

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 2337 OF 2011**

1. Dr. Gokeran Dubey S/o Shri Bhaiyalal Dubey, aged about 62 years, R/o Gali No.5, Behind BJP Office, Karbala Road, Bilaspur, District Bilaspur (CG).
2. Dr. Chandrashekar Patel S/o Shri Yudhishtir Patel, aged about 62 years, R/o House No. 30/463, Behind Dr. Ladikars Hopital, Near Karbala Road, Bilaspur (CG).

...Petitioner(s)**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Higher Education Department, DKS Bhawan, Mantralaya Raipur (CG).
2. Commissioner, Department of Higher Education, Govt. Science College Campus, Raipur (CG).
3. University Grants Commission Through Its Secretary, Bahadur Shah Zafar Marg, New Delhi-110002.
4. D.P. Vipra College Through its Principal, Old High Court Road, Bilaspur (CG).

... Respondent(s)**WRIT PETITION (S) NO. 2333 OF 2011**

Dr. BA. Mishra, S/o late Shri AP Mishra, aged about 62 years R/o near Mamabhacha Talab, Tikrapara, Bilaspur District Bilaspur (CG).

...Petitioner(s)**Versus**

1. State Of Chhattisgarh Through Its Secretary, Department of Higher Education Department, DKS Bhawan, Mantralaya Raipur (CG).
2. Commissioner, Department of Higher Education, Govt. Science College Campus, Raipur (CG).
3. University Grants Commission Through Its Secretary, Bahadur Shah Zafar Marg, New Delhi-110002
4. CM Dubey Post Graduate College Through Its Principal, Link Road, Bilaspur (CG).

... Respondent(s)**WRIT PETITION (S) NO. 7799 OF 2011**

Dr. (Smt.) Uma Gupta W/o Shri Kamlesh Kumar Gupta, aged about 62 years presently posted and working as Assistant Professor (Botany) Kalyan Post Graduate College, Bhilai Nagar, R/o Qtr No.2-A, Street No.23, Sector-8, Bhilai Distt. Durg (CG).

...Petitioner(s)**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Higher Education Department, DKS Bhawan, Mantralaya Raipur (CG).
2. Commissioner, Department of Higher Education, Govt. Science College premises, Raipur (CG).

3. Kalyan Post Graduate College through the Chairman, Governing Body, Kalyan Post Graduate College, Bhilai Nagar, Distt. Durg (CG).
4. Principal, Kalyan Post Graduate College, Bhilai Nagar, Distt. Durg (CG).

... Respondent(s)

For Petitioners	:	Shri Amrito Das and Shri Animesh Verma, Advocates.
For Respondent-State	:	Shri SP Kale, Dy. Advocate General.
For Respondent-UGC	:	Shri Sachin Singh Rajput, Advocate.
For Respondent No.4	:	Shri Afroz Khan, Advocate (in WPS Nos. 2337 and 2333 of 2011).

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14.08.2018

1. The claim of the petitioners in these writ petitions and the grounds of challenge all being common, this court proceeds to decide these three cases by this common order.
2. The challenge in these petitions are the notice of retirement issued to each of the petitioners intimating them that their services would stand superannuated on their attaining the age of 62 years. Further relief sought for by the petitioners was to permit the petitioners to continue in service till the age of 65 years by applying the regulations/scheme of the University Grants Commission (in short UGC) whereby the UGC had already recommended for enhancement of the age of retirement from 62 to 65 years.
3. The contentions of the petitioners all along was that the recommendations and regulations made by the UGC would have a binding effect upon the State Govt. and that since the State Govt. has been adopting the recommendations so far as the academic curriculum is concerned, they could not have ignored the

recommendations made so far as the age of superannuation of the teachers are concerned as recommended by the UGC.

4. Admittedly, the petitioners in all the writ petitions were working in a private educational institution which were aided by the State Govt. The provisions of Chhattisgarh Shaskiya Sevak (Adhivarshiki-Ayu) (Sansodhan) Adhiniyam, 2012 was enacted by the State on 28.04.2012 making it applicable w.e.f. 01.04.2012 whereby the age of superannuation for the teachers working in the Higher Educational institute engaged in class room teaching has been enhanced from 62 to 65. The effect of the notification would be that the age of superannuation so far as government teachers or teachers working in the Higher Education Institution under the State Govt. would have the benefit of enhanced age of retirement of 65 years w.e.f. 01.04.2012 i.e. to say that all those persons who had attained the age of 62 years on or after 01.04.2012, their age of superannuation would stand enhanced to 65 years, which otherwise also means that those employee who had superannuated prior to 01.04.2012 at the age of 62 years, they would not have the benefit of enhanced age of superannuation.
5. The issue raised in these petitions may not require too much deliberation particularly in the light of judgment of Supreme Court in case of Jagdish Prasad Sharma and Others Vs. State of Bihar & Others, 2013(8)SCC 633 wherein in paragraphs 69 and 70 it has been held as under :

“69. To some extent there is an air of redundancy in the prayers made on behalf of the Respondents in the submissions made

regarding the applicability of the scheme to the State and its universities, colleges and other educational institutions. The elaborate arguments advanced in regard to the powers of the UGC to frame such Regulations and/or to direct the increase in the age of teachers from 62 to 65 years as a condition precedent for receiving aid from the UGC, appears to have little relevance to the actual issue involved in these cases. That the Commission is empowered to frame Regulations under Section 26 of the UGC Act, 1956, for the promotion and coordination of university education and for the determination and maintenance of standards of teaching, examination and research, cannot be denied. The question that assumes importance is whether in the process of framing such Regulations, the Commission could alter the service conditions of the employees which were entirely under the control of the States in regard to State institutions.

70. The authority of the Commission to frame Regulations with regard to the service conditions of teachers in the centrally- funded educational institutions is equally well established. As has been very rightly done in the instant case, the acceptance of the scheme in its composite form has been left to the discretion of the State Governments. The concern of the State Governments and their authorities that the UGC has no authority to impose any conditions with regard to its educational institutions is clearly unfounded. There is no doubt that the Regulations framed by the UGC relate to Entry 66 List I of the Constitution in the Seventh Schedule to the Constitution, but it does not empower the Commission to alter any of the terms and conditions of the enactments by the States under Article 309 of the Constitution. Under Entry 25 of List III, the State is entitled to enact its own laws with regard to the service conditions of the teachers and other staff of the universities and colleges within the State and the same will have effect unless they are repugnant to any central legislation.”

6. Considering the aforesaid authoritative decision of the Supreme Court and also taking note of the fact the State Govt. in the instant case had amended the age of superannuation only w.e.f.

01.04.2012 and all the petitioners before this court in these petitions had superannuated or had crossed the age of 62 years earlier to 01.04.2012, the benefit as has been claimed for by the petitioners cannot be extended in the light of the judgment in Jagdish Prasad (Supra).

7. All the three writ petitions therefore being devoid of merit deserve to be and accordingly stand dismissed.
8. Needless to mention that since the cut off date fixed by the State has not been challenged by any of the petitioners in these petitions, dismissal of these petitions would not preclude them to challenge the same by way of fresh petition, if they so intend.

Sd/-
(P. Sam Koshy
Judge