

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P.Nos.8935, 12143, 12456, 13688, 14350, 14550 and 18073 of 2014

W.P.Nos.18210, 18211, 23490 and 27225 of 2015

M.P.Nos.1, 1, 1, 1, 1 and 1 of 2014

M.P.Nos.1, 1 and 1 of 2015

W.P.No.8935 of 2014 and 27225 of 2015

R.Balakrishnan	..	Petitioner in W.P.No.8935/14
N.Manoharan	..	Petitioner in W.P.No.27225/15

versus

1. The Joint Secretary,
Government of India,
Ministry of Personnel, Public Grievances and Pensions,
(Department of Personnel and Training),
New Delhi 110 001.
 2. The Secretary to Government,
State of Tamil Nadu,
Higher Education Department,
Secretariat, Chennai 600 009.
 3. The Registrar,
Bharathiar University,
Coimbatore 641 046.
- .. Respondents in both W.Ps.,

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, to declare the Statute 9 of Service Statute in Volume 2 Chapter XVIII of Bharathiar University as unconstitutional, illegal, arbitrary and vitiated by errors of law, insofar as fixation of 58 years of age as retirement age for the non-teaching staff working in Bharathiar University is concerned and consequently, revise the age of retirement of non-teaching staff employed in Bharathiar University as 60 years of age and to allow the petitioner to continue in service till attaining the age of 60 years with consequential benefits.

For Petitioner : Mr.G.Sankaran
(W.P.No.8935/14)

For Petitioner : Mr.M.V.Muralidaran
(W.P.No.27225/15)

For 1st Respondent : Mr.V.T.Balaji, CGSPC

For 2nd Respondent : Mr.Mr.Arokiasamy,
Government Advocate

W.P.No.12143 of 2014

R.Venu

.. Petitioner

versus

1. The Secretary to Government,
State of Tamil Nadu,
Higher Education Department,

Secretariat, Chennai 600 009.

2. The Registrar,
Madras University,
Chepauk, Chennai 600 005.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, declaring the Chapter XXIV of the Madras University Act as unconstitutional, illegal and arbitrary, in so far fixing the age of retirement as 58 years for the non-teaching staff working in the Madras University and consequently revise the age of retirement of non-teaching staff as 60 years in par with teaching staff and class IV of Non-teaching Staff.

For Petitioner : M/s.K.M.Vijayan Associates

For 1st Respondent : Mr.Mr.Arokiasamy,
Government Advocate

For 2nd Respondent : Mr.G.Thilagavathi

W.P.Nos.14550 and 18073 of 2014

V.Selvaraj .. Petitioner in W.P.No.14550/14
T.S.Rajamanickam .. Petitioner in W.P.No.18073/14

versus

1. The Secretary to Government,
Government of India,
Ministry of Personnel, Public Grievances and Pensions,

(Department of Personnel and Training),
New Delhi 110 001.

2. The Secretary to Government,
State of Tamil Nadu,
Personnel and Administrative Reforms Department,
Fort St. George, Chennai 600 009.
 3. The Secretary to Government,
State of Tamil Nadu,
Higher Education Department,
Fort St. George, Chennai 600 009.
 4. The Secretary to Government,
State of Tamil Nadu,
Agricultural Department,
Fort St. George, Chennai 600 009.
 5. The Registrar,
Tamil Nadu Agricultural University,
Coimbatore 641 003.
- .. Respondents in both W.Ps.,

Prayer: Writ petitions filed under Article 226 of the Constitution of India to issue Writs of Declaration, declaring the regulation in Regulation No.24 of the Tamil Nadu Agricultural University Regulations in so far as the age of Superannuation of University employees other than teachers at 58 years of age is concerned as ex facie illegal discriminatory offending Art.14 and 16 of the Constitution of India and consequently direct the respondents 2 to 4 to revise the age of superannuation of the Non-Teaching Staff of the 4th respondent University from 58 years to 60 years and allow the petitioner to continue in service till 31.10.2016 (in respect of W.P.No.14550 of 2014) and 31.7.2016 (in respect of W.P.No.18073 of 2014) till he attains the 60 years of age with all

consequential monetary and service benefits.

For Petitioner : Mr.A.R.Suresh

For Respondent 2 to 4 : Mr.Mr.Arokiasamy,
Government Advocate

For 5th Respondent : Mr.Abdul Saleem

W.P.Nos.12456, 13688 and 14350 of 2014

W.P.Nos.18210 and 18211 of 2015

R.Kumaresan	..	Petitioner in W.P.No.12456/14
V.Sarala	..	Petitioner in W.P.No.13688/14
M.Thambiraj	..	Petitioner in W.P.No.14350/14
D.Anbazhagan	..	Petitioner in W.P.No.18210/15
K.Velu	..	Petitioner in W.P.No.18211/15

versus

1. The Secretary to Government,
Government of India,
Ministry of Personnel, Public Grievances and Pensions,
(Department of Personnel and Training),
New Delhi 110 001.
2. The Secretary to Government,
State of Tamil Nadu,
Personnel and Administrative Reforms Department,
Fort St. George, Chennai 600 009.
3. The Secretary to Government,
State of Tamil Nadu,
Higher Education Department,
Fort St. George, Chennai 600 009.
4. The Registrar
Tamilnadu Veterinary and Animal Sciences University,

Madhavaram Milk Colony,
Chennai 600 051.

5. The Dean,
Madras Veterinary College,
Vepery Chennai 600 007.

.. Respondents in all W.Ps.,

Prayer: Writ petitions filed under Article 226 of the Constitution of India to issue Writs of Declaration, declaring the regulation in Regulation No.24 of the Tamilnadu Veterinary and Animal Sciences University Regulations in so far as the age of superannuation of other employees who are borne under the Tamilnadu Government service rules and who are recruited against permanent or temporary posts of the University and those who are transferred and allotted to the University from TNAU/Government department at 58 years of age is concerned as ex facie illegal discriminatory offending Art.14 and 16 of the constitution of India and consequently direct the respondents 2 to 4 to revise the age of superannuation of the Non-Teaching Staff of the 4th respondent University form 58 years to 60 years and allow the petitioner to continue in service till 31.7.2016 (in respect of W.P.Nos.12456 & 14350 of 2014); 31.05.2016 (in respect of W.P.No.13688 of 2014); and 30.06.2017 (in respect of W.P.Nos.18210 and 18211 of 2015) till he attains the 60 years of age with all consequential monetary and service benefits.

For Petitioner : Mr.A.R.Suresh

For 1st Respondent : Mr.V.T.Balaji, CGSPC

For Respondent 2 & 3 : Mr.Mr.Arokiasamy,
Government Advocate

For Respondents 4 & 5 : Mr.S.Vijayakumar

ORDER

(Order of the Court was made by **S.MANIKUMAR, J.**)

In W.P.No.8935 of 2014 and W.P.No.27225 of 2015, non-teaching staffs of Bharathiar University, have questioned Statute 9 of the Service Statutes in Volume 2 Chapter XVIII of Bharathiar University Act, prescribing the age of retirement for non-teaching staff as 58 years.

2. In W.P.No.12143 of 2014, the petitioner has sought for a declaration, declaring Chapter XXIV of the Madras University Act, as unconstitutional, illegal and arbitrary, insofar as fixing the age of retirement as 58 years for non-teaching staff working in Madras University and that it should be extended as 60 years, for employees of the superior establishment also.

3. In W.P.Nos.14550 and 18073 of 2014, the petitioners, non-teaching staff of Tamil Nadu Agricultural University, Coimbatore, have sought to declare Regulation 24 of the Tamil Nadu Agricultural University

Regulations, insofar as the age of superannuation of University employees, other than teachers at 58 years of age, is concerned, as ex facie illegal.

4. In W.P.Nos.12456, 13688 and 14350 of 2014 and W.P.Nos.18210 and 18211 of 2015, the petitioners, non-teaching staff of the Tamilnadu Veterinary and Animal Sciences University, have sought for a Declaration, declaring Regulation No.24 of the Tamilnadu Veterinary and Animal Sciences University Regulations, insofar as the age of superannuation of other employees, who are borne under the Tamilnadu Government service rules, and are recruited against permanent or temporary posts of the University and those who are transferred and allotted to the University from TNAU/Government department, at 58 years of age is concerned as ex facie illegal.

5. Sum and substance of the case of the petitioners is that the statutes of the Universities or the Regulations, as the case may be, fixing the age of non-teaching staff, except in the case of Office Assistants and Provisionalised Mazdoors, transferred from Government Department and

appointed by the Tamil Nadu Veterinary and Animal Sciences University, Tamil Nadu Agricultural University, Bharathiar University and Madras University, is discriminatory and violative of Article 14 of the Constitution of India, when teaching staff of the said Universities are allowed to retire on attaining the age of 60 years.

6. Contention of the non-teaching staff of Tamil Nadu Agricultural University is that prescription of age of superannuation of University employees, other than teachers, be governed by the provisions of the State Government, as 58 years, except for the Office Assistants and Provisionalised Mazdoors transferred from Government Departments, as 60 years, is discriminatory. According to them, the age of superannuation should be 60 years, for all the employees of the Universities, whether teaching or non-teaching staff.

7. Mr.A.R.Suresh, learned counsel appearing for non-teaching staff of the Tamilnadu Veterinary and Animal Sciences University, as well as, Tamil Nadu Agricultural University (petitioners in W.P.Nos.12456, 13688, 14350, 14550 and 18073 of 2014 and W.P.Nos.18210 and 18211 of

2015), submitted that the Tamilnadu Veterinary and Animal sciences University Act 1989 (Tamil Nadu act 42 of 1989) was enacted by the State Legislature, with effect from 19.09.1989, and by virtue of and in exercise of the powers conferred by sub section (4) of Section 48 r/w. sub section (1) of section 40 of the Tamilnadu Veterinary and Animal sciences University Act 1989 (Tamil Nadu act 42 of 1989), Regulations namely “The Tamilnadu Veterinary and Animal sciences University Regulations” have been made. Regulation No.24(1) of the said Regulation, impugned in the Writ Petition, reads as follows:

“(1) The age of superannuation of employees who are recruited against permanent or temporary posts of the university, governed by the Policy of the UGC and borne by the UGC scales of pay and the employees who are transferred and permanently allotted to the University from TNAU/ Government departments governed by the policy of the UGC and borne by the UGC Scales of pay shall be 60 years.

The age of superannuation of other employees who are borne under the Tamilnadu Government service rules and who are recruited against permanent or temporary posts of the University and those who are transferred and allotted to the University from TNAU/Government department shall be 58 years except in case of office

assistants and Provincialised Mazdoor.

The age of superannuation for office Assistants and Provincialised Mazdoor transferred from government departments and appointed by the University shall be 60 years.

The date of retirement of University employees shall be with effect from the afternoon of the last day of the month in which he/she attains the Superannuation age as above.”

8. He further submitted that both teaching and non teaching staff of the University are salaried employees of the University and their conditions of service are governed by the provisions of Tamilnadu Veterinary and Animal sciences University Act, 1989, the statutes and the Regulations made thereunder. Earlier, both Teaching and Non Teaching staff of the University had the same age of superannuation of 58 years. But by virtue of the recommendations of University Grants Commission, issued in respect of the pay structures of various cadres of Teaching staff of the University, namely, Lecturers, Assistant professors, Associate professors, Professors etc., age of retirement of the Teaching staff of the

University alone has been increased to 60 years, and thus, the recommendations of the UGC have been acted upon.

9. Learned counsel for the non-teaching staff of the Tamilnadu Veterinary and Animal Sciences University as well as Tamil Nadu Agricultural University, further submitted that, insofar as non-teaching staff of the Universities, is concerned, the statute or regulation, as the case may be, has provided that the employees of Classes A, B and C, shall retire from service on the last day of the month in which he/she completes 58 years of age. Among the salaried employees of the Universities, teaching staff are allowed to continue upto 60 years and non-teaching staff are retired on attaining the age of 58 years, on the last day of the month, in which, he/she completes 58 years. Class "D" employees of the Non -Teaching staff are given the benefit of service up to 60 years of age, and whereas, Non-Teaching staff of Class "A", "B", "C" alone are discriminated.

10. Inviting the attention of this Court to the Official Memorandum No.25012/8/98/Estt.(A), dated 30.05.1998, issued by the

Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training), regarding the age for Central Government Employees and Autonomous Body/Organisations, Mr.A.R.Suresh, Learned counsel for the non-teaching staff of the Tamilnadu Veterinary and Animal Sciences University as well as Tamil Nadu Agricultural University, further submitted that pursuant to the aboveaid Office Memorandum, issued by the Government of India, Fundamental Rules 56(1)(a) has been amended and except in few States, like Tamil Nadu, Jammu & Kashmir, etc., Universities in other States have revised the age of retirement for Class (a), (b) & (c) as 60 years, on par with teaching staff of the Universities. According to him, State of Tamil Nadu has not passed any orders, revising the age of superannuation of non-teaching staffs in (a), (b) & (c) categories in the Universities in Tamil Nadu, without any reason.

11. Learned counsel for the non-teaching staff of the Tamilnadu Veterinary and Animal Sciences University, as well as Tamil Nadu Agricultural University further submitted that due to the inaction, on the part of the State Government, many non-teaching staff in (a), (b) & (c)

categories, have already superannuated, on attaining the age of 58 years, whereas, non-teaching staffs in (d) category, are allowed to retire on attaining the age of 60 years. He further submitted that the abovesaid Office Memorandum issued by the Government of India, is applicable to all the Central Government Employees and Autonomous Bodies/Organisations in the Country, including the Universities.

12. Placing reliance on the decision of the Hon'ble Supreme Court in **Osmania University v. V.S.Muthurangam** reported in **1997 (10) SCC 741**, learned counsel for the petitioners submitted that when a similar question, as to whether, the age of non-teaching staff, should be raised to 60 years, when Osmania University had already fixed the age of teaching staff, as 60 years, writ petitions were filed in High Court of Andhra Pradesh, which upheld the claim of the petitioners therein that the age of superannuation of non-teaching staffs, should also be 60 years.

13. He further submitted that when the correctness of the order of the High Court of Andhra Pradesh was questioned in the Hon'ble Apex

Court, the plea of the University was that it was obliged to fix the same age of superannuation of non teaching staff, as done, in the case of State Government employees. While accepting the contention of the learned counsel for non-teaching staffs that raising the age of superannuation of non teaching staff to 60 years, for bringing uniformity in the superannuation age of both teaching and non teaching staff of the University, is neither impracticable nor undesirable, the Hon'ble Supreme Court in **Osmania University's** case, rejected the plea of the University. According to the Hon'ble Apex Court, this would bring about parity, in the age of superannuation, of both teaching and non teaching staff.

14. Taking this Court through the counter affidavit, filed by the Registrar, Tamilnadu Veterinary and Animal Sciences University, Mr.A.R.Suresh, learned counsel for the non-teaching staff of the Tamilnadu Veterinary and Animal Sciences University, as well as Tamil Nadu Agricultural University, further submitted that when the University has contended that the service conditions of teaching staff are governed by the policy decision of the State Government and when the said University has also increased the age of the teaching staff in the

Universities, based on the recommendations of the University Grants Commission, then, the counter affidavit is self contradictory. Inasmuch as the recommendations of the University Grants Commission, has been accepted, insofar as teaching staff is concerned, then, it is obligatory on the part of the Universities to increase the age of non-teaching staff also. He also submitted that the answering respondent, Tamilnadu Veterinary and Animal Sciences University has failed to consider the decision of the Apex Court in **Osmania University's** case (cited supra), which is squarely applies to the facts of the present case also.

15. Mr.K.M.Vijayan, Learned Senior Counsel appearing for the non-teaching staff of Madras University, drew the attention of this Court to the impugned Chapter XXIV of the Madras University Act and submitted that the said Regulation is arbitrary, discriminatory and hence, violative of Article 14 of the Constitution of India. He adopted the arguments of Mr.A.R.Suresh, learned counsel for the non-teaching staff of the Tamilnadu Veterinary and Animal Sciences University as well as Tamil Nadu Agricultural University.

16. While adopting the arguments of the learned counsel for the

non-teaching staff of the Tamilnadu Veterinary and Animal Sciences University as well as Tamil Nadu Agricultural University, Mr.G.Sankaran, learned counsel appearing for the non-teaching staff of Bharathiar University (petitioner in W.P.No.8935 of 2014) submitted that based on the Pay Commission Recommendations, in many States and Union Territories, age of non-teaching staff, in Universities and Colleges, has been increased to 60 years and only in few States, it has not been done. According to him, teaching and non-teaching staff of the University form a single homogeneous class and therefore, the age of the retirement should be same. It is also his further submission that right to equality and equal opportunity, are guaranteed under the Constitution of India and therefore, any regulation, relating to service conditions, in particular, the age of superannuation of teaching and non-teaching staff, in Universities and Government Colleges, should be same. If there is a variance, then according to him, it is violative of Article 14 of the Constitution of India.

17. Attention of this Court was also invited to the Government of

India's Office Memorandum, dated 30.05.1998. He further submitted that the impugned statute in Vol.2 of Chapter 18 of the Bharathiar University, which prescribes a different age for Class (a), (b) & (c) of non-teaching staff, with that of Class (d), has to be struck down.

18. Averments made in W.P.No.27225 of 2015, filed by another non-teaching staff of Bharathiar University, are on the same lines.

19. On the basis of the counter affidavit, filed by the Registrar, Tamil Nadu Veterinary and Animal Sciences University in W.P.Nos.12456, 13688, 14350, 14550 and 18073 of 2014 and W.P.Nos.18210 and 18211 of 2015, at the outset, Mr.S.Vijayakumar, learned counsel appearing for the said University submitted that the Tamil Nadu Veterinary and Animal Sciences University is governed by the policy decision of the Government of Tamil Nadu, issued from time to time. He further submitted that the University has framed its own statutes and regulations, in accordance with the Policy of the State Government.

20. Learned counsel appearing for the Tamil Nadu Veterinary and Animal Sciences University further submitted that the Tamil Nadu

Veterinary and Animal Sciences University Act, 1989 (Tamil Nadu Act 42/89) (hereinafter referred to as “TANUVAS Act”) was enacted, with effect from 29.11.1989. Salaried employees of the University and their conditions of services, are governed by the provisions of the Act, and the Statutes made thereunder.

21. Referring to Section 47(2) of the said Act, learned counsel for the Tamil Nadu Veterinary and Animal Sciences University submitted that teaching staff of the University is governed by the University Grants Commission Scales of Pay and Allowances, as implemented by the State Government, from time to time. According to him, the staff, not governed by the University Grants Commission, are governed by the State Pay Commission Scales of Pay, as revised from time to time.

22. He further submitted that though the University Grants Commission, New Delhi, has recommended for revision of pay and other service conditions, for the teaching staff of the Universities, it is for the State Government to implement the said decision. He also submitted that the Government of Tamil Nadu have issued G.O.Ms.No.149, Animal

Husbandry and Fisheries (AH6) Department, dated 06.07.1999, prescribing scales of pay and the age of superannuation of teaching staff.

As regards the age of superannuation, the Government in the abovesaid Government Order, have considered as follows:

“The Government have considered the recommendations of the University Grants Commission, with regard to raising of the retirement age of College and University Teachers to 62 years. In tune with their policy in the case of the State Government employees, the Government have decided not to raise the retirement age of College and University Teachers. The Government have accordingly decided to retain the present retirement age of 60 years in the case of the Teachers of Tamil Nadu Veterinary and Animal Sciences University.”

23. Learned counsel appearing for the Tamil Nadu Veterinary and Animal Sciences University, further submitted that during 2010, while revising the University Grants Commission Scales of Pay, the Government have dealt with the age of superannuation of teaching staff of the said University and issued G.O.Ms.No.41, Animal Husbandry, Dairying and Fisheries (AH6) Department, dated 15.03.2010, as follows:

“The present system of retirement age of 60 years in the case of teachers of the Tamil Nadu Veterinary and Animal Sciences University shall continue. There shall be no re-employment beyond the age of superannuation.”

24. Mr.S.Vijayakumar, learned counsel appearing for the Tamil Nadu Veterinary and Animal Sciences University further submitted that based on the recommendations of the University Grants Commission, applicable to teaching staff, age of superannuation of the teaching staff of the Universities alone, was increased. Insofar as non-teaching staff is concerned, they continue to be governed by the pay scale and service conditions prescribed by the State Government, from time to time. In the case of non-teaching staff, the age of superannuation, as fixed in the case of Government service, is adopted. In this context, he referred to Fundamental Rule 56(1), which states that,

“Every Government servant in the superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He shall not be retained in service after that age except with the sanction of the Government on public grounds, which must be recorded in writing but he shall not be retained after the age of sixty years except in very

special circumstances.

Provided that this clause shall not apply to Government servants who are treated as in superior service for the purpose of these rules but as in the Tamil Nadu Basic Service for the purpose of pension. Such Government servants as well as all basic servants shall retire on attaining the age of sixty years.

25. Mr.S.Vijayakumar, learned counsel appearing for the Tamil Nadu Veterinary and Animal Sciences University further submitted that while issuing the said G.O., the Government have considered G.O.Ms.No.208, Agriculture (AU.1) Department, dated 27.03.1989 and other Government Orders of the Higher Education Department. In this context, he also referred to the Preamble of G.O.Ms.No.149, dated 06.09.1999, which states as follows:

“The Government of India, decided to accept the recommendations of the University Grants Commission and implemented the revision of pay scales for college and University teachers. The Indian Council of Agricultural Research (ICAR) has recommended that the revised scales of pay as extended to ICAR Scientists might be extended to the corresponding teaching and research posts in all the

State Agricultural/Veterinary Universities in India with effect from 01.01.1996. The ICAR on behalf of the Government of India, has agreed to provide financial assistance to the State Governments for implementing the revised UGC scales of pay.”

Thus, he submitted that in all the Government Orders, revision of pay scales of college and University teachers alone has been accepted by Government of Tamil Nadu and that the policy decision of the State Government, is duly implemented in all the Universities.

26. He also submitted that service conditions of teaching and non-teaching staff of the University, are distinct. They form separate categories and the nature of duties to be performed, are also different. According to him, there was impelling necessity of the University to change the age of superannuation of teaching and the recommendations of the University Grants Commission, pertain only to teaching staff. He also submitted that the Government or the University, as the case may be, is empowered to decide the age of superannuation of the non-teaching staff. He also submitted that when the Government have

decided to retain the age of superannuation of the non-teaching staff, in the colleges and universities, as 58 years, the Tamilnadu Veterinary and Animal Sciences University, as well as, Tamil Nadu Agricultural University, in exercise of their powers, under the Act, the Universities have made the statutes, in tune with the policy decision of the Government.

27. Mr.S.Vijayakumar, learned counsel appearing for the Tamil Nadu Veterinary and Animal Sciences University further added that Regulation 24 of the Act has been made, in exercise of the powers, conferred by sub-Section (4) of Section 48 r/w. Sub-Section (1) of Section 40 of the Act and therefore, the University is competent to frame regulations. It is his further contention that the service conditions of non-teaching staff, as prescribed by the Government of Tamil Nadu, from time to time, have been duly followed and implemented by the University and per the statutory provisions, University can take appropriate decisions. According to him, inasmuch as the service conditions of teaching and non-teaching staff, are entirely different and distinct, upward revision of pay for the teaching staff and fixing different

age of retirement, cannot be questioned, as a matter of right or for that matter, by fixing a different age for retirement, for non-teaching staff, there is no case of discrimination, violative of Articles 14 and 16 of the Constitution of India. It is also his contention that **Osmania University's** case (cited supra), cannot be applied to the case on hand.

28. Inviting the attention of this Court to Chapter 24 of the Madras University Act, 1923, dealing with the conditions of service of the Establishments of the University and in particular to, Section 4 of the Statutes, relating to Gratuity-cum-Pension-cum-Provident Fund Scheme for the Office Establishment of the University, Ms.G.Thilagavathi, learned counsel appearing for Madras University submitted that the age of retirement shall be 58 years, for the employees of the Superior establishment, and 60 years for Class IV employees.

29. As regards **Osmania University's** case (cited supra), according to her, Osmania University is a Central University and therefore, the decision rendered in the above reported case, cannot be *ipso facto*, be applied to all the Universities, created by the State. It is also her contention that while considering the recommendations of the

University Grants Commission, New Delhi, the Government of Tamil Nadu, have issued orders in G.O.Ms.No.111, Higher Education (H1) Department, dated 24.03.1999, wherein, the State Government have decided not to increase the retirement age of College teachers and accordingly, decided to retain the present retirement age of 58 years, in the case of College teachers and 60 years in the case of University teachers.

30. Ms.G.Thilagavathi, learned counsel appearing for the Madras University further submitted that the abovesaid Government Order was challenged by All Cadre IDA cuder Employee's Union, represented by its President in W.P.No.5169 of 2000, and in the above writ petition also, placing reliance on letter No.F.1-22/97-U.1, dated 27.07.1998, of the Department of Education, Ministry of Human Resource Development, Government of India, the petitioner therein, sought for implementation of the Official Memorandum, for the retirement of fixing the age of non-teaching staff in the University and Colleges, including aided colleges administrated by the Chairman, Governing Body, Vorhees Arts & Science College, Vellore, 2nd respondent therein, but this Court, vide order,

dated 11.08.2010, dismissed the said writ petition. On appeal, in W.A.No.2200 of 2010, dated 14.11.2013, a Hon'ble Division Bench, has confirmed the decision of the learned single Judge. Therefore, on the strength of the Hon'ble Division Bench order, she submitted that the decision of the Government of Tamil Nadu, in fixing the age of retirement for non-teaching staff, as 58 years, in Government Colleges/Aided Colleges and Universities, has already been upheld and therefore, there is no need to advert the same, once again.

31. In respect of Class 'D' posts in Universities, it is the further contention of the learned counsel appearing for Madras University that insofar as the above category is concerned, the policy decision of the Government, is being followed. For the reasons, stated supra, she prayed for dismissal of the writ petitions.

32. Representing the Bharathiar University, learned counsel submitted that the recommendations of the University Grants Commission, are only to revise the pay scales of teaching staff and to increase their age and it does not cover the service condition of non-teaching staff. In all other respects, he has adopted the arguments of the

learned counsel appearing for Tamil Nadu Veterinary and Animal Sciences University and Agricultural University.

33. By way of reply, Mr.G.Sankaran, learned counsel appearing for the non-teaching staff of Bharathiar University, submitted that almost all the Universities in the Country, have adopted 60 years, as the age of superannuation for non-teaching staff, except the Universities in Tamil Nadu. He also added that when the University staff are paid only from the funds of the University, irrespective of the fact, as to whether, they are teaching and non-teaching staff and when the age of retirement of teaching staff, has been enhanced to 60 years, there is no reason, as to why, the same yardstick has not been applied to non-teaching staff also. According to him, there is no nexus, in prescribing the different age for superannuation, for the abovesaid categories.

34. Heard the learned counsel for the parties and perused the materials available on record.

35. In exercise of the powers, under Sub-Section (4) of Section 48 r/w. Sub-Section (1) of Section 40 of the Tamil Nadu Veterinary and

Animal Sciences University Act, 1989, statutes have been framed. Regarding the age of superannuation of teaching and non-teaching staff, Statute No.24, which is impugned, reads as follows:

“(1) (i) The age of superannuation of the employees, who are recruited against permanent or temporary posts of the University, governed by the policy of the UGC and borne by the UGC scales of pay and the employees who are transferred and permanently allotted to the University from TNAU/Government department governed by the policy of the UGC and borne by the UGC scales of pay shall be sixty years.

The age of superannuation of the other employees who are borne under the Tamil Nadu Government Service Rules and who are recruited against permanent and temporary posts of the University and those who are transferred and allotted to the University from TNAU/Government department shall be fifty eight years, except in case of Office Assistants and Provincialised Mazdoors.

The age of superannuation of the Office Assistants and Provincialised Mazdoors transferred from Government departments and appointed by the University shall be sixty years.

The date of retirement of a University employees shall be with take effect from the afternoon of the last day of the month, in which he/she attains the superannuation age as

above.”

36. In exercise of powers conferred by Clause (e) of Section 38 r/w. Sub-Section (4) of Section 48 of the Tamil Nadu Agricultural University Act, 1971, Regulations of the Tamil Nadu Agricultural University, have been framed. In exercise of the powers conferred under Sub-Section (1) of Section 38 of the Act, the University has framed the regulations and amended the same, from time to time. Regulation 24 deals with retirement, extension of service and re-employment, is extracted hereunder:

“(1) (i) The age of superannuation for all such teachers, who were recruited against permanent or temporary posts of the University and those who were transferred and permanently allotted to the University from Government Departments shall be sixty years. Thereafter, no extension in service should be given. However, it will be open to the University to re-employ a superannuated teacher upto 65 years.

(ii) The age of superannuation of University employees other than teachers will be governed by the provisions of the State Government.

(iii) The age of superannuation of the Office Assistants

and Provincialised mazdoors transferred from Government department and appointed by the University shall be sixty years.

(iv) The appointing authority shall have power to extend the age of superannuation of the University employee other than Teaching staff, Office Assistants, Provincialised Mazdoors upto sixty years in respect of non-teaching staff subject to the conditions a, b and c below:

(a) that the services are useful and essential to the University.

(b) that work of the employee has been outstanding in the previous five years and

(c) that he/she is found to be medically fit.

The date of retirement of University employees shall take effect from the afternoon of the last day of the month, in which they attain superannuation.”

37. Likewise, Chapter XXIV of the Madras University Act, deals with the Conditions of Service of the Establishments of the University. Section 4(c) of the Chapter, relating to the Gratuity-cum-Pension-cum-Provident Fund Scheme for the Office Establishment of the University, reads as follows:

“(c) “Age of Retirement” shall be the completion of 60

years of age. The service if any after the completion of 60 years of age will not be reckoned for purposes of Pension, Provided Fund or Gratuity.”

Rules called “Gratuity-cum-Pension-Provident Fund-cum-Insurance Scheme” for teachers of the University, have been framed. As per Rule 4(c) of the said rules, “Age of retirement shall be completion of 60 years of age. The service, if any, after the completion of 60 years of age, will not be reckoned for the purposes of pension, provident fund or gratuity.

38. In exercise of powers under Section 44 of the Bharathiar University Act, 1981, statutes have been framed and Chapter XVIII of the said statutes, deals with service conditions of the establishment. Statute 9 of the Chapter XVIII of the Statutes, deals with retirement and the same is extracted hereunder:

“Age of Retirement - An employee of Classes A, B and C shall retire from the University Service on the last day of the month in which he/she completes his/her 58th year of age in respect of non-teaching staff and 60th year of age in respect of Teaching staff.

Provided that Class D employees should retire on the last day of the month in which he/she completes his/her 60th year of age.”

39. The above statutes have been framed, in exercise of the powers, conferred on the Vice Chancellors of the respective Universities. Powers conferred on the statutory authority is not questioned. Whereas, exercise of the same, on the anvil of Article 14, insofar as non-teaching staff, is challenged.

40. Entry 66 of List I (Union List) of the Constitution of India, reads as follows:-

"Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

41. Entry 25 of List III (Concurrent List) of the Constitution of India, reads as follows:-

"Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

42. The preamble to the University Grants Commission Act, 1956, reads as follows:-

“An Act to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission.”

43. Section 12 of the University Grants Commission Act, casts a duty upon the Commission "to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities." Clauses (d) and (e) of the said Section, are extracted hereunder:

“(d) recommend to any University the measures necessary for the improvement of University education and advise the University upon the action to be taken for the purpose of implementing such recommendation;

(e) advise the Central Government or any State Government on the allocation of any grants to Universities for any general or specified purpose out of the Consolidated Fund of India or the Consolidated Fund of the State, as the case may be;”

Section 13 of the said Act enables the Commission to cause an inspection of any department of the University for the purpose of ascertaining "its standards of teaching, examination and research.

44. Section 26 of the Act empowers the Commission to make Regulations, with regard to various matters that include the qualifications required of a person to be appointed as a teaching staff and the maintenance of standards and co-ordination of work or facilities in Universities.

45. From the reading of the preamble, it could be seen that University Grants Commission Act, 1956, has been enacted, with the main aim of Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions, in terms of Entry 66 of List I of the Seventh Schedule of the Constitution. Entry 25 of List III (Concurrent List), deals with Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour. Universities is certainly, a subject falling with both

lists.

46. As the prayer sought for in the present writ petitions, relates to the power of the State Government in regulating the service conditions of teaching and non-teaching in Government, Government Aided and Self-Financed Educational Institutions and Universities, based on which, a decision is taken by the Government, in the matter of age of superannuation of non-teaching staff, which decision has been adopted by the Universities and stated so, in the counter affidavits of the Animal and Veterinary University, this Court deems it fit to consider the powers conferred on the Government, in the matter of service conditions in Government and private colleges.

47. Insofar as Government Colleges are concerned, the Government have issued G.O.Ms.No.532, Personnel and Administrative (Per.M.) Department, dated 25.04.1979 and G.O.Ms.No.592, Personnel and Administrative (FR.I) Department, dated 18.05.1979, fixing the age of the non-teaching staff, as 58 years. Both the Government Orders are extracted hereunder:

GOVERNMENT OF TAMIL NADU

ABSTRACT

Public Servants - Age of superannuation of Government servants - Raising from 55 to 58 - Orders - Issued.

PERSONNEL AND ADMINISTRATIVE REFORMS
(PER.M) DEPARTMENT

G.O.Ms.No.532

Dated the 25th April 1979

ORDER

The Government have decided to accept the requests made in this regard and direct that the age of superannuation of Government Servants for whom it is now 55 shall, with immediate effect, be raised to 58.

2. Orders amending the Fundamental Rule will issue separately.

(BY ORDER OF THE GOVERNOR)

C.V.R.PANIKAR
Chief Secretary to Govt.
Incharge.

GOVERNMENT OF TAMIL NADU

ABSTRACT

Fundamental Rules - Rule 56 - Amendment - Issued

PERSONNEL AND ADMINISTRATIVE REFORMS
(FR.I) DEPARTMENT

G.O.Ms.No.592

Dated : 18th May 1979

1. G.O.Ms.No.532, Personnel and Administrative (Personnel-M) Department, dated 25.04.1979.
2. From the Accountant General-I, Madras, Letter No.AG.I/TM/I/1-2(FR.56)/79-80/43, dated 14.05.79.

ORDER

The following notification will be published in the Tamil Nadu Government Gazettee:-

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 read with Article 313 of the Constitution of India and all other powers hereunto enabling, the Governor of Tamil Nadu hereby makes the following amendment to the Fundamental Rules and the Instructions thereunder.

2. The amendment hereby made shall be deemed to have come into force on the 25th April, 1979.

AMENDMENT

In the said Fundamental Rules, in rule-56, in sub-rule (a),

(i) In the first sentence, for the words “fifty-five years”, the words “fifty-eight years” shall be substituted.

(ii) Second proviso and the explanation thereunder shall be omitted.

S.P.SRINIVASAN,

Second Secretary to Government.

From the above, it could be deduced that while prescribing the age of retirement for government servants, in exercise of the powers conferred under Article 309 read with Article 313 of the Constitution of India, Fundamental Rules applicable to State Government servants, has been amended.

48. Now, we shall consider the age of superannuation of the teaching staff in the private colleges. The statement of objects and reasons of the Tamil Nadu Private Colleges (Regulations) Act, 1976, reads as follows:-

"STATEMENT OF OBJECTS AND REASONS:-

The Government of Tamil Nadu decided to regulate the conditions of service of teachers employed in private colleges and to make the rules relating to managing bodies and payment of grants to such colleges statutory. As the Legislature of the State of Tamil Nadu was not in session, the Tamil Nadu Private Colleges (Regulation) Ordinance, 1975 was promulgated on the 21st November, 1975.

2. The President issued a Proclamation on the 31st

January, 1976 under Article 256 of the Constitution, in relation to the State of Tamil Nadu, declaring inter alia that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament. Hence, by virtue of the powers delegated to the Governor of Tamil Nadu by the President, the Tamil Nadu Private Colleges (Regulation) Ordinance, 1976 (Tamil Nadu Ordinance 11 of 1976) was promulgated with some modifications to make certain provisions of the Ordinance inapplicable to minority colleges.

3. It is proposed to replace this Ordinance by a President's Act with additional provisions to the effect that no private college shall be established without affiliation to a University, that the non-teaching staff of private colleges would also come within the scope of the measure and that a University may make regulations, statutes and ordinances specifying the qualifications for appointment of teachers and other persons employed in private colleges.”

49. The Tamil Nadu Act was enacted by the President of India. The Hon'ble Supreme Court in **P.Kasilingam v. P.S.G.College of Technology and Others** reported in 1995 Supp. (2) SCC 348, at Paragraph 2, held as follows:-

"On 31.01.1976 the President of India issued a

Proclamation under Article 356 of the Constitution of India, in relation to the State of Tamil Nadu, declaring inter alia that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament. Parliament under Article 357(1)(a) of the Constitution enacted the Tamil Nadu State Legislature (Delegation of Powers) Act, 1976 whereby it conferred on the President of India the powers of the Legislature of the State of Tamil Nadu to make laws in relation to State of Tamil Nadu. In exercise of the said powers the President of India enacted the Act to provide for the regulation of private colleges in the State of Tamil Nadu. Chapter II (Sections 3 to 10) makes provisions for establishment, permission for establishment and management of private colleges. In Chapter III (Sections 11 to 14) provision is made for college committee and its constitution and functions. **Chapter IV (Sections 15 to 24) deals with the terms and conditions of service of teachers and other persons employed in private colleges.** Chapter V (Sections 25 to 32) relates to control of private colleges. Other provisions are contained in Chapter VI (Accounts, Audit, Inspection and Furniture), Chapter VII (General Provisions regarding Appeal and Revision), Chapter VIII (Penalties and Procedure) and Chapter IX (Miscellaneous)."

50. The preamble of the Act states that it is an "Act to provide for the regulation of private colleges in the State of Tamil Nadu". Section 15 vests the University with the power to make regulations specifying the qualifications and Section 17 confers power on the Government to make rules (in consultation with the University) regulating the number and conditions of service of teachers employed in a Private College. The said provisions are extracted as follows:-

"15. Qualifications of teachers and other persons employed in private colleges.-

(1) The University may make regulations, statutes or ordinances specifying the qualifications required for the appointment of teachers employed in any private college.

(2) The Government may make rules specifying the qualifications required for appointment to any post, other than teachers, in any private college.

17. Conditions of service, etc. of teachers and other persons employed in private colleges.-

The Government may make rules in consultation with the University regulating the number and conditions of service (including promotion, pay, allowances, leave pension, provident fund, insurance and age of retirement and rights as respects disciplinary matters but excluding qualifications) of the teachers and other

persons employed in any private college.”

51. In **All Saints High School v. The Government of Andhra Pradesh and others** reported in **1980 (2) SCC 478**, the Apex Court held that it is, therefore, open to the government or the university to frame rules and regulations governing the conditions of service of teachers in order to secure their tenure of service.

52. In **Frank Antony Public School Employees Association of India v. Union of India** reported in **1986(4) SCC 707**, the Apex Court held that even an unaided private minority school was required to ensure parity pay scales and other conditions of service with those available to their counter parts in Government Schools and such obligation arises under the State enactment regulating the private unaided minority institutions. The Apex Court has held that the statutory measures, regulations and the terms and conditions of service of the employees of minority institutions for maintaining educational standard and excellence would not offend Article 30(1) of the Constitution of India.

53. In **M.Reethammal v. State of Tamil Nadu** reported in **2002**

(2) MLJ 768, a Hon'ble Division Bench of this Court, held that,

“It is further manifestly clear that in the matters of maintaining a uniform standard in education, the State can regulate the conditions of employment of teachers and other staff of the private aided colleges including the minority institutions. Conditions of service of both teaching and non-teaching staff of the private colleges as found in Sections 15,16 and 17 of "the Act" are not excluded by the provisions of Section 24(3) of the Act. Regulating conditions of service by both the teaching and non-teaching staff cannot be in any way termed as infringing Article 39(1) of the Constitution of India. Hence, we do not find any infringement of the right conferred on a minority under Article 30(1) of the Constitution of India while the State Government framed the rules, more particularly, Rule 11(4)(i) and (ii) of the rules requiring the minority institutions to consider the promotion in the case of non-teaching staff only on the basis of seniority, more so, there is no challenge to Section 17 of the Act which enables the Government to make rules prescribing the conditions of service for both teachers and other staff namely non-teaching staff.

.....

Coming to the second point, we have already held that

the Government is empowered to make rules relating to the conditions of service and other persons employed in private colleges by virtue of the powers conferred under Section 17 read with Section 53 of the Act. When once such rules are made, the private colleges are bound to follow the same.”

54. G.O.Ms.No.281, Education Department, dated 13.02.1981, is extracted hereunder:

GOVERNMENT OF TAMIL NADU

ABSTRACT

Aided Colleges - Teachers - Age of retirement - Assessment of grant - orders - Issued.

EDUCATION DEPARTMENT

G.O.Ms.No.281

Dated: 13.02.1981

Read:

1. G.O.Ms.No.921, Education, dated 05.06.1970
2. G.O.Ms.No.2028, Education, dated 11.12.1970
3. G.O.Ms.No.1699, Education, dated 01.10.1973
4. From the Director of Collegiate Education, Letter No.76473/S2/79, dated 22.08.1979.
5. From the Madurai Kamaraj University, Lr.A1.26/75-76, dated 09.07.1980.
6. From the University of Madras Lr.A.III/1/3/80 9498, dated 22.10.1980

ORDER:

According to the existing orders, Government grant is assessed in respect of approved teachers of aided colleges till they attain 60 years of age. Increments drawn beyond 58 years is however not taken into account. Teachers who attain the age of superannuation of 60 years, in the middle of the academic year are permitted to continue till the end of that academic year. According to G.O.Ms.No.1699, Education, dated 01.10.1973, persons above the age of 58 years on the teaching side, will not be given extension of service, but they may be re-employed upto 60 years with the permission of the Director of Collegiate Education. Thus the age of retirement for aided college teachers has been 60 years for purpose of grant mainly to satisfy the University regulations, eventhough the retirement age for Government College teachers is 58 years. The Government have extended all the concessions applicable to Government college teachers, to the teachers of aided colleges also and have brought them on par with the teachers of Government Colleges. However, there is the discrimination of permitting teachers of aided college to serve upto 60 years. The question of fixing the age of retirement to teachers of aided colleges was therefore taken up by the Government in consultation with the Director of Collegiate Education and Madras/Madurai Kamaraj

Universities.

2. The Director of Collegiate Education has recommended that the retirement age for teachers of aided colleges may be fixed as 58 years with no provision of re-employment beyond 58 years. He has suggested necessary amendment to the Government Order third read above, in this regard. The Madras and Madurai Kamaraj Universities Universities have also agreed to fixing the age of retirement of aided college teachers as 58 years on par with Government college teachers. The Government have therefore decided to accept the recommendation of the Director of Collegiate Education.

3. The Government accordingly direct that the age of retirement of aided college teachers shall be 58 years for purpose of assessment of grant. No teacher shall be permitted to continue beyond 58 years, for purpose of grant. Those who attain 58 years in the middle of the academic year shall however be permitted to continue till the end of that academic year.

4. There may be some teachers who would have attained 58 years and may be in the age group of 59/60 years, now working in aided colleges. Such teachers, who are on re-employment may be continued till the end of the academic year 1980-81 and the year 1980-81.

5. The Director of Collegiate Education is requested to

communicate a copy of these orders to the Managements of all aided colleges.

6. This order issues with the concurrence of the Finance Department, vide its U.O.14144/E1/81-1, dated 06.02.1981.

(By order of the Governor)

C.RAMDAS,
Commissioner and Secretary to Government.

55. In exercise of the powers conferred under Section 17 of the Tamil Nadu Recognised Private Colleges Regulations Act, the Government have prescribed the age of retirement of teaching staff as 58 years, as in the case of Government servants. Thus, the Government of Tamil Nadu, in tune with the orders, rules and regulation, applicable to government servants, working in Government colleges and having regard to the statutory provisions, enabling them to determine the terms and conditions of service, including the age of retirement, in Tamil Nadu Recognised Private Colleges (Regulation) Act, 1974 and the Rules made thereunder, have taken a policy decision and decided to prescribe the age of retirement for teaching and non-teaching staff in Colleges as 58 years. At this juncture, it is worthwhile to incorporate G.O.Ms.No.111,

Higher Education (H1) Department, dated 24.03.1999, as follows:

GOVERNMENT OF TAMIL NADU

ABSTRACT

COLLEGES - Government and aided colleges-Revision of pay scales to the Teaching staff in government Colleges / Aided Colleges on the basis of recommendation of University Grants Commission - Orders Issued.

HIGHER EDUCATION (H1) DEPARTMENT

G.O.(Ms) No.111

DATED: 24.03.1999

READ:-

1. From the Director, Government of India, Ministry of Human Resources Development, Department of Education, New Delhi, letter No.F.1.22/97-U.I, dated 27.07.1998.
2. From the Director, Government of India, Ministry of Human Resources Development, Department of Education, New Delhi, letter No.F.1.22/97-U.II, dated 27.07.1998.
3. From the secretary to Government Higher Education Department, Fax letter No. 21673/AlH1I97, dated 13.08.1998.
4. From the Director, Government of India, Ministry of Human Resources Development, Department of

Education, New Delhi, letter No.F.1.22/97-UJ, dated 22.09.1998.

5. From the Director, Government of India, Ministry of Human Resources Development, Department of Education, New Delhi, letter No.F.1.22/97-UJ, dated 06.11.1998.
6. From the Secretary to Government, Higher Education Department, D.O letter No.21673/AlHI/98-7, dated 27.11.1998.
7. From the Director of Collegiate Education letter No. Rc.75664/E1I98, dated 10.12.1998.
8. From the Deputy Secretary, University Grants Commission, New Delhi, D.O. Letter No.F3J/94 (PS), dated 14.01.1999.

ORDER:

The Rasthogi Committee appointed by the Government of India recommended revision of pay scales of College and University Teachers and other officers of Colleges and Universities which was accepted by the University Grants Commission. The Government of India decided to accept the recommendations of the 'University Grants Commission and implement the revision of scales of pay with effect from 1st January 1996. The Government of India have agreed to provide financial assistance to the

state Governments for implementing the revised scales subject to the following conditions:

(i) The Central Government will provide assistance to the state Government to the extent of 80 percent of the additional expenditure involved in giving effect to the revision of scales of pay.

(ii) The Central Assistance to the extent indicated above will be available for the period from January 1, 1996 to March 31, 2000.

(iii) The State Government will meet the remaining 20 percent of the expenditure from its own resources.

(iv) The State Government will take over the entire responsibility for maintaining the revised scales of pay with effect from April 1st 2000.

(v) Central assistance towards revision of pay scales will be restricted to the posts which were in existence and filled up on 01.01.1996.

2. The Government after careful consideration of the scheme have decided to implement the revised scales of pay as recommended by the Government of India with effect from 151 January 1996 and pass the following orders:

COVERAGE:

This scheme applies to all the teachers in Government / Aided Colleges, unless they specially exercise an option in writing to remain out of the

scheme. All teachers appointed after the date from which the scheme has been given effect to will invariably be governed by the provisions of the scheme.

This scheme will not apply to the Teachers in Agricultural, Veterinary and Animal Science Colleges and Medical Colleges.

It will also not apply to the University Teachers in Tamilnadu and Librarian / Physical Directors in Colleges / Universities for whom separate orders have been issued.

This scheme will apply to teachers in all Arts and Science Colleges (including those who are on deputation borne on Collegiate Education Service, etc.) law Colleges, Oriental Colleges. Colleges of Education, Colleges of Physical Education, the Madras Institute of Development Studies and the School of Social Work.

.....

AGE OF SUPERANNUATION: The Government have considered the recommendations of the University Grants Commission with regard to raising of the retirement age of Colleges and University teachers to 62 years. In tune with their policy in the case of the State Government employees, the State Government have decided not to raise the retirement age of University and college teachers. The Government accordingly have decided to retain the present retirement age of 58 years in the case

of College Teachers and 60 years in the case of University Teachers.

3. Anomalies if any, in the implementation of the scheme should be brought to the notice of the Government for clarification.

4. The expenditure should be debited to the appropriate heads of accounts.

5. This order issues with the concurrence of the Finance Department vide its U.O.No.125/SS (TP)/99- 1, Dated: 19-03-99.

(By order of the Governor)

56. The Government have issued G.O.Ms.No.112, Higher Education (H1) Department, dated 24.03.1999, for revision of pay scales for Registrars, Controller of Examinations and Vice Chancellors and the said Government Order is extracted hereunder:

GOVERNMENT OF TAMIL NADU

ABSTRACT

UNIVERSITIES --- Chennai, Annamalai, Madurai - Kamaraj, Bharathiar, Bharathidasan, Alagappa, Mother Teresa, Manonmaniam Sundaranar, Periyar, Avinashilingam (Deemed University), Ambedhkar Law and Thanjavur Tamil Universities - Revision of pay scales to the Teaching staff in

Universities on the basis of recommendation of University Grants Commission - Orders - Issued.

HIGHER EDUCATION (H1) DEPARTMENT

G.O.(Ms) No.112

DATED: 24.03.1999

READ:-

1. From the Director, Government of India, Ministry of Human Resources Development, Department of Education, New Delhi, letter No.F.1.22/97-U.I, dated 27.07.1998.
2. From the Director, Government of India, Ministry of Human Resources Development, Department of Education, New Delhi, letter No.F.1.22/97-U.II, dated 27.07.1998.
3. From the secretary to Government Higher Education Department, Fax letter No. 21673/AlHL/97, dated 13.08.1998.
4. From the Director, Government of India, Ministry of Human Resources Development, Department of Education, New Delhi, letter No.F.1.22/97-U.I, dated 22.09.1998.
5. From the Director, Government of India, Ministry of Human Resources Development, Department of Education, New Delhi, letter N.F.1.22/97 -U.I, dated

06.11.1998.

6. From the Secretary to Government Higher Education Department, D.O letter No.21673/AlHL/98-dated 27.11.1998.
7. From the Director Collegiate Education letter No.Rc.75664/El/98, Dated 10.12.1998.
8. From the Deputy Secretary, University Grants Commission, New Delhi, D.O. Letter No. F3.I/94 (PS), dated 14.01.1999.

ORDER:

The Rasthogi Committee appointed by the Government of India recommended revision of pay scales of College and University Teachers and other officers of Colleges and Universities which was accepted by the University Grants Commission. The Government of India decided to accept the recommendations of the University Grants Commission and implement the revision of scales of pay with effect from 1st January 1996. The Government of India have agreed to provide financial assistance to the state Governments for implementing the revised scales subject to the following conditions:

- (i) The Central Government will provide assistance to the state Government to the extent of 80 percent of the additional expenditure involved in giving effect to the revision of scales of pay.

(ii) The Central Assistance to the extent indicated above will be available for the period from January 1, 1996 to March 31, 2000.

(iii) The State Government will meet the remaining 20 percent of the expenditure from its own resources.

(iv) The State Government will take over the entire responsibility for maintaining the revised scales of pay with effect from April 1, 2000.

(v) Central assistance will be restricted to the revision of pay scales of the posts which were in existence and filled up on 01.01.1996.

2. The Government after careful consideration of the Government of India's scheme have decided to implement the revised scales of pay as recommended by the Government of India with effect from 1st January 1996 and pass the following orders:

COVERAGE:

(i) This scheme applies to all the teachers, Registrars and Controllers of Examination and Vice Chancellors in Universities, unless they specially exercise an option in writing, to remain out of the scheme. All teachers and other officers mentioned above, appointed after the date from which the scheme has been given effect to will invariably be governed by the provision of the scheme.

(ii) This scheme will not apply to the Teachers in

Agricultural, Veterinary and Animal Science and Medical Universities.

(iii) This order will not apply to the College Teachers in Tamilnadu and Librarians / Physical Directors in Colleges / Universities for whom separate orders will be issued.

.....

AGE OF SUPERANNUATION:

The Government have considered the recommendations of the University Grants Commission with regard to raising of the retirement age of Colleges and University teachers to 62 years. In tune with their policy in the case of the State Government employees, the Government has decided not to rise the retirement age of University and college teachers. The Government has accordingly decided to retain the present retirement age of 58 years in the case of College Teachers and 60 years in the case of University Teachers.

3. Anomalies, if any, in the implementation of the scheme should be brought to the notice of the Government for clarification.

4.. The expenditure should be debited to the appropriate heads of accounts.

5. This order issues with the concurrence of the Finance Department vide its U.O.No: I 25/SS (TP)/99-1 Dated: 19-03-99.

(By order of the Governor)

57. The Government have issued G.O.Ms.No.113, Higher Education (H1) Department, dated 24.03.1999, for revising the pay scales of Librarians and Physical Education personnel in University and Colleges (Government and Aided) in Tamil Nadu and it is as follows:

GOVERNMENT OF TAMIL NADU

ABSTRACT

Universities and Colleges (Government and Aided) - Scales of Librarian / Physical Directors - Revision on the basis of recommendations of University Grants Commission- Orders - issued.

HIGHER EDUCATION (H1) DEPARTMENT

G.O.(Ms) No.113

DATED: 24.03.1999

READ:-

1. From the Director, Government of India, Ministry of Human Resources Development, Department of Education, New Delhi, letter No.F.l.22/97-U.I, dated 27.P7.1998.
2. From the Director, Government of India, Ministry of Human Resources Development, Department of Education, New Delhi, letter No.F.1.22/9-U.II, dated

- 27.07.1998. (with details of revision pay structure).
3. From the Secretary to Government, Higher Education Department, Fax letter No.21673/AIHL/97, dated 13.08.1998.
 4. From the Director, Government of India, Ministry of Human Resources Development, Department of Education, New Delhi, Letter No.F.l.22/97-U.l, dated 22.09.1998.
 5. From the Director, Government of India, Ministry of Human Resources Development, Department of Education, New Delhi, Letter No.F.1.22/97-U.1, dated 06.11.1998.
 6. From the Secretary to Government, Higher Education Department. D.O.letter No.216 73/ AIH 1/98-7, dated 27.11.1998.
 7. From the Director of Collegiate Education, letter No.Re.75644fE1/98, dated 10.12.1998.
 8. From the Deputy Secretary, University Grants Commission, New Delhi, D.G.Letter No.F3.II94 (PS), dated, 14.01.1999.

ORDER:

The Rasthogi Committee appointed by the Government of India recommended revision of pay scales of College and University Teachers and other officers of

Colleges and Universities which was accepted by the University Grants Commission. The Government of India decided to accept the recommendations of the University Grants Commission and implement the revision of scales of pay with effect from 1st January, 1996. The Government of India have agreed to provide financial assistance to the state Governments for implementing the revised scales subject to the following conditions:

(i) The Central Government will provide assistance to the State Government to the extent of 80 percent of the additional expenditure involved in giving effect to the revision of scales of pay.

(ii) The Central Assistance to the extent indicated above will be available for the period from January 1, 1996 to March 31, 2000.

(iii) The State Government will meet the remaining 20 percent of the expenditure from its own resources.

(iv) The State Government will take over the entire responsibility for maintaining the revised scales of pay with effect from April 1st 2000.

(v) Central assistance towards revision of pay scales will be restricted to the posts which were in existence and filled up on 01.01.1996.

2. The Government after careful consideration of the scheme have decided to implement the revised scales of

pay of Librarians, and Physical Education Personnel as recommended by the Government of India with effect from 1st January 1996 and pass the following orders:

COVERAGE:

(i) This scheme applies to Librarians and Physical Education Personnel in University and Colleges (Government and Aided) in Tamilnadu unless they specially exercise an option in writing to remain out of the scheme. Those appointed after the date from which the scheme has been given effect to will invariably be governed by the provisions of the scheme.

(ii) The scheme will not apply to the Librarian / Physical Education Personnel in Agricultural, Veterinary and Animal Science, Medical Colleges / Universities.

(iii) It will also not apply to the Teachers in the Universities / Government Colleges / Aided Colleges in Tamilnadu.

(iv) The scheme will apply to Librarians and Physical Education Personnel in all Arts and Science Colleges (including those who are on deputation borne on Collegiate Education Service, etc.) law Colleges, Oriental Colleges, Colleges of Education, Colleges of Physical Education, the Madras Institute of Development Studies and the School of Social Work.

.....

AGE OF SUPERANNUATION:

The Government have considered the recommendations of the University Grants Commission with regard to raising of the retirement age of Colleges and University teachers to 62 years. In tune with their policy in the case of the State Government employees, the Government have decided not to raise the retirement age of University and college teachers. The Government accordingly decided to retain the present retirement age of 58 years in the case of College Teachers and 60 years in the case of University Teachers.

3. Anomalies, if any, in the implementation of the scheme should be brought to the notice of the Government for clarification.

4. The expenditure should be debited to the appropriate heads of accounts.

5. This order issues with the concurrence of the Finance Department U.O, No: 1 25/SS(TP)/99-1, Dated: 19-03-1999.

(By order of the Governor)

58. In all the abovesaid Government Orders, issued by the Government, age of superannuation is fixed, as follows:

“The Government have considered the

recommendations of the University Grants Commission, with regard to raising of the retirement age of Colleges and University teachers to 62 years. In tune with their policy in the case of the State Government employees, the State Government have decided not to raise the retirement age of University and College teaches. The Government accordingly have decided to retain the present retirement age of 58 years in the case of College Teachers and 60 years in the case of University Teachers.”

59. The Government of Tamil Nadu, while considering the implementation of the recommendations of the University Grants Commission, for revision of scale of pay of teachers in Colleges and Universities, have decided to retain the age of retirement of teaching staff, researchers and others, in the Universities, as 60 years only, and that the Universities have adopted the same.

60. The contention of Mr.A.R.Suresh, learned counsel appearing for non-teaching staff of the Tamilnadu Veterinary and Animal Sciences University, as well as, Tamil Nadu Agricultural University, is that the scheme framed in G.O.Ms.No.111, Higher Education (H1) Department,

dated 24.03.1999, is not applicable to the Tamil Nadu Agricultural University, Tamil Nadu Veterinary and Animal Sciences University and Medical Colleges. Even taking it for granted that the scheme framed in G.O.Ms.No.111, Higher Education (H1) Department, dated 24.03.1999, is not applicable to the said educational institutions, revision of pay cannot be made applicable to non-teaching staff.

61. The policy decision of the Government of Tamil Nadu, in fixing the age of retirement to teaching and non-teaching staff in the Universities, has been questioned by All Cadre IDA Scudder Employees Union, by its President, Mr.S.Arumainayagam, in W.P.No.5169 of 2000 and the same has failed. The prayer made in W.P.No.5169 of 2000 is as follows:

“Writ Petition filed under Article 226 of the Constitution of India to issuance of a Writ of Certiorarified Mandamus, to call for the records, available in G.O.Ms.No.111, Higher Education (H1) Department, dated 24.03.1999, available with the Secretary to the Government, Higher Education Department, Government of Tamil Nadu, the first respondent herein, quash the same in respect of the age of superannuation as null and void; and

direct them to implement the order dated 27.07.1998 of the Department of Education, Ministry of Human Resources Development, Government of India, for the retirement of Teaching Staff in the University and Colleges including aided Colleges administered by the second respondent herein on the completion of 62 years of age on superannuation.”

While dismissing the writ petition, a learned single Judge has observed that members of All Cadre IDA Scudder Employees Union, petitioner therein, are not teachers working in Vorhees Arts and Science College, Vellore, 2nd respondent therein and they were not working as Teachers in any University, falling within the jurisdiction of the State Government and hence, they could not have any grievance in respect of the policy decision of the State Government, not to raise the age of the University Teachers.

62. On appeal, a Hon'ble Division Bench of this Court, vide order, dated 14.11.2013 in W.A.No.2200 of 2010, has confirmed the order made in the above Writ Petition. The said order is extracted hereunder:

“This Writ Appeal is filed against the order of the

learned single Judge made in W.P.No.5169 of 2000, dated 11.08.2010, wherein, the writ petition was filed by the petitioner-Union challenging G.O.Ms.No.111, Higher Education (H1) Department, dated 24.03.1999, issued by the first respondent, fixing the age of retirement as 58 years, for teaching and non-teaching staff was dismissed.

2. The learned Single Judge held that the petitioner-Union has got no locus standi to file the writ petition and none of the Union members are working as teachers in any University or aided colleges and the policy decision was taken by the Government, fixing the age of retirement and the same cannot be questioned by the petitioner-Union. As fixing the age of retirement of college staff or any group of staff is the policy of the Government, nobody has got any right to challenge the said policy, merely because in some States, the age of retirement is higher. It is relevant to note that in some States, the age of retirement is lower. For instance, in the State of Kerala, the age of retirement is 55 years.

3. In such view of the matter, the order passed by the learned single Judge requires no interference and there is no merits in the Writ Appeal and accordingly, the same is dismissed. No costs.”

63. Thus, as rightly pointed out by the learned counsel for the

Madras University, a Hon'ble Division Bench of this Court, has already held that non-teaching of the Universities or aided Colleges, have no right to challenge the policy decision of the Government, in fixing the age of retirement. The said decision squarely applies to all the petitioners. The issue in All Cadre IDA Scudder Employees Union, has been decided, with reference to the policy decision of the Government, in retaining the age of retirement of non-teaching staff as 58 years and that of the University teachers, as 60 years. Judgment rendered in All Cadre IDA Scudder Employees Union, can be concluded as a judgment in rem. Reference can be made to a decision made in **C.L.Pasupathy v. Engineer in Chief (WRO)** reported in **2009 (2) MLJ 491**, wherein, this Court has considered the expressions, "judgment in 'in rem' or a judgment 'in personam'", as follows:

"27.Historically the term judgement "in rem" was used in Roman law in connection with actio but not in connection with "jus actio in personam". The effect of "actio in rem" was to conclude against all mankind, but the effect of "actio in personam" was to conclude with regard to the individual only. After the Roman forms of procedure had passed away, the term "in rem" survived to express the effect of an action "in rem" and gradually, it came to import

"generally".

28. The judgements "in rem" signified as judgements which are good against all mankind and "judgements in personam" signified the judgements which are good only against the individuals who are parties to them and their privies. The point adjudicated upon in a "judgement in rem" is always as to the status of the "res" and is conclusive against the world as to that status, whereas in a judgement "in personam", the point whatever it may be, which is adjudicated upon, not being as to the status of the "res" is conclusive only between the parties or privies. Reference can be made to Firm of Radhakrishnan Vs. Gangabai, 1928 S 121, Ballantyne vs. Mackinson 1896 2 QB 455.

29. **Courts have held that, "Judgement in rem", operates on a thing or status rather than against the person** and binds all persons to the extent of their interest in the thing, whether or not they were parties to the proceedings. The judgement "in rem", as distinguished from judgement "in personam" is an adjudication of some particular thing or subject matter, which is the subject of controversy, by a competent Tribunal, and having the binding effect of all persons having interests, whether or not joined as parties to the proceedings, in so far as their interests in the "res" are concerned. In determining whether a judgement is "in rem", the effect of the judgement is to be

considered and it is tested by matters of substance, rather than by measure of any particular draft or form.

A final judgement on the merits in a particular proceeding, "in rem" is an absolute bar to subsequent proceedings founded on the same facts and a judgement "in rem" may be pleaded as a bar to another action of the same subject matter, if its effect is to merge a distinct cause of action, but not otherwise. The judgement "in rem" operates as a bar or estoppel only to the "res" or matter within the jurisdiction of the court and does not prevent a subsequent action for personal relief, which could not be obtained in the first action. Thus with respect to the "res or status", a "judgement in rem" has to be conclusive and binding upon "all the world" that is, on all the persons, who may have or claim any right or interest in the subject matter of litigation, whether or not, they were parties to or participants in the action, atleast to the extent, that it adjudicates or establishes a status, title or res, constituting the subject matter of the action, a "judgement in rem" will operate as a estoppel, in a subsequent action in respect of the points or questions adjudicated."

64. Thus, there is uniformity in the age of retirement for non-teaching staff, in all the educational institutions, ie., Colleges, whether

it be Government, Government Aided, Self-Financed and Universities. In the case on hand, what is sought to be enforced is the Official Memorandum No.25012/8/98/Estt.(A), dated 30.05.1998, issued by the Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) and the said Official Memorandum is as follows:

No.25012/8/98-Estt.(A)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

New Delhi - 11001.
Dated the 30th May, 1998.

OFFICE MEMORANDUM

Subject : Age of retirement in autonomous bodies/
organizations - Raising of.

The undersigned is directed to say that the Fifth Central Pay Commission in para 128.16 of its report recommended for increase in age of retirement of Central Government employees from 58 years to 60 years. The recommendation of the Fifth Central Pay Commission has been accepted by the Government and it has been decided to increase the age of retirement of Central Government employees from 58 years to 60 years. Accordingly, F.R.56

has been amended vide this Department's Notifications No. 25012/2/97-Estt.(A) dated 13.5.1998 and 27.5.1998. The amended F.R.56 (a) reads as under :-

“(a) Except as otherwise provided in this rule, every Government servant shall retire from the service on the afternoon of the last day of the month in which he attains the age of sixth years :

Provided that a Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixth years”.

“Provided further that a Government servant who has attained the age of eight years on or before the first day of May, 1998 and is on extension in service, shall retire from service on expiry of his extended period of service”.

Consequent upon revision of scale of pay of the Central Government employees, the question of extending the same benefits to the employees of the autonomous bodies/organisations was also under consideration of the Government. It has been decided to extend the benefit of extension in age retirement from 58 years to 60 years in the following cases :-

(a) In cases where the autonomous bodies/organizations are following the rules as applicable to Central Government employees and where the pay

scales and conditions of service are identical to Central Government employees, the age of retirement shall be extended by two years with prospective effect through appropriate Notification amending the Rules in consultation with the administrative Ministry concerned subject to condition that the age of retirement shall not exceed 60 years.

There shall be a complete ban on grant of extension in service beyond the age of superannuation except in the case of medical and scientific specialists, who can be granted extension in service, on a case to case basis, upto the age of 62 years and the orders relating to increase in age of retirement shall not be applicable to the persons on extension in service on 1.5.1998.

(b) In cases where the existing rules of the relevant autonomous bodies/organizations provide either that the age of retirement of specified categories of personnel working in these organizations shall be same as corresponding categories/grades in the Central Govt. or where the existing rules provide that all the conditions of service shall be identical to corresponding category of personnel in the Central Govt., the age of retirement may be increased by two years from prospective effect subject to a maximum of 60 years, in consultation with the concerned Administrative Ministry except in cases where

the age or retirement in these organizations is already more compared to their counter parts in the Central Govt. There shall be a complete ban on extension in service beyond the age of superannuation except in the case of medical and scientific specialists, who can be granted extension in service, on a case to case basis, upto the age of 62 years and the orders relating to increase in age of retirement shall not be applicable to the persons on extension in service on 1.5.1998.

(C) In respect of autonomous bodies/organization not covered by (a) & (b) above, the Administrative Ministry concerned may examine the matter on merits and there after approach the Department of Personnel, if it proposed to extend the age of retirement in these autonomous bodies/organization. The usual conditions that the maximum age of retirement, shall not exceed 60 years and there shall, be a complete ban on extension in service beyond the age of superannuation except in case of medical and scientific specialists, who can be granted extension in service, on a case to case basis, upto the age of 62 years and the orders relating to increase in age of retirement shall not be applicable to the persons on extension in service on the date of issue of orders shall apply.

3. Approvals in the cases covered by paras 2(a) and

(b) above will be at the level of the Minister-in-Charge of the administrative Ministry.

Sd/-
(Harinder Singh)
Joint Secretary to the Government of India.

65. First of all, it should be noted that the Official Memorandum No.25012/8/98/Estt.(A), dated 30.05.1998, issued by the Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training), can be made applicable only to Central Government Departments and Autonomous Bodies/Organisations, falling within the purview of the Ministry of Personnel, Public Grievances and Pension and *prima facie*, we are of the considered view that it cannot be said that it is binding on all the Universities, which are created by enactments and governed by the respective statutory provisions of such enactments, insofar as non-teaching staff is concerned. The Official Memorandum, dated 30.05.1998, referred to by the learned counsel for the petitioners, cannot be *ipso facto*, be applicable to the Universities, in the case of non-teaching staff also. Reading of the Official Memorandum, dated 30.05.1998, makes it clear that the Central Pay Commission Report has recommended to increase the age of central

government servants only, from 58 to 60 years and accordingly, Rule 56 of the Fundamental Rules, applicable to Central Government servants has been amended. Official Memorandum is not for the State Government employees or to the non-teaching staff in all the Universities, in the States.

66. Official Memorandum, dated 30.05.1998, makes it clear that in cases where the autonomous bodies/organizations are following the rules as applicable to Central Government employees and where the pay scales and conditions of service are identical to Central Government employees, the age of retirement shall be extended by two years, with prospective effect through appropriate Notification, amending the Rules in consultation with the administrative Ministry concerned, subject to condition that the age of retirement shall not exceed 60 years.

67. It cannot be contended that the Universities in the State of Tamil Nadu or autonomous bodies/organisations, are following the rules, applicable to Central Government employees and where the pay scales and conditions of service are identical to that of Central Government

employees. Insofar as the age of retirement is concerned, the staff employed in the Government colleges are governed by the Fundamental Rules, framed in exercise of the powers, conferred under Articles 309 and 313 of the Constitution of India. G.O.Ms.No.532, Personnel and Administration (Per.M.) Department, dated 25.04.1979 and G.O.Ms.No.592, Personnel and Administrative (FR.I) Department, dated 18.05.1979 are applicable to the staff employed in Government and the said Government Orders are already extracted. In respect of private colleges recognised under the Tamil Nadu Recognised Private Colleges (Regulations) Act, 1976, the staff employed are governed by the service conditions, as per Section 17 of the said Act and the amendments issued from time to time. Rules applicable to the Central Government employees and the State Government servants or for that matter, staff working in private educational institutions, cannot be said to be *pari materia*.

68. Likewise, the service conditions of the staff in the Universities are framed under the respective Acts and each University is empowered to determine the service conditions, depending upon the

purpose and functions carried out, by such University, as per the provisions of the Acts, under which, they are created. Therefore, it cannot be contended that all the autonomous bodies or organisations, are following the same rules, as applicable to Central Government employees and in the case on hand, it is nobody's case that the Universities are following the rules, applicable to the Central Government employees. Hence, there is no need for all the autonomous bodies/organisations to amend the rules, insofar as non-teaching staff is concerned.

69. From the bare reading of the Official Memorandum, dated 30.05.1998, it could be deduced that it is applicable to only Central Government employees and employees in autonomous bodies/organisations, which follow the rules applicable to Central Government employees and not to others. In effect, it is not applicable to cases, where the rules are different.

70. Fundamental Rule 56(1)(a), as amended and incorporated supra, for Central Government servants, are not *ipso facto* applicable to

State Government employees/autonomous bodies/organisations controlled by the State Government, which have separate set of rules, prescribing conditions of service. Added further, the Government of Tamil Nadu have framed rules, called the Fundamental Rules of the Government of Tamil Nadu and these rules have come into effect from 01.01.1922. By virtue of the powers, conferred under Articles 309 and 313 of the Constitution of India, the said Rules have the force of law. Ruling of the said Rules is extracted hereunder:

“The President of the Republic of India and the State Government may, by general or special orders, permit deviations from any provisions of a purely procedural nature contained in any rules made or confirmed under Article 309 of the Constitution of India provided that such deviations shall not affect the conditions of service, the pay and allowances or the pensions of officers subject to the rule-making control of the President of the Republic of India.

2. The Fundamental Rules apply, subject to the provisions of Rule 3, to all Government servants paid from the Consolidated Fund of the State and to any other class of Government servants to which Government may by general or special order declare them to be applicable. The Government may, in relation to service, under their administrative control, other than All India Services, make

rules modifying or replacing any of the Fundamental Rules:

Proviso deleted (G.O.Ms.No.90 P&AR (FR.IV) dt. 5.7.2003 - w.e.f. 19.3.2003).

Note 1.—A Government servant who is paid from the Consolidated Fund of the State and who is temporarily transferred to any of the Defence Services shall remain subject to these Fundamental Rules.

Note-2.—The Service Rules shall be taken to embody and indicate fully all the provisions governing the services concerned. As laid down in the Service Rules the Fundamental Rules shall govern a service, only in the matter of leave, leave salary, pension and other such conditions of service, as have not been provided for in the Service Rules. If any provision of the Fundamental Rules is repugnant to any provisions of the Service Rules, then the provisions of the Service Rules shall prevail and the provisions of the Fundamental Rules shall, to the extent of the repugnancy, be void.”

71. As per the subsidiary definitions in the Fundamental Rules, applicable to State Government servants, “Basic Service”, includes all service in the following appointments, unless, declared by the Government to be superior:—

“(a) Service as peon, head peon, chobdar or duffadar.

(b) Service in posts the pay of which does not exceed Rs.720.*

(c) Service in posts in the Raj Bhavan household establishment-class XXXVI-Madras General Subordinate Service irrespective of the scale of pay.

(G.O.Ms.No.185, Finance, dated 6th March 1968.)

*[G.O. Ms. No. 1071, P. & A.R. (FR.III) Dept., dt. 31-10-1986 —w.e.f. 1-10-84.]

All other service is superior.

Note.—Service in the posts specified in Appendix II shall be treated as superior.

RULING.

The question whether a Government servant is in superior or Basic Service should be decided with reference to the pay actually drawn by the Government servant at the time. The fact that the post of masalchi is included in the Tamil Nadu Basic Service does not affect the question of treating the holder of that post as superior or last grade for the purposes of Fundamental Rules. The status of a particular individual should be decided with reference to Subsidiary Definition (iii) (b) under Rule 9.

(G.O. Ms. No. 3580, L.A., dated 21st September 1937 and G.O.Ms.No. 320, Finance, dated 8th May 1930.)”

72. Both G.O.Ms.No.185, Finance, dated 6th March 1968 and G.O.Ms.No.1071, P. & A.R. (FR.III) Department, dated 31.01.1986, are extracted hereunder:

GOVERNMENT OF TAMIL NADU

ABSTRACT

The Madras Fundamental Rules - Amendment - Issued
FINANCE (S-IV) DEPARTMENT

G.O.Ms.No.185

Dated : 6th March 1968

Read:

From the Accountant General No.TM/UNIT.I/1-2/
FR.45/135, dated 12.12.1967.

ORDER

In exercise of the powers conferred by the proviso to Article 309 read with Article 313 of the Constitution of India and of all other powers hereunto enabling, the Governor of Tamil Nadu hereby makes the following amendments to the Fundamental Rules and the Instructions thereunder:-

AMENDMENT

In the said Fundamental Rules,-

(1) in rule 9, in Subsidiary definition (iii), after clause

(b), the following shall be inserted, namely:-

“(c) Service in posts in the Raj Bhavan household establishment - class XXXVI - Madras General Subordinate Service irrespective of the scale of pay.”

(2) in rule 45-A V, in Note 1, for item (c), the following shall be substituted, namely:-

“(c) “Staff of the Raj Bhavans establishment”;

(3) in rule 45-A VI, in Instruction 1, for Exception 1 the following shall be substituted, namely:-

“Exception 1. No rent shall be charged on the furniture supplied to the quarters and buildings attached to the Raj Bhavans at Madras and Ootacamund”;

(4) under subsidiary definition (iii) in Part I of Appendix II,

In Appendix II, in Part I, in the heads of departments specified under the sub-heading Rule 9 - Subsidiary definition (iii) after entry 16 the following shall be added, namely:-

“(17) Caretaker, Guindy Gandhi Mandapam Establishment, Raj Bhavan”.

R.S.RANGASWAMI,
Deputy Secretary to Government.

GOVERNMENT OF TAMIL NADU

ABSTRACT

FUNDAMENTAL RULES - SUBSIDIARY DEFINITION (III) UNDER
RULE 9 - AMENDMENT - ISSUED.

PERSONNEL AND ADMINISTRATIVE (FR.III) DEPARTMENT

G.O.Ms.No.1071

Dated : 31.10.1986

(Ippasi 15, Ashya,
Thiruvalluvar Aandu 2017)

G.O.Ms.No.555, Finance (PC) Department, dated
10.06.1985.

ORDER

The term “Basic Service” is defined in Subsidiary Definition (iii) under Fundamental Rule 9. It includes the posts, the pay of which does not exceed Rs.400/-. Consequent on the general revision of the scales of pay with effect from 01.10.1984, the Government have decided that the limit of Rs.400/-, should be revised as Rs.720/-.

The following Notification will be published in the Tamil Nadu Government Gazettee:-

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 read with Article 313 of the Constitution of India and of all other powers hereunto enabling, the Governor of Tamil Nadu hereby makes the following amendment to the

Fundamental Rules and the Instructions made thereunder.

2. The amendment hereby made shall be deemed to have come into force on the 1st October 1984.

AMENDMENT

In the said Fundamental Rules, under the heading “Chapter II - Definitions”, in rule 9, under the sub-heading “Subsidiary Definitions”, in item (iii), in sub-item (b), for the letters and figures “Rs.400/-”, the letters and figures “Rs.720” shall be substituted.

(By order of the Governor)

R.S.RANGASWAMI,
Deputy Secretary to Government.

Needless to extract all the Government Orders, where the scales of pay of the above service, have been revised, following the pay commission recommendations, as accepted by the State Government, wherever applicable.

73. Chapter XXIV of the Madras University Act, 1923, deals with ordinances applicable to all the superior and inferior establishments of the University, not registered by separate laws, formed in accordance

with the provisions of the Act and the statutes. Inferior service as defined in Clause 1(i), includes all service in the following appointments,

“(a) Services as attenders, peons, head gardener, night watchman, sweepers gardeners and such other posts as may be declared as “Inferior Service”.

(b) Service on pay not exceeding Rs.30/-.

All other service is deemed to be “Superior Service”.

74. Thus, from the reading of the Fundamental Rules applicable to State Government servants, it could be seen that the posts governed under the State Service Rules and followed by the autonomous bodies/organisations and controlled by the State Government, some of the categories in Group 'D' posts falls under the definition of “Basic Service” rules, for which, the Tamil Nadu Basis Service Rules have been framed.

75. From the definition of basic service, in the subsidiary definitions in the Fundamental Rules of the State, except the posts classified as inferior service or basic service, all other posts are classified as superior posts. The age of retirement of a basic servant, as per the

Fundamental Rules for Tamil Nadu Servants, is 60 years, and that is why, the Universities have adopted to determine the age of superior service as 58 years, as done in the case of government servants. Thus, it could be seen in the Madras University Regulation, the said University has classified the staff, as belonging to the superior establishment, than those in Group D. Therefore, the contention of the learned counsel for the non-teaching staff of the Universities that there is a discrimination between the age of retirement of staff falling in Classes (a), (b) and (c) of the University staff and Class (d), cannot be countenanced.

76. Needless to state that it is the prerogative of the government to frame rules, for different classes of employees. Tamil Nadu Basic Service Rules or the rules applicable to Class D employees, cannot be mutatis mutandis be applicable to all the services in the departments, and in particular, age of retirement to others.

77. Chapter IX of the Fundamental Rules, deals with retirement and the same is extracted hereunder:

“56. (1) Retirement on Superannuation.— (a) Every

Government servant in the superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He shall not be retained in service after that age except with the sanction of the Government on public grounds, which must be recorded in writing but he shall not be retained after the age of sixty years except in very special circumstances:

Provided that this clause shall not apply to Government servants who are treated as in superior service for the purpose of these rules but as in the Tamil Nadu Basic Service for the purpose of pension. Such Government servants as well as all basic servants shall retire on attaining the age of sixty years.

78. The question to be determined is whether the recommendations of the University Grants Commission or for the matter, the Official Memorandum No.25012/8/98/Estt.(A), dated 30.05.1998, issued by the Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training), is wholly binding on the State Governments, in respect of non-teaching staff also, when there is no reference to the revision of pay scales or the

age for non-teaching staff. Official Memorandum, dated 30.05.1998 has been issued, pursuant to the recommendation of the University Grants Commission. Recommendation is not a regulation framed by the University Grants Commission for non-teaching staff.

79. Even taking it for granted that the Government of India have accepted the recommendations and decided to implement the same, insofar as the teaching staff of the Central Government Department, is concerned, at first blush, in our considered view that it cannot be said that the State Governments have no powers to fix the age of non-teaching staff in the Colleges and Universities.

80. Entry 25 of List III (Concurrent List) of the Constitution of India, reads as follows:-

"Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

81. We have already extracted G.O.Ms.No.532, Personnel and

Administrative (Per.M.) Department, dated 25.04.1979 and G.O.Ms.No.592, Personnel and Administrative (FR.I) Department, dated 18.05.1979, applicable to the staff in all the Government department, irrespective of the class, which includes the Government Colleges also. At the risk of repetition, Section 17 of the Tamil Nadu Recognised Private Colleges Act, 1976, is extracted hereunder:

“17. Conditions of service, etc. of teachers and other persons employed in private colleges.-

The Government may make rules in consultation with the University regulating the number and conditions of service (including promotion, pay, allowances, leave pension, provident fund, insurance and age of retirement and rights as respects disciplinary matters but excluding qualifications) of the teachers and other persons employed in any private college.”

82. If the University Grants Commission has framed any regulation, fixing the age of non-teaching staff also as 60 years, in terms of Entry 66 List I of the Constitution of India, which deals with co-ordination and determination of standards in institutions for higher

education or research and scientific and technical institutions, then there could be an argument, as to whether, the provisions in the State Acts or the rules and regulations, in the matter of service conditions, pertaining to age of retirement, are applicable or not, as the field can be stated to be occupied by the Central Government or University Grants Commission, in light of Article 254 of the Constitution of India. Reference can be made to few decisions,

(i) In **Prem Chand Jain Anr. vs. R.K. Chhabra [(1984) 2 SCR 883]**, the Hon'ble Apex Court held:

"The legal position is well-settled that the entries incorporated in the lists covered by Schedule VII are not powers of legislation but 'fields' of legislation. Harakchand v. Union of India [(1970) 1 S.C.R. 479 at p.489]. In State of Bihar v. Kameswar [1952] S.C.R. 889 this Court has indicated that such entries are mere legislative heads and are of an enabling character. **This Court, has clearly ruled that the language of the entries should be given the widest scope or amplitude. Navinchandra v. C.I.T. [1955] 2 S.C.R. 129 at p. 836. Each general word has been asked to be extended to all ancillary or subsidiary matters which can fairly and**

reasonably be comprehended. See State of Madras v. Gannon Dunkerley [1959] S.C.R. 379 at p. 391. It has also been held by this Court in The Check Post Officer and Ors. v. K.P. Abdulla Bros [(1971) 2 S.C.R. 817] that an entry confers power upon the legislature to legislate for matters ancillary or incidental, including provision for avoiding the law. As long as the legislation is within the permissible field in pith and substance, objection would not be entertained merely on the ground that while enacting legislation, provision has been made for a matter which though germane for the purpose for which competent legislation is made it covers an aspect beyond it. In a series of decisions this Court has opined that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature enacting it, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature."

(ii) In **University of Delhi vs. Raj Singh & ors.**, reported in **1994**

Suppl. (3) SCC 516, the Hon'ble Apex Court held:

"13. ...By reason of entry 66, Parliament was invested with the power to legislate on "coordination and determination of standards in institutions for higher

education or reach and scientific and technical institutions." Item 25 of List III conferred power upon Parliament and the State legislatures to enact legislation with respect to "vocational and technical training on labour". A six-Judge bench of this Court observed that the validity of State legislation on the subjects of University education and education in technical and scientific institutions falling outside Entry 64 of List I as it then read (that is to say, institutions for scientific or technical education other than those financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance) had to be judged having regard to whether it impinged on the field reserved for the Union under Entry 66. In other words, the validity of the State legislation depended upon whether it prejudicially affected the coordination and determination of standards. It did not depend upon the actual existence of union legislation in respect of coordination and determination of standards which had, in any event, paramount importance by virtue of the first part of Article 254(1)."

(iii) In **State of T.N. & Anr. vs. Adhiyaman Educational & Research Institute & ors. [(1995) 4 SCC 104]**, the Hon'ble Supreme Court laid down the law in the following terms:

"41. What emerges from the above discussion is as follows:

(i) The expression "coordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the center under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the

main part of Clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the center under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the center or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

(vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities derecognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the central authority,

the State authorities act illegally."

(iv) In **State of A.P. vs. K. Purushotham Reddy & ors. [(2003) 9 SCC 564]**, the Hon'ble Supreme Court held:

"19. The conflict in legislative competence of the Parliament and the State Legislatures having regard to Article 246 of the Constitution of India must be viewed in the light of the decisions of this Court which in no uncertain terms state that each Entry has to be interpreted in a broad manner. Both the parliamentary legislation as also the State legislation must be considered in such a manner so as to uphold both of them and only in a case where it is found that both cannot co-exist, the State Act may be declared ultra vires. Clause I of Article 246 of the Constitution of India does not provide for the competence of the Parliament or the State Legislatures as is ordinarily understood but merely provide for the respective legislative fields. Furthermore, the Courts should proceed to construe a statute with a view to uphold its constitutionality."

"20. Entry 66 of List I provides for coordination and determination of standards inter alia for higher education. Entry 25 of List III deals with broader subject, namely, education. On a conjoint reading of both the entries there cannot be any doubt whatsoever that although the State has

a wide legislative field to cover the same is subject to entry 63, 64, 65 and 66 of List I. Once, thus, it is found that any State Legislation does not entrench upon the legislative field set apart by Entry 66, List I of the VII Schedule of the Constitution of India, the State Act cannot be invalidated."

84. Dealing with the scope of Clause (2) of Article 254 of the Constitution of India, in **T.Rishikesh and another v. Salma Begum** reported in **1995 (4) SCC 718**, at paragraph Nos.15 and 21 of the said judgment, the Hon'ble Apex Court held as follows:-

"15. Clause (2) of Article 254, is an exception to clause (1). If law made by the State Legislature is reserved for consideration and receives assent of the President though the State law is inconsistent with the Central Act, the law made by the Legislature of the State prevails over the Central law and operates in that State as valid law. If Parliament amends the law, after the amendment made by the State Legislature has received the assent of the President, the earlier amendment made by the State Legislature, if found inconsistent with the Central amended law, both Central law and the State law cannot coexist without colliding with each other. Repugnancy thereby arises and to the extent of the repugnancy the State law becomes void under Article 254(1) unless the State Legislature again makes law reserved for the

consideration of the President and receives the assent of the President....

21. We may clarify at once that if the Central law and the State law or a provision made by the High Court occupy the same field and operate in collision course, the State Act or the provision made in the Order by a High Court being inconsistent with or in other words being incompatible with the Central Act, it becomes void unless it is re-enacted, reserved for consideration and receives the assent of the President after the Central Act was made by Parliament, i.e. 10.09.1976."

85. In **Kaiser-I-Hind Private Ltd., and another v. National Textile Corporation (Maharashtra North) Ltd., and others** reported in (2002) 8 SCC 182, a Constitution Bench of the Hon'ble Supreme Court went to the extent of holding that even if the State Act receives the assent of the President subsequent to a Central Legislation, in respect of a matter falling in the Concurrent List, there must be indications to show that the repugnancy was specifically considered before the assent was granted.

86. As stated supra, University Grants Commission's

recommendation for the revision of pay scale to teachers and enhancement of age to teaching staff, in our considered opinion, cannot be read as regulations framed by the University Grants Commission, insofar as non-teaching staff is concerned and therefore, when the State Government in exercise of their powers, under Entry 25 of List III (Concurrent List) of the Constitution of India, have fixed the age of retirement as 58 years, in the case of non-teaching staff in the Colleges and Universities, the same cannot be held as arbitrary. The Universities in exercise of their powers, under the respective Acts, have framed the statutes or regulations, in tune with the Government's Policy.

87. In **Ispat Industries Ltd., v. Commissioner of Customs, Mumbai** reported in **2006(137) ECR 0495 (SC) = 2006(111) ECC 0495**, the Hon'ble Apex Court held as follows:-

"14. In this connection, it may be mentioned that according to the theory of the eminent positivist jurist Kelsen (The Pure Theory of Law) in every legal system there is a hierarchy of laws, and whenever there is conflict between a norm in a higher layer in this hierarchy and a norm in a lower layer the norm in the higher layer will prevail (see Kelsen's "The General Theory of Law and

State').

In our Country this hierarchy is as follows:

- 1)The Constitution of India;
- 2)The Statutory Law, which may be either Parliamentary law or Law made by the State Legislature;
- 3)Delegated or subordinate legislation, which may be in the form of rules made under the Act, regulations made under the Act, etc.,;
- 4)Administrative orders or executive instructions without any statutory backing."

88. Recommendations of the University Grants Commission, made, exercising the powers conferred on the University Grants Commission Act, for teaching staff in the Universities, does not fall under any of the three above mentioned categories, to non-teaching staff also. While that be the case, exercise of powers conferred on the State Government under the State Acts or for the matter, exercise of powers, by the Universities, under the Acts, by which they are created, cannot be said to be discriminatory, in the matter of fixing the age of retirement of its employees.

89. On the issue of State's role in prescribing rules or regulations for admission to professional educational institutions and the terms and conditions of teaching and non-teaching staff in **T.M.A. Pai Foundation v. State of Karnataka [(2002) 8 SCC 481]**, it is held as follows:

"71. While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe by rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the State. The merit may be determined either through a common entrance test conducted by the university or the Government followed by counselling, or on the basis of an entrance test conducted by individual institutions-the method to be followed is for the university or the Government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the Government or the university to provide that consideration should be shown to the weaker sections of the society.

72. Once aid is granted to a private professional educational institution, the Government or the State agency, as a condition of the grant of aid, can put fetters on the freedom in the matter of administration and

management of the institution. The State, which gives aid to an educational institution, can impose such conditions as are necessary for the proper maintenance of the high standards of education as the financial burden is shared by the State. The State would also be under an obligation to protect the interest of the teaching and non teaching staff. In many States, there are various statutory provisions to regulate the functioning of such educational institutions where the States give, as a grant or aid, a substantial proportion of the revenue expenditure including salary, pay and allowances of teaching and non-teaching staff. It would be its responsibility to ensure that the teachers working in those institutions are governed by proper service conditions. The State, in the case of such aided institutions, has ample power to regulate the method of selection and appointment of teachers after prescribing requisite qualifications for the same. Ever since in **Kerala Education Bill, 1957, Re AIR 1958 SC 956 : 1959 SCR 995**, this Court has upheld, in the case of aided institutions, those regulations that served the interests of students and teachers. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institutions. In other words, rules and regulations that promote good administration and prevent maladministration can be

formulated so as to promote the efficiency of teachers, discipline and fairness in administration and to preserve harmony among affiliated institutions. At the same time it has to be ensured that even an aided institution does not become a government-owned and controlled institution. Normally, the aid that is granted is relatable to the pay and allowances of the teaching staff. In addition, the management of the private aided institutions has to incur revenue and capital expenses. Such aided institutions cannot obtain that extent of autonomy in relation to management and administration as would be available to a private unaided institution, but at the same time, it cannot also be treated as an educational institution departmentally run by Government or as a wholly owned and controlled government institution and interfere with constitution of the governing bodies or thrusting the staff without reference to management.

73. There are a large number of educational institutions, like schools and non-professional colleges, which cannot operate without the support of aid from the State. Although these institutions may have been established by philanthropists or other public-spirited persons, it becomes necessary, in order to provide inexpensive education to the students, to seek aid from the State. In such cases, as those of the professional

aided institutions referred to hereinabove, the Government would be entitled to make regulations relating to the terms and conditions of employment of the teaching and non-teaching staff whenever the aid for the posts is given by the State as well as admission procedures. Such rules and regulations can also provide for the reasons and the manner in which a teacher or any other member of the staff can be removed. In other words, the autonomy of a private aided institution would be less than that of an unaided institution."

90. Insofar as the revision of scales of pay, on the recommendation of the University Grants Commission, Government of Tamil Nadu have issued orders in G.O.Ms.No.208, Agriculture (AU) Department, dated 27.03.1989, as hereunder:

GOVERNMENT OF TAMIL NADU

ABSTRACT

Tamil Nadu Agricultural University - Teaching Staff (excluding Physical Directors and Librarians) - Scales of Pay - Revision on the basis of recommendations of University Grants Commission and Government of India - Orders - Issued.

AGRICULTURE (AU) DEPARTMENT

G.O.Ms.No.208

Dated 27.03.1989

Panguni: Vibhava,
Thiruvalluvar Aandu-2020

Read the following:

1. From the Director General, Indian Council of Agricultural Research/Secretary, Government of India Letter No.17-20/81-Edn.II, dated 02.02.1988.
2. From the Registrar, Tamil Nadu Agricultural University Letter No.B1/20124/87, dated 19.03.1988.
3. From the Registrar, Tamil Nadu Agricultural University Letter No.A2/9718/88, dated 15.08.1988.

Read also:

4. G.O.Ms.No.1784, Education, dated 5.12.1988.
5. G.O.Ms.No.1785, Education, dated 5.12.1988.
6. G.O.Ms.No.1786, Education, dated 5.12.1988.

ORDER:

In recognition of the importance of College and University Teachers and their role in developing the Nation's human and material resources, the Government of India appointed Mehrotra Committee for reviewing the status of higher education in the country. The Mehrotra Committee recommended revision of pay scales of College and University Teachers which was accepted by the University Grants Commission and recommended it for its implementation. The Government of India decided to implement the revision of scales of pay with effect

from 1st January, 1986 and have also offered financial assistance to the State Government and for adopting the revised scale subject to the following terms and conditions:-

(i) The Central Government will provide assistance to the State Government to the extent of 80 percent of the additional expenditure involved in giving effect to the revision of scales of pay.

(ii) The Central assistance to the extent indicated above will be available for the period from 1st January, 1986 to 31st March, 1990.

(iii) The State Government will meet the remaining 20% of the expenditure from their own resources and will not pass on the liability or any portion thereof to the Universities.

(iv) The State Government will take over the entire responsibility for maintaining the revised scale of pay with effect from 01.04.1990.

(v) Central assistance will be restricted to the revision of pay scales of the posts which were in existence on January 1, 1986.

2.

3. The following orders are issued for adoption by the Tamil Nadu Agricultural University in respect of the various points regulating service conditions of teaching

staff dealt with by the Government of India:-

COVERAGE:

1. The Scheme applies to all the teaching staff of the Tamil Nadu Agricultural University and its constituent Research Units and Colleges under its control as their functioning teaching, research and extension are well integrated. All teachers appointed after the date from which this scheme has been given effect to will be governed by the provisions of the scheme.

.....

SUPERANNUATION AND RE-EMPLOYMENT

(xxxiii) The Tamil Nadu Agricultural University shall continue to adopt the existing provisions as per the Statutes and Regulations of the Tamil Nadu Agricultural University Act, in regard to superannuation and re-employment of superannuated teacher.

.....

(BY ORDER OF THE GOVERNOR)

LATIKA D.PADALKAR
Commissioner & Secretary to Government,
(Education, Research & Training).

91. Contention of the Tamilnadu Veterinary and Animal Sciences University as well as Tamil Nadu Agricultural University, is that they have adopted the policy decision of the Tamil Nadu Government, in fixing the

age of superannuation of teaching staff as 60 years and in the case of non-teaching staff of the University, except Class 'D', as 58 years. As observed earlier, when the Government of Tamil Nadu itself have decided to accept the University Grants Commission's recommendations only in the case of teaching and research posts in the Tamilnadu Veterinary and Animal Sciences Universities, as well as Tamil Nadu Agricultural Universities, insofar as revision of pay scales is concerned, Universities cannot be compelled to enhance the age of non-teaching staff as 60 years, in all the Colleges and Universities.

92. It is the contention of Mr.A.R.Suresh, representing the non-teaching staff of Tamilnadu Veterinary and Animal Sciences University as well as Tamil Nadu Agricultural University that G.O.Ms.No.111, Higher Education (H1) Department, dated 24.03.1999, is not applicable to the teaching or non-teaching staff of the Tamilnadu Veterinary and Animal Sciences University as well as Tamil Nadu Agricultural University. Insofar as the staff employed in the said Universities are concerned, the Government have issued G.O.Ms.No.208, Agriculture (AU.1) Department, dated 27.03.1989 and G.O.Ms.No.149, Animal Husbandry and Fisheries

(AH6) Department, dated 06.07.1999.

93. First of all, ICAR has decided to recommend to extend the revised scales of pay to teaching and research posts, in all the Agricultural/Veterinary and Animal Sciences Universities, in India. The said decision can be extended only to the above categories and not to all. Absolutely, no materials have been placed before this Court that ICAR has extended financial assistance to non-teaching staff also. What is meant by the University Grants Commission to revise the Scales of pay and age of retirement, to teaching staff, cannot be *ipso facto*, applied to non-teaching staff also.

94. University Grants Commission recommendations are only to the teaching staff in the Universities. No materials have been placed before this Court that ICAR has intended to extend the privileges to non-teaching staff also. In which case, ICAR or the Ministry of Agriculture, would have extended financial assistance, as done by the Central Government. Absolutely, there are no materials to that effect.

95. It is the case of the Tamil Nadu Veterinary and Animal Sciences Universities that the Government have issued G.O.Ms.No.149, Animal Husbandry and Fisheries (AH6) Department, dated 06.07.1999 and that Universities have decided to adopt of the same, in the matter of fixing the age of superannuation, for non-teaching staff, in the Universities. At this juncture, at the risk of repetition, we may incorporate the Preamble of G.O.Ms.No.149, dated 06.09.1999, which states as follows:

“The Government of India, decided to accept the recommendations of the University Grants Commission and implemented the revision of pay scales for college and University teachers. The Indian Council of Agricultural Research (ICAR) has recommended that the revised scales of pay as extended to ICAR Scientists might be extended to the corresponding teaching and research posts in all the State Agricultural/Veterinary Universities in India with effect from 01.01.1996. The ICAR on behalf of the Government of India, has agreed to provide financial assistance to the State Governments for implementing the revised UGC scales of pay.”

96. From the reading of G.O.Ms.No.149, Animal Husbandry and Fisheries (AH6) Department, dated 06.07.1999, it could be seen that though the University Grants Commission has recommended for enhancement of the age of teaching staff to 62 years, Government of Tamil Nadu, considering the financial implications, have restricted the same upto 60 years only. Infact the Government of Tamil Nadu have retained the age of superannuation of teaching staff, only upto 60 years. At the risk of repetition, yet another fact, which could be deduced from the abovesaid Government Order, is that the recommendations of the University Grants Commission, is only with reference to the age of superannuation of teaching staff and not non-teaching staff in the Universities.

97. Further reading of G.O.Ms.No.149, dated 06.09.1999, it is clear that the Government of India, have decided to accept the recommendations of the University Grants Commission and implement the revision of pay scales for college and University teachers. Indian Council of Agricultural Research has also recommended that the revision of scale of pay can be extended to only ICAR scientists, be extended to

the corresponding teaching and research posts, in all the Agricultural/Veterinary Universities in India. Absolutely, there is no material on record to indicate that the Government of India have decided to implement the recommendations of the University Grants Commission, for all the employees in the colleges, i.e., non-teaching staff, in the Veterinary and Animal Sciences and Agricultural Universities and Colleges in India. ICAR has also recommended the revision of pay scales only for the corresponding teaching and research posts in all the State Agricultural Universities in India, with effect from 01.01.1996. Revision of pay scale applicable to teaching and research posts in all the Agricultural/Veterinary and Animal Sciences Universities, cannot at any stretch of imagination, be mixed with age of superannuation of teaching and non-teaching staff.

98. G.O.Ms.No.149, dated 06.09.1999, speaks about, scales of pay of those covered under the scheme, propounded by University Grants Commission. As regards payment of arrears, the same is set out, under the heading “Payment of arrears”, as hereunder:

“(i) Arrears will be paid from 01.01.1996. Out of the

arrears due for the period from 01.01.1996 to 31.03.1999, 40 per cent will be paid in cash and the balance of 60 per cent will be credited to the Provided Fund Account of the employees. The payment of arrears, both cash payment and the credit to Provident Fund will be made soon after the State Government/University receives 80 per cent grant from the Indian Council of Agricultural Research, New Delhi. Cash payment shall be made from the Salary for the month of April 1999 onwards.

(ii) The Government had sanctioned third instalment of Interim Relief to TANUVAS Teaching staff at the rate of 10% of Basic Pay with effect from 01.04.1996 in G.O.Ms.No.33, Animal Husbandry and Fisheries (AH6) Department, dated 11.02.1997. This shall be adjusted from out of arrears.

(iii) As per G.O.Ms.No.641, Finance (Pay Cell) Department, dated 29.12.1997, the employees on UGC Scales of Pay were paid an adhoc payment of arrears of Rs.4,000/-. Out of Rs.4,000/-, an amount of Rs.2,000/- was credited to the Provident Fund Account of the employees and the balance of Rs.2,000/- was paid in cash. Hence, Rs.2,000/- each has to be deduced from the portion of arrears to be credited to the Provident Fund Account and from the portion of cash payment of arrears, respectively.”

99. In G.O.Ms.No.41, Animal Husbandry, Dairying and Fisheries (AH6) Department, dated 15.03.2010, the Government of Tamil Nadu have reiterated their stand for upward revision of pay for the teaching staff, including Librarians and Director of Physical Education Teachers. The said Government Order is extracted hereunder:

GOVERNMENT OF TAMIL NADU

ABSTRACT

University - TANUVAS - Teaching staff including Librarian and Directors of Physical Education - Revision of UGC-ICAR Pay Scales - Orders issued.

ANIMAL HUSBANDRY, DAIRYING AND FISHERIES (AH.6) DEPARTMENT

G.O.Ms.No.41

Dated 15.03.2010

Panguni: 01

Thiruvalluvar Aandu-2041

Read:

1. G.O.Ms.No.149, Animal Husbandry and Fisheries (AH-6) Department, dated 06.07.1999.
2. Notification No.1-32/2006-U.II/U.I(i), dated 31.12.2008, from the Department of Higher Education, Ministry of Human Resource

Development, Government of India, New Delhi.

3. Notification No.1(01)/2009-Per-IV, dated 13.03.2009, from the Dept., of Agricultural Research and Education, Ministry of Agriculture, Government of India, New Delhi.
4. From the Registrar, TANUVAS Letter No.5295/A.1/2009, dated 18.03.2009 and 01.10.2009.
5. G.O.Ms.No.350, Higher Education (H.1) Department, dated 09.09.2009

ORDER:

Based on the orders issued by the Government of India on the recommendations of Prof.G.K.Chadha Committee, the State Government constituted an Official Committee to examine and make necessary recommendations for the revision of Scales of Pay and Allowances for the teachers and equivalent cadres in the Universities governed by UGC. Accordingly, the Official Committee has submitted its report to Government on 14.08.2009 and the Government passed orders on its implementation for the Teachers and equivalent cadres in the Universities in Tamil Nadu in the Government Order fifth read above. The Registrar, Tamil Nadu Veterinary and Animal Sciences University in his letters

referred 4th above has sent proposals to revise the Pay of the Teachers and equivalent cadres in the University based on the above Government Orders since they are governed by UGC Pay Scales.

.....

4. The Government will take the financial liabilities only for the approved posts and not for the posts created from University funds.

.....

6. Necessary additional funds will be provided in the Final Modified Appropriation 2009-2010. The Registrar, Tamil Nadu Veterinary and Animal Sciences University shall include this expenditure while sending the proposal for Final Modified Appropriation 2009-2010 to Government in Finance Department.

.....

/ By Order of the Governor/

C.MUTHUKUMARASWAMY
Secretary to Government.

100. At Paragraph 4 of the abovesaid Government Order, the Government have made it clear that the Government would take the financial liabilities only for the approved posts and not for the posts created from University funds, thus making it clear that even in the case

of teaching posts or Librarians or Directors of Physical Education, not approved, financial assistance will not be given. At Paragraph 6, the Government have ordered that necessary additional funds would be provided in the Final Modified Appropriation 2009-2010 and the Registrar, Tamil Nadu Veterinary and Animal Sciences University would include this expenditure, while sending the proposal for Final Modified Appropriation 2009-2010 to the Government in Finance Department.

101. As regards the age of superannuation, though the University Grants Commission has recommended the retirement age of college and university teachers, to be raised to 62 years, the Government have decided not to raise the retirement age of College and University Teachers to 62 years and accordingly, the Government have decided to retain the present retirement age of 60 years, in the case of teachers in the Universities alone and ultimately, at Paragraph 5, the Government have ordered that necessary additional funds will be provided in the revised estimate/final modified appropriation, 1999-2000.

102. The Government have the power to establish Universities, grant permission and recognition to private colleges and therefore, any directions issued by the Government from time to time, in exercise of the powers, under Entry 25 of List III (Concurrent List) of the Constitution of India, have to be followed by all the Colleges and Universities, except to the extent of the right of minorities. If they are aided or unaided, then the only difference is administration of such minority institutions. Even in such cases, they are governed by the provisions of the Tamil Nadu Private Colleges (Regulations) Act, 1976, regarding the age of retirement and other service conditions, as per Section 17 of the Act and the Rules made thereunder and pay scales and age of retirement are fixed by the Government to the employees of the colleges, thus maintaining equality, among the staff employed in Government and Government aided colleges.

103. Insofar as Tamil Nadu Veterinary and Animal Sciences University is concerned, a meeting has been convened by the Vice Chancellor. Subject No.5 discussed and decided is extracted hereunder:

“Under the immediate supervision of

Dr.V.Ulaganathan. Director, CAPS, Dr.A.T.Venugopalan, Professor of Microbiology, will help for drafting the University Statutes, Rules and Regulations, and will submit them to the Vice-Chancellor for forwarding to the Government for approval.”

104. Subsequently, vide proceedings of the Vice-Chancellor of Tamil Nadu Veterinary and Animal Sciences University, dated 23.09.1989, Dr.V.Ulaganathan, Director, CAPS.MVC, has been requested to draft the statutes, regulations and rules for the New University with the assistance of Dr.A.T.Venugopalan, Professor of Microbiology and submit the same to the Vice-Chancellor as early as possible for transmission to the Govt, for approval.

105. Vide proceedings of the Vice-Chancellor, Tamil Nadu Veterinary and Animal Sciences University, Madras, in partial modification to the office reference cited, a committee has been constituted with the following Officers for framing of Statutes, Regulations and rules of Tamil Nadu Veterinary and Animal Sciences University.

1.	Registrar, TNVASU	CHAIRMAN
2.	Dr.A.T. Venugopalan	MEMBER
3.	Dr.V.Ulaganathan	MEMBER
4.	Dr.V.Gnanaprakasam	MEMBER
5.	Dr.R.Govindarao	MEMBER
6.	Dr.V.D.Padmanabhan (Finance Officer I/c.)	MEMBER
7.	Law Officer	MEMBER

106. Notes for information, regarding the following of Tamil Nadu Agricultural University Rules, Statutes and Regulations, on agenda item No.4, is extracted hereunder:

“In accordance with the provisions in Section 60(3) of the Tamil Nadu Government Act 42 of 1989, all Statutes, Rules and Regulations of Tamil Nadu Agricultural University shall continue to be in force till they are replaced by the Statutes, Rules and Regulations to be formed and approved by the Government for Tamil Nadu Veterinary and Animal Sciences University. (Govt. Lr.No.33166/AH.6/89-3, dated 26.12.1989 of A.H.&F. Dept.,)”

107. In response to the same, the Deputy Secretary to the Government, Animal Husbandry and Fisheries Department, Madras, in Letter No.33166/AH.6/89-3, dated 26.12.1989, addressed to the Registrar, Tamil Nadu Veterinary and Animal Sciences University,

Madras,-7, has stated as follows:

“I am directed to state that under sub-section(5) of section 48 of the Tamil Nadu Veterinary and Animal Sciences University Act, 1989, until such time authorities of the University are duly constituted the first Vice-Chancellor may constitute any committee temporarily to exercise and perform any of the powers and functions if such authority under the said Act. The Vice-Chancellor of the University has constituted a temporary committee for the purpose. The approval of the Government for such constitution of the committee is not contemplated in the said section 48(5). Under sub-section (3) of section 60 of the said Nadu Act 42 of 1989, all statutes and regulations made under the Tamil Nadu Veterinary and Animal Sciences University Act 1971 (Tamil Nadu Act 5 of 1971) and in force on the appointed day, namely the 20th September 1989, shall in so far as they are not inconsistent with the provisions of the Tamil Nadu Veterinary and Animal Sciences University Act, continue to be in force until they are repealed by statutes and regulations to be repealed under the said Tamil Nadu Act 42 of 1980. In view of the above provisions, I am to inform you that the proposal to follow the Statutes, regulations etc., made under the Tamil Nadu Agricultural University Act, 1971 (Tamil Nadu Act 8 of 1971) by the Tamil Nadu Veterinary

and Animal Sciences University does, not require the formal approval of the Government.”

108. The Director, Centre for Animal Production Studies, Madras Veterinary College, Madras, in his letter, dated 07.03.1990, addressed to the Vice Chancellor, Tamil Nadu Veterinary and Animal Sciences University, Madras, has stated as follows:

“The draft of the statutes prepared for Tamil Nadu Veterinary and Animal Sciences University was produced to the Committee for its approval. I wish to bring the following to your kind notice.

(1) The Page No.37, the Sub-Section (e) is a repetition of (d). Hence, it can be omitted.

(2) In Page No.47 the periodicity at which the Research Council meetings are to be held are not given and therefore, the following may be added at the 4th item.

(3) In Page No.56, it is stated that the service in University is regulated mutatis mutandis in accordance with the Government rules. In addition it also stated that the D.O.M., will apply. The D.O.M., advocates Tottanham filing system. Therefore, the mention of D.O.M. may be omitted. Otherwise, it is suggested that the following as given in the ICAR Rules may be supplemented. “The University service is pensionable but non Government. The

grant of leave, pay, advances, travelling and other allowances and other service conditions of officers and establishment in the service of the university are regulated mutatis mutandis in accordance with the fundamental and supplementary rules and such other rules and orders, as are issued by the Government of Tamil Nadu from time to time.”

109. The Registrar, Tamil Nadu Veterinary and Animal Sciences University, Madras, in his letter, dated 16.05.1990, addressed to the Secretary to the Government, Animal Husbandary and Fisheries Department, Madras, has enclosed the draft regulations of Tamil Nadu Veterinary and Animal Sciences University, for approval. Subsequently, on 07.05.1990, the Vice-Chancellor of the Tamil Nadu Veterinary and Animal Sciences University, has requested the Secretary to the Government, Animal Husbandary and Fisheries Department, Madras, to get it approved by the Chancellor and to publish the same in the Government Gazettee, on or before 19.09.1990.

110. On 19.09.1990, the Secretary to the Government, Animal Husbandary and Fisheries Department, Chennai, has informed the

Registrar (I/c), Tamil Nadu Veterinary and Animal Sciences University, Madras, that the Chancellor has approved the statutes and regulations. On the same day, the Secretary to the Governor has addressed a letter to the Secretary to the Government, Animal Husbandry and Fisheries Department, Chennai and the same is extracted hereunder:

“The Governor-Chancellor has approved the Statutes and Regulations sent with your Department’s file bearing C.No.8647/AH6 90 with the following modification:-

In the Draft Government Order it is mentioned that the Statutes and Regulations shall take effect from the publication in the Tamil Nadu Government Gazette. According to Section 39(5) of the Tamil Nadu Veterinary and Animal Sciences University Act, a Statute passed by the Board shall have no validity until it has been assented to by the Chancellor. Hence, the Statutes as and when they receive the assent of the Chancellor come into operation. The Governor-Chancellor has, therefore, ordered that the Statutes and Regulations shall come into operation from 19.9.1990 the date of approval of the Governor-Chancellor.

I am to request you to suitably amend the Government Order. Your Department's file bearing C.No.8647/AH6/90, is returned herewith.”

Department, dated 19.09.1990, is extracted hereunder:

GOVERNMENT OF TAMIL NADU

ABSTRACT

Tamil Nadu Veterinary and Animal Sciences University -
Statutes and Regulations of the Tamil Nadu Veterinary and
Animal Sciences University approved by the Chancellor -
Published.

ANIMAL HUSBANDRY AND FISHERIES (AH.VI) DEPARTMENT

G.O.Ms.No.493

Dated: 19.09.1990

Read:

From the Registrar, Tamil Nadu Veterinary and Animal
Sciences University, Letter No.17197/R1/89, dated
05.03.1990, 16.05.1990, 17.07.1990, 28.08.1990,
29.08.1990 and 01.09.1990.

ORDER:

The following Notifications shall be published in an
Extra Ordinary Issue of the Tamil Nadu Government
Gazette.

NOTIFICATION - I

In exercise of the powers conferred by sub-Section
(4) of Section 48 read in the section 38 of the Tamil Nadu
Veterinary and Animal Sciences University Act, 1989 (Tamil

Nadu Act 42 of 1989), the first Vice-Chancellor of the Tamil Nadu Veterinary and Animal Sciences University hereby makes the following statutes of the Tamil Nadu Veterinary and Animal Sciences University with the approval of the Chancellor as shown in the Appendix I.

It shall take effect from the 19th September, 1990.

NOTIFICATION - II

In exercise of the powers conferred by sub-Section (4) of Section 48 read in the Sub-Section (1) of section 40 of the Tamil Nadu Veterinary and Animal Sciences University Act, 1989 (Tamil Nadu Act 42 of 1989), the first Vice-Chancellor of the Tamil Nadu Veterinary and Animal Sciences University hereby makes the Regulations of the Tamil Nadu Veterinary and Animal Sciences University with the approval of the Chancellor as shown in the Appendix II.

It shall take effect from the 19th September, 1990.

2. The Director of Stationary and Printing is requested to print the notifications immediately and send 350 copies of the Gazettee to the Government.

(BY ORDER OF THE GOVERNOR)

D.SUNDARESAN,
SECRETARY TO GOVERNMENT.

112. Insofar as Agricultural University is concerned, the Government have issued G.O.Ms.No.208, Agriculture (AU) Department,

dated 27.03.1989. Insofar as Madras University is concerned, a meeting of the syndicate has been convened on 23.10.1979, under the Chairmanship of Thiru.G.R.Damodaran and 16 members and it has been decided to adopt the age of of superannuation as 58 years. Minutes of the meeting is as follows:

"375. Considered the G.O.Ms.No.532, Personnel and Administrative Reforms (Per.M) Department, dated 25th April, 1979, enhancing the superannuation age from 55 to 58 with immediate effect, for adoption to the University employees.

RESOLVED that the G.O.Ms.No.532, Personnel and Administrative Reforms (Per.M) Department, dated 25th April, 1979, enhancing the superannuation age from 55 to 58 with be adopted to the University employees.

RESOLVED FURTHER that necessary action be taken to amend the Statute 4 of Chapter VII and Statute 29 of Chapter XXIV of Volume I, University Calender 1973 suitably.

113. Insofar as Bharathiar University is concerned, in exercise of the powers under Section 44 of the Bharathiar University Act, 1981, statutes have been made with the approval of the Vice Chancellor of the said University and published in the Government Gazettee and it reads thus,

"Assented to by the Chancellor - *Vide* D.O.Lr.No.13292/U2/86, dated 12th June 1987, 17th August 1987 and 25th September 1987 and D.O.Lr.No.1853/U2/88, dated 16th March 1988 of Secretary to the Governor."

114. In Oxford Dictionary, "Homogeneous" means, "of the same kind; alike". In Merriam-Webster's Dictionary, it is defined as follows:

- (i) of the same or a similar kind or nature
- (ii) of uniform structure or composition throughout a culturally *homogeneous* neighborhood.

In Macmillan Dictionary, "Homogeneous" means, consisting of things that are very similar or all of the same type. In Collin's Dictionary, it is defined as follows:

- (i) composed of similar or identical parts or elements
- (ii) of uniform nature
- (iii) similar in kind or nature
- (iv) having a constant property, such as density, throughout."

115. Nature of duties and functions performed by the teaching staff and non-teaching staff are different. Invariably, staff in all the Universities, are classified into four classes, as in the case of

Government servants. Changes in the classification made by the Government from time to time, are applicable to the University employees also. They form different classes, separate categories, and service conditions, cannot be said to be similar in all respects. In this context, it is also worthwhile to incorporate few statutes in Chapter XVIII of the Statutes of Bharathiar University, Coimbatore, dealing with the service conditions of the establishment,

Statute 4:

CLASSIFICATION OF STAFF

Classification of Service. — The employee of the university shall be classified into four classes as in the case of Government servants. Changes in classification made by the Government from time to time will be applicable to the university employees also.

Statute: 5

RECRUITMENT

1. (a) Creation of Non-teaching Posts. — the Syndicate shall have the powers to create non-teaching posts from time to time according to the necessity.

.....

5.(a) Qualification age, etc. — The age, qualifications method of recruitment, etc, to the posts of

professor, Reader, Lecturer, Registrar, Controller of Examinations and Deputy registrar, Assistant Registrar, Superintendent, Assistant, Junior Assistants, Typists, Steno-typists, Record Clerk/Attenders, Office Assistants, Drivers, Telephone Operator, Technicians, etc., shall be as indicated in Appendix-I. In the case of teaching staff, the qualifications prescribed by the UGC for various categories shall generally be followed subject to such modifications as the Syndicate might consider necessary. The Syndicate reserves the right to prescribe/change or modify the qualifications, age etc., for all teaching and non-teaching posts as and when found necessary from time to time. All appointments made by the appointing authority shall be deemed to have been on behalf of the University.

Statute 6:

PROBATION.

1. Period of Probation. — Every directly recruited employee of the University unless specifically exempted, shall be on probation for a period of two years within a continuous period of three years from the date of joining the University:

Provided that in case of Class D employees the probation shall be for a period of one year within a continuous period of two years from the date of joining duty.

2. (a) Completion of probation — On completion of the period of probation the university shall make an assessment of the work of the probationers and on the basis of such an assessment either declare him/her to have completed his/her probation satisfactorily or terminate his/her services or extend his/her probation such period as it considered necessary, not excepting one year to make a further assessment of his/her suitability provided such orders shall be issued within 3 months after the date of completion of probation. If on assessment at the end of the extended period of probation his/her work is found to be not satisfactory, his/her probation shall be terminated.

An order shall be issued within 3 months after the date of the completion of the extended period.

.....

Statute No.9:

RETIREMENT

Age of retirement. — An employee of Classes A, B and C shall retire from the University Service on the last day of the month in which he/she completes his/her 58th year of age in respect of non-teaching staff and 60th year of age in respect of Teaching Staff:

Provided that class D employees should retire on the last day of the month in which he/she completes his/her completes his/her 60th year of age:

Re-employment. – Provided that the Syndicate may re-employ any such employee for one year in except of non-Teaching Staff, and two years in respect of Teaching Staff at a time and upto a period of two years in all in respect of non-teaching staff and Five years in all in respect of teaching staff.

Statute 10.

COMPULSORY RETIREMENT

1. Teaching staff:- (a) Notwithstanding anything contained in these statutes, the syndicate based on the recommendations given by a committee constituted by the Syndicate every year for this purpose of review shall, if it is of the opinion that it is in its interest so to do, have the absolute right to retire any University Teaching Staff by giving him/her notice of not less than three months in writing or three months pay and allowance in lieu of such notice, after he/she attained the age of 50 years or completion of 30 years of active service.

(b) Any teaching staff after completion of 20 years of qualifying service or 55 years of age may opt to retire by giving notice of not less than three months in writing to the Syndicate.

2. Non-teaching Staff:- Notwithstanding anything contained in these statutes, the Syndicate based on the recommendations given by the Committee constituted by

the Syndicate every year for the purpose of review shall, if it is of the opinion that it is in the interest so to do, have the absolute right to retire any University non-teaching employee by giving him/her notice of not less than three months in writing or three months pay and allowances in lieu of such notice, at any time after he/she attained the age of 50 years or 55 years in the case of basic servants as the case may be or after he/she has completed 30 years of qualifying service.

Any non-teaching staff who has attained the age of 53 years or after his/her completion of 20 years of qualifying service may likewise opt to retire after giving notice of not less than three months in writing to the Syndicate.

Explanation No. I:- In computing the notice period of three months, the date of services of the notice shall be excluded; the period if any spent on leave during the notice period shall also be excluded.

Explanation No. II. — When a university employee under suspension of against whom disciplinary action is pending seeks to retire voluntarily under his statute, the Syndicate may withheld the permission sought for.

3. Review petition. — Any employee compulsorily retired either under sub-clause (1) (a) or sub-clause (2) above may if he/she chooses to file a review petition, do so within 2 months to the Syndicate. A “Review Committee”

which shall be specially constituted every year for this purpose by the Syndicate shall consider and make its recommendations to the Syndicate. The decision of the Syndicate thereon shall be final.

Statute 11:

SCALE OF PAY AND ALLOWANCES.

1 .Pay and revision of pay. — The scales of pay admissible to various categories of posts in the University shall be fixed and revised by the Syndicate from time to time provided such scales of pay fixed or revised shall be comparable to those adopted or accepted for similar posts under the Government and University Grants Commission:

Provided that the Dearness Allowance, House rent Allowance, City, Compensatory Allowance shall be regulated as per the rules applicable to the employees of Government of Tamil Nadu from time to time.

Sanction of advance increments. — All appointments shall ordinarily be made at the minimum of the scale of pay prescribed for the post provided however that the Syndicate may authorise fixation of pay at a higher stage in the scale than that admissible in special cases for reasons to be recorded in writing.

3. Applicability of fundamental rules. — The Fundamental Rules of the Tamil Nadu Government shall apply in general regarding pay fixation, increments, joining

time, foreign service, etc., wherever it is not inconsistent with any of the provisions under these statutes and the act.

4. Conditions for temporary appointment-Whenever the university creates a temporary post for a specified period and specific purpose the syndicate may prescribe adhoc rules to govern the recruitment, qualification and scale of pay.”

116. Every employee of the University directly recruited, unless specifically exempted shall be on probation, for a period of two years, within a continuous period of three years from the date of joining. But in the case of Class D employee, the period of probation is one year within a continuous period of two years from the date of joining. A teaching staff can be compulsorily retired on attaining the age of 50 years or completion of 30 years of service. On completion of 20 years of qualifying service or 55 years of age, he may opt for voluntary retirement, whereas, in the case of non-teaching staff, they can be compulsorily retired, at the age of 50 or 55 years, in the case of basic servants or 30 years of qualifying service. As regards voluntary retirement of non-teaching staff, it is 53 years or completion of 20 years of service. Needless to state that Class D or Group D employees is the

least in the cadre and they are mostly manual workers (skilled or semi skilled). However, classification is done on the basis of scale of pay. Allowances and other privileges, granted to the employees in different classes, in the cadre, may also vary depending upon the classification.

117. As regards scales of pay of the employees, under various categories, it would be fixed by the Syndicate, comparable to those adopted or accepted for similar posts, under the Government and University Grants Commission. Needless to state that scales of pay of the University teaching staff has been fixed and funded by the Central Government or ICAR, as the case may be, upto the period, stated supra. Thus, a comparison of the service conditions of the teaching and non-teaching staff, would make it clear that service conditions are different, in the case of teaching and non-teaching staff. The above are only illustrative.

118. One cannot dispute that increase in the age of retirement of non-teaching staff in the Universities, would incur recurring financial expenditure. It has already been considered by the Central Government

or ICAR, as the case may be, and thus, they have come forward to provide financial assistance. It is the contention of Mr.G.Sankaran, learned counsel for the non-teaching staff in Bharathiyar University that all the staff are paid only from University funds and not from the Government. As the learned counsel representing the non-teaching staff of Bharathiar Univerity, at this juncture, it is relevant to extract Chapter VIII of Bharathiar University, Section 42 of the Act reads as follows:

“General Funds. — The University shall have a General Fund to which shall be credited:-

(a) its income from fees, grants, donations and gifts, if any;

(b) any contribution or grant made by the Central Government, any State Government, the University Grants Commission or like authority, any local authority or any corporation owned or controlled by the Government; and

(c) endowments and other receipts.”

119. Chapter VIII of the Laws of the said University deals with finance and it is extracted hereunder:

CHAPTER VIII

FINANCE

1. Act S.32- The University shall have a General Fund to which shall be credited-

(a) its income from fees, grants, donations and gifts, if any:

(b) any contribution or grant made by the central Government and state Government, the University Grants commission or like authority, any local authority or any Corporation owned or controlled by the Government; and

(c) Statute 1 .-Endowments and other receipts. The funds shall in the main be of two categories, viz,

(a) Trust funds, such as endowment funds, provident funds, pension fund etc., and

(b) University funds, which may be both revenue and capital including grants and contributions.

2. Statute 2.-The university accounts shall be maintained by the Finance officer, subject to the direction and control of the vice-chancellor and the syndicate . He shall open such accounts and registers as may be prescribed by the Financial and Accounts Rules.

Act S. 28(1). - Annual Accounts.- The Annual accounts of the university shall be submitted to such examination and audit as the Government may direct.

Act S. 28 (2). - The University shall settle objections raised in such audit and carry out such

instructions as may be issued by the Government on the audit report.

3. Act S. 28 (3) - The accounts when audited shall be published by the syndicate in such manner as may be prescribed by the ordinances and copies thereof shall be submitted to the Senate at its next meeting and to the Government within three months of such publication.

4. Statute 3.- Financial Estimates . - The financial estimates shall be prepared by the Finance officer in co-operation with the Registrar, under the directions of the vice-chancellor and after consideration by the finance committee shall be approved by the syndicate before the 1st February of each year for the ensuing year.

The Budget estimates shall provide under the head 'vice-chancellor's discretionary fund' a sum equivalent to 5 per cent of the total provision of the Departments. It shall be in the discretion of the vice-chancellor to allot funds from this fund to any department that is in dire need of some equipment or material not provided for and which may be needed for carrying on the further stages of research.

5. Statute 4. - Syndicate to incur unforeseen expenditure.- The syndicate may incur expenditure outside or in excess of the provision made in the budget, as approved by the Finance committee in case such

expenditure is unforeseen and does not involve recurring commitment, and subject also to the condition that it shall be reported to the Finance committee for ratification. This is outside the vice-chancellor's discretionary fund.

6. Statute 5.- No new scheme or project of any kind to be financed either in whole or in part by the university Grants commission or by the Government or by the university shall be undertaken unless the Finance committee has accorded its approval. In the case of recurring commitment in regard to such projects, no such commitment shall be made or undertaken unless the State Government or the University Grant commission grants would be forthcoming for meeting the recurring cost of the scheme or other endowment or funds would meet the cost of such projects permanently.

7. statute 6. pension, provident Fund for staff- The university shall institute for the benefit of officers, teachers and servants of the University such scheme of pension-cum-Gratuity and provident Fund as the syndicate may decide .The funds earmarked and invested for such purposes shall be deemed to be trust funds, and cannot be applied for any other purposes than those specified in the scheme or diverted for other purposes temporarily.

8. Statute 7. Writing off irrecoverable stock or moneys. - The syndicate shall have power to write off

irrecoverable balance or loss or shortage of stock occasioned by fraud or neglect of duty by University Officers or servants or otherwise. Such shortage proposed to be written off shall be reported to the Finance committee.”

120. Thus, it could be deduced that in the case of recurring expenditure, the Finance Committee has to accord its approval, even if a new scheme or project of any kind, is financed in whole or in part by the University Grants Commission or by the Government or by the University. It is also made clear that no such commitment shall be made or undertaken by the University, unless the State Government or the University Grants Commission are forthcoming to meet out the recurring cost of the scheme or other endowment or funds, to meet the costs of such scheme or project, permanently. There are similar provisions, relating to funds, implementations of new schemes or projects and service conditions, in other enactments also, under which, Universities are created. As pointed out earlier, the scheme or the recommendations of the University Grants Commission is only to revise the pay scales and the age of retirement of teaching staff alone and

while, implementing the same, the Central Government or ICAR, as the case may be, have come forward to contribute 80% of the expenditure, for five years only and the remaining 20% has to be shared by the State Government.

121. Reading of G.O.Ms.Nos.111, 112, 113, Higher Education (H1) Department, dated 24.03.1999, shows that the Government of India have agreed to provide financial assistance to the state Governments for implementing the revised scales, subject to the following conditions:

(i) The Central Government will provide assistance to the state Government to the extent of 80 percent of the additional expenditure involved in giving effect to the revision of scales of pay.

(ii) The Central Assistance to the extent indicated above will be available for the period from January 1, 1996 to March 31, 2000.

(iii) The State Government will meet the remaining 20 percent of the expenditure from its own resources.

(iv) The State Government will take over the entire responsibility for maintaining the revised scales of pay with effect from April 1st 2000.

(v) Central assistance towards revision of pay scales

will be restricted to the posts which were in existence and filled up on 01.01.1996.

122. Thus, it is clear that the State Government have to bear the expenditure, to the tune of 20%, from its own sources upto 31.03.2000 and thereafter, the State Government have to take over the entire responsibility to bear the expenditure, for payment of the revised pay scales to the teaching staff. University funds broadly comprise of income from fees, grants, donations, gifts, endowments and other receipts, trust funds, etc. It also includes contribution or grant made by the Central Government and State Government, the University Grants Commission or the like authority, any local authority or any Corporation owned or controlled by the Government. There is absolutely no material to show that there is any grant or financial assistance from any of the above, for revision of pay scales to the non-teaching staff in the colleges and Universities.

123. Financial assistance from the above authorities, may be included under the broad caption of University Funds, but the same cannot be said to have been granted for revision of pay scale to non-

teaching staff. As the non-teaching staff in colleges and Universities do not fall under the same classification and not homogeneous, age of retirement, cannot be, at par with the University teachers.

124. As per Schedule II of the Tamil Nadu State and Subordinate Service Rules, there are Universities and Institutions recognised by the University Grants Commission for the purpose of grant. Explaining the distinction between the pleadings and proof, required in a writ petition filed under Article 226 of the Constitution of India and the pleadings in the Civil Court, the Supreme Court at paragraph No.13, in **Bharat Singh and Others Vs. State of Haryana and Others**, reported in **1988 (4) SCC 534**, held as follows:

".... In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evident which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of

place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

In the light of the decision in **Bharat Singh's** case, contentions of Mr.G.Sankaran, learned counsel appearing for non-teaching staff of Bharathiar University, to the contra, cannot be countenanced.

125. Files produced by the Government shows that there were deliberations on the representations of the University, Teaching and non-Teaching staff and ultimately, taking into consideration the financial implications, the State Government have decided to retain the age of teaching staff, only upto 60 years, though the UGC recommendation was to increase the age to 62 years. Universities, on their own, cannot extend the scheme to all the employees, without there being any financial assistance from the Government or the University Grants Commission and that they cannot be compelled to increase the age of non-teaching staff to 60 years, on par with the teaching staff and

mulcted with financial liability.

126. Files further deduce that the State Government have issued orders in G.O.Ms.No.129 Education, dt:11-3-97 in modification to the UGC guidelines of 1986, for the Career Development Scheme in respect of University Teachers. However, most of the Universities have neither followed the UGC guidelines nor adopted the State Government schemes, but formulated their own scheme, and promotions have been given effect to. As a result, for purposes of fixing the scales of teachers in the revised UGC scales, it has been observed that only such of those promotions which were in accordance with the UGC/State guidelines can be considered. Orders, however, been obtained in circulation to honour all the promotions by the Universities irrespective of their fulfilling the UGC/State guidelines, but restricted the reimbursement to the Universities to the extent of the level of eligibility of teachers. The Government have recorded in the files that, "This is the difference between the pay and emoluments of the University teachers in the eligible grade and the promotional grade will have to be borne by the University". The Government of Tamil Nadu have also recorded in the

files that on this aspect, circulation orders may be communicated to the Universities through a separate letter from the Higher Education Secretary, as otherwise, if the body of the main G.O., contains these points, it may raise problem with the UGC in getting the reimbursement amount.

127. Files further shows that the Government have taken a decision that a detailed Fitment table with Tentative illustrations annexed to the G.Os., has to be issued. Files indicate that the Finance was requested to scrutinise and approve the same. Insofar as the expenditure side is concerned, the amount has been arrived tentatively, based on the primary data made available to the Government by the Universities/Colleges. The estimated expenditure on account of implementing the revised scales was Rs.319 crores as arrears for the period from 01-01-1996 to 31-03-1999 and Rs.107 crores for the period 01-04-1999 to 31-03-2000. The Government have recorded that the figures may undergo upward revision on actual implementation.

128. Files further discloses that detailed proposals for implementation of the scheme on the lines indicated by the UGC in its

guidelines should be formulated and sent to the department of education in the Ministry for Human Resources Development for examination, so that the Central Assistance (i.e.80%) can be received for the implementation of revised scales of pay. Files indicate that orders be issued, after they are formally cleared by the Ministry of Human Resources Development. Thus, going through the files, it could be deduced that the Government of Tamil Nadu, have considered the financial implications, in implementing University Grants Commission recommendations, insofar as the teaching staff alone.

129. It should not be forgotten that Article 309 of the Constitution of India, empowers the State Government to frame rules. Thus, having regard to the powers conferred, Government of Tamil Nadu have framed the Fundamental Rules, which prescribe the age of superannuation of basic servants as 60 years and others, as 58 years. These rules cannot be said to be arbitrary or discriminatory of Articles 14 and 16 of the Constitution of India. Fundamental Rules framed for the State Government servants and adopted by the Universities in respect of non-teaching staff, have been framed in the year 1922. After the Constitution of India, the same have been validated, in terms of Article 313 of the

Constitution of India, which reads that, until provisions Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution.

130. University Grants Commission recommendations do not deal with the revision of age of retirement of non-teaching staff in Universities. As discussed supra, the Government of India in Official Memorandum No.25012/8/98/Estt.(A), dated 30.05.1998, is not applicable to non-teaching staff of the Universities. The above proceedings do not confer any right on the non-teaching staff, to claim revision of age of retirement. At this juncture, we deem it fit to consider few cases, as to when, a Mandamus can be sought for.

131. In **State of Kerala v. A.Lakshmi Kutty** reported in **1986 (4)**

SCC 632, the Hon'ble Supreme Court held that a Writ of Mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of Mandamus.

132. In **Raisa Begum v. State of U.P.**, reported in **1995 All.L.J. 534**, the Allahabad High Court has held that certain conditions have to be satisfied before a writ of mandamus is issued. The petitioner for a writ of mandamus must show that he has a legal right to compel the respondent to do or abstain from doing something. There must be in the petitioner a right to compel the performance of some duty cast on the respondents. The duty sought to be enforced must have three qualities. It must be a duty of public nature created by the provisions of the Constitution or of a statute or some rule of common law.

133. In **Mr.'X' Vs. Hospital 'Z'** reported in (1998) 8 SCC 296, at paragraph No.15, the Apex Court explained the word "right" as follows:

"RIGHT" is an interest recognised and protected by moral or legal rules. It is an interest the violation of which would be a legal wrong. Respect for such interest would be a legal duty. That is how Salmond has defined the "Right". In order, therefore, that an interest becomes the subject of a legal right, it has to have not merely legal protection but also legal recognition. The elements of a "LEGAL RIGHT" are that the "right" is vested in a person and is available against a person who is under a corresponding obligation and duty to respect that right and has to act or forbear from acting in a manner so as to prevent the violation of the right. If, therefore, there is a legal right vested in a person, the latter can seek its protection against a person who is bound by a corresponding duty not to violate that right."

134. Writ of mandamus cannot be issued merely because, a person is praying for. One must establish the right first and then he must seek for the prayer to enforce the said right. If there is failure of duty by the authorities or inaction, one can approach the Court for a mandamus. The said position is well settled in a series of decisions.

(a) In the decision reported in **(1996) 9 SCC 309 (State of U.P. and Ors. v. Harish Chandra and Ors.)** in paragraph 10, the Apex Court held as follows:

10. ...Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition....

(b) In the decision reported in **(2004) 2 SCC 150 (Union of India v. S.B. Vohra)** the Supreme Court considered the said issue and held that 'for issuing a writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued against a person, who has a legal duty to perform, but has failed and/or neglected to do so.

(c) In the decision reported in **(2008) 2 SCC 280 (Oriental Bank of Commerce v. Sunder Lal Jain)** in paragraphs 11 and 12 the Supreme Court held thus,

11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

Note 187.-Mandamus, at common law, is

a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep

subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion

dependent upon all the surrounding facts and circumstances.

135. When a Writ of Mandamus can be issued, has been summarised in Corpus Juris Secundum, as follows:

“Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion reached may be, and although there may be no other method of review or correction provided by law. The discretion

must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective." (emphasis supplied)

136. A writ of Mandamus, can be issued by the court, in its discretion, for which, it must be shown that, there is a non discretionary legal duty upon the authority against whom, the relief is sought for and that the person approaching the High Court under Article 226 of the Constitution of India, has to prove that he has a legal right to be enforced against the authority, for the failure of performance of a legal or statutory duty, by the authority against whom, the relief is sought for.

137. In the light of the provisions, dealing with the funds of the Universities and the restrictions imposed in the respective enactments, on the universities to undertake projects or new schemes of any kind, unless financed in whole or part by the University Grants Commission or the State Government or the University and the categorical statute in the case of Bharathiar University, extracted supra, with like provisions in other enactments that no commitment shall be made or undertaken by the university, unless the State Government or the University Grants Commission are forthcoming to meet out the recurring expenditure of the scheme or offer endowment of funds, to meet out the costs for the scheme or projects, permanently, let us consider some of the judgments of the Courts, on the aspect, as to whether Courts can interfere in the matters, involving a policy decision, in the matter of fixing the age of retirement, which has a bearing on the finance of the State and the instrumentalities of the State.

138. In **C. Sankaranarayanan vs. State Of Kerala**, reported in **1971 (2) SCC 361**, the Hon'ble Supreme Court has held that rule-making power of Government under Article 309 of the Constitution of India is not

controlled by any agreement between Government and employees and that change of age of retirement from 58 to 55 does not attract Art. 311(2). In that case, the appellant in C.A. No. 1789/69 was a teacher in a private aided school in Kerala while the other appellants were at the relevant time teachers in government schools. The teachers associations of the Government, as well as the aided schools submitted a memorandum to the Government making various demands, one of them being that the age of retirement of school teachers should be raised to 60 years. On July 1966 the Government issued an order by which the age of retirement was raised from 55 to 58 years. However, on May 4, 1967 another order was made by Government in supersession of the earlier orders and the age of retirement of all government employees and aided school teachers was again fixed at 55 years.

139. In **C. Sankaranarayanan's** case, it was contended that the Government Order, which followed the memorandum submitted by the teachers was the result of an understanding which could very well be regarded as a binding agreement or contract between the Government and the teachers, from which it was not open to the Government to

resile unilaterally. On the above contentions, the Hon'ble Apex Court held that the first limb of this argument was disposed of by the learned single judge, by rightly pointing out that the power of the government under Article 309 of the Constitution to make rules regulating the conditions of service of government employees or of teachers in aided schools under Section 12 of Act 6 of 1959 could in no way be fettered by any agreement even if such an agreement was proved. We have not been shown any principle or authority on which any agreement or contract could be spelt out from the document relied upon, nor is it possible to understand how the power conferred by Art. 309 of the Constitution or by the statutory provisions could be curtailed or fettered in any manner by any alleged agreement or contract. The rule of estoppel can hardly be invoked in the circumstances of the case although support was sought from certain decisions of this Court.

140. In **B. Prabhakar Rao & Ors. Etc vs State Of Andhra Pradesh & Ors.**, reported in **AIR 1986 SC 210**, following **K. Nagaraj v. State of A.P.**, reported in **[1985] A.I.R. S.C. 551**, the Apex Court held that it is now well established by decisions of this Court that the Government has

full power to effect a change in the age of superannuation of its employees on relevant considerations. If in the exercise of such power the age of superannuation is enhanced purely by way of implementation of a policy decision taken by the Government, such alteration can legally be brought about with prospective effect from the date of the commencement of the operation of the Ordinance, Act or Rule and no question of violation of Article 14 or 16 of the Constitution will arise merely because the benefit of the change is not extended to employees who have already retired from service.

141. In **B. Prabhakar Rao's** case, while concurring with the views of the other Hon'ble Judges, the Hon'ble Mr.V.Khalid has observed that in matters relating to policy decisions, the charge of arbitrariness cannot be laid at the doors of the Government. The Government have full powers to decide about the age of retirement considering the various data available before it. Removing a word or adding words to a legislative enactment is an exercise, Courts have been repeatedly warned against from embarking upon. This guideline is one that has to be respected by the Courts of Law. Normally, this Court will be

disinclined to entertain or to hear petitions raising identical points again where, on an earlier occasion, the matters were heard and dismissed. Not that this Court has no jurisdiction to entertain such matters, but that it would normally exercise its discretion against it.

142. The Hon'ble Supreme Court, in **K. Nagaraj v. State of A.P.**, reported in [1985] A.I.R. S.C. 551, upheld the action of the Government in reducing the age of retirement from 58 to 55. Thus, in **B.Prabhakar Rao's** case, the Apex Court has rejected the contention of the petitioners therein that such reduction, was not arbitrary and irrational. In **K.Nagaraj's** case, the Hon'ble Apex Court held that the decision regarding the age of retirement was a matter of policy, in the formulation of which the Government must be allowed a free and fair role to play. Hence, in **Prabhakar Rao's** case, it was held that the decision made in **K. Nagaraj's** case, was, therefore, an authority for the proposition that the charge of arbitrariness cannot be laid at the doors of the Government, in matters relating to policy decisions, and that the Government have full powers to decide about the age of retirement, considering the various data available before it.

143. In **Tejinder Singh v. Bharat Petroleum Corporation Limited**, reported in **AIR 1987 SC 51**, the question before the Hon'ble Supreme Court was, Whether the disparity in the age of retirement between the two groups of employees, amounts to discrimination or not? Superannuation of the officers of the management staff employed under BPCL was 58 years, and that of clerical staff of the refinery division of the Corporation was 60 years. That was questioned under Article 32 of the Constitution of India, before the Hon'ble Supreme Court. After holding that clerical staff and officers of the management staff belong to separate classification, and that when the two classes do not stand at par, the Hon'ble Apex Court held that management staff are not entitled to the relief, under Article 32 of the Constitution of India, and the said discrimination is not violative of Article 14.

144. In **Life Insurance Corporation Of India vs. S.S. Srivastava & Others**, reported in **AIR 1987 SC 1527**, the Hon'ble Supreme Court held that the decision taken by the Corporation and Central Government as regards the ages of retirement of the different classes of the employees

of the Corporation is a bona fide and cannot be characterised, as unreasonable and held that not liable to be upset by the decision of the Apex Court.

145. In **Life Insurance Corporation of India's** case, it was further held that, "in the instant case, since the classification of the employees for the purpose of age of retirement into two categories is reasonable, and not arbitrary and there is a reasonable nexus between the classification and the object to be attained thereby, it is not possible to hold that Regulation 19(2) is violative of Articles 14 and 16 of the Constitution."

146. In **Life Insurance Corporation of India's** case (cited supra), the Hon'ble Apex Court also held that having regard to the lower emoluments and other benefits which the employees belonging to Class III and Class IV are entitled to get from the Corporation and the higher emoluments and other benefits to which officers belonging to Class I and Class II are entitled to and also the nature of their work and the powers enjoyed by them, fixation of different ages of

retirement to the different classes of employees could not by itself be violative of Articles 14 and 16 of the Constitution.

147. In **West Bengal Headmasters' Welfare Association vs. State Of West Bengal And Ors.**, reported in (1990) 2 CALLT 327 HC, 94 CWN 1166, the petitioners therein moved a writ against a Memo No. 372-Edn.(B) dated 31st July, 1981 for a writ of Mandamus commanding the respondents therein to cancel and withdraw the offending portion of the said Memo, by which the age of retirement has been reduced from 65 years to 60 years. A writ of Certiorari for quashing the relevant "portion of the said impugned Memo which the Government reduced the age of retirement from 65 years to 60 years, has been sought for. Also a writ of Prohibition directing the respondents therein not to make any discrimination in the matter of fixation of the age of retirement, amongst the teaching and non-teaching staff, was sought for. It has been contended that determination of the age of retirement, at the age of 60 years, in respect of teaching and non-teaching staff of both primary and secondary schools was highly arbitrary and not based on any rational basis and discrimination has been done in the case of school teachers,

college teachers, in determining the age of retirement.

148. Objection to the prayer has been made that the extension of service by 5 years after 60 years, was subject to the fulfilment of certain conditions, and such extension of service never crystalised into an absolute legal right, so much so that it cannot be altered, even if it goes against public interest and employment policy of the Government. It was prayed that the writ petition be dismissed with costs. On the contentions, the Calcutta High Court held that as a matter of principle, the Court must not interfere with a policy decision of the Government if the same does not infringe any legal right of a citizen. It is for the Government to consider various factors including economic factor and growing unemployment problem while taking a policy decision with regard to the revision of pay-scale and age of retirement, and new avenues must be created to minimise the growing volume of educated unemployed.

149. In *State of W.B. v. Gopal Chandra Paul* reported in 1995 Supp (3) SCC 327, the core question was, whether the superannuation at

the age of 60 years available to teaching staff of the Government Schools of the Education Department of West Bengal would automatically stand extended to the inspecting staff of the said Department? The Hon'ble Supreme Court held that the inspecting staff governed by the statutory rules are not on a par with the teaching staff. Therefore, they are required to retire compulsorily on attaining the age of superannuation of 58 years and shall retire in the afternoon of the last day of the month in which he/she attains the age of 58 years.

150. In *M.P. Vidyut Karamchari Sangh vs M.P. Electricity Board*, reported in 2004 (9) SCC 755, the Hon'ble Supreme Court, after considering the scope and powers of the Electricity Board, in fixing the age of retirement, held as follows:

“The power of the Board, therefore, to lay down the conditions of service of its employees either in terms of regulation or otherwise would be subject only to any valid law to the contrary operating in the field. Agreement within the meaning of proviso appended to Rule 14A is not a law and, thus, the regulations made by the Board shall prevail thereover. The Board has power to make regulations which having regard to the provisions of General Clauses Act would

mean that they can make such regulations from time to time. Alterations in the age of retirement by the employer is a matter of executive policy and for sufficient and cogent reasons, the same is permissible.”

It would also be worthwhile to extract paragraphs 20 to 28, to understand the scope of the powers of the State vis-a-vis central enactments, with reference to Article 254 of the Constitution of India, as follows:

“20. Before analysing the relevant provisions of the State Acts vis-à-vis “the Act”, we may have an overview of the constitutional scheme. Articles 245 and 246 of the Constitution of India read with the Seventh Schedule and legislative lists contained therein prescribe the extent of legislative competence of Parliament and State Legislatures. Parliament has exclusive power to make laws in respect of any of the matters enumerated in List I in the Seventh Schedule. Similarly, State Legislatures have exclusive power to make laws in respect of any of the matters enumerated in List II. Parliament and State Legislatures both have legislative power to make laws with respect to any matter enumerated in List III of the Concurrent List.

21. The various entries in the three lists are fields of

legislation. They are designed to define and delimit the respective areas of legislative competence of the Union and State Legislatures. Since legislative subjects cannot always be divided into watertight compartments; some overlappings between Lists I, II and III of the Seventh Schedule are inevitable.

22. Notwithstanding the fact that great care with which the various entries in the three lists have been framed; on some rare occasions it may be found that one or the other field is not covered by these entries. The makers of our Constitution have, in such a case, taken care by conferring power to legislate on such residuary subjects upon the Union Parliament including taxation by reason of Article 248 of the Constitution.

23. The doctrine of pith and substance, however, is taken recourse to when examining the constitutionality of an Act with respect to competing legislative competence of Parliament and the State Legislature qua the subject-matter. Incidental entrenchment, however, is permissible.

24. As in a federal constitution, division of legislative powers between the Central and Provincial Legislatures exists, controversies arise as regards encroachment of one legislative power by the other, particularly in cases where both the Union as well as the State Legislature

have the competence to enact laws. Article 254 provides that if any provision of a law made by the legislature of a State is repugnant to any provision made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List then subject to provisions of clause (2), the law made by Parliament shall prevail to the extent of the repugnancy required.

25. In terms of clause (2) of Article 254 of the Constitution of India, where a law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provisions repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to the matters, then the law so made by the legislature of such State shall, if it has been reserved for consideration of the President and has received its assent, prevail in that State. It is not in dispute that the 1961 Act has received the assent of the President of India and, thus, would prevail over any parliamentary law governing the same field.

26. It is no doubt true that the entire field relating to “electricity” is covered under Entry 38 of List III pursuant where to the Indian Electricity Act and the

Electricity (Supply) Act, 1948 were enacted but thereby the State's legislative competence to exercise its legislative power under Entries 22, 23 and 24 was not taken away. Section 79(c) of the Electricity (Supply) Act provides for an incidental power upon the Board. The same would, therefore, not prevail over the specific legislative competence granted to the State to regulate the conditions of service between an industrial undertaking and its employees nor thereby the State Government would be denuded of its legislative power relating to regulation of the industrial relations.

27. Furthermore, both Parliament and the State within their own respective legislative competence may make legislations covering more than one entry in the three lists contained in the Seventh Schedule of the Constitution of India. Article 254 of the Constitution of India would be attracted only when legislations covering the same ground both by the Centre and by the Province operate in the field; both of them being competent to enact.

28. Recourse to the said principles, however, would be resorted to only when there exists direct conflict between two provisions and not otherwise. Once it is held that the law made by Parliament and the State Legislature occupy the same field, the subsequent

legislation made by the State which had received the assent of the President of India indisputably would prevail over the parliamentary Act when there exists direct conflict between two enactments. Both the laws would ordinarily be allowed to have their play in their own respective fields. However, in the event there does not exist any conflict, the parliamentary Act or the State Act shall prevail over the other depending upon the fact as to whether the assent of the President has been obtained therefor or not.”

151. In **Nagaland Senior Govt. Employees vs. State Of Nagaland & Ors.**, reported in **2010 (7) SCC 643**, the Hon'ble Supreme Court, referring to **K.Nagaraj v. State of A.P.**, [1985 (1) SCC 523], at Paragraphs 37 to 40, held as under:

“37. In the case of **K. Nagaraj**, the employees of the Government of Andhra Pradesh were aggrieved by an amendment in the Fundamental Rules and Hyderabad Civil Services Rules reducing the retirement age from 58 to 55 years. As a result of these amendments, over 18,000 government employees and 10,000 public sector employees were superannuated. The government employees challenged the said amendments on diverse grounds, inter-alia that the said amendment violated Articles 14, 16 and 21 of the Constitution. This Court held

that it was in public interest to prescribe age of retirement and while holding so observed that fixation of age would be unreasonable or arbitrary if it does not accord with the principles which are relevant for fixing the age of retirement or if it does not sub-serve any public interest.

38. While ruling that in reducing the age of retirement from 58 to 55, the State Government cannot be said to have acted arbitrarily or irrationally, it was held:

“.....

39. As a matter of fact, in K.Nagaraj, the Supreme Court stated clearly that fixation of retirement age is a matter of employment policy of the Government and no inflexible rule can be laid down. However, if such policy is shown to violate recognized norms of employment planning, then such policy may not meet the test of rationality and reasonableness. The fact that employment policy was formulated hurriedly was not held sufficient to conclude that the policy suffered from non-application of mind or arbitrary.

40. We are afraid, K.Nagaraj case instead of helping the appellants, rather supports the stand of the State. Fixation of maximum length of service as an alternative criterion for retirement from public service, by no stretch of imagination, can be held to be violative of any

recognized norms of employment planning. There may be a large number of compelling reasons that may necessitate the Government (or for that matter the Legislature) to prescribe the rule of retirement from the government service on completion of specified years. If the reasons are germane to the object sought to be achieved, such provision can hardly be faulted.”

152. In *State of Maharashtra v. Nowrosjee Wadia College*, reported in (2013) 11 SCC 762, on the facts and circumstances of the case, the Hon'ble Apex Court, at Paragraph 20 and 20.1, held as under:

“An analysis of the provisions of the 1994 Act shows that universities constituted under Section 3(1) are autonomous and they are, by and large, independent in their functioning. However, the State Government can exercise control in some matters including those which have financial implications and issue directives which are binding on the universities. The creation of posts and conditions of service of the teaching and non-teaching staff which impacts finances of the universities are some such matters:

Section 8 makes it obligatory for the universities to seek approval of the State Government for creation of new posts of teachers, officers or other employees and revision of their pay, allowances, post-retirement benefits, etc. No

university can grant special pay or allowance or extra remuneration to the employees except with the prior approval of the State Government. Likewise, any decision regarding affiliated colleges resulting in additional financial liability can be taken only after obtaining approval from the State Government.”

153. Reverting to the case on hand, we have already extracted the Government Orders, wherein, while accepting the implementation of the University Grants Commission recommendations, the Government have made it clear that revision of scales of pay can be extended only to teaching staff, only upto the age of 60 years, in the case of University teachers alone and not to others.

154. In **Dr.M.Velayudhan Nair vs Union Of India & Anr., [W.P.(C) No.8461 of 2014, by an order dated 18.05.2015]**, the Delhi High Court held that it is in the exclusive privilege of the government to decide what should be the age of retirement and from when should the enhanced age of retirement be applicable. Courts do not substitute this opinion of the administration by changing the date fixed of retirement by the government as this Court is ill-equipped to decide

the validity of facts with respect to what should be the age of retirement which is purely an administrative decision.

155. Needless to state that it is the prerogative of the State to determine the classification of posts, differentiate them for the purposes of the legislation, with reference to the subject matter, for which, law has been enacted, categorize the posts as administrative, managerial or supervisory, clerical or ministerial, skilled or semi-skilled, basic and other categories and classify them, in different classes, taking into consideration, the scales of pay, nature of duties performed, etc.

156. In the case on hand, we have already taken note of that Universities have classified the employees in four classes, A, B, C and D respectively. When the posts are classified in different classes, it is inevitable and bound to have some degree of inequality, amongst the employees, in different classes. Classification made on the above and such other factors, which the employer chooses to apply and group them together, in different classes, cannot be said to be discriminative, violating Article 14 of the Constitution of India, for the reason, that it is

a settled law, a legislation or administrative order, can be set at naught only if,

(i) discrimination alleged is based on an impermissible or invalid classification, and

(ii) excessive delegation of powers, conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders, if such conferment of power is without any guidance, control or checks.

157. Classification of posts or for that matter, increase in age of retirement of teaching staff of the Universities, purely based on the University Grants Commission's recommendations, funded by the Central Government or ICAR, as the case may be, cannot be mixed with the age of retirement of non-teaching staff of the Universities and said to be arbitrary or discriminatory and thus, violating of Article 14 of the Constitution of India. As observed by the Apex Court in **Life Insurance Corporation's** case reported in **AIR 1987 SC 1527** and **Tejinder Singh's** case reported in **AIR 1987 SC 51**, when teaching staff and non-teaching staff belong to separate class, by virtue of their duties and having regard to the lower employments and other benefits, which the employees

belong to D class receive, the nature of work done by them, some skilled and other semi-skilled, fixation of different age of retirement, for employees of A, B and C together and D Class employees, whose retirement is fixed differently, cannot be said to be discriminatory, and violative of Article 14 of the Constitution of India.

158. On the aspect of reasonable classification, this Court deems it fit to extract few decisions,

(i) A Constitutional Bench of the Apex Court in **Ram Krishna Dalmia v. S.R.Tendulkar** reported in **AIR 1957 SC 538**, held as follows:

“(i) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the court. In determining the validity or otherwise of such a statute the court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter

whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the court finds that the classification satisfies the tests, the court will uphold the validity of the law....

(ii) A statute may direct its provisions against one individual person or thing or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the court will strike down the law as an instance of naked discrimination....

(iii) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the court will strike down the statute if it does not lay down any principle or

policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the court will strike down both the law as well as the executive action taken under such law.....

(iv) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification.....

(v) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection

or classification does not proceed on or follow such policy or principle, then in such a case the executive action but not the statute should be condemned as unconstitutional.....”

(ii) In **Nagpur Improvement Trust v. Vithal Rao** reported in **1973**

(1) SCC 500, a five Judge Constitution Bench of the Apex Court, at Paragraph 26, held that,

“26.the State can make a reasonable classification for the purpose of legislation [and] that the classification in order to be reasonable must satisfy two tests: (i) the classification must be founded on intelligible differentia and (ii) the differentia must have a rational relation with the object sought to be achieved by the legislation in question.”

(iii) In **Special Courts Bill, 1978, In re.**, reported in **1979 (1) SCC**

380, Seven Judges Constitutional Bench, at Paragraph 72, held as follows:

“(2) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of

distinguishing and classifying persons or things to be subjected to such laws.

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a

particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well- defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational

relation to the object sought to be achieved by the Act.

(8) The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned.

(9) If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the Legislature, its action can be annulled as offending against the equal protection clause. On the other

hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory, irrespective of the way in which it is applied.

(10) Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur; but the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power.

(11) Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.

(12) Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 must be

determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary.

(13) A rule of procedure laid down by law comes as much within the purview of Article 14, as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination.”

159. Decision reported in **Osmania University v. V.S.Muthurangam [1997 (10) SCC 741]**, makes it clear that,

- (1) There is no compulsion under the law that the University is bound to maintain the same age of superannuation of its teaching and non-teaching staff, as is available to the employees of the State Government.
- (2) Because there is no such statutory compulsion to maintain the age of superannuation of the teaching staff on par, the University has increased the age of its teaching staff.
- (3) University would be justified within the ambit of Section 38(1) of

the Osmania University Act, to introduce different conditions of service for different categories of employees, if such conditions become necessary for the exigency of the administration and if it is otherwise impracticable to bring uniformity in the conditions of service of different categories.

160. In **Osmania University's** case (cited *supra*), the Hon'ble Apex Court has also agreed that teaching and non-teaching staff of the University are distinct and separate categories. The nature of duties performed by teaching and non teaching staff of the University are also different. Therefore, apart from different scales of pay in the hierarchy of the service in both teaching and non teaching departments, it may be held that the nature of service of the two distinct and different departments, namely, the teaching and non teaching departments, is inherently different.

161. However, the Apex Court, by observing that if uniform conditions of service for teaching and non-teaching staff is not otherwise impracticable, then the University is under an obligation to maintain

such uniformity, because of the mandate of Section 38(1) of the Osmania University Act.

162. Yet another factor considered by the Apex Court in **Osmania University's** case is that the Government of Andhra Pradesh have fixed the age of Andhra Pradesh University, differently. Thus, as between the Universities in the State of Andhra Pradesh, there was a difference in the age of superannuation for non-teaching staff.

163. Earlier, in this judgment, we have extracted few portions from the files produced, indicating the financial burden, on the Government of Tamil Nadu, to meet out the expenditure, consequent to the revision of pay scale of University teachers. We have also pointed out that though the University Grants Commission, has recommended for revision of age to 62 years, for the teaching staff, in the Universities, the Government have thought it fit, that is not practicable to increase the same to 62 years, but retained the age as 60 years and revised the pay scales.

164. In **Osmania University's** case (cited supra), relied on by the petitioners, the University has mainly contended the impracticability or the undesirability in enhancing the age of non-teaching staff, on par with teaching staff, but the Apex Court considered that when in similar circumstances, the Government of Andhra Pradesh, have fixed the age of non-teaching staff in Andhra Pradesh University, differently, held that there should not be discrimination on the grounds of impracticability and undesirability. But that is not the case in the State of Tamil Nadu. In all the Universities, age of superannuation of non-teaching staff is 58 years, excepting D Class employees. There is equality and parity, in the age of superannuation of all the non-teaching staff in Government, Government Aided, Self-Financed Colleges, and Universities.

165. When State of Andhra Pradesh have fixed different age of superannuation between the Universities, in the said State, objection of impracticability or undesirability, has been overruled. Apparently, decisions of the Hon'ble Apex Court, rendered earlier, on the aspect of difference, in fixing the age of superannuation of the employees, belonging to different Classes or Groups, have not been placed in

Osmania University's case (cited supra).

166. In **The Madras University Staff Association v. State of Tamil Nadu** reported in **2012 (3) CTC 337**, a learned single Judge of this Court held that the State Government can exercise its executive powers to fill up the gaps in the statutes or in the relevant rules and that the State cannot exercise its executive power, in respect of field already occupied by laws made by the Legislature. The learned Judge, while extensively considering the powers of the executive vis-a-vis legislative competence, held that when the field is occupied by the Legislature, by virtue of the executive powers, there cannot be any orders, inconsistent in the Rules and the Statutes. There cannot be any quarrel on the general proposition of law. But, it should be noticed that, whenever there is a financial implication, the Hon'ble Supreme Court in **State of Maharashtra v. Nowrosjee Wadia College**, reported in **(2013) 11 SCC 762**, held that the State Government can exercise control, in some matters including those which have financial implications, and issue directives, which are binding on all the universities. The decision made in **The Madras University Staff Association's case**, would not lend any support to the case of the

petitioners.

167. In **B.Bharat Kumar v. Osmania University** reported in 2007 (11) SCC 58, several writ petitions were filed by the petitioners therein, serving in the capacity as Lecturers, Professors, Readers, Librarians, Physical Education Teachers, etc., in different private colleges, which were receiving grant-in-aid from the Government, with a common prayer that their age of superannuation which was hitherto 58 or 60 years, as the case may, should be raised to 62 years. They relied on a communication No.F.1.22/97-U.I, dated 27.7.1998. Claim of the petitioners therein was that the decision of the Government of India was mandatory and binding vis-a-vis the colleges/universities. The Central Government was providing financial assistance to the State Government, in implementing the scheme of revision of pay scales. The Universities and colleges have followed the revision of pay scales of Central Government employees, on the recommendations of the Fifth Central Pay Commission. As per the UGC notification on revision of pay scales bearing No.1-3-1494(PS) dated 24.12.1998, "The age of superannuation of university and

college teachers, Registrar, Librarians, Physical Education personnel, Controller of examination, Finance Officers and such other university employees, who are being treated at par with the teachers and whose age of superannuation was 60 years, would be 62 years and thereafter no extension in service should be given. However, it will be open to a university or college to re-employ a superannuated teacher according to the existing guidelines framed by the UGC upto the age of 65 years (Annexure I & III)."

168. In **Bharat Kumar's** case (cited supra), the Government of Andhra Pradesh, after, in depth study of the issues, relating to implementation, issued G.O.Ms.No.208. While doing so, the Government, after taking into consideration, the repercussions and adverse implications, regarding the announcement of the age of retirement of the State employees also, decided that there should be no change in the age of superannuation and retained 58 years to the college teachers and 60 years, for the university teachers. Referring to Entry 66 of the Union List and laying stress on the expression, "shall be necessary" and "to make necessary changes", as suggested by the University Grants

Commission, contentions have been made by the petitioners therein that the scheme of the University Grants Commission was not only mandatory, but was also binding, vis-a-vis the Universities and States, and therefore, it was essential that the retirement age was bound to be increased to 62 years or as the case may be, 60 years. Reference has also been made to the judgments of the Supreme Court in **T.P. George & Ors. Vs. State of Kerala [(1992) Suppl. 3 SCC 191]**, **The Gujarat University, Ahmedabad vs. Krishna Ranganath Mudholkar & Ors. [(1963 Supp. 1 SCR 112)]**, **State of T.N. vs. Abhiyaman Educational and Research Institute [(1995) 4 SCC 104]** and **Dr.Preeti Srivastava vs. State of M.P. [(1999) 7 SCC 120]** and exercise of executive powers, under Article 73 of the Constitution of India, was also pressed into service.

169. On the other hand, the Government of Andhra Pradesh, took a stand that a mandamus cannot be issued to the State Government on the basis of a letter written by the Director of UGC. It was argued that the scheme of the University Grants Commission, nowhere suggested that the State Governments were required to implement. Arguments were also advanced that it would be voluntary on the part of the State

Government to accept or not to accept the scheme. Laying stress on the word, “wish” of the State Government, submissions were advanced that the scheme of the University Grants Commission has given option to the State Governments to implement the recommendations or not. As the implementation of the scheme by the State Governments had the benefit of financial assistance from the Central Government to the extent of 80% of the additional expenditure involved in giving effect to the revision of pay-scales, option was given to the State Government to accept or not.

170. In **B.Bharat Kumar's** case, reliance has been made to **T.P. George & Ors. Vs. State of Kerala** reported in (1992) Suppl. 3 SCC 191, wherein, earlier the Kerala High Court held that the teachers had no right to claim a specific age and it was further observed that the appellant therein, cannot claim that merely because a major portion of the scheme having been accepted by the Government, there is a right to seek for revision of age upto 62 years. In **T.P. George's** case, it was further observed that it is a matter between the State Government on the one hand, and the University Grants Commission on the other, and it would be for the University Grants Commission to extend the benefit of the scheme or not to extend the same depending upon its satisfaction

about the attitude taken by the State Government in the matter of implementing the scheme. The Kerala High Court also observed that as long as the State Government has not accepted the UGC's recommendations to fix the age of superannuation at 60 years, teachers cannot claim as a matter of right that they were entitled to retire on attaining the age of 60 years. **T.P.George's** case, decided by the Kerala High Court, has been approved by the Hon'ble Apex Court, as hereunder:

"Though clause 26 of the scheme provides that the age of superannuation for teachers should be 60 years, and the scheme contemplates certain improvements in providing for assistance in that behalf, it is not a scheme which is statutorily binding either on the State Government or the different universities functioning under the relevant statutes in the State of Kerala. What the State Government has done by its order dated March 13, 1990 is to implement the UGC scheme including revision of scales of pay in relation to teachers in Universities including Kerala-Agricultural University, affiliated colleges, Law Colleges, Engineering Colleges, and qualified Librarians and qualified physical Education Teachers with effect from January 1, 1986, subject however to the express condition that in so far as the age of retirement is concerned, the present fixation of 55 years shall continue. The contention of the appellant is that the

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

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

171. Though strong reliance has been made by the petitioners, on **Prof. Yashpal and Anr. Vs. State of Chattisgarh & Others** reported in **(2005) 5 SCC 420**, the Hon'ble Apex Court in **B.Bharat Kumar's** case, at Paragraphs 13 to 15, held as follows:

"13. The situation is no different in the present case also. The very language of the letter dated 27.7.1998 suggests that the scheme is voluntary and not binding at all. Further it is specified in the judgment of the Kerala High Court that the teachers had no right to claim a specific age because it suggested in the scheme which scheme was itself voluntary and not binding. The Court clearly observed that

"the appellant cannot claim that major portion of the scheme having been accepted by the Government, they have no right not to accept the clause relating to fixation of higher age of superannuation". The Court therein observed that it is a matter between the State Government on the one hand and the University Grants Commission on the other and it would be for the University Grants Commission to extend the benefit of the scheme or not to extend the same depending upon its satisfaction about the attitude taken by the State Government in the matter of implementing the scheme. It was lastly clearly observed that as long as the State Government has not accepted the UGC's recommendations to fix the age of superannuation at 60 years, teachers cannot claim as a matter of right that they were entitled to retire on attaining the age of 60 years.

14. In spite of our best efforts, we have not been able to follow as to how the judgment of the Kerala High Court, which has been approved by this Court is, in any manner, different from the factual situation that prevails here in this case. It is for that reason that we have extensively quoted not only the aforementioned letter dated 27.7.1998 but also the subsequent letters and the further policy statement. Plain reading of all these is clear enough to suggest that the scheme was voluntary and it was upto the State Governments to accept or not to accept the scheme. Again even if the State Government accepted a part of the

scheme, it was not necessary that all the scheme as it was, had to be accepted by the State Government. In fact the subsequent developments suggest that the State Government has not chosen to accept the scheme in full inasmuch as it has not accepted the suggestions on the part of the UGC to increase the age of superannuation.

15. Once we take this view on the plain reading of the scheme, it would be necessary for us to take stock of the subsequent arguments of Mr.Rao regarding Entry 66 in the List I vis-a-vis Entry 25 in List III. In our opinion, the communications even if they could be heightened to the pedestal of a legislation or as the case may be, a policy decision under Article 73 of the Constitution, they would have to be read as they appear and a plain reading is good enough to show that the Central Government or as the case may be UGC also did not introduce the element of compulsion vis-a-vis the State Government and the Universities. We, therefore, do not find any justification in going to the Entries and in examining as to whether the scheme was binding, particularly when the specific words of the scheme did not suggest it to be binding and specifically suggest it to be voluntary."

172. At Paragraph 19 of the judgment in **B.Bharat Kumar's** case, when the learned counsel for the teaching staff argued to a great extent,

the desirability of the age of superannuation being raised to 60 or 62, as the case may be, the Hon'ble Apex Court has observed as follows:

"We again reiterate that it is not for this Court to formulate a policy as to what the age of retirement should be as by doing so we would be trailing into the dangerous area of the wisdom of the Legislation. If the State Government in its discretion, which is permissible to it under the scheme, decides to restrict the age and not increase it to 60 or as the case may be 62, it was perfectly justified into doing so."

173. In the light of the statutory provisions/statutes of the Universities/regulations, decisions considered and in particular to **B.Bharat Kumar's** case, where the Hon'ble Apex Court has clarified that the implementation of the scheme, propounded by the University Grants Commission, is only optional, on the part of the State Governments and Universities, even in respect of teaching staff, the petitioners herein, non-teaching staff cannot maintain a claim for parity, on the basis of **Osmania University's** case. At this juncture, it is also to be noticed that in the subsequent decision of the Apex Court in **B.Bharat Kumar's** case (cited supra), Osmania University is also a party respondent, before the Apex Court.

174. Thus, in **B.Bharat Kumar's** case, the Hon'ble Apex Court has made it clear that even in the case of teachers, implementation of the University Grants Commission scheme, for revision of age of superannuation for teaching staff, by the State Governments is only optional and no mandamus can be issued to the Government or the Universities to increase the age to 62 years. While that be the law laid down by the Apex Court, non-teaching staff, who are not even governed by the scheme of the University Grants Commission, cannot seek for a Writ of Certiorari, to quash the statutes/regulations of the Universities, insofar as the fixing of age of superannuation for non-teaching staff, as discriminatory.

175. In view of the above discussion and the decisions considered, policy decision of the State Government adopted by the Universities and incorporated in the statute/regulations, in exercise of their powers, conferred under the enactments, cannot be said to be arbitrary and violative of Article 14 of the Constitution of India.

176. The prayer sought for in the writ petitions, to strike down the relevant statutes/regulations, cannot be granted. No right is conferred on the non-teaching staff of the Universities to seek for revision of their age of superannuation to 60 years, on par with teaching staff in the Universities and consequently, the relief of Certiorarified Mandamus, is rejected.

177. In view of the above, all the writ petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(S.M.K., J.) (M.V., J.)
04.09.2015

Index: Yes

Internet: Yes

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To

1. The Joint Secretary,
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2. The Secretary to Government,

Government of India,
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3. The Secretary to Government,
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10.The Dean,
Madras Veterinary College,
Vepery Chennai 600 007.

S. MANIKUMAR, J.
AND
M.VENUGOPAL, J.

skm

W.P.Nos.8935, 12143, 12456, 13688,
14350, 14550 and 18073 of 2014
W.P.Nos.18210, 18211, 23490 and 27225 of 2015
M.P.Nos.1, 1, 1, 1, 1 and 1 of 2014

M.P.Nos.1, 1 and 1 of 2015

04.09.2015