

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Writ Petition No.9144 OF 2018

Between:

Manam Sankara Rao

... Petitioner

Vs.

**The State of Andhra Pradesh,
Rpe. By its Principal Secretary,
Higher Education Department,
Secretariat buildings, Velagapudi,
Amaravathi, Guntur District & others.**

...Respondents

DATE OF JUDGMENT PRONOUNCED: 01.05.2018

Submitted for approval.

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

*** THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

+ Writ Petition No.9144 OF 2018

% Dated 01.05.2018

Manam Sankara Rao

... Petitioner

Vs.

**\$ The State of Andhra Pradesh,
Rpe. By its Principal Secretary,
Higher Education Department,
Secretariat buildings, Velagapudi,
Amaravathi, Guntur District & others.**

..Respondents

! Counsel for the Petitioner: Sri G.Bhanu Priya

^ Counsel for the Respondent: Learned Government Pleader
for Education for R1 & R2.
Sri K. Ramakanth Reddy,
learned Standing Counsel for R3
Sri N.Subba Rao, learned
counsel for R4 and R5.

> HEAD NOTE:

? Cases referred

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**WRIT PETITION No.9144 OF 2018****ORDER:**

It is the case of the petitioner that he was initially appointed as Driver in the 5th respondent college on 01.10.1993 on consolidated pay of Rs.1,000/- per month; that he was regularised and given regular pay scale by proceedings of the 5th respondent college in pay scale of 1875-50-2075-60-2375-75-2750-90-3200-110-3750; that the post of the driver comes under non-teaching staff and that he is entitled to continue in service until the age of 62 years as per All India Council for Technical Education (for short 'AICTE') Regulations and as per Admission and Fee Regulatory Committee (for short 'AFRC') guidelines, he is entitled to continue in service up to 60 years of age. However, 5th respondent served an intimation letter dated 01.03.2018 stating that he is to be retired on 31.05.2018 on attaining 58 years of age, though he is entitled to continue until he attains the age of 62 years. Aggrieved by the proceedings of the 5th respondent dated 01.03.2018, present Writ Petition is filed.

2. Counter affidavit is filed by the 5th respondent denying the allegations in the affidavit filed in support of the Writ Petition stating that the Writ Petition is not maintainable as he is a driver of the college, as such, the question of applicability of Rules framed under AICTE or AFRC Regulations or the Amended Section 78-A of the A.P. Education Act does not arise, as the said provision relating to a person, who is working as non-

teaching person in an unaided educational institution; that as per byelaw 7 of the Society, the President shall be the person to sue or to be sued on behalf of the Society and that as the petitioner did not made claim as party to the writ petition, as such, on this ground alone, the Writ Petition is liable to be dismissed. Section 78-A of the Education Act is applicable only to the staff of aided private educational institutions. That the AICTE Regulations applies to teaching staff in technical institutions and Universities including deemed universities imparting technical education and other such courses subject to the rules made by the Trusts and Societies in accordance with the norms under the Education Act. That the short title and commencement of Rules itself indicates that it is applicable only to teachers and other academic staff but it is not applicable even to the non-teaching staff of **unaided** engineering colleges. That the G.O.Ms.No.6 dated 17.05.2007 is framed for the purpose of fixation of fees in private unaided professional institutions under A.P. Educational Institutions Regulations of Admissions and Prohibition of Capitation Fee Act, 1983, but it cannot deal with the superannuation of the employees either teaching or non-teaching staff working in the unaided educational institutions. The G.O.Ms.No.59, dated 24.12.2014 issued by the Government of Andhra Pradesh enhancing the age from 58 years to 60 years with effect from 02.06.2014 as envisaged under the Act 4 of 2014, is applicable only to the Government employees but not applicable to the non-teaching staff. The byelaws of the Society does not indicate that the non-teaching staff are entitled to be

continued beyond 58 years, which is the age of superannuation fixed and being followed since its inception. That the similar orders passed by this Court are in respect of teaching staff, as such, petitioner cannot equate himself to teaching staff. It is stated that the AICTE Regulations indicates that since there is a dearth of qualified teaching staff, the concerned technical/educational institutions are authorized to continue up to the age of 65 years, as such, petitioner is not entitled to continue beyond 58 years and sought for dismissal of the Writ Petition.

3. Heard Sri P.Gangaiah Naidu, learned Senior Counsel appearing for Smt. G.Bhanu Priya, learned counsel for the petitioner and Sri N.Subba Rao, learned counsel for the 5th respondent.

4. In this case, before dealing with the rival contentions of both parties, it is necessary to extract Section 78-A of the A.P. Education Act, 1982.

“Section 78-A: Age of superannuation of the staff in aided private educational institutions;

- (1) Every teacher or member of the non-teaching staff employed in any aided private educational institution, not belonging to last grade 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.

A reading of the aforesaid provision goes to show that it applies only to the teaching and non-teaching staff employed in any aided private educational institutions, as such, the 5th respondent being private unaided engineering college, same is not applicable to the present case on hand.

5. In exercise of its powers conferred under sub-section (1) of Section 23 read with Section 10(i) and (v) of the All India Council for Technical Education Act, 1987, the All India Council for Technical Education made Regulations on 22.01.2010 vide F.No.37-3/Legal/2010. Short title, application and commencement of the same reads as follows:

1.1 These Regulations may be called as the All India Council for Technical Education (Pay Scales, Service Conditions and Qualifications for the Teachers and other Academic Staff In Technical Institutions (Degree) Regulations, 2010.

1.2 They shall apply to technical institutions and Universities including deemed Universities imparting technical education and such other courses/programs and areas as notified by the Council from time to time.

A reading of the above provision goes to show that it applies only to the teachers and other academic staff in technical institutions. Though learned Senior Counsel vehemently contends that the petitioner is entitled to continue up to the age of 62 years as per AICTE Regulations, but the same Regulations applies to the teaching staff and other academic staff in technical institutions and Universities imparting technical education, but not applicable even to the other staff of unaided engineering colleges. The purport of enhancing the age of teaching staff is to attract eligible teaching persons to a career in teaching and to meet the shortage of teachers in service for a longer period, but not in the case of non-teaching staff. Admittedly, petitioner is a driver, as such, application of AICTE Regulations to him does not arise at all.

Therefore, there is no merit in the contention of the learned Senior Counsel that the petitioner is entitled to continue up to the age of 62 years as per AICTE Regulations.

6. The next contention of the learned Senior Counsel is that the petitioner is entitled to continue up to 60 years of age as per AFRC Regulations. A perusal of the guidelines for furnishing fee proposals by Private Unaided Professional Institutions in the State for the block period 2016-17 to 2018-19 goes to show that except regulating and fixing the fees for the private unaided engineering colleges, the AFRC has no statutory power to fix the age of superannuation of the employees. The said Regulations do not contain any provision regarding fixation of age of superannuation of employees working in engineering colleges. In clause (e) of Sub-Clause A of Clause B provides that the retirement age shall be 65 years for teaching faculty and 60 years for non-teaching staff and 60 years for last grade servants. Even otherwise, it not shown that the drivers falls under last grade service, as such, the contention of the learned Senior Counsel that the petitioner has to continue up to the age of 60 years has no force. Therefore, all the three grounds raised by the learned Senior Counsel cannot be accepted.

7. In the counter affidavit it is specifically pleaded that as per Clause 7 of the Society, the President is the person to sue or to be sued on behalf of the 5th respondent college, but the petitioner filed the Writ Petition making the Principal of the 5th respondent college as party to the Writ Petition.

Clause 7 of the Articles of Association of the Bapatla Education Society reads as follows:

“7.President:

- a) The President shall be the person to sue or to be sued on behalf of the Society.”

A perusal of the aforesaid clause goes to show that the President is person to sue or to be sued on behalf of the society. But the petitioner has not filed any reply rebutting the aforesaid averment in the counter affidavit nor advanced any argument by the learned Senior Counsel in that regard. As such, the Writ Petition is also liable to be dismissed on that ground also. Though learned Senior Counsel while placing reliance on draft service Regulations-2017 of the Acharya Nagarjuna University, submits that the petitioner is entitled to continue up to 60 years of age. But the said Regulations pertains to service conditions of employees of Engineering Service of University, wherein the Driver Grade-1 and Driver Grade-II is included, but in the instant case, the petitioner is working in the 5th respondent Engineering college, which is unaided private engineering college. As such, the said regulations are of no use to the petitioner's case.

After examining the contentions of both parties, it is found that no statutory Rule or Regulation or the Provision of any enactment is violated by the 5th respondent and that no illegality or infirmity is brought to the notice of this Court. Since the Writ Petition under Article 226 of the Constitution of India is a public law remedy and the 5th respondent college, being a private

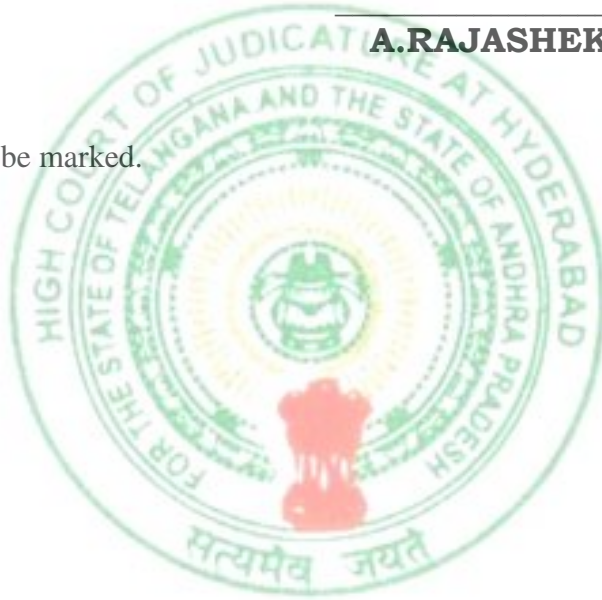
unaided engineering college, it is governed by its own non-statutory rules. While considering similar contentions, this Court dismissed W.P.Nos.17500 of 2012 & batch on 31.07.2012.

In view of above facts and circumstances, this Writ Petition is liable to be dismissed and accordingly, same is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending, shall stand dismissed.

01.05.2018

Note: LR copy to be marked.
B/o.kvs

A.RAJASHEKER REDDY, J



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.9144 OF 2018



Date: 01.05.2018

kvs