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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On:14th July, 2010*
Judgment Delivered On:6th August, 2010

\+ **W.P.(C) 1326/2010**

GOVERNMENT OF NCT OF DELHI ..... Petitioner
Through: Mr. V.K. Tandon, Ms. Mamta Tandon, Advs.

Versus

SMT.SWATANTRA NAYYAR ..... Respondent
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

For orders, see W.P.(C) No.10640/2009.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

AUGUST 06, 2010
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On:14th July, 2010*
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\+ **W.P.(C) 10640/2009**

GOVT OF NCT OF DELHI ..... Petitioner
Through: Mr.V.K. Tandon, Ms. Mamta Tandon, Advs.

Versus

SURESH CHAND VASHIST & ORS. ..... Respondents
Through: Mr. Arun Bhardwaj, Mr. Piyush Gaur, Ms. Ruchika, Advs.

W.P.(C) 1325/2010

GOVERNMENT OF NCT OF DELHI ..... Petitioner
Through: Mr. V.K. Tandon, Ms. Mamta Tandon, Advs.

Versus

PARMANAND ..... Respondent
Through: Mr.Arun Bhardwaj, Mr. Piyush Gaur, Ms. Ruchika, Advs.

W.P.(C) 1326/2010

GOVERNMENT OF NCT OF DELHI ..... Petitioner
Through: Mr. V.K. Tandon, Ms. Mamta Tandon, Advs.

Versus

SMT.SWATANTRA NAYYAR ..... Respondent
Through: Nemo.

W.P.(C) 1358/2010

GOVERNMENT OF NCT OF DELHI ..... Petitioner
Through: Mr. V.K. Tandon, Ms. Mamta Tandon, Advs.

Versus

SHEO RAJ SINGH ..... Respondent
Through: Mr. Harish Kumar Mehra, Adv.

W.P.(C) 1375/2010

GOVERNMENT OF NCT OF DELHI ..... Petitioner
Through: Mr. V.K. Tandon, Ms. Mamta Tandon, Advs.

Versus

ASHOK KUMAR ..... Respondent
Through: Mr. Harish Kumar Mehra, Adv.

W.P.(C) 1767/2010

GOVERNMENT OF NCT OF DELHI ..... Petitioner
Through: Mr. V.K. Tandon, Ms. Mamta Tandon, Advs.

Versus

SHIV RAM SUMAN ..... Respondent
Through: Mr. Sanjoy Ghose, Adv.

W.P.(C) 13199/2009

UNION OF INDIA AND ORS ..... Petitioners
Through: Mrs. Avnish Ahlawat, Ms. Latika Chaudhary, Advs.

Versus

ASHOK KUMAR ..... Respondent
Through: Nemo.

W.P.(C) 13200/2009

UNION OF INDIA AND ORS ..... Petitioners
Through: Mrs. Avnish Ahlawat, Ms. Latika Chaudhary, Advs.

Versus

DHANESH KUMAR ..... Respondent
Through: Nemo.

W.P.(C) 13213/2009

UNION OF INDIA AND ORS ..... Petitioners
Through: Mrs. Avnish Ahlawat, Ms. Latika Chaudhary, Advs.

Versus

DRAUPADI ..... Respondent
Through: Nemo.

W.P.(C) 13238/2009

GOVT OF NCT OF DELHI AND ORS ..... Petitioner
Through: Mrs. Avnish Ahlawat, Ms. Latika Chaudhary, Advs.

Versus

PARAMJEET KAUR DHILLON ..... Respondent
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. On 23.12.1987, All India Council for Technical Education Act, 1987 (hereinafter referred to as the "AICTE Act") was enacted by the Parliament by virtue of its powers under Entry 66 of Union List wherein exclusive power is vested with the Central Government with regard to technical education. The Preamble to AICTE Act reads as under:-

"An Act to provide for the establishment of an All India Council for Technical Education with a view to proper planning and co-ordinated development of the technical education system throughout the country, the promotion of qualitative improvement of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith."

2. Under Section 3 of the AICTE Act, the Central Government has the power to appoint a Council called All India Council of Technical Education (hereinafter referred to as "AICTE"). Relevant would it be to note that Section 10 of AICTE Act enumerates the powers and functions of the Council and reads as under:-

"**10. Functions of the Council** - It shall be the duty of the Council to take all such steps as it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards and for the purpose for performing its functions under this Act, the Council may-

(a) undertake survey in the various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education;

(b) coordinate the development of technical education in the country at all levels,

(c) allocate and disburse out of the Fund of the Council such grants on such terms and conditions as it may think fit to-

(i) technical institutions, and

(ii) Universities imparting technical education in coordination with the Commission;

(d) promote innovations, research and development in established and new technologies, generation, adoption and adaptation of new technologies to meet

developmental requirements and for overall improvement of educational processes;

(e) formulate schemes for promoting technical education for women, handicapped and weaker sections of the society;

(f) promote an effective link between technical education system and other relevant systems including research and development organisations, industry and the community;

(g) evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education, incorporation norms and mechanisms for enforcing accountability;

(h) formulate schemes for the initial and in-service training of teachers and identify institution or centres and set up new centres for offering staff development programmes including continuing education of teachers;

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

(j) fix norms and guidelines for charging tuition and other fees;

(k) grant approvals for starting new technical institutions and for introduction of new courses or programmes in consultation with agencies concerned;

(l) advise the Central Government in respect of grant of charter to any professional body or institution in the field of technical education conferring powers, rights and privileges on it for the promotion of such profession in its field including conduct of examinations and awarding of membership certificates;

(m) lay down norms for granting autonomy to technical institutions;

(n) take all necessary steps to prevent commercialisation of technical education;

(o) provide guidelines for admission of studies to technical institutions and Universities imparting technical education;

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

(q) withhold or discontinue grants in respect of courses, programmes to such technical institutions which fail to comply with the directions given by the Council within the stipulated period of time and take such other steps as may be necessary for ensuring compliance of the directions of the Council;

(r) take steps to strengthen the existing organisations, and to set up new organisations to ensure effective discharge of the Council's responsibilities and to create positions of professional, technical and supporting staff based on requirements;

(s) declare technical institutions at various levels and types offering courses in technical education fit to receive grants;

(t) advise the Commission for declaring any institution imparting technical education as a deemed University;

(u) set up a National Board of Accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it and to make recommendation to it, or to the Council, or to the Commission or to other bodies, regarding recognition or de-recognition of the institution or the programme;

(v) perform such other functions as may be prescribed." (Emphasis Supplied)

3. Consequent upon revision of pay scales of Central Government employees on the recommendations of 5th Central Pay Commission, Ministry of Human Resource and Development, Government of India issued orders dated 09.10.1998 and 14.09.1999 directing AICTE to frame a scheme for revision of pay scales of teachers employed in Technical Institutions pursuant to which AICTE framed such a scheme. AICTE issued notification dated 30.12.1999 relating to revision

of pay scales and service conditions of teachers, librarians and physical education personnel employed in diploma level Technical Institutions. The relevant portion of the said notification reads as under:-

"AICTE NOTIFICATION FOR REVISION OF PAY-SCALES AND ASSOCIATED TERMS AND CONDITIONS OF SERVICE OF TEACHERS, LIBRARIANS AND PHYSICAL EDUCATION PERSONNEL FOR DIPLOMA LEVEL TECHNCIAL INSTITUTIONS

1.0 PREAMBLE

The Government of India, Ministry of Human Resource Development, Department of Education has issued orders vide letter No.37-104/95-TS-II, dated October 9, 1998 and of even No. dated January 14, 1999 implementing a scheme of revision of pay scales of teachers of degree level Technical Institutions, following revision of pay scales of Central Government employees on the recommendation of Fifth Central Pay Commission. The Government orders require that AICTE notify other terms and conditions of service of such teachers with the approval of Ministry of Human Resource Development.

In line with the revised pay-scales of teachers of degree level technical institutions and the associated service conditions, AICTE has now revised the pay-scales and associated service conditions of teachers, librarians and physical education personnel in diploma level technical institutions, with the concurrence of Ministry of Human Resource Development. These revised pay scales and associated service conditions are given in this notification.

2.0 COVERAGE

2.1 Scope:

The provisions of this notification apply to teachers, librarians and physical education personnel in diploma level technical institutions, covered under the AICTE Act.

2.2 Date of Effect:

The revised pay-scales, Career Advancement Scheme and incentives for higher qualification given in this notification shall be effective from January 1, 1996. All other terms and conditions come into force with effect from date of this notification.

2.3 State Government Institutions and Private Aided Institutions:

Taking into account the local conditions, a State Government may implement the revised pay-scales from a date later than January 1, 1996 and/or implement pay-scales other than those given in this notification, but which are not higher than the pay-scales given in Tables (Appendix A 1, 2 and 3). In such cases, the details of the modification proposed either to the scales of pay or the date from which the Scheme is to be implemented, should be furnished to the All India Council for Technical Education for its approval.

....

4.0 PAY-SCALES

The revised pay-scales for teachers of diploma level technical institutions are given in Tables (Appendix A 1 and 2).

5.0 QUALIFICATIONS

1. The prescribed minimum qualifications and experience requirements for various teaching posts in diploma level technical institutions are given (Appendix – B)

2. Where qualifications and experience prescribed for a post in this pay revision are higher than the qualifications and experience prescribed by AICTE for that post prior to this revision,

(i) the revised qualifications and experience will be required only for fresh appointees to that post and will not be insisted on for existing incumbents working on those positions.

(ii) for open selection to a higher cadre position through advertisement internal candidates presently working in a lower position will be exempted from the prescribed higher qualification and experience to the extent that they will be required to possess only the

qualifications and experience prescribed by AICTE prior to this pay revision. This relaxation will be available only for a period of 5 years from the date of issue of this notification. Thereafter, internal candidates must also possess the qualifications and experience prescribed in this notification.

3. Teachers already in service prior to January 1, 1996 and who at the time of their recruitment possessed only a second class in their degree at Bachelor's level (but met all the qualification requirements prescribed by AICTE at the time of their recruitment) shall be exempted from the requirement of First Class for the degrees they had at the time of their recruitment.

.....

12.0 SUPERANNUATION AND RE-EMPLOYMENT

The age of superannuation of teachers in diploma level technical institutions would be 62 years and thereafter no extension of service shall be given.....

The age of superannuation of Librarians, Physical Education Personnel and such other employees of technical institutions who are treated at par with the teachers and whose age of superannuation was 60 years, will now be 62 years .. ..

.....

TABLE A-1

SCALES OF PAY FOR TEACHERS FOR DIPLOMA LEVEL TECHNICAL INSTITUTIONS

S. No.	Category	Existing Pay-Scales (Rs.)	Proposed Pay-Scales (Rs.)
1.	Lecturer	2200-75-2800-100-4000	8000-275-13500
2.	Senior Lecturer	3000-100-3500-125-5000	10000-325-15200
3.	Head of Deptt.	3700-125-4950-150-5700	12000-420-18300
4.	Principal	4500-150-5700-200-6300	16400-450-20000

TABLE A-2

S. No	Category	Existing Pay-Scales (Rs)	Proposed Pay-Scales (Rs)
1.	Lecturer	3000-100-3500-125-5000	1000-325-15200 (Senior Scale)
2.	Lecturer	3700-125-4950-150-5700	12000-420-18300 (Selection Grade)

The revised scales of pay for Librarians and Physical Education Personnel are given in Table A-3.

TABLE A-3

SCALES OF PAY FOR LIBRARIANS AND PHYSICAL TRAINING INSTRUCTORS (PEI) FOR DIPLOMA LEVEL TECHNICAL INSTITUTIONS

S. No	Category	Proposed Pay-Scales (Rs.)
1.	Librarian/Lecturer Physical Training instructors (P.E.I.)	8000-275-13500
2.	Librarian (Senior Scale)/Lecturer (Senior Scale)/Physical Education Instructor (Senior Scale)	10000-325-15200
3	Librarian (Selection Grade)/Lecturer (Selection Grade)/Physical Education Instructor (Selection Grade)	12000-420-18300

....." (Emphasis Supplied)

4. Relevant would it be to note that the notification dated 30.12.1999 prescribed higher qualifications and experience than previously required for appointment to various teaching posts in the diploma level technical institutes but

correspondingly did not provide for any change in the qualifications and experience required for appointment to the posts of librarians and physical training instructors in the said institutes. A period of 5 years was granted to the existing incumbents on the said posts to acquire revised qualifications and service experience.

5. The matter regarding the revision of pay scales of teachers, librarians and physical education personnel in diploma level technical institutions as prescribed in the notification dated 30.12.1999 issued by AICTE was submitted by Department of Training and Technical Education (hereinafter referred to as "DTTE") to the cabinet, government of National Capital Territory, Delhi for consideration. The relevant portion of the note submitted by DTTE to the cabinet dealing with revision of pay scales and age of superannuation of librarians and physical education personnel in diploma level technical institutions reads as under:-

"5.3 PAY SCALES OF LIBRARIANS & PHYSICAL EDUCATION PERSONNEL

Besides the teachers, AICTE has also recommended revised pay scales for Librarians and Physical Education Personnel as under:-

FOR COLLEGES

1. Librarian/Directors, Physical Education	Rs.8,000-275-13500/-
2.Librarian (Sr. Scale)/ Director, Physical Education (Sr. Scale)	Rs.10,000-325-15200/-
3.Librarian (Selection Grade)/Director,	Rs12,000-420-18300/-

Physical Education
(Selection Gr.)

FOR POLYTECHNICS

1. Librarian/Physical Education Instructor	Rs.8,000-275-13500/-
2.Librarian (Sr. Scale)/ Physical Education (Sr. Scale)	Rs.10,000-325-15200/-
3.Librarian (Selection Grade)/ Physical Education (Selection Gr.)	Rs12,000-420-18300/-

.....

9.1 (viii) AICTE recommendations on pay scales may be accepted for implementation for eligible categories of employees of Government Polytechnics and implementation may be w.e.f 1.1.96. As in the case of colleges like Delhi College of Engineering, the retirement age will continue to be 60 years and benefits under the Pay Commission over and above the AICTE/MHRD recommendations may not be available and will have to be adjusted.

.....

11.0 As regards the revised pay scales recommended by AICTE for colleges and polytechnic Librarians and Physical Education personnel, at present there is a post of Librarian in Delhi College of Engineering in the pay scale of Rs. 8000-13,500 but in College of Pharmacy and College of Art the post of Librarian exists in a lower pay scale of Rs. 5000-8000. Similarly, in polytechnics also the posts exist in the pay scale of Rs. 5000-8000. In so far as Physical Education personnel are concerned there is a post of Director, Physical Education in Delhi College of

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Engineering and College of Art in the pay scale of Rs. 8000-13,500. There is no post of Director, Physical Education in College of Pharmacy but a post of PTI exists in the pay scale of Rs. 5000-8000. In Polytechnics there are posts of PTIs. So, where the posts exist in lower pay scale the incumbents cannot be straightaway placed in revised pay scales as posts will have to be created in higher scales and eligibility of existing Librarians and PTIs will have to be seen in terms of qualifications recommended by AICTE for these posts. These issues need to be examined in consultation by the Finance Department separately before implementing the recommendations of AICTE in their cases. It is, therefore, proposed that for these categories of employees-viz-Librarians and PTIs the implementation of AICTE recommended pay scales may be carried out after the issue of qualifications and upgradation of existing posts is settled in consultation with Finance Department and their cases examined separately in consultation with Finance Department.

....

14.1 As regards Librarians and Physical Education Personnel, they are not being denied the benefit. It is only certain issues relating to upgradation of the existing posts and educational qualifications that needs to be sorted out in consultation with Finance Department before their case can be considered for implementation of AICTE pay scales"

6. Vide cabinet decision No.841 dated 23.09.2003, the Government of NCT of Delhi approved the grant of revised pay scales to the teachers teaching in diploma level technical institutions under DTTE. However, the cabinet did not take a decision with respect to revision of pay-scales of librarians and physical education personnel employed in technical institutions under DTTE. The reason for the same is that in the notification dated 30.12.1999 AICTE recommended scales of pay for lecturers, librarians and physical educational persons at par with same post holders in degree colleges, but enhance the requirement of a higher educational qualification only for

lecturers and bring it at par with lecturers in degree colleges but did not recommend similar enhancement in the educational qualifications for librarians and physical educational persons and the Government of NCT Delhi thought it not advisable to pay same scale of pay to those having higher qualifications and those with lesser qualifications.

7. On 02.08.2004 the DTTE issued letter No.F.123/19/2000/TE/AD/1217 to AICTE seeking clarifications regarding the revision of pay scales of librarians and physical training instructors. The relevant portion of the said letter reads as under:-

> "....AICTE vide its notification No.1-65/CD/NCE/98-99 dated 20th December, 1999 has given the pay scales and Career Advancement scheme for Librarian and Physical Training Instructors for Diploma Level Technical Institutions at table A-3.
>
> Kindly clarify whether these scales are linked with the qualifications of the Librarian and Physical Training Instructors or to be given to all irrespective of their qualifications.
>
> In case the pay scales are linked with the qualification, you are requested to convey the qualifications for Librarians/Physical Training instructors attached to each grade as the same is not reflected in your notification....."

8. In response thereto, AICTE issued letter No.2004-05/50 dated 23.08.2004 to DTTE, the relevant portion whereof reads as under:-

> ".....The normal practice to give revised pay scales to the existing faculty members (including Librarians/Physical Training Instructors) for the post they are holding at the time of revision of the pay scales i.e. 01.01.1996 in the present cadre. The revised qualifications and experience, if any,

prescribed with the revised scales are to be made applicable for fresh recruitment only. The only consideration for giving the revised pay scales to the existing faculty should be that the person concerned was appointed in the date of cadre prior to the date of revision i.e. 01.01.1996....."

9. Vide cabinet decision No.1024 dated 16.12.2005, Government of NCT of Delhi accepted the AICTE's recommendation pertaining to enhancement of age of superannuation from 60 to 62 years for teachers of degree and diploma level technical institutions under DTTE and further decided to not to extend the said benefit to librarians and physical training instructors at diploma level technical institutions.

10. Feeling aggrieved by the inaction of Government of NCT of Delhi in respect of revision of pay-scales of librarians and physical education persons at diploma level technical institutions under DTTE, a few librarians and physical training instructors working in various polytechnics under DTTE filed applications under Section 19 of Administrative Tribunals Act, 1985 before Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the "CAT") inter-alia seeking issuance direction against the government to revise the pay-scales of librarians and physical instructors in polytechnics under DTTE in terms of the notification dated 30.12.1999 issued by AICTE. The details of the applications filed before CAT are being noted herein under:-

S. No.	Number of the application (OA No.)	Name of the applicant	Details of the applicant
i.	2451/2006	Suresh Chander Vashisht	Librarian in Kasturba Gandhi Polytechnic

ii.	2297/2006	Sheo Ram Suman	Librarian in Parmanand Institute of Business Studies
iii.	2298/2006	Parmanand	Librarian in Parmanand Institute of Business Studies
iv.	2232/2006	Ashok Kumar	Librarian in Parmanand Institute of Business Studies
v.	2338/2006	Sheo Raj Singh	Librarian in Parmanand Institute of Business Studies
vi.	2339/2006	Swatantra Nayyar	Librarian in Parmanand Institute of Business Studies
vii.	2020/2008	Ashok Kumar	Physical Training Instructor in Arya Bhatt Polytechnic
viii.	2021/2008	Draupadi	Physical Training Instructor in GBP Polytechnic
ix.	2022/2008	Dhanesh Kumar	Physical Training Instructor in Guru Nanak Dev So Ed Polytechnic
x.	2023/2008	Paramjeet Kaur Dhillon	Physical Training Instructor in Meera Bai Polytechnic

11. A perusal of the pleadings filed by Government of NCT of Delhi before CAT reveals that the stand taken by the

government was that since the effect of AICTE's recommendations was that the pay-scales of the librarians and physical education persons in diploma level technical institutions were upgraded to the level of their counterparts in degree level technical institutions it was necessary that the qualifications and service experience required for appointment in the cadre of librarians and physical education persons in diploma level technical institutions should have also been upgraded in the same manner and that there is a fallacy in the recommendations of AICTE inasmuch as AICTE upgraded the qualifications and service experience required for appointment for various teaching posts in diploma level technical institutions while revising the pay-scales of teachers in diploma level technical institutions but ignored said aspect of the matter while revising pay-scales of librarians and physical training instructors in diploma level technical institutions. Thus, the Government of NCT Delhi justified its decision to implement a different pay-scale for librarians and physical education persons in diploma institutes in Delhi.

12. Before the aforesaid matters could be decided by the CAT, a significant development took place. In the year 2006, one Mr.K.R. Mann, who was working as a librarian in Arya Bhatt Polytechnic under DTTE of Government of NCT of Delhi filed an application under Section 19 of Administrative Tribunal Act, 1985 before CAT challenging the decision of Government of NCT of Delhi not to enhance age of superannuation of librarians in polytechnics under DTTE of Government of NCT of Delhi from 60 to 62 years in terms of notification dated 30.12.1999 issued by AICTE. In the said proceedings the stand taken by the Government of NCT Delhi was two-fold: - (i) notification dated 30.12.1999 issued by AICTE is

recommendatory and not mandatory in nature; (ii) though in the notification dated 30.12.1999 recommendation has been made for enhancement of age of superannuation of librarians and physical training instructors in diploma level technical institutions, who are at par with teachers from 60 to 62 years, the said notification nowhere states that librarians are to be treated at par with the teachers.

13. Vide order dated 30.04.2007, CAT allowed the aforesaid application filed by Mr.K.R.Mann. It was held that the recommendations of AICTE Contained in notification dated 30.12.1999 are mandatory in nature and that the expression "who are treated at par with the teachers" occurring in paragraph 12.0 of the said notification includes librarians and physical education personnel treating them at par with teachers.

14. Feeling aggrieved by the afore-noted order dated 30.04.2007 passed by CAT, the Government of NCT of Delhi filed a petition bearing W.P.(C) No.6588/2008 in this Court challenging to the aforesaid order, which petition was dismissed by this Court vide order dated 28.03.2008. After noticing the decisions of Supreme Court reported as *Unni Krishnan J.P. v State of A.P.* (1993) 1 SCC 645, *Govt. of A.P v J.B. Educational Society* (2005) 3 SCC 212, *Jaya Gokul Educational Trust v Commissioner and Secretary to Govt. Higher Education Deptt Thiruvanthapuram* AIR 2000 SC 1614 and *State of Tamil Nadu v Adhiyaman Educational & Research Institute* (1995) 4 SCC 104, this Court was of the view that the recommendations of AICTE contained in the notification dated 30.12.1999 are mandatory in nature. The relevant observations of this Court are being extracted herein below:-

"16.....Therefore, the validity of the judgment of the Tribunal and outcome of this petition rests on the sole issue, namely, upon the nature of the notification dated 30.12.1999 of the AICTE and that is whether it has the binding effect or every State Government or other authorities running such technical institutions were given freedom to accept or not to accept the provisions of the said notification and had their own final say in the matter.

.....

24. A common thread, which is discernible from the aforesaid judgments is that in the matter of technical education covered by the AICTE Act and to maintain the uniformity, the standards prescribed by the Council established under this Act would prevail. This was necessary to have uniformity in the educational standards in so far as technical education in this country is concerned. Once we accept this proposition, it would also follow that the service conditions laid down by the AICTE would also have uniform application in all technical institutions. Once it is recognized that norms and standards and the requirements of technical education are to be uniform, this cannot be achieved in case the service conditions of the employees working in these institutions are also uniform. It would, therefore, logically follow that the age of retirement, as recommended by the AICTE and duly accepted by the MHRD would be applicable to the librarians working in DTTE as well."

15. Feeling aggrieved by the afore-noted order dated 28.03.2008 passed by this Court, the Government of NCT of Delhi filed a petition under Article 136 of Constitution of India before Supreme Court, which petition was dismissed by Supreme Court in the following terms:-

"The special leave petition is dismissed leaving open the question of law."

16. Relying upon the decision of this Court dated 23.3.2008 in W.P.(C) No.6588/2008 titled '*Chief Secretary, Govt. of NCT of Delhi v K.R. Mann*', vide order dated 23.05.2008 CAT

allowed the application(s) before it holding that it was the bounden duty of Government of NCT of Delhi to revise pay scales of librarians in diploma level technical institutes under DTTE, Govt. of NCT of Delhi in terms of recommendations of AICTE contained in the notification dated 30.12.1999 for the said recommendations were mandatory in nature. The CAT directed the Government of NCT of Delhi to grant pay scale Rs.8000-13500/- at the entry level; Rs.10000-15200 at senior scale level and Rs.12000-18300/- at selection grade level i.e. pay scales prescribed in the notification dated 30.12.1999 to the librarians in diploma level technical institutions.

17. Aggrieved by the order dated 23.05.2008 passed by CAT, Government of NCT of Delhi filed application(s) before CAT seeking review of the said order, which application(s) were dismissed by CAT vide order dated 22.04.2009 for the reason that there was an inordinate delay in filing the said application(s) and that no satisfactory explanation has been furnished by the government for the said delay.

18. In view of the decision dated 23.3.2008 of this Court in W.P.(C) No.6588/2008 titled '*Chief Secretary, Govt. of NCT of Delhi v K.R. Mann*' vide order dated 23.05.2008 and the order dated 23.05.2008 passed by CAT allowing the application(s) filed by the librarians vide order dated 14.05.2009 CAT allowed the application(s) filed by the physical training instructors.

19. Aggrieved by the orders dated 23.05.2008 and 14.05.2009 by CAT allowing the application(s) filed by the librarians and physical training instructors respectively, Government of NCT of Delhi has filed the above-captioned writ petitions challenging the said orders.

20. During hearing of the present petitions, following arguments were advanced by the learned counsel for the petitioner:-

I AICTE's recommendations contained in the notification dated 30.12.1999 are not mandatory in nature but are recommendatory. Counsel pointed out clauses (a)-(k) of Section 10 of AICTE Act enumerates functions of AICTE. Counsel argued that only such recommendation of AICTE would be mandatory in nature which is issued by it in discharge of its functions prescribed under Section 10 of AICTE Act. That AICTE acts in advisory capacity while issuing recommendations on a matter not included under clauses (a)-(k) of Section 10 of AICTE Act and thus such recommendations have no binding force. That since fixation of pay of staff of technical institutions is not a function of AICTE under Section 10 of AICTE Act, recommendations issued by AICTE in respect of said matter are not mandatory but recommendatory in nature. With respect to the decision of this Court in *K.R. Mann's* case (supra), counsel submitted that the said decision is *per incuriam* as Section 10 of AICTE Act has not been examined therein. Counsel further submitted that since the issue pertaining to nature of the recommendations of AICTE was left open for adjudication by Supreme Court while dismissing the special leave petition filed by Government of NCT of Delhi against the decision of this Court in *K.R. Mann's* case (supra), the said decision cannot be taken to be an authority for the proposition that the recommendations of AICTE contained in the notification dated 30.12.1999 are mandatory in nature inasmuch as view of this Court on the said issue was not approved by Supreme Court.

II Even if it is taken that the recommendations of AICTE contained in notification dated 30.12.1999 are mandatory in nature, paragraph 2.3 of the said notification extracted in para 3 above gives sufficient lee way to a state government to suitably modify said recommendations and therefore

Government of NCT of Delhi was fully justified in seeking to make appropriate modifications in the said recommendations in respect of librarians and physical education personnel in diploma level technical institutions under DTTE, Government of NCT of Delhi.

III The modifications sought to be made by Government of NCT of Delhi in the recommendations of AICTE contained in the notification dated 30.12.1999 are based on sound rationale and logic. Counsel argued that when scales of pay of librarians and physical education personnel of diploma level technical institutions are sought to be upgraded it is most reasonable that the qualifications and service experience required for appointment in the cadre of librarian and physical training instructor in diploma level technical institutions be upgraded accordingly. To demonstrate the reasonableness of the decision of Government of NCT of Delhi to upgrade the qualifications and service experience required for appointment to the cadre of librarian and physical education personnel in diploma level technical institutions while granting them benefit of higher scales of pay, counsel pointed out similar step has been taken by AICTE in the matter of revision of pay scales of teachers in diploma level technical institutions inasmuch as while recommending higher pay scales for teachers in diploma level technical institutions AICTE has also recommended upgradation of qualifications and service experience required for appointment to various teaching posts in the said institutions.

21. Per contra, learned counsel for the respondent contended that:-

I The view taken by CAT that recommendations of AICTE contained in the notification dated 30.12.1999 are mandatory in nature and thus it is the bounden duty of the Government of

NCT of Delhi to implement the pay scales prescribed in the said notification in respect of librarians and physical education personnel in diploma level technical institutions is perfectly legal. It was further submitted that when the stand taken by Government that the said recommendations are recommendatory in nature already stood rejected by a Division Bench of this Court there was no occasion for the government to re-agitate the same argument in the present matters.

II As per the notification dated 30.12.1999 as also the view taken by this Court in *K.R. Mann*'s case (supra), the librarians and physical education personnel in the diploma level technical institutions are to be treated "at par" with the teachers. In the face of said factual position, the decision of the government to accept the recommendations of AICTE only qua teachers and not in respect of librarians and physical education personnel is most arbitrary.

III In the teeth of the direction issued by CAT to grant pay scales prescribed in the notification dated 30.12.1999 to the librarians and physical training instructors in diploma level technical institutions, the government was not justified in issuing office order dated 09.01.2009 which provided that pay scales in question would be granted to the librarians and physical training instructors subject to their possessing revised qualifications and service experience required for appointment to the said posts. According to the counsel, the aforesaid attempt of the government to modify the aforesaid direction of CAT particularly when the matter was sub-judice before this Court demonstrates that the decision of government to not to implement the recommendations of AICTE in respect of librarians and physical education personnel in diploma level technical institutions smacks of malafide.

IV The stand taken by government to not to implement the recommendations of AICTE in respect of librarians and physical education personnel in diploma level technical institutions is most untenable in view of the fact that many states and union territories namely Mizoram, Arunachal Paradesh, Andhra Pradesh, Madhya Pradesh and Rajasthan have implemented the said recommendations in respect of librarians and physical education personnel in diploma level technical institutions.

22. The primary question which has arisen for consideration in the instant matter is whether the recommendations of AICTE contained in the notification dated 30.12.1999 are mandatory or recommendatory in nature.

23. We may not delve on said aspect of the matter for a Co-ordinate Bench of this Court has already taken a view that the said recommendations are mandatory in nature in *K.R. Mann*'s case (supra). However, since great emphasis was laid by the learned counsel for the petitioner that Section 10 of AICTE Act which prescribes the powers and functions of AICTE and holds the key to the answer to the aforesaid question has not been examined in *K.R. Mann*'s case (supra), we proceed to examine the said aspect of the matter in the light of Section 10 of AICTE Act.

24. It is an established proposition of law that where a specific power is conferred without prejudice to the generality of the general powers already specified, the specific power is only illustrative and does not in any way restricts the general power. (See the decisions of Supreme Court reported as *Om Prakash v Union of India* (1970) 3 SCC 942 and *Ajay Canu v Union of India & Ors* (1988) 4 SCC 156). In view of the aforesaid settled legal position, a perusal of Section 10 of the AICTE Act reveals that the council is entrusted with the duty to ensure coordinated and integrated development of technical

education and maintenance of standards in technical institutes and for which it may exercise various powers as per clause (a) to (u). As per clause (l) the counsel specifically empowered to lay down norms and standards pertaining to staff pattern, staff qualifications and quality instructions.

25. As per clause (i) of Section 10 which provides that AICTE is empowered to 'lay down norms and standards for courses, curriculam, physical and instructional facilities, *staff pattern*, staff qualifications, quality instructions, assessment and examinations' and hence must include power to prescribe service conditions of staff of technical institutions. The expression 'staff pattern' occurring in clause (i) of Section 10 is wide enough to include within its ambit service conditions of staff of technical institutions.

26. We may incidentally note that the Preamble to AICTE Act, contents whereof have been noted in 1 above, as also decisions of Supreme Court reported as *Govt. of A.P. v I.B. Educational Society* (2005) 3 SCC 212, *Jaya Gokul Educational Trust v Commissioner and Secretary to Govt. Higher Education Deptt Thiruvanthapuram* AIR 2000 SC 1614 and *State of Tamil Nadu v Adhiyaman Educational & Research Institute* (1995) 4 SCC 104 lay down that AICTE shall have primacy in the matter of technical education in this country.

27. It is thus apparent that AICTE is empowered to recommend pay of staff of technical institutions.

28. The question arises whether the State Government can modify the recommendations of AICTE as per the notification dated 30.12.1999?

29. A perusal of the notification, contents whereof have been noted in para 3 above, vide para 2.3 clearly show that while making the recommendations AICTE has left it to the State Government to implement the revised pay scales from a date

later than 1.1.1996 and even to implement different pay scales but with a rider that in such case the same should be furnished to the counsel for its approval.

30. Thus, exercising its statutory power, AICTE has not mandatorily directed the State Governments to implement its recommendations. The State Governments have been given the freedom to implement different pay scales, but with the approval of AICTE.

31. The obvious rationale behind the aforesaid decision of the AICTE is that ordinarily it should be expected that the State Governments should implement the recommendations of AICTE, but for valid reasons may chose not to do so, but the justifiability of the said reasons has to be made good to AICTE, evidenced by the requirement that in such situation, approval from the council should be taken.

32. What has happened in the instant case is that AICTE has recommended pay scales for lecturers, librarians and physical education persons in technical institutes awarding diplomas at par with what is paid in institutes imparting education in engineering for graduate courses, but with respect to lecturers has enhanced the educational qualifications at par with those required in regular engineering colleges, but has failed to upgrade the education qualifications for physical education persons and librarians to bring them at par with engineering colleges and for this reason the Government of NCT Delhi sought a clarification on the issue of the enhancement of educational qualification for said two category of posts when it wrote the letter dated 2.8.2004, to which the council gave a evasive reply vide its letter dated 23.7.2004. The result is that a stalemate has ensued.

33. We see no reason why AICTE could not be specific on the issue of educational qualifications as it did in the case of

teachers by requiring teachers in technical education to have same qualifications as required by teachers in engineering colleges.

34. Thus, the Government of NCT Delhi has acted within the scope of its right as per the notification dated 30.12.1996, which vide para 2.3 left it to the discretion of the respective State Government to implement or not the pay scales recommended by AICTE and instead implement some other pay scale, but has fallen foul in not taking the prior approval of AICTE, which council has also contributed to the mess by not according due consideration to the controversy arising out of AICTE enhancing educational qualifications for teachers and bringing the same at par with teachers in engineering colleges and simultaneously requiring same scale of pay to be made applicable but qua librarians and physical education persons recommending pay scale at par with corresponding posts in engineering colleges but without enhancing the requisite educational qualifications by bringing the same at par with the posts in engineering colleges.

35. Thus, the inevitable conclusion has to be that the impugned directions issued by the Tribunal in all the writ petitions are required to be quashed and as a consequence the applications filed by the respondents before the Tribunal being dismissed, but with a direction to the Government of NCT Delhi and AICTE to resolve the deadlock.

36. The impugned orders passed by the Tribunal which are the subject matter of challenge in all the writ petitions are quashed.

37. Since Government of NCT Delhi is permitted to implement pay scales for the post of librarian and physical education persons in technical institutions in Delhi other than those recommended by AICTE, but subject to the approval of

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AICTE, which has not been done we issue a direction requiring AICTE to decide specifically the issue of educational qualifications required by the librarians and physical education persons in technical institutes in Delhi and in what scale of pay they must be put. A specific approval shall be granted by AICTE in clear language for the reason its notification dated 30.12.1999, vide para 2.3 thereof casts an obligation on AICTE to consider for approval the pay scales to be applied if the State Government seeks not to implement the scales of pay recommended by AICTE and this must of necessity require AICTE to pass a specific order.

38. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

AUGUST 06, 2010
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CM no 5785/14 - for clarifications/Directions