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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 13666 of 2020

W.P.(C) Nos.5155 and 5620 of 2019

**W.P.(C) Nos.11000, 13667, 15612, 15615, 15782,
17565, 19442, 26871, 30607, 36139, 36142 of 2020**

W.P.(C) No.17106 of 2021

W.P.(C) No.7900 of 2022

W.P.(C) No. 7672 of 2021 W.P.(C) No.7673 of 2021

W.P.(C) Nos.9659 and 9667 of 2022

W.P.(C) No.13666 of 2020

Dr. Asit Kumar Jenamani

....

Petitioner

W.P.(C) No.5155 of 2019

Dr. Akshay Kumar Swain

....

Petitioner

W.P.(C) No.5620 of 2019

Trilochan Sathua

...

Petitioner

W.P.(C) No.11000 of 2020

Ganeswar Jena

...

Petitioner

W.P.(C) No.13667 of 2020

Nrusingha Charan Dash

...

Petitioner

W.P.(C) No.15612 of 2020

Trilochan Pradhan

...

Petitioner

W.P.(C) No.15615 of 2020

Subhash Chandra Malla

...

Petitioner

W.P.(C) No.15782 of 2020

Dr. Kabindra Das

...

Petitioner

W.P.(C) No.17565 of 2020

Dr. Gyanendranath Das

...

Petitioner

<u>W.P.(C) No.19442 of 2020</u> Dr. Siddhartha Kumar Sahu	...	Petitioner
<u>W.P.(C) No.26871 of 2020</u> Siba Prasad Nayak	...	Petitioner
<u>W.P.(C) No.30607 of 2020</u> Rabindra Kumar Mahapatra	...	Petitioner
<u>W.P.(C) No.36139 of 2020</u> Sushil Kumar Choudhury	...	Petitioner
<u>W.P.(C) No.36142 of 2020</u> Nishikanta Senapati	...	Petitioner
<u>W.P.(C) No.17106 of 2021</u> Dr. Jyotirmayee Dash	...	Petitioner
<u>W.P.(C) No.7900 of 2022</u> Ramesh Chandra Satapathy		Petitioner
<u>W.P.(C) No.7672 of 2021</u> Ajaya Kumar Mishra		Petitioner
<u>W.P.(C) No.7673 of 2021</u> Umesh Chandra Dora		Petitioner
<u>W.P.(C) No.9659 of 2022</u> Judhistir Jena		Petitioner
<u>W.P.(C) No.9667 of 2022</u> Madhaba Chandra Jena		Petitioner

-versus-

State of Odisha and Others **Opposite Parties**

Advocates, appeared in these cases:

For Petitioner(s) : Mr. Purusottam Chuli , Advocate
Mr. S.C. Acharya, Advocate
Mr. K.K. Swain, Advocate

For Opposite Parties :

Mr. P.K. Muduli
Addl. Govt. Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIAK**

JUDGMENT
20.04.2022

Dr. S. Muralidhar, CJ.

1. This batch of writ petitions raises a similar question of law concerning the age of superannuation of teachers and staff of aided educational institutions. In each writ petition, there is a challenge to the validity of Rule 19 of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 (1974 Rules) insofar as it prescribes that "every employee shall retire on completion of sixty years of age". The consequential prayer is for a direction to the Higher Education Department (HED) of the Government of Odisha and the Director of Higher Education (DHE) to allow each of the Petitioners to retire on completion of 65 years of age. The interim order passed if at all in all these writ petitions is that the retirement of the Petitioner would be subject to the outcome of the writ petition.

2. Although the facts in each of the petitions is more or less similar as regards the central issue, for the sake of convenience, the Court would like to set out in some detail the facts in W.P.(C) No.13666 of 2020 filed by Dr. Asit Kumar Jenamani.

The petitions

3. The background facts in W.P. (C) No. 13666 of 2020 are that the Petitioner was, at the time when the writ petition was filed on 5th June 2020, working as Reader in Odia-cum-Principal-in-Charge of Hindol College, Khajuriakata, District-Dhenkanal, which got the Government concurrence and affiliation in Intermediate in Arts with 128 seats from the academic session 1981-82. Further, the +2 seats in Arts were increased from 128 to 256. From 1985-86, affiliation in the +2 science course, 128 seats were accorded. In 1988-89, the College was accorded Government concurrence to start a 3 year degree course in Arts with 128 seats. Permission was granted for Honours in Education, History, Political Science, Odia, Sanskrit and Physics.

4. It is stated that the Hindol College was receiving grant-in-aid with effect from 1st June, 1987. It is thus an aided educational institution within the meaning of Section 3 (b) of the Orissa Education Act, 1969 (OE Act).

5. The Petitioner (Dr. Asit Kumar Jenamani) was appointed as Lecturer in Odia on 2nd January 1984 in the second post. The said post was allowed to receive 1/3rd grant-in-aid from 1st June, 1990. Subsequently, the Petitioner was promoted as Reader in 2012. Given the date of birth of the Petitioner, at the time of filing of the petition on 5th June 2020, he was on the verge of retirement i.e. nearing 60 years of age. His central plea was that in view of the judgment of the Supreme Court in ***Dr. R.S. Sohane v. The State of Madhya Pradesh (2019) 16 SCC 796***, the Petitioner is entitled to benefit of the

enhanced age of superannuation of 65 years in terms of the Regulations of the University Grant Commission (UGC) on "Minimum Qualifications for Appointment of Teachers and other Academic Staff in University and Colleges and measures for the maintenance of standards in Higher Education, 2010 (hereafter "the UGC Regulations") framed in exercise of powers conferred on the UGC under Section 26 (1) (d)(e) of the University Grants Commission Act, 1956 (UGC Act). The Appendix to the UGC Regulations contains the conditions of service of teachers which indicates the age of superannuation to be 65 years. It is claimed that in terms of the said provisions in Appendix-I to the UGC Regulations, the Petitioner has a right to continue in service till attaining the age of 65 years.

6. It is stated that corresponding amendments have been carried out in West Bengal and Jharkhand allowing teachers of Universities or Colleges to retire on attaining the age of 65 years. However, as far as Odisha is concerned, by virtue of Rule 19 of the 1974 Rules, which prescribes that every employee shall retire on completion of the age of 60 years, the benefit of the UGC Regulations is being denied. It is pointed out that in similar circumstances, in **Dr. R.S. Sohane** (*supra*) case, the Supreme Court allowed the Lecturers/Readers of Madhya Pradesh to retire at the age of 65 years. The contention in all the accompanying writ petitions in this batch is more or less similar.

Reply of the Opposite Parties State

7. 1 A counter affidavit has been filed by the HED and the DHE stating *inter alia* that the ratio of the decision in **Dr. R.S. Sohane**

(*supra*) case is confined to the State of Madhya Pradesh. As far as Odisha is concerned, the 1974 Rules which applies to non-Government aided colleges stands on a different footing. It is pointed out that under the Madhya Pradesh Shaskiya Sevaka (Adhivarshiki Ayu) 2nd Amendment Act, 1998 which amended the provisions of the 1967 Act with effect from 2nd September 1998, the age of superannuation of the Government Teachers was enhanced from 60 to 62 years. The same benefit was also extended to Teachers of private aided colleges.

7.2 On 1st April 2003, a Standing Committee in Madhya Pradesh recommended to the University Coordination Committee of Madhya Pradesh that it would be appropriate to equate the age of superannuation of principals, teachers and employees of private colleges with their counterparts in Government Colleges. The Co-ordination Committee approved this recommendation on 7th January, 2004. On 31st December 2008, the Ministry of Human Resources Development (MHRD), Government of India introduced with effect from 31st December 2008 a scheme (hereafter "the 2008 Scheme") enhancing the age of superannuation of teachers engaged in classroom teaching from 62 to 65 years on the recommendation of the 6th Central Pay Commission (CPC).

7.3 The Government of Madhya Pradesh accepted the recommendation on 16th April 2010 resolving to extend the benefit of the UGC Pay Scales and recommendations of enhancement of age of superannuation to 65 years to the Principal, Teachers, Librarians and Sports Officers serving in Government Colleges and Universities. It

is stated that merely because State of Madhya Pradesh may have accepted the recommendations of the MHRD *ipso facto* the benefit of enhanced age of retirement does not become applicable in the State of Odisha. The enhancement of age of superannuation from 62 to 65 years for teachers working in Government Colleges was implemented in Madhya Pradesh with effect from 2nd May 2011 by amending the 1967 Act applicable in that State.

7.4 Therefore, a distinction was made in Madhya Pradesh between teachers of Government Colleges and aided Colleges whereas in Odisha the age of superannuation is uniformly 60 years for teachers of both Government as well as Non-Government Colleges. This is also the age of retirement for all State Government employees. The only exception is Doctors covered under the Odisha Medical Service Rules which was a conscious decision taken by the Government of Odisha keeping in view the needs for more Doctors in the public health services. However, in Madhya Pradesh, there was no basis for discriminating between the teachers in Government Colleges and aided Colleges and therefore, in ***Dr. R.S. Sohane*** (*supra*) case the Supreme Court issued a mandamus to equate the salaries of both sets of teachers. Since that is not the factual situation as far as Odisha is concerned, the judgment in ***Dr. R.S. Sohane*** (*supra*) case is distinguishable.

8. The State Government has relied on a judgment of a three Judge Bench of the Supreme Court in ***Jagdish Prasad Sharma v. State of Bihar*** (2013) 8 SCC 633 where it was held that the 2010 UGC Regulations were not binding on the State Government. In the batch

of cases where the lead case was Jagdish Prasad Sharma, a set of teachers of private aided colleges in Odisha had filed a Special Leave Petition (SLP) against an order dated 12th April 2012 of the Division Bench of this Court in W.P.(C) Nos.16742 of 2011 and 20160 of 2011 on the issue of enhancement of age of superannuation of the teachers from 60 to 65 years. On dismissal of the writ petition by this Court, the above SLP had been filed and was converted to C.A. No.5608-5610 of 2013 (*Ashutosh Samantaray v. Odisha University of Agriculture and Technology*). This was clubbed with the lead petition of Jagdish Prasad Sharma. With the dismissal of all the civil appeals with the batch by the Supreme Court in the judgment in *Jagdish Prasad Sharma (supra)* case, the appeals of Ashutosh Samantaray being C.A. Nos.5608-5610 of 2013 were also dismissed. The observation made was that both the State authorities as well as the Central authorities were at liberty to work out their remedies in accordance with law.

9. A reference is made to Section 7 (C) of the OE Act which deals with grant-in-aid. It is contended that unless a rule is framed with regard to enhancement of age of the superannuation from 60 to 65 years in terms of Section 7 (C) of the OE Act, no such benefit can be extended to the Petitioner. In other words, it cannot be claimed as a matter of right.

Rejoinder of the Petitioners

10. In the rejoinder filed, reference is made to the judgment of the Supreme Court in *Dr. Preeti Srivastava v. State of Madhya Pradesh AIR 1999 SC 2894* which has been referred to and relied upon in the

judgment in **Dr. R.S. Sohane** (*supra*) case. It was submitted that a Constitution Bench of five learned Judges of the Supreme Court decided the case of **Dr. Preeti Srivastava** (*supra*) and held that List-III of the 7th Schedule to the Constitution is subject to entry 66 of List-I in the same Schedule namely the Union List. It was held that the State cannot prescribe criteria which would adversely affect the standards of higher education as laid down by the Union of India. In that case, it was held that the Regulations framed by the Indian Medical Council (IMC) [an expert body] with reference to Entry-66 of list-I was binding on the State Government which could not make Rules impinging on the Regulations of the Union of India.

11. It was held in **Dr. Preeti Srivastava** (*supra*) that the scheme of the Indian Medical Council Act, 1956 (IMC Act) did not give an option to the University to follow or not to follow standards laid down by the IMC. Drawing an analogy, it was contended that as far as the present case is concerned, the Government of Odisha has no option but to follow the UGC Regulations notwithstanding Rule 19 of the 1974 Rules which in any event will have to be struck down as *ultra vires* the UGC Regulations. It was submitted that the three Judge Bench in **Jagdish Prasad Sharma** (*supra*) case had by-passed the ratio of **Dr. Preeti Srivastava** (*supra*) case which was a binding judgment and therefore, the judgment in **Jagdish Prasad Sharma** (*supra*) case should be declared as *per incuriam*. Reference was made to the decision in **State of Orissa v. Sudhansu Sekhar Misra AIR 1968 SC 647** to urge that a decision is only an authority for what it actually decides. Not any and every observation found therein can be considered to be its ratio which is binding.

12. Reference is also made by the Petitioners to the fact that the UGC Regulations have to be laid before Parliament in terms of Section 28 of the UGC Act and have this force of the Act itself which would bind the State Government. It is pointed out that by the resolution dated 14th December 2009, the HED, Government of Odisha has in fact implemented the revised scale of pay as recommended by the Government of India in UGC. A reference is also made to a communication dated 2nd November 2017 of the Director, Department of Higher Education, MHRD, Government of India directed in paragraph 16 (iv)(h) that “payment of Central assistance for implementing this Scheme is also subject to the condition that the entire Scheme of revision of pay scales, together with all the conditions to be laid down by the UGC by way of Regulations and other guidelines shall be implemented by State Governments and Universities and Colleges coming under their jurisdiction as a composite scheme without any modification except in regard to the date of implementation and pay scales mentioned herein above.”

13. Reference is also made by the Petitioners to a communication dated 20th December 2018 of the Additional Secretary, DHE, Government of Odisha directing re-designation of Lecturers and Readers receiving UGC scale of pay.

Submissions of counsel

14. Mr. Purusottam Chuli, learned counsel appearing for the Petitioner submitted that the judgment in ***Dr. R.S. Sohane*** (supra) case would squarely apply to the facts of the present case. He further

submitted that inasmuch as the decision in ***Jagdish Prasad Sharma*** (supra) case is contrary to the judgment of the Constitution Bench of the Supreme Court in ***Dr. Preeti Srivastava*** (supra), it is no longer good law and that cannot bind this Court.

15. Mr. P.K. Muduli, learned Additional Government Advocate appearing on behalf of the Opposite Parties submitted that the decision in ***Dr. Preeti Srivastava*** (supra) related to the quality of education under the guidance of the IMC which is not relevant as far as the fixing of the age of superannuation of teachers of non-Government aided colleges in Odisha. He referred to the distinguishing features of ***Dr. R.S. Sohane*** (supra) case and submitted that it has no relevance to the facts of the present case. He further pointed out that an identical plea taken by certain other teachers of aided non-Government colleges of Odisha was negatived by the Supreme Court in the batch of cases of which the said case formed part in the judgment in ***Jagdish Prasad Sharma*** (supra) case. The question therefore cannot be sought to be reopened.

Analysis and reasoning

16. The above submissions have been considered. The question that squarely arose for consideration in ***Jagdish Prasad Sharma*** (supra) case which is a decision of a three Judge Bench of Supreme Court decided on 17th July 2013 was "whether the Regulations framed by the UGC had a binding effect on the educational institutions run by different States under the State enactments." Indeed, ***Jagdish Prasad Sharma*** (supra) was a judgment delivered in a batch of similar case of which one set of civil appeals namely C.A. Nos.5608-5610 of

2013 (*Ashutosh Samantaray v. Odisha University of Agriculture and Technology*) arose from a judgment dated 12th April 2012 of the Division Bench of this Court in W.P.(C) No.16742 of 2011.

17. The question that squarely arose for considerations in the set of civil appeals pertained to the applicability of the UGC Regulations vis-à-vis Rule 19 of the 1974 Rules applicable in Odisha. For convenience, it may be noted that Rule 19 specifically states that "every employee in a non-Government aided college shall retire on completion of 60 years of age."

18. There has been no amendment carried out to the above Rule consequent upon the 2010 Regulations of the UGC. In *Jagdish Prasad Sharma (supra)*, while dealing with this very issue, it was held in paragraph 78 as under:

"78. We are then faced with the situation where a composite scheme has been framed by the UGC, 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 1st April, 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.”

19. The plea that the above decision in **Jagdish Prasad Sharma** (*supra*) is contrary to the Constitution Bench judgment in **Dr. Preeti Srivastava** (*supra*) cannot be accepted as being correct. For the simple reason that the question involved in **Dr. Preeti Srivastava** (*supra*) was different. The central issue there was for the standards of medical education and whether the higher standards prescribed under the MCI Act would bind on the State Government. There is no such issue as far as the present case is concerned.

20. Interestingly, the decision in **Dr. Preeti Srivastava** (*supra*) dealt with a wide range of issues including reservation in seats in post graduation for super-specialties. In other words, the judgment was dealing with the scope and ambit of reservations under Article 15 (4).

21. Turning to the decision in **Rajbir Singh Dalal v. Chaudhari Devi Lal University Sirsa (2008) 9 SCC 284**, where the issue was very different. The question was whether the Appellant there fulfilled the requisite academic qualification for appointment to the post of a Reader in Public Administration. There the Appellant was a MA and Phd. in political science and the question was whether this could be equated to a degree in public administration. The observation made on the applicability of the UGC Regulations on the above context cannot *ipso facto* apply to the issue at hand viz., what should be the age of superannuation for teachers in aided non-Government colleges and Universities in Odisha.

22. Turning to the case of **Dr. R.S. Sohane** (*supra*), again the Court is of the view that it turned on its own facts as has been pointed out by the Opposite Parties. The UGC Regulations would not *ipso facto* apply where there has been no adoption of such regulations by amending the Rules. There is merit in the contention that UGC Regulations in this context can be considered only to be directory and not mandatory.

23. By the resolution dated 14th December 2009, the Government of Odisha has implemented the UGC Regulations only in part as far as revision of pay scale is concerned. It did not accept the proposal as regards the enhancement of age superannuation from 60 to 65 years. In its resolution dated 14th December 2009, it clarified as under:

“keeping in view the age of superannuation of State Government employees, the age of superannuation in case of college teachers shall be 58 years. However, for the University teachers of Non-Government Aided College teachers, the superannuation age shall continue to be 60 years.”

24. Indeed fixing the age of superannuation of an employee is an essential part of the service condition and a decision in that regard has to be taken on rational basis by an employer. Whether it should be 60 or 65 years is entirely for the employer to decide. Merely because the Government of Odisha has decided not to implement the UGC Regulations in this regard would not make Rule 19 of the 1974 Rules *ultra vires* the UGC Regulations or unconstitutional.

25. It is pointed out how the notification dated 31st December 2008 of the MHRD which provides for payment of central assistance for implementation of the scheme is subject to the condition that the entire scheme of revision of pay scales together with all the conditions laid down in UGC would be implemented by the State Government in Universities. The Government of Odisha, it is pointed out, had never exercised the option of adopting such a composite scheme and never presented any proposal to the Government of India to avail any central assistance for implementing the scheme. It has implemented the scheme only in a limited context of revision of pay scales following the revision of pay scale of Central Government employees on the recommendations of the 6th CPC.

26. Doctors in Government of Odisha Hospitals have been given an enhanced retirement age only because of the special need of the Doctors in the Public Health Service in Odisha. Otherwise, the age of superannuation has been uniform for both Government and non-Government aided colleges at 60 years. Even learned counsel for the Petitioner was unable to point out if there was any discrimination on that score between the teachers in Government colleges and non-Government aided colleges.

27. Reliance placed by learned counsel for the Petitioners on the decision in ***Dr. Shah Faesal v. Union of India (2020) 4 SCC 1*** regarding referring the matters to the Larger Bench has no relevance as far as the High Court is concerned. It is only the Supreme Court of India that can refer the correctness of the judgment of a Supreme Court to the Larger Bench of the Supreme Court. That is not within

the remit of any High Court. Therefore, all the decisions relied in this regard have no relevance as far as the present cases are concerned.

28. As far as this Court is concerned the decision in ***Jagdish Prasad Sharma*** (*supra*) has decided the issue against the Petitioners and is binding on this Court. Consequently, the Court finds no merit in any of these writ petitions and they are dismissed as such, but with no order as to costs.

(***Dr. S. Muralidhar***)
Chief Justice

(***R.K. Pattanaik***)
Judge

S.K. Guin

