

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Petition Nos.35935, 41331, 41370, 43178, 44296, 44468 of 2016 & 3140 of 2017

COMMON ORDER: (per Hon'ble the Acting Chief Justice Justice Ramesh Ranganathan)

In these batch of Writ Petitions the petitioners, who are all non-teaching staff working in the Sri Padmavathi Mahila Viswavidyalam, Tirupati ("University" for short), have invoked the jurisdiction of this Court, under Article 226 of the Constitution of India, questioning the action of the respondents in not continuing them in service till they attain the age of 60 years.

It would suffice, for the disposal of these Writ Petitions, if the facts in W.P.No.41370 of 2016 are noted. The petitioner was appointed as a Junior Assistant on 11.01.1994, and her services were regularised in the said cadre. She claims that she is entitled to be continued in the University till she attains the age of 60 years i.e upto 31.01.2019 as per the instructions issued by the Principal Secretary to the Government, Higher Education Department in his letter dated 23.12.2014, and in terms of the orders passed by this Court in W.A.No.974 of 2016 dated 27.09.2016. She is aggrieved by the office order issued by the Registrar of the University dated 07.11.2016 fixing the date of her retirement from service as 31.01.2017. Reliance is placed by her on the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) (Amendment) Act, 2014 (the "2014 State Act" for short) following which G.O.Ms.No.147 dated 30.06.2014 was issued stipulating that the provisions of the 2014 State Act were applicable only to the categories mentioned in Section 2(6)(i) to (iv) of the said Act.

It is contended by the Learned Special Government Pleader, appearing on behalf of the Learned Advocate-General for the State of Andhra Pradesh, that the petitioners are all members of the non-teaching staff of the University; in these Writ Petitions they seek enhancement of the age of superannuation from 58 to 60 years; and as the University is a body created under the 1983 Act, and is one of the entities listed in the Tenth Schedule to the A.P. Reorganisation Act, 2014 (the “2014 Central Act” for short), the subject matter of these writ petitions is covered by the order of the Division Bench of this Court in **G. Ramamohan Rao v. The Government of A.P.**¹.

It is contended on behalf of the petitioners that the subject matter of these Writ Petitions is not covered by the Division Bench judgment in **G. Ramamohan Rao**¹; on the other hand, the order passed by the Division Bench in W.A.No.974 of 2016 dated 27.09.2016 is applicable; the letter addressed by the Principal Secretary to the Government, Higher Education Department dated 23.12.2014 clearly shows that the 2014 State Act is applicable to employees of the University also; the Executive Council of the University, in its meeting held on 28.03.2015, ratified the action of the University in re-instating retired non-teaching staff, who had crossed 58 years, but had not completed 60 years of age; this decision of the University authorities should be applied uniformly to all employees, including the non-teaching staff of the University; G.O.Ms.No.147 dated 30.06.2014, making the 2014 State Act applicable, is binding on the respondents; the Principal Secretary to the Government, Higher Education Department had informed

¹ (Order in W.P.No.18205 of 2014 and batch dated 07.03.2017)

the Registrars of Universities, vide letter dated 23.12.2014, that the service conditions of non-teaching staff are governed by a law made under Article 309 of the Constitution of India, and employees of the University were entitled to continue in service, till they attained 60 years of age, under the provisions of the 2014 State Act; the said letter of the Principal Secretary to the Government was based on the recommendations of the Andhra Pradesh State Council for Higher Education; in respect of a few employees, the directions of the Principal Secretary to the Government was implemented, and they were continued in service till they attained 60 years of age; having issued the earlier letter dated 23.12.2014, it was not open to the Principal Secretary to the Government to change his mind and issue letter dated 06.08.2016; in the light of the order of the Division Bench, in W.A.No.974 of 2016 dated 27.09.2016, the petitioners are entitled to continue in service till they complete 60 years of age; G.O.Ms.No.112 dated 18.06.2016 has no application as the University is wholly located within the residuary State of Andhra Pradesh; the question of division of assets and liabilities, and final allocation of employees, between both the States, does not arise as the University exclusively belongs to the State of Andhra Pradesh; the mere fact that the University is listed in the Tenth Schedule of the 2014 Central Act is of no consequence; the University cannot discriminate between its teaching and non-teaching staff; the age of superannuation, applicable to its teaching staff, is also applicable to its non-teaching staff; and in the light of the earlier directions including G.O.Ms.No.147 dated 30.06.2014, and as G.O.Ms. No.112 dated 18.06.2016 has no application, no clarification should have been

sought, from the Government of Andhra Pradesh, by the Registrar of the University.

Before examining the rival contentions it is necessary, at the outset, to note the contents of the documents relied upon on behalf of the petitioners. G.O.Ms.No.147 dated 30.06.2014 was issued by the Government of Andhra Pradesh regarding the age of superannuation of government employees, and enhancing their age of superannuation from 58 to 60 years under the 2014 State Act. All the departments of the Secretariat and Heads of Departments were informed that the provisions of the 2014 State Act were applicable only to the categories of employees mentioned in clauses (i) to (iv) of Section 1 r/w Section 2(6) of the 2014 State Act.

The Principal Secretary to the Government, Higher Education Department informed the Registrar of the University, vide letter dated 23.12.2014, that, in terms of the remarks of the Secretary to the Andhra Pradesh State Council of Higher Education in his letter dated 02.08.2014, there was no recruitment of non-teaching staff in the University for more than a decade; most of the Universities had hired temporary employees; the service conditions of non-teaching staff were governed under a specific legislation made under the provisions of Article 309 of the Constitution of India; the non-teaching staff of the universities were entitled for enhancement of the age of superannuation from 58 to 60 years, with effect from 02.06.2014, under the provisions of the 2014 State Act; and, since the Executive Council of the University had the power to define the conditions of its service of its non-teaching employees, they were entitled to be extended the benefit of the enhanced age of superannuation, from 58 years to 60

years, by placing the matter before the Executive Council for taking a decision. The Principal Secretary, while conveying the recommendations of the A.P. State Council for Higher Education, informed the Registrar of the University that, after careful examination of the matter, the Government had agreed to extend the benefit of enhancement of the age of superannuation in respect of regular non-teaching staff, on the permanent rolls of the Universities, from 58 years to 60 years with effect from 02.06.2014; and to treat the gap period, from 02.06.2014 till the date of adoption by the respective Executive Councils of the Universities, as extra-ordinary leave wherever applicable to avoid break in service.

Thereafter the Vice-Chancellor of the University vide proceedings dated 01.01.2015, following the directions of the Principal Secretary to the Government, Higher Education Department conveyed in his letter dated 23.12.2014, continued four of the five employees (other than the driver) who had retired from University service on attaining the age of superannuation of 58 years, during the period between 02.06.2014 and 30.11.2014, in the University service till they attained the age of 60 years. The Executive Council of the University, in its 97th meeting held on 28.02.2015, resolved to approve and ratify the action taken by the University in reinstating the retired non-teaching employees till they attained the age of 60 years as per the letter of the Principal Secretary to the Government, Higher Education Department dated 23.12.2014.

In the office order issued by the University dated 04.01.2017 it is stated that, in compliance with the interim orders passed by

this Court in W.P.M.P.No.50973 of 2016 in W.P. No.41370 of 2016 dated 29.11.2016, the petitioner was continued in service with effect from 01.02.2017 subject to the disposal of the Writ Petition or till she attained the age of 60 years whichever was earlier. By G.O.Ms.No.8 dated 14.03.2017 the Government of Andhra Pradesh, basing on the recommendations of the Secretary, A.P. State Council of Higher Education to regularise the interregnum period of absence of those non-teaching staff who had retired from service between 02.06.2014 and 24.12.2014 and had joined service, accorded permission to regularise the interregnum period in respect of the non-teaching employees of all the Universities who retired between 02.06.2014 and 23.12.2014, and had rejoined service pursuant to the letter dated 23.12.2014.

Thereafter the Government of Andhra Pradesh issued G.O.Ms.No.112 dated 18.06.2016 directing that enhancement of the age of superannuation could not be made applicable to employees of Public Sector Undertakings and Institutions listed in the Ninth and Tenth Schedules of the 2014 Central Act until the matter of division of assets and liabilities of the institution, between the States of Andhra Pradesh and Telangana, was settled, and allotment of employees between the two States was finalised for these Public Sector Undertakings/ Institutions; the Government would be in a position to take a policy decision on the matter only after such process was completed in all respects; and orders issued, if any, by any Department or Public Sector Undertakings/Institutions should be kept in abeyance.

Pursuant to G.O.Ms.No.112 dated 18.06.2016, the Registrar of the University informed the Principal Secretary to the

Government, Higher Education Department, by his letter dated 16.07.2016, that, consequent upon implementation of G.O.Ms.No.147 dated 30.06.2014, four employees, who had retired from University service on attaining the age of superannuation of 58 years during the period between 02.06.2014 and 30.11.2014, were continued in the University service with effect from 01.01.2015 till they attained the age of 60 years and the gap period, from the date of retirement of these employees till the date of re-joining, was treated as extra-ordinary leave; the Executive Council, in its 97th meeting held on 28.02.2015, had approved and ratified the action taken by the University in reinstating the retired non-teaching employees till they attained the age of 60 years as per the letter of the Principal Secretary to the Government, Higher Education Department dated 23.12.2014; in the said letter the Principal Secretary to the Government, Higher Education Department had informed that the service conditions of non-teaching staff were governed by the provisions of the 2014 State Act; all the existing non-teaching employees of the University belonged to the State of Andhra Pradesh, and there was no division of physical assets; there were no affiliated colleges and centres of the University outside the State of Andhra Pradesh; division of employees did not therefore arise; the salaries of employees of the University were met from the Block Grant sanctioned by the Government of Andhra Pradesh; G.O.Ms.No.112 dated 18.06.2016 stated that the provisions of the 2014 State Act were applicable only to the categories mentioned in clauses (i) to (iv) of Section 2(6) of the 2014 State Act; though the University was listed in the 10th Schedule, all the existing non-teaching staff of the University

belonged to the State of Andhra Pradesh; and division of employees, between the two States, did not arise. The Registrar of the University requested the Government of A.P. to extend the benefit of enhancement of the age of superannuation, from 58 years to 60 years, to the non-teaching staff of the University as extended under G.O.Ms.No.147 dated 30.06.2014, and the letter of the Principal Secretary to the Government, Higher Education Department dated 23.12.2014.

Thereafter, by his letter dated 27.07.2016, the Registrar of the University informed the Principal Secretary to the Government, Higher Education Department that G.O.Ms.No.112 did not make any reference to G.O.Ms.No.59 dated 24.12.2014 whereby the age of superannuation of University teachers was enhanced from 60 years to 62 years with effect from 02.06.2014; it was not clear whether this enhanced age of superannuation could be made applicable to non-teaching staff of the University also; G.O.Ms.No.112 was not marked to the Universities, which lead to further ambiguity about the application of the said G.O. to the staff of the University; and, in the absence of clarity on the issue, the University administration was not in a position to take action in this regard. The Registrar of the University sought a clarification from the Principal Secretary to the Government, Higher Education Department regarding this issue.

The Principal Secretary to the Government, Higher Education Department, by his letter dated 06.08.2016, informed the Registrar that the University was listed in the Tenth Schedule; and G.O.Ms.No.112 dated 18.06.2016 was applicable to the University also till further orders from the Government, even

though the University was located geographically at Tirupati. Thereafter the University issued office order dated 07.11.2016 informing the petitioner in W.P.No.41370 of 2016 that she would retire on completion of the age of superannuation of 58 years as on 31.01.2017, as her date of birth was 12.01.1959.

The respondent University is listed at Entry 57 of the Tenth Schedule to the 2014 Central Act. A Division bench of this Court, in **G. Ramamohan Rao**¹, observed that Section 82 of the 2014 Central Act was a specific provision made for the distribution of employees, of State public sector undertakings, corporations and other autonomous bodies, between both the Successor States of Telangana and the residuary State of A.P; while Section 68 of the 2014 Central Act referred to companies and corporations specified in the IX Schedule, and Section 53 to the assets and liabilities of commercial or industrial undertakings of the existing State of A.P, Section 82 not only referred to public sector undertakings and corporations but also to other autonomous bodies; the word “autonomous bodies” could only mean entities other than the commercial and industrial undertakings referred to in Section 53, and companies and corporations referred to in Section 68, as the legal entities referred to in Section 53(1) and 68(1) would fall within the ambit of State public sector undertakings and corporations as referred to in Section 82; autonomous bodies would, necessarily, mean those institutions referred to in both the IX and X Schedule to the 2014 Central Act which were not State public sector undertakings and corporations; by the use of the words ‘autonomous bodies’, in addition to State public sector undertakings and corporations, in Section 82, Parliament intended

to bring employees of all the legal entities/institutions, referred to in the IX and X Schedules, within its ambit; and neither Section 75 nor any of the other provision of the 2014 Central Act related to distribution of employees of the IX and X Schedule entities between the two successor States. The respondent-University, a Tenth Schedule Institution, is governed by the provisions of Section 82 of the 2014 Central Act. However, as the University is located in its entirety within the residuary State of A.P and it does not have any affiliated colleges much less outside the State, all its employees would stand distributed only to the State of Andhra Pradesh.

On the validity of G.O.Ms.No.112 dated 18.06.2016, the Division bench, in **G. Ramamohan Rao**¹, observed that the State Government was not justified in issuing an omnibus G.O such as G.O.Ms. No.112 dated 18.06.2016, more so as the premise on which it was based was evidently invalid since the Corporations/Societies/ Companies of the composite State of Andhra Pradesh no longer operated in their original form and, consequent upon the Government of Telangana establishing new companies/societies, the erstwhile corporations/companies/societies were being administered by the Board of Directors/Managing Committees appointed exclusively by the Government of A.P, and were carrying on their operations within the present State of A.P; G.O.Ms. No.112 dated 18.06.2016 was issued by the State Government without considering all relevant aspects, and on the erroneous premise that the corporate bodies, referred to in Section 82 of the Act, still continued to remain jointly owned and controlled by both the State Governments; and the

reasons for refusal to extend the age of superannuation, as referred to in G.O.Ms. No.112 dated 18.06.2016, had no nexus to the decision required to be taken regarding enhancement of the age of superannuation.

The respondent University, though a Tenth Schedule Institution, is located at Tirupati in the residuary State of A.P. As it has no affiliated institutions, much less outside the present State of A.P, all its employees would stand distributed, under Section 82 of the 2014 Central Act, to the residuary State of A.P. The age of superannuation of the non-teaching staff of the University would be governed by the decision of the Executive Council of the University fixing a uniform retirement age for all its non-teaching staff after obtaining approval of the Government of Andhra Pradesh in this regard, and not by G.O.Ms. No.112 dated 18.06.2016.

As the letter of the Principal Secretary to the Government, Higher Education Department dated 23.12.2014, and the remarks of the Secretary, A.P. State Council of Higher Education dated 02.08.2014, are both based on the premise that the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984 (hereinafter called the "1984 Act") as amended by the 2014 State Act, is applicable to non-teaching staff of Universities also, and they are therefore entitled to continue in service till they reach 60 years of age, it is necessary to refer to the relevant provisions of the 1984 Act and the 2014 State Act.

The 1984 Act was enacted by the A.P. State Legislature to regulate the age of superannuation of persons appointed to public services and posts in connection with the affairs of the State of Andhra Pradesh. Section 1(2) thereof stipulates that the 1984 Act

shall apply to (i) persons appointed to public services and posts in connection with the affairs of the State; (ii) officers and other employees working in any local authority, whose salaries and allowances are paid out of the Consolidated Fund of the State; (iii) persons appointed to the Secretariat staff of the House of the State Legislature; and (iv) every other officer or employee whose conditions of service are regulated by rules framed under the proviso to Article 309 of the Constitution of India immediately before the commencement of the 1984 Act.

Section 2(2) of the 1984 Act defines “Government” to mean the Government of Andhra Pradesh. Section 2(3) defines “Government employee” to include all categories of officers and employees referred to in Section 1(2). Section 2(6) defines “local authority” to mean, in relation to a local area comprised within the jurisdiction of a Municipal Corporation, the concerned Municipal Corporation; and, in relation to any other local area, the concerned Municipal Council, Zilla Parishad, Panchayat Samithi or Gram Panchayat. Section 3 prescribes the age of superannuation and, under sub-section (1) thereof, every Government employee, not being a workman and not belonging to the Last Grade Service, shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years. Section 3(1A), introduced by Act 26 of 1998, stipulates that, notwithstanding anything contained in sub-section (1), every member of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh State Judicial Service shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years. Section 4 stipulates that the provisions of the 1984 Act shall have

effect notwithstanding anything contained in any rule, or order of the Government, for the time being in force.

The 1984 Act was amended by the 2014 State Act, which came into force with effect from 02.06.2014, and Section 2(1) of the 1984 Act was substituted. Section 2(1), after its substitution, stipulates that every Government employee shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years. Section 3A was inserted to the 2014 State Act and, under sub-section (1) thereof, a Government employee belonging to the state cadre/multi-zonal cadre and who, by general or specific order issued by the Government of India under Section 77(1) of the 2014 Central Act is serving provisionally in connection with the affairs of the State of Telangana shall, on his final allotment to the State of Andhra Pradesh, be deemed to be continuously serving in the State of Andhra Pradesh.

While Section 3A of the 2014 State Act specifically refers to Government employees belonging to the state cadre/multi-zonal cadre, employees of wholly owned State Government Public Sector Undertakings/Corporations/Societies, and Universities created by Legislative Enactments, do not belong either to the state cadre or to the multi-zonal cadre in terms of the Presidential Order made under Article 371-D of the Constitution of India. Section 3A has, therefore, no application to these employees. Clause (iv) of Section 1(2) of the 1984 Act relates to every other officer or employee i.e. officers or employees who do not fall within the ambit of clauses (i) to (iii), but whose service conditions are regulated by rules made under the proviso to Article 309 of the Constitution of India.

The Sri Padmavathi Mahila Viswavidyalayam Act, 1983 (hereinafter called the “1983 Act”) is a law, enacted by the legislature of the State of A.P, to establish and incorporate a teaching University for women in the State of A.P, and to provide for matters connected therewith. The said Act came into force on 14.04.1983. Section 3 thereof relates to the University, and provides for the constitution of a University by the name of Sri Padmavathi Mahila Viswa Vidyalayam to consist of a Chancellor, a Vice-Chancellor, Rector, the Board of Management (now called the “Executive Council), an Academic Senate etc. Under Section 3(4) thereof, the University shall be a body corporate having perpetual succession and a common seal, and shall sue and be sued by the said corporate name. Section 3(5) stipulates that, in all suits and other legal proceedings by or against the University, the pleadings shall be signed and verified by the Registrar and all processes in such suits and proceedings shall be issued to, and be served on, the Registrar. Section 15(i) relates to the authorities of the University and, among them, are (i) The Executive Council; (ii) The Academic Senate; and (v) The Board of Studies. As the University is a body corporate under Section 3(4) of the 1983 Act, it is a legal entity distinct and different from the Government of A.P.

The University and its employees (including the petitioners who are all non-teaching staff) are governed by the provisions of the 1983 Act, the regulations and the statutes made thereunder. The 1983 Act is not a law made under Article 309, or a rule made under the proviso to Article 309 of the Constitution of India. Employees of the University are not persons holding public posts in connection with the affairs of the State. On the questions

whether persons working in State owned corporations/companies/Societies are entitled to continue upto the age of 60 years in terms of the 2014 State Act, and whether they all fall under the category of "*persons holding public posts and in connections with the affairs of the State*", the Division bench, in **G. Ramamohan Rao**¹, observed that the words "public services" and "posts in connection with the affairs of the State" are expressions used in Article 309 of the Constitution of India which stipulates that, subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State; the word "service", in the proviso to Article 309, is the "public service" referred to in Article 309 itself; the expression "posts in connection with the affairs of the Union or of any State" is also to be found in the proviso to Article 309 of the Constitution of India; the phrase "persons serving under the Government of a State" refers to such persons in respect of whom the administrative control is vested in the respective executive Governments functioning in the name of the President or of the Governor; the salaries of these persons are paid out of State funds; the salaries, allowances and pension payable to such officers and employees are chargeable upon the Consolidated Fund of a State; the item relating to such administrative expenses forms part of the annual financial statement to be presented to the State Legislative Assembly, and estimates thereof form the subject-matter of discussion in the Legislature; and such persons are taken "*to hold posts in connection with the affairs of the State and to be members of the civil*

service of the State”. (**Pradyat Kumar Bose v. Chief Justice of Calcutta High Court**²).

The Division bench further observed that, while the service conditions of persons appointed to public services and posts in connection with the affairs of the State are ordinarily governed by rules made under the proviso to Article 309 of the Constitution of India, clause (iv) of Section 1(2) of the 1984 Act ensured that even those persons, apart from the persons appointed to public services and posts in connection with the affairs of the State as referred to in clause (i), were also brought within the ambit of the 1984 Act provided their services are regulated by rules made under the proviso to Article 309 of the Constitution of India; all officers and employees, falling within the ambit of clause (i) of Section 1(2) of the 1984 Act, would fall within the ambit of clause (iv) also; clause (iv) of Section 1(2) of the 1984 Act ensured that even those persons, who did not fall within the ambit of clause (i), were also brought within the ambit of the 1984 Act provided their service conditions were governed by rules made under the proviso to Article 309 of the Constitution; employees of Public Sector Undertakings were neither persons holding posts in connection with the affairs of the State, nor were they members of the civil service of the State; and as they were also not governed by the rules made under the proviso to Article 309 of the Constitution of India, they did not fall within the ambit of clauses (i) to (iv) of Section 1(2), and were therefore not governed by the provisions of the 1984 Act as amended by the 2014 State Act. As the University, a body created by the 1983 Act, is also a legal entity

² AIR 1956 SC 285

distinct and separate from the Government of A.P, the aforesaid observations of the Division bench, made in the context of public sector undertakings, would also apply to statutory bodies like the respondent-University.

The Division bench, in **G. Ramamohan Rao**¹, held that, it is only if the 1984 and the 2014 State Act are held applicable to employees of public sector undertakings, can it be held that they are entitled to continue in service till they reach the age of superannuation of 60 years; as employees of public sector undertakings were not *“persons appointed to public services and posts in connection with the affairs of the State”*, they were not governed by the provisions of the 1984 Act as amended by the 2014 State Act; while it was open to the Board of Directors/Managing Committees of each of these Corporations/ Companies/Societies, in accordance with the provisions of the enactment by which they were governed and the Articles of Association/bye-laws which were applicable to them, to adopt the provisions of the 1984 Act and the 2014 State Act, and make them applicable to their employees by amending their rules and regulations, it was only thereafter could employees of these undertakings claim the right to continue in service upto the enhanced age of superannuation of 60 years.

Section 5 of the 1983 Act relates to the powers and functions of the University and, thereunder, the University shall have, among others, the following powers and functions namely; (ix) to create administrative, ministerial and other posts and to make appointments thereto; (xix) to regulate and enforce discipline among the teachers and other employees and students of the University, and take such disciplinary measures in this regard as

may be deemed by the University to be necessary; and (xx) to make arrangements for promoting the health and general welfare of the teachers and other employees. Chapter VI of the 1983 Act relates to Statutes and Regulations and under Section 25 thereof, subject to the provisions of the 1983 Act, the Board of Management shall have the power to make statutes for, among others, the constitution, powers and duties of the authorities of the University; the constitution of pension, insurance, gratuity or provident fund for the benefit of the Officers, teachers and other employees of the University; and all other matters which, by the 1983 Act, are to be, or may be, provided by Statutes. Under Section 16(1) of the 1983 Act, the Board of Management is the Executive Council which shall be the executive body of the University. Section 26(2) enables the Executive Council, from time to time, to make new statutes in addition to the first statute, and to amend or repeal any statute including the first statute. Section 26(3) requires every new statute, or addition to the statutes, or any amendment or repeal of a statute, to be approved by the Chancellor who may assent thereto or withhold assent therefrom or remit the same to the Executive Council for its reconsideration. Under Section 26(4) a new statute, or a statute amending or repealing an existing statute, shall have no validity unless it has been assented to by the Chancellor.

The Executive Council, which is one of the authorities of the University under Section 15(1) of the 1983 Act, and on whom power is conferred to amend statutes under Section 26(2), has the power to make statutes providing for the conditions of service of employees of the University, including enhancing their age of

superannuation. It is only on a decision being taken by the Executive Council in this regard, and on its approval by the Government of A.P, can the age of superannuation of the non-teaching staff of the University be enhanced from 58 to 60 years.

In its 97th meeting held on 28.02.2015, the Executive Council of the University merely ratified the action taken by the University in reinstating the retired non-teaching employees till they attained the age of 60 years in terms of the letter of the Principal Secretary to the Government, Higher Education Department, dated 23.12.2014. No decision has been taken by the Executive Council to prescribe 60 years as the age of superannuation for all its non-teaching staff, nor has any such proposal been approved by the Government of A.P till date. It is only if the letters of the Registrar dated 16.07.2016 and 27.07.2016 are acted upon, and the Government of A.P. takes a considered decision to enhance the age of superannuation of the non-teaching staff of the University from 58 to 60 years, can the petitioners claim, as of right, that they should be continued in service till the age of 60 years.

The Division bench, in **G. Ramamohan Rao**¹, further observed that, unlike Part III of the Constitution, service provisions in Part-XIV of the Constitution related to recruitment, conditions and tenure of service of persons, citizens or otherwise, appointed to a Civil Service or to posts in connection with the affairs of the Union or any State; the word “State” had a different connotation in Part III relating to Fundamental Rights; it included the Government and Parliament of India, the Government and Legislature of each of the States, all local or other authorities

within the territory of India, etc; the scope and ambit of the Service provisions were to a large extent distinct and different from the scope and ambit of the fundamental right, guaranteeing to all citizens, an equality of opportunity in matters of public employment; it would be wrong in principle to either cut down or expand the amplitude of a fundamental right by reference to provisions which had an altogether different scope and purpose (**Gazula Dasaratha Rama Rao v. State of A.P**³); and, while Public Sector Undertakings were no doubt “Instrumentalities of the State” under Article 12 of the Constitution and were governed by Part-III of the Constitution of India, that did not make employees, of these corporate bodies, Government servants. Like public sector undertakings, the respondent-University is also a “State” within the meaning of Article 12 of the Constitution, and the provisions of Part III of the Constitution is applicable to them. Similar to public sector undertakings, the provisions of Part XIV of the Constitution are not applicable to the non-teaching staff of the University, and these employees are not government employees.

The Division bench, in **G. Ramamohan Rao**¹, held that corporate bodies were independent entities, and their employees could not claim parity with employees of the State Government; the State Government had a master-servant relationship with the civil servants of the State, whilst it had no such direct or indirect nexus with employees of corporate bodies; the State Government may legitimately choose to extend different rights in terms of pay-scales and retiral benefits to civil servants; it may disagree to extend the same benefits to employees of corporate bodies; the State

³ (1961) 2 SCR 931 : AIR 1961 SC 564

Government would be well within its right to deny similar benefits to employees of corporate bodies, which were financially unviable, or if their activities resulted in financial losses; when pay-scales were periodically revised for civil servants, they did not automatically become applicable to employees of corporate bodies, which were wholly financed by the Government, and similarly not even to employees of Government companies; likewise, there could not be parity with Government employees in respect of allowances, and so also of retiral benefits (**State of H.P. v. Rajesh Chander Sood**⁴); as employees of public sector undertakings and government servants constituted two different and distinct classes, neither did the conditions of service prescribed for government servants automatically apply to employees of public sector undertakings, nor did the plea of discrimination, or of violation of Article 14, merit acceptance; the contention that the government cannot apply different yardsticks was therefore not tenable; while several of the corporate bodies appeared to have adopted the 1984 Act, they were required to also adopt the 2014 State Act and amend the rules and bye-laws governing the age of superannuation of its employees accordingly; and it was only if the rules, governing the age of superannuation, were amended would the employees of these corporate bodies then be entitled to claim the benefit of the enhanced age of superannuation.

There is no master-servant relationship between the Government of A.P. and the petitioners herein, and there exists an employee-employer relationship between them and the University. The mere fact that the age of superannuation of Government

⁴ (2016) 10 SCC 77

servants has been enhanced to 60 years, does not obligate the State Government to likewise enhance the age of superannuation of the non-teaching staff of the University also. We may not be understood to have held that the State Government should not accord approval for enhancement of the age of superannuation. We have only opined that these are all matters for the Government of A.P. to examine and, thereafter, take a considered decision.

Section 32 of the 1983 Act relates to the conditions of service of employees and settlement of disputes, and sub-section (1) thereof stipulates that every employee shall be appointed under a written contract which shall be lodged with the Registrar, and a copy of which shall be furnished to the employee concerned. Sub-section (2) stipulates that any dispute, arising out of a contract between the University and any employee, may be referred by the Vice-Chancellor to a grievances committee consisting of such persons not being members of the Executive Council as may be nominated by the Executive Council. Section 32(1) of the 1983 Act makes it clear that the relationship between the petitioners and the University is contractual in nature. The Division bench, in **G. Ramamohan Rao**¹, observed that employees governed by the terms of a contract do not possess the status of government servants; neither are they governed by the Rules framed under Article 309 of the Constitution, nor do they enjoy the protection under Article 311 (**UPSC v. Dr. Jamuna Kurup**⁵; **Roshan Lal Tandon v. Union of India**⁶; **Dinesh Chandra Sangma v. State of Assam**⁷); employees of statutory bodies are governed by statutory

⁵ (2008) 11 SCC 10

⁶ AIR 1967 SC 1889

⁷ (1977) 4 SCC 441

rules, and do not enjoy the status of government servants (**Dr. Jamuna Kurup**⁵); employees of government companies are not civil servants; such employees have no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scale should be met by the Government; being employees of bodies corporate, it is the responsibility of the bodies corporate concerned to pay them salary and, if the body corporate does not have the financial capacity to revise or enhance pay scales, its employees cannot claim any legal right against, or seek a direction to, the State Government to meet the additional expenditure required to be incurred on account of revision of pay scales (**A.K. Bindal v. Union of India**⁸; **Pyare Lal Sharma v. Managing Director**⁹).

Section 21 of the 1983 Act relates to the General fund and, thereunder, the University shall have a general fund to which shall be credited (i) its income including the fees and endowments; (ii) contributions or grants which may be made by the Government on such conditions as they may impose; and (iii) other contributions or grants. Section 24 places certain restrictions on the University in respect of financial matters and, thereunder, the University shall not, without the prior approval of the Government, divert earmarked funds for other purposes or upgrade any post or revise the scales of pay of its staff or implement any scheme which involves contribution from the Government, or create a post or posts resulting in recurring liability on the Government either immediately or in future. It is evident, therefore, that any action taken by the University, which would result in recurring liability on

⁸ (2003) 5 SCC 163

⁹ (1989) 3 SCC 448

the Government either immediately or in the future, would require prior approval of the State Government under Section 24 of the 1983 Act.

Section 29 of the 1983 Act relates to annual accounts, and requires the Finance Committee to prepare, each financial year, the annual accounts of the University of the preceding year, and submit them to such audit as the Government may direct before the end of the financial year. The accounts, when audited, are required to be published in the Andhra Pradesh Gazette and copies thereof, together with copies of the audit report, are required to be submitted to the Board of Management, and to the Government. Section 30(2) confers power on the Government to fix the block grant for the University. It is evident, from Sections 24 and 30(2) of the 1983 Act, that approval of the Government is required where the action of the University would result in recurring liability on the Government. Enhancing the age of superannuation of the non-teaching staff of the University, from 58 to 60 years, would result in recurring liability on the Government for the additional two years of service of each of these employees, and would therefore require its prior approval.

W.A.No.974 of 2016, on which reliance is placed by the Learned Counsel for the petitioners, was preferred against the interlocutory order passed by the Learned Single Judge in W.P.M.P.No.36135 of 2016 in W.P.No.29177 of 2016 dated 30.08.2016. In its order in W.A.No.974 of 2016 dated 27.09.2016 the Division Bench, after referring to the provisions of the 2014 State Act, the letter of the Principal Secretary to the Government, Higher Education Department dated 23.12.2014, the subsequent

proceedings dated 01.01.2015, ratification by the Executive Council on 28.02.2015 and G.O.Ms.No.112 dated 18.06.2016, held that, in its prima-facie opinion, the first respondent could not nullify its earlier proceedings/letter dated 23.12.2014 based on which the University had reinstated some of its retired non-teaching employees, by merely making a reference to the fact that the University fell in the Tenth Schedule, and thereby making G.O.Ms.No.112 dated 18.06.2016 applicable; G.O.Ms.No.112 dated 18.06.2016 *per se* would not apply to the University as the said G.O. was evidently intended to apply to the Ninth and Tenth Schedule institutions involving division of the assets and liabilities between the States of Andhra Pradesh and Telangana, and final allocation of the employees thereof; and as the University exclusively belonged to the State of Andhra Pradesh, by the mere fact that it fell in the Tenth Schedule, it could not be subjected to the application of G.O.Ms.No.112 dated 18.06.2016. The Division Bench saw no justification in discontinuing the appellant therein from service on completion of the age of 58 years. An interim order was passed directing the 3rd respondent-University to continue the appellant therein in service pending further orders, or till he reaches 60 years of age, whichever was earlier. Following the said order of the Division Bench, interim orders were passed in other writ petitions directing that the petitioners therein be continued in service till they reached the age of 60 years.

While the Division Bench was justified in holding, in its order in W.A. No.974 of 2016 dated 27.09.2016, that G.O.Ms.No.112 dated 18.06.2016 had no application to the respondent-University, the fact remains that the 2014 State Act also has no application to employees of

the University. As the correspondence between the Government and the University, and the earlier G.Os, were based on the erroneous premise that the 2014 State Act was applicable to employees of the University, and as we have now held that employees of statutory bodies such as the University do not fall within the ambit of the 2014 State Act, no reliance can be placed by the petitioners on the earlier letters, or the G.Os, issued by the State Government to claim that they should be continued in the service of the University till they attain 60 years of age.

Even otherwise there is no finality to an interlocutory order, and interim orders passed by Courts on certain conditions are not precedents for other cases which may be on similar facts (**Empire Industries Limited v. Union of India**¹⁰; **M. Vijaya Kumar v. Milk Products Factory**¹¹; and **M/s. Ideal Industrial Explosives Ltd. v. Govt. of A.P.**¹²). The mere fact that W.A. No.974 of 2016, preferred against the interlocutory order passed in W.P.M.P. No.36135 of 2016 in W.P. No.29177 of 2016 dated 30.08.2016 was allowed by the earlier Division bench on 27.09.2016, would not require us to pass a similar final order as an interlocutory order does not constitute a precedent binding on a co-ordinate Division bench.

Unlike the order in W.A. No.974 of 2016 dated 27.09.2016 which is interlocutory in nature, the judgment in **G. Ramamohan Rao**¹ is a final order, and the law declared therein is binding on a co-ordinate bench. A Division Bench of the High Court is bound by the judgment of another Division Bench. They cannot differ from the earlier judgment of co-ordinate jurisdiction merely because they hold a different view as

¹⁰ AIR 1986 SC 662

¹¹ 1990(3) ALT 382

¹² (Order in W.P. No.13617 of 2014 dated 31.10.2014 (DB))

certainty and uniformity in the administration of justice are of paramount importance. (**Commissioner of Income Tax v. M/s B.R. Constructions**¹³; **Agarwal Industries Ltd. v. Union of India**¹⁴). Even if the earlier decision seems to be incorrect to a bench of coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the Court or more aspects should have been gone into by the Court deciding the matter earlier, that would not be a reason to say that the decision was rendered per incuriam and is liable to be ignored. The earlier judgment may seem to be incorrect, yet it will have binding effect on the latter bench of co-ordinate jurisdiction. The easy course of saying that the earlier decision was rendered per incuriam is not permissible and the matter can be resolved only in two ways — either for the earlier decision to be followed or to refer the matter to a larger Bench. (**State of Bihar v. Kalika Kuer**¹⁵; **Agarwal Industries Ltd.**¹⁴). It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety, forms the basis of judicial procedure and it must be respected at all costs. (**Vijay Laxmi Sadho (Dr) v. Jagdish**¹⁶).

The mere fact that G.O.Ms. No.112 dated 18.06.2016 has been set aside would not revive the earlier orders passed by Government officials, or the G.Os issued by the State Government. In **G. Ramamohan Rao**¹, the Division bench opined that the G.Os issued earlier would not automatically revive, on G.O.Ms. No.112 dated 18.06.2016 being set aside, nor would it require employees of these corporate bodies to be continued in service till they attained the age of 60 years; not to provide for an age of retirement at all would be contrary

¹³ (1994) 1 An .W.R.450 (FB)

¹⁴ (Common order in WP. No.19303 and 20536 of 2001 dated 21.06.2016)

¹⁵ (2003) 5 SCC 448

¹⁶ (2001) 2 SCC 247

to public interest, because the State or its instrumentalities cannot afford the luxury of allowing its employees to continue in service after they have passed their peak (**Yeshwant Singh Kothari v. State Bank of Indore**¹⁷; **K. Nagaraj v. State of A.P**¹⁸); the proposition that there ought to be an age of retirement in services was widely accepted as reasonable and rational; public interest demanded that there ought to be an age of retirement in all services; a common scheme of general application governing superannuation was evolved in the light of experience regarding performance levels of employees, the need to provide employment opportunities to the younger sections of society, and the need to open up promotional opportunities to employees at the lower levels early in their career; inevitably, the employer had to counter-balance conflicting claims while determining the age of superannuation; on the one hand, services under bodies corporate could not be deprived of the benefit of the mature experience of senior employees; on the other hand, a sense of frustration and stagnation could not be allowed to generate in the minds of the junior members of the services, and the younger sections of the society; the balancing of these conflicting claims of different segments of society involved minute questions of policy; these claims involved considerations of varying vigour and applicability; often, the Court had no satisfactory and effective means to decide which alternative, out of the many competing ones, was the best in the circumstances of a given case; while resolving the validity of policy issues like the age of retirement, it was not proper to put the conflicting claims in a sensitive judicial scale, and decide the issue by finding out which way the balance tilts; this was an exercise which the administrator had to undertake (**K. Nagaraj**¹⁸); courts would

¹⁷ 1993 Supp (2) SCC 592

¹⁸ AIR 1985 SC 551

not issue a writ to enforce the earlier G.Os, whereby administrative instructions were issued to enhance the retirement age, as it did not have the force of law (**Sureshchandra Singh v. Fertilizer Corpn. of India Ltd.**,¹⁹); determination of the age of superannuation was a matter of policy of the State Government, or the competent authority, and the High Court, under Article 226 of the Constitution, would not determine the age of superannuation (**State of U.P. v. Dayanand Chakrawarty**²⁰); the age of superannuation, governing the length of service of officers and employees, may be suitably altered in appropriate circumstances, even by reducing the age so as to affect serving employees, and no exception can be taken thereto (**P. Venugopal v. Union of India**²¹); if a rule of retirement could be deemed to deprive a person of his right to livelihood, it would be impermissible to provide for an age of retirement at all; that would be contrary to public interest because the State, or its instrumentalities, could not afford the luxury of allowing its employees to continue in service after they had passed the point of peak performance; rules of retirement did not take away the right of a person to his livelihood; they limited his right to hold office to a stated number of years (**K. Nagaraj**¹⁸); a government servant/employee of a public sector undertaking or a statutory body had no right to continue in service beyond the age of superannuation (**State of Assam v. Basanta Kumar Das**²²); it was inconceivable that, when the age of superannuation was fixed, it should be in the option of the employee to continue in service thereafter (**Guest Keen Williams (P) Ltd. v. P.J. Sterling**²³); and it is for the concerned authority to make necessary

¹⁹ (2004) 1 SCC 592

²⁰ (2013) 7 SCC 595

²¹ (2008) 5 SCC 1

²² (1973) 1 SCC 461

²³ (1960) 1 SCR 348 : AIR 1959 SC 1279

changes in the rules and regulations after taking into account all relevant aspects. (**Sureshchandra Singh**¹⁹).

The earlier G.Os, and proceedings issued by Government officials, would neither revive nor can the petitioners claim, on the basis of these proceedings, that they are entitled to continue in service till they attain 60 years of age, as these proceedings were issued on the erroneous premise that the 2014 State Act applied to the bodies corporate listed in the Ninth and Tenth Schedule to the 2014 Central Act. As held hereinabove the 2014 State Act has no application to employees of the respondent-University.

While the State Government, as held by the Division bench in **G. Ramamohan Rao**¹, is required to consider the proposals submitted by the Companies/Corporations/Societies (in the present case “the University”) and take a decision regarding enhancement of the age of superannuation, with respect to the legal entity, on the merits of the proposal, no mandamus can be issued to the Government to enhance the age of superannuation of the employees, of the respondent-University, from 58 years to 60 years. The decision, whether or not the age of superannuation of the non-teaching staff of the respondent-University should be enhanced, would depend on several factors such as its financial condition, its need etc. The question whether enhancing the age of superannuation would increase its financial burden, which it finds difficult to bear, are also matters to be considered by the State Government. The proposal submitted by the Registrar of the University, requesting the State Government to enhance the age of superannuation, is tentative and not final. It is subject to the proposal being accepted by the State Government. Suffice it to

make it clear that, merely because the State Government enhanced the age of Government employees from 58 to 60 years, does not obligate them to automatically enhance the age of superannuation of employees of the bodies corporate, referred to in Section 82 of the 2014 Central Act, even without examining the need of these corporate bodies to continue the services of such employees beyond 58 years of age.

The decision taken by the Executive Council of the University to ratify the earlier action of its Vice Chancellor, in reinstating retired non-teaching staff and in continuing them in service till they attained the age of 60 years, is in compliance with the directions of the Principal Secretary to the Government, Higher Education Department in his letter dated 23.12.2014. As noted hereinabove, the said letter dated 23.12.2014 is based on the erroneous premise that employees of the University are governed by the provisions of the 1984 Act, as amended by the 2014 State Act.

The respondent University, a body created by the 1983 Act, is a distinct legal entity in terms of Section 3(4) thereof. As has been detailed hereinabove the Division bench, in **G. Ramamohan Rao**¹, held that employees of public sector undertakings and statutory bodies, which are independent legal entities, are not government servants and do not fall within the ambit of the 1984 Act as amended by the 2014 State Act. The earlier exercise of ratification, by the Executive Council of the University, cannot therefore be relied upon by the petitioners to claim that they should also be continued in service till they attain 60 years of age. We, however, make it clear that it is for the Executive Council of

the University to take an appropriate decision regarding the age of superannuation of its non-teaching staff after obtaining approval of the Government of A.P. in this regard.

Teaching and non-teaching staff of Universities constitute two different and distinct classes. The petitioners, all of whom are non-teaching staff, cannot compare themselves, or claim parity with, the teaching staff of the University. We may not be understood to have expressed any opinion on what the age of superannuation, for the teaching staff of the Universities, should be. All that we have held is that the non-teaching staff of the University cannot compare themselves with the teaching staff of the University, with regards the age of superannuation, as the classification of teaching and non-teaching staff is a valid classification, and these distinct and different categories constitute two separate classes. The plea of discrimination, with regard to the age of superannuation of these two categories, must therefore fail.

We consider it appropriate, in these circumstances, to dispose of all these Writ Petitions, directing the Government of A.P. to consider the proposal submitted by the Registrar of the University for enhancement of the age of superannuation of the non-teaching staff of the respondent-University from 58 years to 60 years, in accordance with law and take a decision in this regard at the earliest, in any event not later than four months from the date of receipt of a copy of this order.

All the Writ Petitions are, accordingly, disposed of. The miscellaneous petitions pending, if any, shall stand closed. No costs.

RAMESH RANGANATHAN, ACJ

Dr. SHAMEEM AKTHER, J

Date:04.04.2017.

MRKR/CS

