

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 08.03.2021****Order delivered on 19/05/2021****WPS No. 5218 of 2016**

- Hemlal Sahu, S/o Late Shri Brijlal Sahu, aged about 63 years, resident of village Sasaha, Pallari, District Balodabazar Bhatapara (CG)

---- Petitioner**Versus**

1. Union of India, through its Secretary, Department of Secondary and Higher Education, Ministry of Human Resources Development, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi- 110001
2. State of Chhattisgarh, through its Secretary, Department of Higher Education, Mantralaya, Naya Raipur, District Raipur.
3. Under Secretary, Department of Higher Education, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur.
4. Government Brijlal Verma College, through its Principal, Pallari, District Balodabazar Bhatapara (CG)

---- Respondents

For Petitioner	:	Mr. K. Rohan, Advocate.
For Respondent No.1	:	Mr. Amit Banerjee, Advocate on behalf of Mr. R.K. Mishra, Asst. Solicitor General.
For Respondent No.2 to 4	:	Mr. Sudeep Agrawal, Deputy Advocate General.

Hon'ble Shri P.R. Ramachandra Menon, CJ**Hon'ble Shri Parth Prateem Sahu, J****C A V Order****Per Parth Prateem Sahu, J**

1. By this instant writ petition the petitioner has sought for declaration that Rule 56 (1-e) of the Fundamental

Rules, applicable and amended by Chhattisgarh Shashkiye Sevak (Adhivarshiki Ayu) (Sanshodhan) Adhiniyam, 2012 (for short 'the Adhiniyam of 2012') is ultra vires; quashment of the order dated 26.6.2015 (Annexure P-1); and benefit of enhancement of age of superannuation to the petitioner from 62 to 65 years, as has been enhanced for the Classroom Teachers.

2. Facts relevant for disposal of this petition are that the petitioner was appointed as Sports Teacher in Champa Devi Jain Night Post-Graduate College, Raipur. Said college was taken over by the State Government on 27.7.1984. Services of the petitioner with other employees were absorbed by the State Government. On the date of filing of writ petition, the petitioner was posted in the Government College, Palari. Service of the petitioner is governed by the Chhattisgarh Educational Services (Collegiate Branch) Recruitment Rules, 1990 (for short 'the Rules of 1990'). For the purpose of governing field of age of superannuation of the government employees, the State Government has enacted Chhattisgarh Shashkiya Sevak (Adhivarshiki Ayu) Adhiniyam, 1967 (for short 'the Adhiniyam of 1967'). Under the Adhiniyam of 1967, Rule 56 of the CG Fundamental Rules has been made applicable by virtue of Section 2 of the Adhiniyam of 1967. Under Rule 56, as it stood prior to amendment in the year 2012, the age of superannuation of every government

teacher was fixed i.e. 1st day of the month in which he/she attains the age of 62 years. The State Government has made amendment in Rule 56 of the Fundamental Rules, which is made part of the Adhiniyam of 1967 and notified as the Chhattisgarh Shaskiya Sevak (Adhivarshiki Ayu) (Sanshodhan) Adhiniyam, 2012 (for short 'Adhiniyam of 2012'). By way of amendment in Rule 56 of the Fundamental Rules, applicable to the Chhattisgarh, as substituted by Section 2 of the Adhiniyam of 1967, sub-rule (1-e) was inserted after Rule 2 (1-d). By amending Rule 56, the age of superannuation of the teachers, who are engaged in Classroom teaching activities in colleges, has been enhanced from 62 to 65 years. In the year 2014, the petitioner filed writ petition challenging amendment on the ground of sub-classification to be arbitrary and violative of Article 14 of the Constitution of India, whereas, some other employees have filed writ petition in the year 2012. All the writ petitions were disposed of vide order dated 9.12.2014 with a direction to the petitioners therein to file a representation before the State Government and the State Government was directed to decide the same at the earliest within a maximum period of three months from the date of receipt of representation. Respondent State considered the representation submitted by the petitioners and rejected the same vide order Annexure P-1, which made

the petitioner to file this writ petition seeking for following reliefs:-

- “a. Call for the entire record pertaining to the present case concerning the decision of the state government to adopt the scheme issued by the Ministry and the directions issued by the UGC with regard to the teachers.
- b. Issue an appropriate writ declaring the Rule 56 (1-e) of the Fundamental Rules, applicable to Chhattisgarh, as amended by Chhattisgarh Shaskiya Sevak (Adhivarshiki Ayu) (Sanshodhan) Adhiniyam, 2012, (ANNEXURE-P/2) as ultra vires.
- c. Issue a Writ of Certiorari quashing and setting aside the impugned Order dated 26.06.2015 (ANNEXURE –P/1) and directing the Respondent Authorities to grant all consequential benefits to the petitioner.
- d. Issue a Writ of Mandamus directing the Respondent Authorities to accord the benefit of enhancement of age of superannuation to the petitioner from 62 to 65 years of age along with all consequential benefits.
- e. Grant the cost of the petition to the Petitioner.
- f. Grant any other relief as deemed fit and proper in the facts and circumstances of the case.

3. Respondent-State submitted reply to writ petition, while resisting the pleadings made therein it was further pleaded that the instant writ petition on the date of its filing was not maintainable as the petitioner stood retire from service w.e.f. 16.6.2015 whereas writ petition challenging conditions of service is filed on 14.9.2016

i.e. post retirement of petitioner. Fixation of age of superannuation is a matter primarily for the employer to decide unless the exercise of that power is assailed. The representation submitted by the petitioner was considered and rejected. The power and authority to fix service conditions for the employees of colleges run by the State is with the State. The role of University Grant Commission (UGC) is only to prescribe academic standards, qualification required for the teaching staff, facilities required in higher education etc. Enhancement of age of superannuation from 62 to 65 years is to meet out the shortage of teachers involved in the Classroom teaching. There is no shortage of Sports Teachers, hence the petitioner being a Sports Officer/Teacher is not entitled for enhancement of age given to Classroom Teachers and pleaded for dismissal of writ petition being devoid of substance. The petitioner has not arrayed the UGC as party respondent and had not challenged the Regulation on Minimum Qualification for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 (for short 'the Regulation of 2010'), therefore, the writ petition is not maintainable.

4. Mr. K. Rohan, learned counsel for the petitioner submits that reason assigned in pleading that there is no shortage of Sports Officer is incorrect. Petitioner has

produced the chart of sanctioned posts of the Sports Officer/ Teacher and working of the year 2009-10 to 2013-14 showing half sanctioned posts of Sports Officer to be vacant. He further contended that Section 2 (ii) of the Adhiniyam of 2012 creates a hostile discrimination between 'Classroom Teachers' and 'Sports Officers'. There is no difference in the services rendered by the Sports Officers and any other Classroom teachers. The Classroom Teachers impart education inside the class whereas Sports Officers give instructions, guidance and explain skills and techniques of sports activities to the students in the field. Both are having the status of teacher. He further argued that Section 2 (ii) of the Adhiniyam of 2012 is bad in law and violative to authoritative pronouncement of Hon'ble Supreme Court in the case of **PS Ramamohan Rao vs. AP Agriculture University** reported in **(1997) 8 SCC 350**. It is further contended that in the State of Chhattisgarh there are about 165 colleges out of which only two colleges grant degree of B.P.Ed. & M.P.Ed. i.e. BPG Girls College, Raipur and Government Post Graduate College, Kurud. In these two colleges only, the persons having qualification of B.P.Ed. & M.P.Ed. were appointed as Assistant Professor and work as class room teacher. Whereas, other 163 colleges running in the State do not provide aforementioned degrees but only appoint Sports Officers. The Sports Officers / Teachers posted in

above two colleges would be entitled for enhancement of age of superannuation to 65 years, whereas Sports Officers appointed in other colleges will retire on attaining age of 62 years. This action of the respondent State is arbitrary as it creates sub-classification in a class of employees. Explanation offered in the amendment under Rule 2 (ii) of the Adhiniyam of 2012 is also discriminatory as English & Hindi subjects do not lead to award degree, even then the teachers teaching those subjects are given benefit of age enhancement but the Sports Officers/Teachers, who are also necessary for every academic course, were not given said benefit. This amounts to discrimination between similarly placed teachers who are discharging same duties. The State Government has given similar benefits in all respects to the Sports Officers and Classroom Teachers prior to amendment. There was no distinction between Classroom Teachers and Sports Officers. Fixing different age for retirement of Classroom Teachers and Sports Officers/Teachers like petitioner is violative to Articles 14 & 16 of the Constitution of India. Judgment rendered in **Jagdish Prasad Sharma vs. State of Bihar** reported in **(2013) 8 SCC 633**, which was relied upon by the State in reply, is totally misconceived. There is no rationale for making classification. There is no reasonable basis for classification and is not based on intelligible differentia.

He submits that the Regulation framed under the UGC has been challenged in WPS No.4386/2012, hence the Regulation of 2010 is not put to challenge in this writ petition. Service of the petitioner is governed by the Rules of 1990 which do not provide for age of superannuation of the employees.

5. Mr. Sudeep Agrawal, learned counsel representing the State, controverting the submissions made by learned counsel for the petitioner, submits that petitioner has challenged only amendment in Section 2 (ii) (1-e) of the Adhiniyam of 2012. Amendment under challenge is in consonance with the Regulations framed under the University Grant Commission Act, 1956 (henceforth 'the Act of 1956'). Referring to Clause 2.1.0 of Appendix I of the Regulations of 2010 it is argued that in the Regulation of 2010 distinction has been made between the teachers teaching in classrooms and other teachers. Clause 8 (f) (ii) of the Appendix-I under the Regulation of 2010 is not put to challenge, hence the petition itself is not maintainable and it is liable to be dismissed on this count alone. The UGC is one of the proper and necessary parties in view of the grounds raised and reliefs sought for by the petitioner being the authority framing Regulations for fixing minimum qualification for appointment of teachers and other academic staff in Universities and Colleges and measures for maintenance of standards in Higher Education. The

State Government while amending age of superannuation has followed the Regulations issued by the UGC. He further submits that for the purpose of prescribing service conditions of an employee under the State Government, the Regulations are not binding. The State can frame rules with regard to the service conditions of the employees working in the colleges under the State but said service conditions are to be in consonance with the Regulations framed under the UGC and not in derogation to it. The State has framed Rules of 1990 for recruitment and for the purpose of considering the age of superannuation the Act of 1967 is made applicable. He submits that the State Government is competent to frame rules for governing service conditions of the government employees working in the colleges / Higher Education Department. In support of his contention, he referred to the judgment of Hon'ble Supreme Court delivered in case of Jagdish Sharma (supra). He submits that classification of the teachers is made with an object to achieve the purpose as fixed by the Central Government under the Regulations of 2010, writ petition is not maintainable for non-joinder of necessary parties and for not challenging the Regulation, which has been followed by the respondent State. The writ petition be dismissed.

6. Mr. K. Rohan, learned counsel for the petitioner submits that the Sports Officers have also been held to be

teachers as other teachers of college. Judgment relied upon by learned State Counsel is distinguishable. He further contended that there is sub-classification within the class which is arbitrary and violative to Article 14 of the Constitution of India. In support of his submissions, he relied upon the decision of Hon'ble Supreme Court in cases of **Sudhir Kumar Consul vs. Allahabad Bank** reported in (2011) 3 SCC 486; **Kallakkruchi Taluk Retired Officers Association Vs. State of T.N.** reported in (2013) 2 SCC 772; **Maharashtra Forest Guards and Foresters Associations vs. State of Maharashtra** reported in (2018) 1 SCC 149 & **Manish Kumar vs. Union of India** reported in (2021) SCC Online SC 30.

7. Undisputed facts of the case are that the petitioner is an employee of the college run by the State Government. His services are governed by the Rules of 1990. For the purpose of considering age of superannuation, service of the petitioner is governed by the Act of 1967. The UGC has formulated the Regulation under Section 26 of the Act of 1956. Regulations were notified from time to time and Regulation of 2010 is applicable for consideration in the given facts and circumstances of the case. Section 2 (f) of the Act of 1956 defines 'university', which reads as under:-

“(f)“university” means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act.

8. The universities are being recognized by the UGC in accordance with the Regulations made under the Act of 1956. Age of superannuation of class room teachers of the Central Educational Institutions was enhanced to 65 years vide order dated 23.3.2007 to attract eligible persons to teaching carrier and to retain teachers in service for longer period. Under the Appendix-I to Regulations of 2010, benefit of enhancement of age of superannuation has not been made available to the Librarians and Directors of Physical Education and their age of superannuation has been remained as it is i.e. 62 years, under clause 8 (f). They have been specifically excluded.

9. The State Government has made amendment in the Act of 1967 precisely under Rule 56 of the State Fundamental Rules, relevant portion of which reads as under:-

“(ii) After sub-rule (1-d) of rule 56, following sub-rule shall be inserted, namely:-

“(1-e) Subject to the provisions of sub-rule (2), a member of the teaching cadre of a Government College under Higher Education department, Government Engineering College, Government Polytechnic Institute, Government Dental College and a member of

nursing teaching faculty with M.Sc. in Nursing in the State Government nursing teaching institution, who is engaged only in class room teaching activities and not occupying non-teaching or administrative post, shall retire from service on the afternoon of the last day of the month on which he attains the age of sixty five years.

Provided that such member of a teaching cadre, who is holding a lien on a teaching post and occupying administrative post, shall have the option of seeking appointment to the teaching post in case he wishes to continue in service up to sixty five years.

Provided further that such member of the teaching cadre who retires under this sub-rule, whose date of birth is the first of a month shall retire from service on the afternoon of the last day of preceding month on attaining the age of sixty five years.

Explanation.- For the purpose of this sub-rule 'class room teaching' shall mean teaching students in a class room in a course or programme of study in a subject or faculty leading to award of a degree or any other qualification as recognized under the University Grants Commission Act, 1956 (3 of 1956) or the All India Council for Technical Education Act, 1987 (52 of 1987), the Dentists Act, 1948 (16 of 1948), the Indian Nursing Council Act, 1947 (48 of 1947) or any other law for the time being in force."

10. Under the Explanation of amended rule 2 (1-e), '**class room teaching**' has been explained to be teaching in a course or programme of study leading to award of a degree or any other qualification as recognized under the Act of 1956 and others. The determination of standards in Institution for higher education or research and scientific and technical institution is made part of Entry-66 of List 1 under the Seventh Schedule of the Constitution of India. Entry 66 reads as under:-

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

11. Education is made part of Entry No.25 of List-3 under

the Seventh Schedule, which reads as under:-

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

12. Perusal of the aforementioned two entries i.e. Entry-66

in List I and Entry 25 in List III, makes it clear that Entry 25 in List-III is subject to provisions of entries made in Entry No.63, 64, 65, 66 of List I. The State is having an authority to frame laws with regard to education subject to provisions of Entry 66 in List I. Entry No.66 of List I is with respect to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. It is very specific for that purpose only. For the purpose of imparting higher education, the State Government has established colleges affiliated to the University and for the purpose of appointing the teachers and other staff had framed rules known as Rules of 1990. As the universities and the institutions affiliated to the universities are governed with the Act of 1956, the educational qualification for appointment of teachers, sports officers, librarians etc. has been mentioned in Schedule-3 of the Act of 1990 to be in accordance with norms prescribed by the UGC. The requirement of qualification as per UGC norms is only to comply with

the Regulations framed by the UGC from time to time, on Minimum Qualification for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education. A bare perusal of aforementioned constitutional provisions, the Act of 1956 and the Regulations framed thereunder, makes it very clear that the Act of 1956 is having the object to make provision for co-ordination and determination of the standards in institution for higher education. The heading of Regulation also makes the purpose clear of its enactment. Clause-8 of Appendix-I of the Regulations of 2010 i.e. Other Terms and Conditions including age of superannuation, are for the employees of central educational institutions. For the purpose of governing service conditions of the government employees, the State Government is having authority to frame rules. For the purpose of appointment of the teachers and other staffs like sports officer, librarians etc. the qualification prescribed by the UGC in its Regulations is to be followed or made applicable under the rules framed by the State.

13. Hon'ble Supreme Court in case of Jagdish Sharma (supra) has dealt with the issue with regard to the scheme framed by the UGC on 31.12.2008 to enhance age of superannuation of teachers and other staff in Universities/colleges/educational institutions of the

Central Government and to increase their age of superannuation. The State Government is given option to adopt said scheme and held that the State Government is at liberty to decide whether the scheme to be adopted by the State or not. Right to alter service condition of the employees of the said universities / colleges is within the domain of the State Government until it decides to adopt UGC scheme and held thus:-

“77. We are inclined to agree with such submission mainly because of the fact that in the amended provisions of Section 67(a) it has been categorically stated that the age of superannuation of nonteaching employees would be 62 years and, in no case, should the period of service of such non-teaching employees be extended beyond 62 years. A difference had been made in regard to the teaching faculty whose services could be extended up to 65 years in the manner laid down in the University Statutes. There is no ambiguity that the final decision to enhance the age of superannuation of teachers within a particular State would be that of the State itself. The right of the Commission to frame regulations having the force of law is admitted. However, the State Governments are also entitled to legislate with matters relating to education under List III Entry 25. So long as the State legislation did not encroach upon jurisdiction of Parliament, the State legislation would obviously have primacy over any other law. If there was any legislation enacted by the Central Government under List III Entry 25, both -4- would have to be treated on a par with each other. In the absence of any such legislation by the Central Government under List III Entry 25, the regulations framed by way of delegated legislation have to yield to the plenary jurisdiction of the State Government under List III Entry 25.

78. We are then faced with the situation where a composite scheme has been framed by UG, whereby the Commission agreed to bear 80% of the expenses incurred by the State if such scheme was to be accepted, subject to the condition that the remaining 20% of the expense would be met by the State and that on and from 1-4-2010, the State Government would take over the entire burden and would also have enhanced the age of superannuation of teachers and other staff from 62 to 65 years. There being no compulsion to accept and/or adopt the said Scheme, the States are

free to decide as to whether the Scheme would be adopted by them or not. In our view, there can be no automatic application of the recommendations made by the Commission, without any conscious decision being taken by the State in this regard, on account of the financial implications and other consequences attached to such a decision. The case of those petitioners who have claimed that they should be given the benefit of the Scheme de hors the responsibility attached thereto, must, therefore, fail.”

14. The respondent State in its pleadings has very categorically pleaded and also made submission before this Court that the role of Regulations framed under the Act of 1956 is only to prescribe academic standards, qualification required for the appointment of teaching staff, facilities required in higher education institutions. The UGC in no circumstance is empowered to prescribe conditions of service in relation to the State Government employees. Perusal of the amendment which is under challenge, as made in the Act of 1967 by inserting Section 2 (1-e), would show that amendment has not been made adopting Appendix-I of the Regulations of 2010. In view of the pleadings and arguments made by the respondent State and considering the Act of 1956 and the Regulations of 2010, we are of the view that the objection raised by the State that writ petition is not maintainable as the petitioner has not challenged Clause-8(f) of the Appendix-I of the Regulations of 2010 framed under the Act of 1956 and not arrayed the UGC as party respondent is not sustainable and it is hereby repelled.

15. The petitioner during the course of arguments has very fairly submitted that the petitioner is not challenging the authority of the State Government in bringing amendment in the age of superannuation as fixed under the Act of 1967 and Rule 56 of the Fundamental Rules, but only challenging the action of the respondent State on the ground of hostile discrimination, sub-classification within the class without there being any intelligible differentia.
16. Before proceeding further to appreciate submissions made by learned counsel for the petitioner with regard to hostile discrimination and sub-classification within the class, we deem it appropriate to discuss the law laid by Hon'ble Supreme Court on the issue. There is presumption of constitutionality of legislation. The burden is upon the person challenging vires of any legislation on the ground of hostile discrimination and sub-classification within the class, the action of amendment to be arbitrary and violative to Article 14 of the Constitution of India and that equals have been treated as unequals.
17. In case of **Kewal Singh Vs. Lajwanti** reported in **1980 (1) SCC 290** Hon'ble Supreme Court while applying Article 14 of the Constitution of India to the provisions under challenge has made following observations;-

9. Lastly, we come to the question of the application of Article 14 to the provisions of the Act. This is

undoubtedly a question which merits serious consideration. Before approaching this question we might observe that it is well settled that what Article 14 forbids is hostile discrimination and not reasonable classification. Discrimination may take place in many ways, and what Article 14 requires is that equals must be treated alike. If equals and unequals are also treated alike then also Article 14 is clearly attracted and discrimination results. A reasonable classification based on grounds having a clear nexus with the objective to be achieved and grouping certain persons in a separate category in view of their special peculiarities is undoubtedly permissible. Of course, classification should not be purely a class legislation. It is also well settled that there is always a presumption in favour of the constitutionality of a statute and any party who seeks to challenge the legislation on the ground of applicability of Article 14 must plead and prove the necessary facts. In making a classification the court must presume matters of common knowledge, common report, history of the time and every other relevant fact.

18. In case of **Dipak Sibal vs. Punjab University** reported in **(1989) 2 SCC 145** Hon'ble Supreme Court while dealing with the grounds raised challenging the Statute, has held thus;-

“9. It is now well settled that Article 14 forbids class legislation, but does not forbid reasonable classification. Whether a classification is a permissible classification under Article 14 or not, two conditions must be satisfied, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) that the differentia must have a rational nexus to the object sought to be achieved by the statute in question.

20. In considering the reasonableness of classification from the point of view of Article 14 of the Constitution, the court has also to consider the objective for such classification. If the objective be illogical, unfair and unjust, necessarily the classification will have to be held as unreasonable. In the instant case, the foregoing discussion reveals that the classification of the employees of government/semi-government institutions etc. by the impugned rule for the purpose of admission in the evening classes of three year LLB degree course to

the exclusion of all other employees, is unreasonable and unjust, as it does not subserve any fair and logical objective. It is, however, submitted that classification in favour of Government and public sector is a reasonable and valid classification. In support of that contention, the decision in *Hindustan Paper Corpn. Ltd. v. Government of Kerala*⁴, has been relied on by the learned counsel for the respondents. In that case, it has been observed that as far as government undertakings and companies are concerned, it has to be held that they form a class by themselves, since any project that they may make would in the end result in the benefit to the members of the general public.....”

19. In case of **State of AP v. Nallamilli Rami Reddi**

reported in **(2001) 7 SCC 708** Hon’ble Supreme Court has considered the test of permissible classification and held that classification to be in two folds; (i) whether classification is founded on intelligible differentia which distinguishes persons grouped together from others who are excluded from the group and; (ii) whether differentia has rational connection with the object sought to be achieved. Hon’ble Supreme Court has held thus:-

“8. What Article 14 of the Constitution prohibits is “class legislation” and not “classification for purpose of legislation”. If the legislature reasonably classifies persons for legislative purposes so as to bring them under a well-defined class, it is not open to challenge on the ground of denial of equal treatment that the law does not apply to other persons. The test of permissible classification is twofold: (i) that the classification must be founded on intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (ii) that differentia must have a rational connection to the object sought to be achieved. Article 14 does not insist upon classification, which is scientifically perfect or logically complete. A classification would be justified unless it is patently arbitrary. If there is equality and uniformity in each group, the law will not become discriminatory, though due to some fortuitous circumstance arising out of peculiar situation some included in a class get an advantage over others so long as they are not singled out for special treatment. In substance, the

differentia required is that it must be real and substantial, bearing some just and reasonable relation to the object of the legislation.”

20. In case of **AP Dairy Development Corporation vs. B. Narsimha Reddy** reported in **(2011) 9 SCC 286**, Hon’ble Supreme Court while considering the challenge made to Andhra Pradesh Mutually Aided Cooperative Societies (Amendment) Act, 2006 on the ground of classification and hostile discrimination has observed as under:-

“18. It is well-settled law that Article 14 forbids class legislation, however, it does not forbid reasonable classification for the purpose of legislation. Therefore, it is permissible in law to have class legislation provided the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question. Law also permits a classification even if it relates to a single individual, if, on account of some special circumstances or reasons applicable to him, and not applicable to others, that single individual may be treated as a class by himself. It should be presumed that the legislature has correctly appreciated the need of its people and that its laws are directed to problems made manifest by experience and that *its discriminations are based on adequate grounds*. There is further presumption in favour of the legislature that legislation had been brought with the knowledge of existing conditions. The good faith on the legislature is to be presumed, but *if there is nothing on the face of the law or the surrounding circumstances* brought to the notice of the court on which the classification may reasonably be

regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation. The law should not be irrational, arbitrary and unreasonable inasmuch as there must be nexus to the object sought to be achieved by it. (Vide *Budhan Choudhry v. State of Bihar*² and *Ram Krishna Dalmia v. Justice S.R. Tendolkar*³.)”

21. In case of **Ramkrishna Grover vs. UOI** reported in **(2020) 12 SCC 506** Hon’ble Supreme Court while dealing with constitutional validity of Section 13B of the East Punjab Urban Rent Restrictions Act, 1949 and its extension to the Union Territory Chandigarh, has considered whether it is arbitrary, unreasonable, discriminatory or creates artificial classification, has held thus:-

“41. Legislature’s primary function is to make laws for all or different groups or classes of persons. The lawmakers as elected representatives are in a better position than any other body which is removed from local and other circumstances, to know the needs, requirements and expectations of citizens. It, therefore, seems only logical that the legislature possesses the power to distinguish and classify persons or things subjected to such laws. Such a classification, however, must pass the muster of Article 14 which proscribes hostile and invidious discrimination. Recognising that Article 14 does not entirely prohibit classification by grouping certain persons with special peculiarities in a special category to meet certain specific ends, this Court in *Ram Krishna Dalmia v. S.R. Tendolkar*²⁴ had postulated two conditions which must be satisfied for a classification to withstand a challenge under Article 14, namely: (i) the classification should be founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of

the group; and (ii) the differentia must have a rational relation or nexus to the object sought to be achieved by the statute in question. In *State of A.P. v. Nallamilli Rami Reddi*²⁵, this Court had further elucidated that a challenge on the ground of denial of equal treatment will not sustain when the legislature intends to classify persons under a well-defined class. A classification need not be scientifically perfect or logically complete and would be justified unless it is palpably arbitrary. The test to judge the validity of any classification has to be practical and pragmatic by looking beyond the classification to the purpose of the law, that is, the purpose or object of the legislation and the circumstances which had prevailed when the law was passed and which had necessitated passing of that law. Not only this, there is a presumption as to constitutional validity of an enactment predicated on the belief that the legislature understands and correctly appreciates the need of its own people and is free to recognise degrees of harm and may confine its restriction to only those cases where the need is deemed to be the clearest. The hardship that may result from the classification cannot be the basis for determining the validity of any statute. This requires distinguishing between under-inclusiveness and over-inclusiveness. The former classification does not confer the same benefit or place the same burden on others who are similarly situated whereas over-inclusiveness includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well. The latter is frowned upon but the former may pass the judicial test for the courts do exercise tolerance to under-inclusiveness unless it is clear that there is no fair reason for the law which would not require with equal force its extension to those whom it leaves untouched (see *Pioneer Urban Land & Infrastructure Ltd. v. Union of India*²⁶, decided on 9-8-2019).

22. The law as laid down by Hon'ble Supreme Court is that Article 14 of the Constitution of India does not entirely prohibits classification but classification is permissible if founded on intelligible differentia which distinguishes persons that are grouped together from other left out from the group having nexus to the object sought to be achieved. The purpose of the legislation is to be seen

by adopting pragmatic and practical approach and the necessity for incorporating such provision.

23. In the light of above law laid down by Hon'ble Supreme Court, if we examine the facts of the present case, from perusal of the amendment and insertion of sub-rule (1-e) in section 2 of the Act of 1967, it is apparent that increase in the age of superannuation has been made only for the teachers engaged in the institution in class room teaching. The class room teaching has been explained by way of explanation given below the amended provision i.e. Section 2 (ii) (1-e) of the Act of 1967, which clarifies that the class room teaching shall mean teaching students in the class room in a course or programme of studies in a subject leading to award of degree.
24. True it is that the status of class room teachers and sports officers/teachers has been held to be same as teacher. Scope of duties and activities of sports officers/ teachers has been considered by Hon'ble Supreme Court on the basis of affidavit submitted by the respondents in case of **P. Ramamohan Rao (supra)**, which reads as under:-

“8. Neither the Act nor the rules and regulations specify the duties and functions of a Physical Director. We have, therefore, to go by the material available in the affidavits filed by the parties to decide that question. In the additional counter-affidavit filed on behalf of the

University in the High Court, it is stated in para 7 as follows:

“I further submit that the duties of the Physical Directors in this University, in brief, are as follows:

- (a) to arrange games and sports daily in the evenings for the students,
- (b) to look after the procurement of sports material and the maintenance of the sports grounds,
- (c) to arrange inter-class and inter-collegiate tournaments,
- (d) to accompany the student teams for the inter-university tournaments,
- (e) to *guide* the students about the *rules* of the various *games and sports*.”

25. From perusal of the duties and functions of the Physical Director, which is similar to the work of Sports Officer, it is clear that it is only with regard to arrangement of games and sports activities within the college, inter-colleges tournaments and inter universities tournaments. The duties and functions of Sports Officer are not having any relevance and importance with regard to the course which the students are pursuing for obtaining a degree in the said college in a particular subject. From the duties and functions as discussed in the aforementioned case, it is apparent that the students learning techniques of any sport will not have any impact with the result to be declared by college or university for the purpose of grant of degree of the course which any student is pursuing except the course of B.P.Ed. and M.P.Ed., whereas the duties and

functions of the teachers engaged in class room teaching have an obligation to impart education with regard to subjects which the students are pursuing and to be considered for the award of marks for preparation of result to be considered for grant of degree. The qualification prescribed for appointment of Assistant Professors, Associate Professors, Professors, University Librarian, Deputy Librarian, Assistant Librarian / college librarian, Director of Physical Education & Sport, Deputy Director of Physical Education and Sports / College Director of Physical Education and Sports, Assistant Director of Physical Education/College, Director of Physical Education and Sports, minimum qualifications have been prescribed for appointment under “the Regulations of 2010”. From perusal of the qualifications prescribed would show that the Director or Assistant Director of Physical Education and in case at hand, the Sports Officer have to pass the physical fitness test norms as prescribed under Clause 4.6.4 of the Regulations of 2010. The requirement to undergo physical fitness test is only for the Assistant Director of Physical Education in University or college, Director of Physical Education and Sports. (Sports Officers for this case).

26. In the light of the above, if responsibilities and duties of the Sports Officers and the Class Room Teachers are taken into consideration, both stand on different footing.

Further perusal of the amendment which has been brought in by the State Government under the Adhiniyam of 1967 by way of the Chhattisgarh Shaskiya Sevak (Adhivarshiki Ahu) (Sanshodhan) Adhiniyam, 2012 would show that the class room teachers have been given benefit of increase in age of superannuation i.e. teachers who are engaged in teaching subjects which are relevant for the purpose of preparation of mark sheet and award of degree. Class room teachers will teach the students with their experience which they have gained during their long period of service, which shall be beneficial and in the interest of students. The reason as stated for enhancement of the age of superannuation of the class room teachers is shortage of teachers.

27. In the Regulations framed by the UGC under the Act of 1956 increase in the age of superannuation from 62 to 65 years is of the teachers engaged in class room teaching in the universities and institutions run by the Central Government assigning the reason that there is shortage of teachers. The State Government by way of amendment under challenge has also increased the age of superannuation of the class room teachers from 62 to 65 years. The class room teaching has been explained widely. From the explanation given to 'class room teaching' it is apparent that the teachers who are engaged in teaching a class or programme of study in a

subject or faculty leading to **award of degree**. From the nature of duties & responsibilities, as discussed in preceding paragraphs, between the Sports Officer and Class Room Teacher is considered, it is apparent that the petitioner being a Sports Officers cannot be treated as equal to class room teachers for extending benefit of the increase in age of superannuation.

28. Hon'ble Supreme Court in case of **Chiranjeet Lal Choudhary vs. UOI** reported in **AIR 1951 SC 41** has observed that if there is classification, the Courts will not held it invalid merely because the law might have been extended to other persons who in some respect might resemble the class for which the law was made for. The Legislature is the best Judge of the need of particular class to estimate the degree of anvil so as to adjust its legislation accordingly to the exigencies found to exist.
29. Reason assigned for extending age of superannuation of class room teacher is to meet out the shortage of class room teachers. It is for the experts to consider the need which exists and not for the Court to give its opinion. The legislation which is put to challenge is only with regard to increase in age of superannuation of a particular class of teacher i.e. class room teacher, which in the opinion of this Court has been made with

intelligible differentia and with an object to avoid shortage of class room teachers.

30. For the foregoing reasons, we are of the considered view that the petitioner failed in his challenge to get a declaration that amended provision under the Act of 1967 amounts to hostile discrimination and unreasonable classification. The petition fails and is hereby dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Roshan/-