference No. 1 in the said Government Order is to G.O.(P) NO. 58/2010/H. Edn. Dated 27.3.2010 (Ext.P8 in W.A. No. 854 of 2016). It is the said Government Order that is directed to prevail as per Clause 6 extracted above. It has been ordered by the said Government Order that the age of superannuation shall continue as at present. In the above context, it is necessary to notice that as per letter No. F.1-7/2010-U.II dated 14.08.2012 of the MHRD (a copy of which has been handed over to us by the Counsel in the Court), it has been clarified that the issue regarding age of retirement has been left to the*

*decision of the State Governments. Paragraph 5 that deals with the above aspect is extracted hereunder for convenience of reference:*

**5.** *Bearing in mind that the question of enhancement of age of retirement is exclusively within the domain of the policy making power of the State Governments, the issue of age of retirement has been left to the State Governments to decide at their level. The condition of enhancement of age of superannuation to 65 years as mentioned in this Ministry's letter dated 31.12.2008 may be treated as withdrawn, for the purpose of seeking reimbursement of central share of arrears to be paid to State University and College teachers. However, the other conditions as mentioned in the letter cited above shall continue to apply.*

*Though a contention has been put forward by the counsel for the Appellants that, the condition has been withdrawn for the purpose of seeking reimbursement of the central share of arrears alone, we are not prepared to accept the same in view of the opening sentence in the said clause which declares*

*in unambiguous terms that enhancement of age of retirement is exclusively within the domain of the powers of the State Government and that for the said reason, the issue of age of retirement has been left to the State Governments to decide at their level.*

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**17.** *In the view that we have taken above, we do not consider it necessary to refer to or discuss the other decisions on which reliance has been placed. The question of fixing the retirement age of teachers is essentially a matter of policy. The said policy would have to be adopted by the State Government taking into account a number of factors. As contended before us by the learned Additional Advocate General, the State of Kerala does not suffer from a dearth of qualified candidates to be appointed as teachers. There are a large number of qualified teachers, including Ph.D. Holders who are waiting for employment. They are persons trained in advanced methods of instruction and teaching techniques. At the same time, teachers like the appellants who are approaching retirement age are not persons who could be described as aged or infirm. They are in their prime of life, endowed with*

*the rich experience both in teaching as well as in guiding research projects. The wisdom of the decision to superannuate them at such a prime point of time in their lives is also questionable. A decision can be taken only by balancing both the above aspects as well as other relevant factors that may require to be taken into account. Such an informed decision would have to be taken by the law makers and not by courts. As at present, the UGC Regulations, 2010 cannot affect the State laws governing the age of superannuation. UGC Regulations have in recognition of the above position granted a discretion to the State to take a decision with respect to the manner of implementation of the Regulations. Accordingly, the State Government has decided not to enhance the age of retirement. We notice that, a similar claim for enhancement in retirement age has been considered by another Division Bench of this Court and rejected in Mathai M.M. v. Elizabeth Xavier (2011) 2 KLT 468. The said decision is also binding on us."*

- The Apex Court finally at para-30 has taken note of the observations made at para-68 of the decision in **Jagdish Prasad Sharma (supra)**

and the same are extracted hereinbelow for reference: -

*"68. Another anxiety which is special to certain States, such as the States of Uttar Pradesh and Kerala, has also come to light during the hearing. In both the States, the problem is one of surplusage and providing an opportunity for others to enter into service. On behalf of the State of Kerala, it had been urged that there were a large number of educated unemployed youth, who are waiting to be appointed, but by retaining teachers beyond the age of 62 years, they were being denied such opportunity. As far as the State of U.P. is concerned, it is one of job expectancy, similar to that prevailing in Kerala. The State Governments of the said two States were, therefore, opposed to the adoption of the UGC Scheme, although, the same has not been made compulsorily applicable to the universities, colleges and other institutions under the control of the State authorities.*

- It is concluded at para-31 that while affirming the observations made in para-72 of **Jagdish Prasad**

**Sharma (supra)** that "State was not bound to accept or follow the UGC regulations" and the observations are as follows:-

*"31. It is not understood how those paragraphs are of assistance to the Appellant. There is no finding in paragraph 68, but only discussion of facts, which led to the decision, and paragraph 72 is clearly against the Appellants. This Court unequivocally held that the State was not bound to accept or follow the UGC Regulations."*

(ii) This Court in **Dr.Chidananda P. Mansur (supra)** while considering the Writ Appeal against the order of learned Single Judge whereby the direction to continue in service till the attainment of age of 65 Years in terms of the age of retirement prescribed by UGC Regulations 2018, had been negated. The observations made at Para-5 are as follows:-

*"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).*

(iii) It must be noticed that this Court<sup>31</sup> had specifically dealt with the contention that the earlier judgments relate to the 6<sup>th</sup> Pay Commission and would not

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<sup>31</sup> Chidananda P. Mansur (supra)

apply to a case involving the 7<sup>th</sup> Pay Commission, but has rejected such contention.

(iv) Insofar as the 7<sup>th</sup> Pay Commission is concerned, the UGC has in its communication dated 30.01.2018, while clarifying regarding revision of pay, has observed that the Scheme relating to the recommendation of 7<sup>th</sup> Central Pay Commission would be subject to the guidelines issued by the Ministry of Finance (Department of Expenditure) vide OM No.1/1/2016-E.III(A) dated 13.01.2017.

(v) The communication of MHRD to UGC in the context of revision of pay dated 02.11.2017 of teachers and equivalent cadres has observed at Clause 12 as follows:

**"12. Superannuation and Reemployment**

*The existing provisions on superannuation and reemployment of teachers shall continue."*

(vi) No doubt, at Clause-16 of MHRD's letter dated 02.11.2017, while discussing the applicability of the Scheme, it is observed at Clause-16(iv)(h) that, if the

Scheme is sought to be extended to the Universities, Colleges and other Higher Educational Institutions coming under the purview of State Legislature; that the payment of central assistance for implementing the Scheme is subject to the condition that the entire Scheme along with all the conditions laid down by UGC by way of Regulations and other guidelines shall be implemented by the State Government and Universities and Colleges as a Composite Scheme without any modification, except in regard to the date of implementation. This communication of the Central Government dated 02.11.2017 is as per Clause-18 subject to the guidelines issued by the Ministry of Finance (Department of Expenditure) vide OM No.1/1/2016-E.III(A) dated 13.01.2017.

(vii) It is the contention of the petitioners that a cumulative reading of the letter of MHRD dated 02.11.2017 and UGC Regulations dated 30.06.2010 read with letter of MHRD dated 31.12.2008, the policy of the Central Government is that the age of superannuation shall be 65



Years which is mandatory. The earlier direction of Central Government through MHRD letter dated 14.08.2012 addressed to all the Educational Secretaries has at point No.4 observed that the condition of enhancement of age of superannuation would be de-linked from the condition of payment of central share of 80% arrears to the State as extracted supra at para-4.4. Such direction of the Government is to be construed to be a direction under Section 20 of the UGC Act<sup>32</sup> and binding upon UGC.

(viii) No doubt, the communication of Central Government through MHRD letter dated 02.11.2017 does not refer to the letter of MHRD dated 14.08.2012, but observes at para-12 that the existing provisions on superannuation and re-employment of Teachers shall continue. If that were to be so, the earlier communication

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<sup>32</sup>20. Directions by the Central Government - (1) In the discharge of its functions under this Act, the Commission shall be guided by such directions on questions of policy relating to national purposes as may be given to it by the Central Government.

(2) If any dispute arises between Central Government and the Commission as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government shall be final.

of MHRD dated 14.08.2012 also remains intact and in operation.

(ix) The only subsequent communication of UGC dated 30.01.2018 clarifies that it is subject to the guidelines issued by the Ministry of Finance dated 13.01.2017 and also refers to the communications of the Central Government dated 02.11.2017 and a combined reading will not have the effect of ignoring the communication of 14.08.2012 of MHRD which even otherwise is binding upon UGC as a direction under Section 20 of the UGC Act. Accordingly, the UGC Circular to the Vice Chancellors dated 30.01.2018 as well as UGC's communication dated 31.01.2018 addressed to Education Secretaries of all the States cannot be construed as altering the earlier Government Regulations.

(x) It must be noted that there is a difference between conditions of service which is within the sole domain of the Government under Article 309 of the Constitution of India which is regulated by appropriate

Legislature on one hand and the requirement of adherence of Minimum Standards in terms of Section 26(g) of the UGC Act, which falls within the domain of UGC and would be subject to the directions of the Central Government under Section 20 of the UGC Act. The superannuation is a condition of service and would fall within the ambit of Article 309 of the Constitution of India till statutory provision is made by the appropriate Legislature. Such Rules would have statutory force. Wherever the age of superannuation is contained in either (a) KCSR insofar as employees of the Government, (b) Provisions of Karnataka Education Act, 1983 insofar as the employees of Aided and Unaided Institutions, (c) Acts of the University, Statutes of the University, (d) Rules/Byelaws of Private Educational Institutions which are not Aided, but affiliated to the University where such Byelaws are framed under the authority of the Universities Act/statutes, the same would prevail. Accordingly, the above would hold the field insofar as superannuation is concerned.

(xi) As regards maintenance of standards [Section 26(g) of UGC Act], qualification that is required for any person to be appointed to the Teaching Staff [Section 26(e) of UGC Act], the power is vested with the UGC to make Regulations consistent with Act and Rules.

(xii) The aspect of prescribing qualifications fall within the domain of maintenance of standards which has nothing to do with the aspect of superannuation that falls within Article 309 of Constitution of India and operates in a separate sphere.

(xiii) The Apex Court in **Professor (Dr.) Sreejith P.S. v. Dr. Rajasree M.S. & Ors**<sup>33</sup> while considering the appointment of Vice Chancellor, has held that the prescription regarding qualification for appointments under the UGC Regulations would prevail over the diluted qualifications provided under the State Legislation. It is further held that as a subject "Education" is contained in

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<sup>33</sup> CIVIL APPEAL NOS. 7634-7635 OF 2022

the Concurrent List of the Seventh Schedule, the UGC Regulations enacted in exercise of power under Clause (e) and (g) of sub-section (1) of Section 26 of UGC Act as well as SPU Act of 1955 would be traceable to power under the entry "Education" in the Concurrent List and in case of conflict of both the Acts, in light principle of repugnancy under Article 254 of the Constitution of India and under Article 254 (1) of the Constitution of India, the Central Act i.e., the UGC Act would prevail. This judgment follows the same line of cases including that of ***Kalyani Mathivanan (supra)***, ***Gambhirdan (supra)*** and ***State of West Bengal Vs. Anindya Sundar Das & Ors.***<sup>34</sup> However, it must be noted that all the cases referred to above are relatable to qualification of appointment of Vice-Chancellor and such qualification no doubt relates to recruitment, but still would fall outside the purview of Article 309 of the Constitution of India which deals with the conditions of Service, which would include the age of superannuation.

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<sup>34</sup> **Civil Appeal No. 6706 of 2022**

(xiv) As already held, superannuation has nothing to do with qualification and being a condition of service would fall within the ambit of Article 309 of the Constitution of India and accordingly, the Rules/statutory provision under Article 309 of the Constitution of India would prevail over the UGC Regulation that may fall under "Education" in the Concurrent List.

6. Accordingly, the Writ Petitions are dismissed with the following directions :-

- i) Insofar as the petitioners who have continued to work by virtue of interim orders granted by this Court, their continuance till date is to be treated as continuance on re-employment basis in terms of the applicable Rules, University Statutes and Government Orders as are applicable and are entitled to emoluments on such re-employment terms and will not

be entitled to remuneration paid to the regular employees.

- ii) The question of adjudication relating to re-employment after superannuation and passing direction as regards such aspect does not arise and is a matter to be adjudicated separately if there is any case of legally addressable grievance that may arise post superannuation.
- iii) In all the cases dealt with, the continuance till date by virtue of interim orders cannot be treated to be a dispute relating to re-employment requiring passing of directions.
- iv) After having attained the age of superannuation, it is an aspect of re-employment by the employer subject to fulfillment of conditions as are stipulated in

the applicable Rules/Government Orders/Regulations as the case may be. It is clarified that there cannot be automatic extension of tenure and the extension is on the basis of conscious decision of the employer in light of the applicable Rules.

**Sd/-  
JUDGE**

VGR